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Briefing on How To Use the Federal Register
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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SAN FRANCISCO, CA

WHEN: July 22, at 9:00 am
WHERE: Federal Building and U.S. Courthouse, Conference Room 7209–A, 450 Golden Gate Avenue, San Francisco, CA
RESERVATIONS: Federal Information Center, 1–800–726–4995

SEATTLE, WA

WHEN: July 23, at 1:00 pm
WHERE: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
RESERVATIONS: Federal Information Center, 1–800–726–4995

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AE29

Pay Administration (General); Premium Pay for Emergency Work

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the exception from the biweekly limitation on premium pay authorized by section 204 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final rule: (1) Authorizes the head of an agency to pay premium pay up to an annual limitation of GS–15, step 10, to employees performing work in connection with an emergency involving a direct threat to life or property, including a forest wildfire emergency; (2) establishes an effective date for such entitlement; and (3) requires agencies to document each determination to pay premium pay under the annual limitation for work performed in connection with an emergency.

EFFECTIVE DATE: The final rule is effective on August 17, 1992.

FOR FURTHER INFORMATION CONTACT: JoAnn Perrini, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On March 15, 1991, OPM published interim regulations on the exception from the biweekly limitation on premium pay authorized by section 204 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509, November 5, 1990). (See 56 FR 11059.) The 60-day comment period ended on May 14, 1991. Comments were received from nine agencies. Comments, as well as certain modifications and clarifications of the interim regulations, are summarized below.

Section 204 of FEPCA provides that employees who perform work in connection with an emergency involving a direct threat to life or property, including a forest wildfire emergency, will no longer be subject to the GS–15, step 10, biweekly maximum earnings limitation under 5 U.S.C. 5547(a), but will instead be subject to a GS–15, step 10, annual limitation under 5 U.S.C. 5547(b) during the period of time they perform work in connection with the emergency. Section 204 of FEPCA does not apply to certain law enforcement officers who are covered by a special biweekly limitation on premium pay under section 410 of FEPCA and 5 CFR 550.107.

Delegation of Authority to Agencies

The interim regulations permitted heads of agencies or their designees to authorize payment of premium pay under the annual limitation for employees performing work in connection with a natural disaster posing a direct threat to human life or property, including a forest wildfire emergency. For emergencies other than a natural disaster, the interim regulations required the head of an agency, or his or her designee, to obtain OPM approval to authorize payment of premium pay under the annual limitation.

Seven agencies providing comments objected to the distinction between natural disasters and other emergencies and recommended that the authority be delegated to agency heads for all emergencies. The agencies observed that the statute made no distinction between natural disasters and other emergencies. One agency commented that the term "natural disaster" is open to interpretation. Another agency noted that the distinction between an emergency involving a natural disaster and an emergency other than a natural disaster is often difficult, if not impossible, to make. The agencies pointed out that they must respond quickly to disasters other than those resulting from "natural causes," such as industrial accidents, oil spills, power failures, train derailments, truck accidents, airplane crashes, mine and building collapses, and national security emergencies.

One agency noted that the determination as to whether outside approval must be sought could be delayed pending the results of an investigation to determine the cause of a disaster—i.e., whether the disaster is attributed to natural causes or human error or intervention. Two agencies noted that emergencies may involve sensitive or classified information and that, for reasons of national security, it would be impracticable to provide the requested information to OPM. Three agencies commented that the authority should be delegated to agency heads, since they must make decisions on the use of resources as soon as possible after disasters occur. The agencies felt that the time lag involved in preparing a request and obtaining approval from OPM is difficult to justify and that the requirement places an unnecessary burden on OPM and the agencies.

OPM has amended the final regulations in response to these concerns by revising the definition of "emergency" and removing the requirement that agency heads request approval from OPM to authorize payment of premium pay under the annual limitations. The final regulations provide that when the head of an agency, his or her designee, or OPM determines that an emegency exists, an employee who is performing work in connection with an emergency will be paid premium pay under the annual limitation.

Effective Date of Entitlement

To ensure that heads of agencies make timely determinations on when an emergency exists, OPM has amended the regulations to require the head of an agency, or his or her designee, to make the determination as soon as practicable and to make entitlement to premium pay under the annual limitation effective as of the first day of the pay period in which the emergency began. These requirements ensure that the delegation will be exercised responsibly and that employees will be paid appropriately and in a timely manner for work performed in connection with an emergency.

Agency Recordkeeping

In order for OPM to evaluate agencies' use of this delegated authority and to provide interested parties information regarding its use, the final rule requires

agencies to document each determination to pay premium pay under the annual limitation for work performed in connection with an emergency. In addition, agencies must make these records available to OPM upon request. In response to concerns expressed about providing information on national security emergencies, OPM will not require agencies to report information that is classified or protected from disclosure by statute.

Effective Date of Regulations

Two agencies requested that OPM reconsider the effective date of the interim regulations and allow the effective date to be the earliest date permitted by FEPCA—February 3, 1991. The agencies requested an earlier effective date to allow an additional period of coverage for employees involved in Operation Desert Storm. Section 204 of FEPCA amended 5 U.S.C. 5547(b) to allow the biweekly limitation on premium pay to be waived in emergency situations involving a direct threat to life or property, subject to regulations prescribed by OPM. OPM's interim regulations made this section of law effective on the first day of the first pay period beginning on or after March 15, 1991. The law does not allow this amendment to be applied retroactively.

Miscellaneous

The interim regulations limit eligibility for the annual premium pay limitation to those employees performing work that is directly related to resolving or coping with an emergency or its immediate aftermath. One agency suggested that the limitation be modified to provide agencies more discretion and flexibility. OPM believes this limitation provides a reasonable degree of discretion and latitude for judgment. Therefore, we have not adopted this suggestion.

An agency asked whether an employee subject to the annual limitation would be entitled to basic pay for the remainder of the calendar year if the employee's total pay had reached the maximum rate for GS–15 by December 1. Under 5 U.S.C. 5547(b)(2), no employee may be paid premium pay if the aggregate of the employee's basic pay and premium pay would exceed the maximum rate for GS–15 in effect at the end of the calendar year. Since an employee is entitled to receive basic pay for the entirety of the calendar year, agencies should project, early in the calendar year, the maximum dollar amount of premium pay that an employee may earn, and update that projection as employees receive increases (or reductions) in their rates of basic pay. Similarly, another agency requested additional guidance on projecting an employee's pay for the calendar year. OPM plans to issue additional guidance through the Federal Personnel Manual system.

An agency correctly noted that if a calendar year had 27 pay dates, the extra pay date could cause the employee to exceed the GS–15 annual maximum earnings limitation at an earlier point than in a year containing 26 pay dates. The agency also pointed out that if the maximum rate for GS–15 in effect on the last day of the calendar year was higher than the annual limit in effect in the pay period in which the emergency work was performed, employees could be entitled to retroactive adjustments. If there is an adjustment that results in an increase in the GS–15 maximum rate late in a calendar year, retroactive payments would be required. OPM plans to issue additional guidance on these matters through the Federal Personnel Manual system.

Finally, it should be noted that § 550.107 was adopted as final with changes at 57 FR 2431 on January 22, 1992. In addition, § 551.501(c) was redesignated as § 551.501(d) in the interim regulations at 56 FR 20339 on May 3, 1991, and will be adopted as final in a separate **Federal Register** notice.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the interim rule amending 5 CFR part 550 published on March 15, 1991, at 56 FR 11059 is adopted as final with the following changes:

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for subpart A is revised to read as follows:

Authority: 5 U.S.C. 5547, 5548, and 6101(c).

2. In § 550.103, paragraph (r) is revised and paragraph (s) is added to read as follows:

§ 550.103 Definitions.

* * * * *

(r) *Emergency* means a temporary condition posing a direct threat to human life or property, including a forest wildfire emergency.

(s) *Performing work in connection with an emergency* means performing work that is directly related to resolving or coping with an emergency or its immediate aftermath.

3. In § 550.105, paragraph (b)(1) is revised to read as follows:

§ 550.105 Biweekly maximum earnings limitation.

* * * * *

(b) * * *

(1) Any pay period during which an employee has been determined to be performing work in connection with an emergency under § 550.106(a);

* * * * *

4. Section 550.106 is revised to read as follows:

§ 550.106 Annual maximum earnings limitation for work in connection with an emergency.

(a) For any pay period in which the head of an agency, his or her designee, or the Office of Personnel Management on its own motion determines that an emergency exists, an employee shall be paid premium pay under the annual limitation described in paragraph (c) of this section, instead of under the biweekly limitation described in § 550.105(a) if the employee has been determined by the head of the employing agency, or his or her designee, to be performing work in connection with the emergency.

(b) The head of an agency, or his or her designee, shall make the determination under paragraph (a) of this section as soon as practicable after the emergency begins. Entitlement to premium pay under the annual limitation shall be effective on the first day of the pay period in which the emergency began.

(c) In any calendar year during which an employee has been determined to be performing work in connection with an emergency, he or she shall be paid premium pay under this subpart to the extent that the payment does not cause the total of his or her basic pay and premium pay for the calendar year to exceed the maximum rate for GS–15 in effect on the last day of the calendar year, including—

(1) A locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509); and

(2) A special salary rate established under 5 U.S.C. 5305.

(d) An agency shall keep a record of each determination made under paragraph (a) of this section, including a description of the emergency, the date the emergency began, an estimate of the number of employees affected, and the types of premium pay involved. Agencies shall make such records available for review upon request by the Office of Personnel Management.

(e) This section does not apply to—

(1) An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or

(2) A law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17).

[FR Doc. 92–16850 Filed 7–16–92; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 971

[Docket No. FV–92–034]

Suspension of Provisions of Marketing Order No. 971; Lettuce Grown in Lower Rio Grande Valley in South Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension order.

SUMMARY: This action suspends, for three years, effective July 17, 1992, all provisions of and established pursuant to, Federal Marketing Order No. 971 for Lettuce grown in the Rio Grande Valley of South Texas. This suspension action is taken because the South Texas lettuce industry, at this time, consists of only one handler and three producers and is unable to meet certain administrative requirements required under the order. Also, with only one handler, there is no need for establishing marketing requirements. Thus, the order and its marketing regulations no longer tend to effectuate the declared policy of the authorizing legislation, the Agricultural Marketing Agreement Act of 1937, as amended (Act).

EFFECTIVE DATES: July 17, 1992 through July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Belinda Garza, Southwest Marketing Field Office, 1133 East Hackberry, McAllen, Texas, 78501, telephone (512) 682–2834; or Sonia Jimenez, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456, telephone (202) 205–2830.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 144 and Order No. 971 (7 CFR part 971) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This action is being taken under the provisions of section 8c(16)(A) of the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. During the 1991–92 season, there were as few as three producers and only one handler marketing lettuce in South Texas, all of which are small entities.

Marketing Order 971 has been in effect since November, 1960. The order provides for the establishment of grade, size, quality and quantity of lettuce shipped from the production area during any period. The order provides for packing holidays, as well as for pack, container, and inspection requirements. In addition, the order authorizes production and marketing research, and market development. Also, it provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from mid-November through March.

While lettuce shipment levels and size of the industry have fluctuated since promulgation of the order in 1960, there has been a downward trend in the number of lettuce producers and handlers, and in the acreage of lettuce planted and volume produced. Records indicate that in 1961, the first year the South Texas lettuce marketing order was in effect, there were 31 handlers and 68 producers who produced 1,793,500 cartons of lettuce on 6,842 acres. However, market share for South Texas lettuce has declined compared to other lettuce producing areas, mainly California and Arizona. During the 1990–91 marketing season, there were 11 handlers and 20 producers who produced 90,427 cartons of lettuce on 2,625 acres. There were reported to be only one handler and three producers of lettuce in South Texas active during the 1991–92 marketing season.

The South Texas Lettuce Committee (committee), the agency responsible for local administration of the order, met on May 29, 1991, and unanimously recommended that the handling regulations currently in effect under the marketing order be suspended for the 1991–92 lettuce season. The recommendation was based largely on the expectation that there would be only one entity producing and handling lettuce during the 1991–92 season. Moreover, the Texas lettuce industry is

unable to nominate the required number of committee members specified under the order.

An interim final rule was published in the Federal Register on October 31, 1991 (56 FR 55986), suspending, for the 1991–92 season, container, pack, packing holiday, inspection, and certain reporting requirements currently in effect under the order. The interim final rule provided opportunity for interested persons to comment on the suspension action. No comments were received. The interim rule was finalized on December 23, 1991, and published in the Federal Register on December 30, 1991 (56 FR 67148).

Thus, it is determined that, at this time, Marketing Order 971 does not tend to effectuate the declared policy of the Act.

Because it has been determined that the order currently does not tend to effectuate the declared policy of the Act, this action suspends, for a three year period effective July 17, 1992 all provisions of Marketing Order 971 including:

(1) Provisions of the order dealing with the establishment and responsibilities of the committee and the administration of the order;

(2) The currently suspended container, pack, packing holiday, inspection and certain reporting requirements;

(3) The authority to establish volume, grade, size and quality requirements;

(4) The committee rules and regulations related to special purpose shipments; and

(5) Information reporting and collection requirements (In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), such requirements have been approved previously by the Office of Management and Budget and assigned OMB Control No. 0581–0085).

Pursuant to § 971.43(d) of the order, the committee may recommend to the Secretary that, during the suspension period, one or more trustees be appointed to oversee the administrative affairs of the order. The trustees will be responsible for completing the order's unfinished business, including ensuring termination of all outstanding agreements, contracts and the payment of all obligations. The trustees will be responsible for disposing of committee property, safeguarding the program assets, holding committee records, and arranging for a financial audit to be conducted. All such actions by the trustees during the period of suspension are subject to the approval of the Secretary. Those designated as trustees are Mr. Humberto Garcia, chairman of the committee, and Mr. Larry McLaughlin, committee member. In addition, Belinda Garza, Officer-In-Charge of the AMS, FV, McAllen Marketing Field Office in McAllen, Texas, and George Kelhart, Marketing Specialist of the AMS, FV, Marketing Order Administration Branch in Washington, DC, are hereby designated as trustees representing the Department of Agriculture. The trustees shall continue in their capacity until the order is reactivated, terminated or discharged by the Secretary.

Not more than $3,000 (three thousand dollars) currently in reserve funds will be held by the trustees to be used to cover unforeseen, outstanding expenses obligated by the committee. Such funds could also be used by the trustees to pay for necessary start-up costs should the order, at the determination of the Secretary, be reactivated. Remaining funds held in the reserve account will be returned, on a pro rata basis, to those handlers who paid assessments to M.O. 971 during one or more of the 1988–89, 1989–90 or 1990–91 marketing seasons. No assessment funds were collected during the 1991–92 marketing season.

During the first two years of the period of suspension, the Department will monitor lettuce production and the number of active producers and handlers in the production area. Evaluation of the situation over a two-year period is appropriate because that period is long enough to determine whether a reversal in the industry's downward trend in production and shipments, and the number of producers and handlers, is likely. If, at any time during the two year period, obstacles facing the industry are alleviated and if a significant number of producers and handlers resume commercial lettuce production and handling in the production area, the industry may petition the Secretary to reactivate the program. After conclusion of the two-year period, if no such production increase occurs, or if there appears to be no imminent alleviation of production and marketing conditions acting against the industry, the Secretary may initiate procedures to terminate the order.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give additional preliminary notice, or to engage in further public procedure with respect to this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relieves restrictions on handlers by suspending the requirements regulating the handling of Texas lettuce pursuant to M.O. 971; (2) an interim final rule suspending the regulations for the current marketing season was issued October 25, 1991, and was finalized in the Federal Register on December 30, 1991 (56 FR 67148); and (3) no useful purpose would be served by delaying the effective date until 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 971

Lettuce, Marketing Agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR 971 is amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR 971 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

PART 971—[AMENDED]

2. Part 971—Lettuce Grown in the Lower Rio Grande Valley in South Texas (7 CFR part 971), and all provisions therein, is suspended for three years effective July 17, 1992 through July 17, 1995.

Dated: July 13, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–16881 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[FV–92–033IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1991–92 Crop Year for Natural (sun-dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for Natural (sun-dried) Seedless (NS) raisins from California's 1991–92 raisin crop year production. The percentages are 79 percent free and 21 percent reserve. The 1991–92 crop year began August 1, 1991. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This action was

unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

DATES: Interim final rule effective July 17, 1992. Comments which are received by August 17, 1992 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENATARY INFORMATION:

This interim final rule is issued under marketing agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This action establishes final free and reserve percentages for NS raisins for the 1991–92 crop year, beginning August 1, 1991, through July 31, 1992. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary, interim, and final percentages for the various varietal types of California raisins that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this action may restrict the amount of raisins that enter domestic markets, the final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry (caused by substantial shifts of raisin grapes from winery use to NS raisin production), and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary, interim, and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of these final percentages which release 100 percent of the NS raisin computed trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54(a) of the order, the Committee met on August 12, 1991, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed, using a formula prescribed in that paragraph, a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for each varietal type shall be the shipments of free tonnage raisins

from the prior year during the months of August, September, and one half of October.

In accordance with these provisions, the Committee computed and announced a trade demand of 279,185 tons for NS, 10,312 tons for Dipped Seedless, 500 tons for Oleate and Related Seedless, 3,334 tons for Zante Currant, 522 tons for Monukka, and 500 tons for Other Seedless, 17,328 tons for Golden Seedless, 500 tons for Muscat, and 500 tons for Sultana raisins. As required under § 989.54(b) of the order, the Committee met on October 10, 1991, computed and announced preliminary percentages for NS, Dipped Seedless, Oleate and Related Seedless, Zante Currant, Monukka, and Other Seedless raisins which released 65 percent of the computed trade demand. Field prices had not been firmly established at that time. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 331,756 tons, and 55 percent free and 45 percent reserve for NS raisins; 11,869 tons, and 56 percent free and 44 percent reserve for Dipped Seedless raisins; 916 tons, and 35 percent free and 65 percent reserve for Oleate and Related Seedless raisins; 4,131 tons, and 69 percent free and 31 percent reserve for Zante Currant raisins; 1,083 tons, and 31 percent free and 69 percent reserve for Monukka raisins; and 1,628 tons, and 20 percent free and 80 percent reserve for Other Seedless raisins. The Committee also determined that free and reserve percentages were not needed for Golden Seedless, Muscat and Sultana raisins because supplies were expected to be in line with the computed trade demands.

The Committee met again, on November 15, 1991, and because field prices had been firmly established, revised its marketing policy to release 85 percent of the computed trade demand for NS raisins. The revised preliminary percentages were 72 percent free and 28 percent reserve. Also at that meeting, the Committee determined that its preliminary crop estimates for Dipped Seedless, Oleate and Related Seedless, Zante Currant, and Monukka raisins were higher than actual deliveries, and that the available supplies of these varietal types would be in line with the computed trade demands. As a result, the Committee unanimously decided to eliminate volume percentage restrictions for these four varieties.

The Committee also recommended not to establish a reserve pool for the Other Seedless variety even though the production was expected to be somewhat higher than the computed trade demand. Because the estimated deliveries of this variety would comprise less than one percent of the total raisin market, it was felt that the lack of volume regulation for this varietal type would not adversely affect the Committee's objectives of stabilizing prices and supplies for the seedless varietal types covered under the marketing order.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. By that time, the Committee has more information available, including its final crop estimate and other information, on which to base the determination of final free and reserve percentages.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. Interim percentages for NS raisins of 78.75 percent free and 21.25 percent reserve were computed and announced on February 5, 1992. The interim percentages for NS raisins released 99.44 percent of the computed trade demand.

The Committee's final estimate of 1991–92 production of NS raisins totaled 352,545 tons (which is 20,789 tons more than the preliminary estimate). Dividing the computed trade demand of 279,185 tons by its final estimate of production results in a final free percentage of 79.19 percent. The Committee rounded that free percentage to 79 percent which results in a final reserve percentage of 21 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1991–92 crop year apply to all NS raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1991–92 crop raisins of the NS varietal type based on the interim free and reserve percentages in anticipation that the final free and reserve percentages will be approved; (3) this action must be taken promptly to achieve its purpose of fostering continued buyer confidence and stable marketing conditions by making the full trade demand quantity computed by the Committee available to handlers; and (4) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.244 is added to Subpart—Supplementary Regulations to read as follows:

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

§ 989.244 Final free and reserve percentages for the 1991–92 crop year.

The final percentages of standard NS raisins acquired by handlers during the crop year beginning on August 1, 1991, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Percentage	
	Free	Reserve
Natural (sun-dried) Seedless	79	21

Dated: July 13, 1992.

Robert O. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 92–16853 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1096

[DA-92-16]

Milk in the Greater Louisiana Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action relaxes the limits on diversion of milk under the Greater Louisiana milk order. The suspension increases the amount of milk that may be shipped directly from farms to nonpool plants and still be priced under the order. The suspension was requested by Dairymen, Inc. (DI), a cooperative association that represents procedures who supply the market. The suspension is necessary to reflect current marketing conditions and to permit the efficient marketing of milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton, H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 6, 1992; published May 12, 1992 (57 FR 20209).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessons the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Greater Louisiana marketing area.

Notice of proposed rulemaking was published in the Federal Register on May 12, 1992 (57 FR 20209), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Comments in support and in opposition were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1096.13 (d)(3) and (d)(4), the words "15 percent of".

Statement of Consideration

This action suspends portions of the producer milk definition of the Greater Louisiana milk order. The suspension allows more milk to be shipped directly from farms to nonpool plants and still be priced and pooled under the order.

The order provides that a handler may divert a quantity of milk up to 15 percent of the quantity of producer milk that is received at pool plants. The suspension would increase the diversion allowance to a volume equal to one half of the volume of producer milk handled.

The suspension was requested by Dairymen, Inc. (DI), a cooperative association having a substantial amount of milk pooled on the Greater Louisiana market. DI contends that the 15 percent diversion provisions are inadequate at the present time and needs to be amended through the formal rulemaking procedure, which has been requested. The cooperative indicates that the normal seasonal variation in production of milk by producers associated with the market is far greater than the portion of producer milk that can be diverted to nonpool plants (a variation of approximately 32 percent of 1988 through 1991 when comparing the months of March, April and May to the months of July, August and September).

DI contends that in order to pool all of the producer milk during the spring months, it is necessary under these conditions, to inefficiently ship the milk to a pool plant, pump the milk into and out of the pool plant and then transfer the milk to a nonpool plant. DI stated that their cooperative association has submitted proposals that if heard should correct this problem.

A comment in support of the suspension was filed by another cooperative association. It stated that seasonal variation in milk production justifies the suspension.

A comment in opposition to the suspension was filed by a proprietary handler. The opponent stated that the suspension would lessen the ability of distributing plants to attract milk since it could result in a lower Greater Louisiana blend price.

An analysis of average daily deliveries by producers for the months of March, April and May of 1991, indicates average daily deliveries of 3,115 pounds. Average daily deliveries for the months of August, September and October 1991 indicates an average of 2,110 pounds or a variation of approximately 48 percent when comparing the two periods. Thus, the 15 percent diversion limit is far less than is needed to pool the market's seasonal reserve supply by diversion to nonpool plants. In fact, cooperatives have followed a practice of pooling much of this reserve supply on the New Orleans-Mississippi market by shipping it directly from farms to pool manufacturing plants under that order. This practice results in an unequitable seasonal disparity in blend prices between these adjacent markets. Relaxation of the diversion limits under the Greater Louisiana order would facilitate the pooling of the markets seasonal reserve milk supplies and thereby tend to alleviate the inequitable pooling of such milk on the New Orleans-Mississippi market.

Accordingly, it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should obviate the need to inefficiently unload and reload milk at pool plants in order to keep it priced under the order.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exits for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1096

Milk marketing orders.

It is therefore ordered, That the following provisions of the order (7 CFR part 1096) are hereby suspended.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. The authority citation for 7 CFR part 1096 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1096.13 [Suspended in Part]

2. In § 1096.13 (d)(3) and (d)(4), the words "15 percent of" are suspended.

Dated: July 13, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–16849 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1955

RIN 0575–AA81

Establishment of Wetland Conservation Easements on FmHA Inventory Property

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its insured loan regulations to implement a new provision of the Consolidated Farm and Rural Development Act (CONACT) added by the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), (FACT ACT) and, therefore, revises the procedure by which FmHA establishes wetland conservation easements on its suitable and surplus inventory property. On November 5, 1991, FmHA published a proposed rule in the Federal Register (56 FR 56474–56480) which explained the Agency's proposed regulations for implementing section 335(g) of the CONACT, which was added by section 1813(h) of the FACT ACT. This action is being taken to facilitate the placement of wetland conservation easements on wetlands located on FmHA inventory property. Inventory properties containing wetlands which have not been cropped to an agricultural commodity, have been cropped less than frequently, have been converted subsequent to December 23, 1985, or which do not have a history of haying or grazing, will be encumbered with full perpetual conservation easement coverage. Perpetual wetland conservation easements will also be placed on wetlands which have been converted prior to December 23, 1985, frequently cropped, or have a history of haying or grazing. However, not more than 10 percent of the cropland on the inventoried property that is prior converted and not more than 20 percent of the cropland on the inventoried property that is frequently cropped wetlands and prior converted wetlands will be so encumbered unless the purchaser waives these limitations. Not more than 50 percent of the existing forage lands on the inventoried property will be so encumbered unless the purchaser waives this limitation. The intended effect is to protect a substantial number of wetlands on FmHA inventoried properties while at the same time avoiding to the extent practicable an adverse impact on the productivity of croplands; and to maintain properties' marketability as agricultural production units for applicants with preservation servicing rights or beginning farmer applicants.

EFFECTIVE DATE: Final rule is effective July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur V. Hall, Director, Farmer Programs, Loan Servicing and Property Management Division, Farmers Home Administration, USDA, room 5449, Washington, DC 20250, Telephone (202) 720–4572.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of 100 million dollars or more.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.407—Farm Ownership Loans.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of FmHA Programs and Activities" (December 23, 1983), Farm Ownership Loans are excluded with the exception of the nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (Public Law 91–190), an Environmental Impact Statement is not required.

I. Summary of Final Rule and Response to Comments

A. Background

The purpose of this final rule is to implement the provisions of section 1813(h) of the FACT Act which added a new subsection (g) to section 335 of the CONACT. In the past, FmHA protected wetlands in accordance with Executive Order 11990. Section 335(g) of the CONACT largely supersedes the Executive Order insofar as the management and disposition of FmHA farm inventory property containing wetlands is concerned. Subject to certain limitations, section 335(g) provides for the establishment of perpetual wetland conservation easements to protect and restore wetlands, or converted wetlands, on FmHA suitable and surplus inventory properties containing wetlands. Included in the scope of this regulation are those properties which are subject to homestead protection rights under section 352 of the CONTACT. For administrative consistency in the management of farm inventory property—rather than to continue to impose full easements under E.O. 11990—the decision was made to treat homestead protection properties the

same as all other farm inventory properties, even though homestead protection properties are not disposed of under section 335 of the CONACT. In establishing wetland conservation easements on land that is considered to be cropland as of November 28, 1990, FmHA will, to the extent practicable, not adversely impact the productivity of the croplands as set forth in § 1955.137 (b), (c) and (d). Wetlands being cropped that were converted prior to December 23, 1985, and which have not been abandoned, will be encumbered with limited wetland conservation easements. These easements will not exceed 10 percent of the existing cropland on the particular inventory property. Wetlands which have been frequently cropped plus prior converted croplands will be encumbered with a wetland conservation easement not exceeding 20 percent of the existing cropland on the particular inventory property. Wetlands that have been abandoned (as determined by Soil Conservation Service (SCS)), whether prior converted or frequently cropped, will have full easement coverage. Wetlands which have a history of haying and grazing will be encumbered with a wetland conservation easement not exceeding 50 percent of the existing forage lands on the particular inventory property. Technical considerations of the potential functions and values of the wetlands on the property, as reflected in the U.S. Fish and Wildlife Service's (FWS) recommendations, will determine the size of the easements, up to these established limits. All other wetlands located on FmHA inventory property that are the subject of a technical recommendation by the FWS will be encumbered with full wetland conservation easement coverage. Purchasers of inventory property may waive the 10 percent and/or 20 percent limits and set higher limits on prior converted and frequently cropped wetlands, including 100 percent easements. Lessees, however, may not waive the limits to establish a higher percentage easement coverage. In the case of a beginning farmer or rancher, or in the case of a person having preservation servicing rights in accordance with subpart S of part 1951 of this chapter, the wetland conservation easement may be reduced on the prior converted wetland, and modified on the frequently cropped wetlands, when recommended by the Easement Review Team, in order to maintain an inventory property marketability and/or comparability in accordance with the provisions of the Act. The Easement Review Team consisting of Agency representatives from SCS, FWS, Agricultural Stabilization and Conservation Service (ASCS), and FMHA is established to assist in the wetland easement establishment process. The individual duties and responsibilities of the team members are set forth in a Memorandum of Understanding between the respective agencies. The FMHA State Director will make the final decision as to whether or not a property subject to the provisions of this subpart is marketable and/or comparable. The intent of this regulation change is to protect a substantial number of wetlands on inventoried properties while maintaining the properties' marketability and/or comparability as agricultural production units for applicants with preservation servicing rights and beginning farmer applicant/borrowers.

When determining whether an inventory property, with a recommended wetland easement in place, will continue to meet the marketability and comparability test, the Easement Review Team may consider a variety of factors. In general, this analysis will focus on whether the inventory farm with the recommended easements can be an economically viable farm, in comparison to a successful farm in the area that is comparable in size and productivity, and that produces the same or similar commodities. The Team will determine which factors/criteria are appropriate for a particular property on a case-by-case basis, and may include such items as: The overall size of the agricultural production unit being affected; the soil's productivity and potential crop yield of the property; the spacial location of the proposed easement in relationship to remaining cropland on the property; and a comparison of the productivity of the inventory farm, with the easements in place, with successful farms of the same basic enterprises in the community. These factors/criteria and others as determined by the team to be appropriate for a particular property will be described and recorded on a field data form and will serve as the basis for the final decision by the FmHA State Director relative to the potential for a wetland easement to adversely impact marketability of the agricultural production unit for comparable agricultural enterprises.

If the FmHA State Director determines that the initially recommended wetland easement would fail the marketability and/or comparability test, the FWS will be provided the opportunity to modify the easement recommendation to bring the proposal into compliance with the marketability and/or comparability requirements. Initially, the focus will be to consider the need to remove part or all of the easement previously recommended for areas that are classified as prior converted cropland. If additional modification of the easement proposal is warranted, easements being recommended for areas classified as frequently farmed wetlands will be considered for modification to allow cropping to the extent that such can occur under the present wetland conditions. Additional drainage of such wetlands would continue to be prohibited under the easement.

When determining which portions of a prior converted wetland to exempt from easement protection or which portions of a frequently farmed wetland to allow to be cropped, the FWS will consider a variety of technical and management factors/criteria. These factors will generally include such items as the present wetland productivity of the areas in question, potential for cost effective and timely restoration results to be achieved, spacial position of potential prior converted cropland and frequently farmed wetland easement areas to other wetlands on the property, and overall configuration of the potential easement in relationship to boundary delineation and management considerations. Additional site specific considerations may also become appropriate for consideration (*e.g.*, proximity to roads and habitable dwellings). To reemphasize, however, the State Director will make the final decision on reducing the easements based on the FWS recommendation.

In summary, the following steps will take place in determining the protection of wetlands on FmHA farm inventory property:

Step 1. Determination of Wetlands. A determination will be made as to the extent of wetlands on inventoried property by type, that is, converted, prior converted, frequently cropped or have historically been used for haying and grazing, and wetlands that are not cropped to an agricultural commodity or are cropped less than frequently. This determination will be made by SCS in accordance with title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

Step 2. Wetlands General. In the event an inventoried property contains wetlands converted after December 23, 1985, or wetlands that are not cropped to an agricultural commodity or are cropped less than frequently, all such wetlands will be deed restricted in their

use, as reflected in the FWS's recommendations.

Step 3. Frequently Cropped and Prior Converted. In the event an inventoried property contains frequently cropped wetlands (as defined by SCS), and no prior converted wetlands, no more than 20 percent of the existing cropland on an inventoried property will be deed restricted. Similarly, if the property contains prior converted wetlands, no more than 10 percent of the existing cropland on an inventoried property will be deed restricted. However, if the property contains both frequently cropped wetlands and prior converted wetlands, no more than 20 percent of the total cropland in these categories will be deed restricted.

Step 4. Haying and Grazing. In the event an inventoried property contains wetlands historically used for haying and grazing, no more than 50 percent of the existing forage land on an inventoried property will be deed restricted. Easements placed on wetlands that have a history of haying and grazing practices shall permit those practices which are in accordance with forage management standards that provide for the protection and restoration of wetlands functional values. The FWS and the SCS in consultation with Land Grant Professionals (Cooperative Extension Service) having experience in range and forage management shall jointly develop, agree and recommend to FmHA, the practices designed to protect these values, before the property is sold out of inventory.

Step 5. Preservation Servicing Rights—Beginning Farmers. For cases involving applicants with preservation servicing rights or sale to a beginning farmer or rancher, easements on prior converted wetlands or frequently planted cropland may be reduced below the established limits in order to maintain the farm as a marketable agricultural production unit of comparable type. The FmHA State Director shall make this determination and shall consult with the Easement Review Team in the reduction of easement coverage where such flexibility clearly must be exercised.

Step 6. Waiver by Purchaser. Subject to the waiver of the established size limits by the purchaser and the technical recommendations of the FWS, easements above the established limits will be placed. Only a purchaser, not a lessee, can waive the established limits.

B. Response to Comments

The Agency received 36 comments from 10 respondents, those comments and the Agency's responses are as follows:

One respondent commented that wetlands having "significant" wetland resources should remain in the possession of the Government and be protected as natural wetlands. The Agency must implement section 335(g) of the CONACT as written. Even so, FmHA presently has in place a program (unchanged with this regulation revision) which provides for the protection and continued Government ownership of properties containing special characteristics (which includes "significant" wetland resources). Under section 354 of the CONACT, FmHA is authorized to transfer properties having special characteristics to State and Federal Agencies for conservation purposes and does so on an on-going basis, after all preservation servicing rights are exhausted. For example, during Fiscal Year 1991, FmHA approved the transfer of 158 properties containing 56,610 acres for conservation purposes.

One respondent commented that there should not be a limit on the number of acres of wetlands encumbered with easements; nor should there be a limit on the percentage of cropland (located on wetlands) that is protected by easements. The Agency is unable to adopt this comment. Section 335(g) of the CONACT is explicit as to the percentage limitations and the amount of wetland acreage to be protected with conservation easements. The statute does not allow for administrative discretion on the part of the Agency on this issue.

One respondent commented that the definition of wetlands should be that set forth in the 1989 Wetland Delineation Manual (prior to the proposed revisions). An additional respondent commented that SCS, FWS, and ASCS each have their own definition of a wetland. Unless a uniform definition of a wetland is utilized by all services, there will be potential confusion and conflicts. The Agency believes that the statute (CONACT) is explicit, in that it sets forth, in section 335(g), that the wetland determinations for the establishment of wetland conservation easements on FmHA inventory property will be made in accordance with title XII of the Food Security Act of 1985. This statute and the resulting regulations are the bases for establishing wetland conservation easements on FmHA inventory property.

One respondent stated that the proposed rule is indeed a major Federal action significantly affecting the quality of the human environment and requested that FmHA complete all of the forms required by the National Environmental Policy Act of 1969 (NEPA). This respondent also commented that FmHA should publish an outline of the analysis used in making its determination as to whether or not the proposed rule is a major Federal action which will result in an annual effect on the economy of $100 million or more. The Agency does not believe that the implementation of the wetland conservation easement provisions (on FmHA inventory property) of section 335(g) of the CONACT is a major Federal action which will result in an annual effect on the economy of $100 million or more. The proposed rule on this regulation set forth, in the discussion section, the Agency's projections on the number of farms and the amount of acreage and scope of the wetlands to be affected by the establishment of wetland conservation easements. The study, conducted by FmHA for Congress in January 1991, provided data on the projected monetary impact of the regulations. The proposed rule specified that the study is available for public inspection by contacting the Office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agricultural Building, 14th & Independence Avenue, SW., Washington, DC 20250. We believe that these projections, and the study, provide adequate data to support the determination made. We do not believe it necessary to publish an outline of the analysis used in making this determination.

One respondent commented that once established, wetland conservation easements are always applicable. The respondent stated: "FmHA should not—and cannot according to the statute—retain the power to release the wetland easements." The Agency believes the respondent is correct and has amended this subpart to more clearly reflect that the wetland conservation easements are perpetual.

One respondent commented that it is important that wetlands be identified by the Soil Conservation Service in accordance with the Food Security Act of 1985, as it may be interpreted from time to time by the Secretary. The Agency agrees and believes that the proposed rule as drafted—and the final rule—make this clear.

One respondent commented that wetlands, not recommended for easement coverage by the U.S. Fish and Wildlife Service (FWS), should not be encumbered with a conservation easement. The Agency does not adopt

this suggestion. Section 335(g) of the CONACT is precise as to the establishment of wetland conservation easements. The statute does not allow the Agency the administrative latitude to arbitrarily exempt wetlands from conservation easements.

One respondent commented that it is important that the value (sales price) of a farm be reduced when easements are established to compensate for the acreage placed under easement in order to assure that it is not unfeasible to buy back the farm. The Agency agrees and believes that the proposed rule, this final rule, and existing FmHA regulations make that clear.

One respondent commented that the definition of a Beginning Farmer (Section 1955.103(6), of the proposed rule) should be changed by adding the word "immediate" in front of the word "family." The Agency included the definition of a Beginning Farmer in the wetlands proposed rule as a reference only, as the definition was not found in existing FmHA regulations at the time the wetlands proposed rule was published, but was set forth in a separate regulation package. The interim final rule on Beginning Farmer has been published and includes that definition. Any changes made to the definition as a result of comments are taken care of in the interim final rule. The Agency has made clear in this final rule that a beginning farmer, for the purposes of the scope of this rule, does not have to be eligible for an FO loan. This is because section 335(g) of the CONACT does not refer to "qualified" (that is, eligible) beginning farmers or ranchers as section 335(e)(1)(C)(v) of CONACT does.

One respondent commented that wetlands located on pasture lands should not be restricted from grazing. Many times these wetlands are the only source of water for the livestock, and fencing these areas may render the pasture useless and unsalable. This type of fencing could piecemeal tracts of land and decrease their values. Haying and grazing management standards should not require the fencing of potholes. The Agency does not adopt this suggestion. The statute (section 335(g) of the CONACT) is precise as to the establishment of wetland conservation easements. The statute does not allow the Agency the administrative latitude to arbitrarily exempt wetlands from conservation easements. However, the commenter's point that the easement (when fencing is used) must not unreasonably separate the water supply from the land used for grazing is valid and understood. The Agency believes that the regulation addresses this situation. Livestock grazing on the non-easement lands will not be separated from the livestock water supply.

One respondent commented that haying should be allowed after July 15th of each year on croplands (located on wetlands) placed under easement. The grazing practices on these lands should be in accordance with management standards that provide for wetland functions. The Agency incorporated the Conference Report provisions when developing this regulation, as the Report was an indication of Congressional intent on this particular point. The Conference Report provided for limited use of wetland forage producing lands (encumbered with easements) but did not provide for any type of use on those portions of the wetlands to be encumbered with easements on the prior converted and frequently cropped wetlands. Therefore, the Agency does not adopt this suggestion.

Two respondents commented that the rule must apply to all land in inventory (both suitable and surplus) on November 28, 1990, the date the FACT ACT was enacted. The commenters recommended that the rule be amended to clearly state to what inventory property the rule applies. The Agency adopts this comment. The rule is further clarified to clearly indicate that this regulation applies to all Farmer Programs inventory farm property (both suitable and surplus properties).

One respondent commented that abandoned wetlands should be defined as a wetland that had been farmed, but is not now, and the ditch or tile (the drainage system for the wetland) has not been maintained for 5 years or more; and ASCS should be the Agency which makes the abandonment determination. The Agency does not adopt this comment. Section 335(g) of the CONACT established title XII of the Food Security ACT of 1985 as the basis for identifying wetlands on which wetland conservation easements are to be established on FmHA inventory property. The determination as to whether cropland has been abandoned is part of the wetland determination process. SCS has published in the Federal Register a definition of abandonment. FmHA opted to use the SCS and their published definitions as they relate to wetlands due to the section 335(g) language.

One respondent expressed a concern that surplus designated property would be encumbered with full wetland conservation easement coverage even if it contained only frequently cropped wetlands, prior converted croplands, or forage producing wetlands. The Agency agrees that clarification on this issue is necessary.

One respondent commented that "Full wetland conservation easement coverage," is not defined. The terms, conditions and restrictions of full conservation easement coverage should be spelled out. The Agency does not believe that this is an issue or that further clarification is needed. The proposed rule provided that not more than 10 percent of the cropland on the inventoried property that is prior converted wetland, and not more than 20 percent of the cropland on the inventoried property that is frequently cropped wetlands and prior converted wetlands, and not more than 50 percent of the existing forage lands will be encumbered with wetland conservation easements. All other wetlands on the inventory property will receive "full wetland conservation easement coverage." The full easement coverage is meant to mean the acreage will be totally encumbered. The terms, conditions and restrictions of the easements will vary with different geographical areas of the country due to ecological variations in wetlands. The proposed rule spells out how these criteria will be established *i.e.*, on the cropland and on the non-forage producing areas, the U.S. Fish and Wildlife Service (FWS) recommendations will set forth the terms of the easement, whereas on the forage producing areas the SCS and FWS in consultation with Land Grant Professionals (Cooperative Extension Service) recommendations will set forth the terms of the easement, etc. The Agency believes the rule is quite specific on this.

One respondent commented that Exhibit M (to Subpart G of Part 1940) is not found in the rules to be reviewed, and should be included in the final rule so that there is no question about the restrictions and compliance requirements.

The Agency does not adopt this suggestion. Exhibit M to subpart G of part 1940 has been previously published in the Federal Register and is therefore presently incorporated into existing FmHA regulations. Because the Agency is not revising Exhibit M at this time, there is no reason to republish it.

One respondent commented that the identification of cropland and forage production areas should not be determined by SCS, but should instead be determined by ASCS. Another respondent commented that ASCS should be the Agency to make the determinations as to what wetlands are

frequently cropped, or cropped less than frequently, and the terminology should be more clearly defined. The Agency does not adopt either comment. The Agency believes that SCS is the USDA Agency that has the technical knowledge and expertise necessary to identify the plants, soil types, and other characteristics which are associated with wetlands located on croplands (prior converted croplands and frequently cropped wetlands); or are located on forage producing wetlands. In most cases, this SCS determination will be made in consultation with ASCS.

One respondent commented that the definition of a "forage production area," as set forth in § 1955.103 is unacceptable. The respondent stated: "A person could have put an alfalfa crop on set aside land and under this definition, these lands would not be considered cropland. We recommend the definition be struck, and that it be rewritten to say, "those lands as determined or identified by ASCS." The Agency adopts this comment in part. We are informed by SCS that: "If land is set-aside, it is cropland." However, in order to avoid confusion or misinterpretation, the Agency will amend its definition of a "forage production area," by adding to the proposed definition, the words, "and are not recognized as cropland." This revision should clearly differentiate the two types of lands.

One respondent commented that they were in agreement with the proposed rule definition on, "marketable agricultural production unit comparable to that acquired." The Agency adopts this definition unchanged.

One respondent recommended that a document should be developed to outline the range and forage management practices designed to protect wetland values so that the prospective buyer as well as FmHA will have a clear idea of what is required; and that input be sought from ASCS, SCS, and FmHA County Committees. The Agency does not adopt this comment. The Agency does not believe it is appropriate to include USDA County Committee members in the easement development process. The Agency adopted the Conference Report provisions on section 1813(h) of the FACT ACT, which sets forth some fairly specific guidance as to what Congress intended as to the development of the forage management practices to be incorporated into the wetland conservation easements to be established on forage producing lands. In reference to establishing the management practices on forage producing lands, the Conference Report states: "The Managers believe the Fish and Wildlife Service and the Soil Conservation Service should jointly develop and agree to the practices designed to protect these values in consultation with Land Grant Professionals having experience in range and forage management." The Agency does not believe any more guidance is necessary.

However, the Agency is in full agreement with the respondent that it is important that the prospective purchaser, as well as FmHA, have a clear understanding as to the terms and conditions of the easement. In order to assure that this takes place, the regulation has been written to provide that the inventoried farm will not be offered for sale until after a determination has been made as to the establishment of the conservation easements.

One respondent indicated that they had previously provided comments to FmHA on Exhibit H to subpart S of part 1951, (a separate **Federal Register** proposed rule). The respondent indicated that they wished to have FmHA consider those comments in reference to this proposed rule.

Those comments were as follows: The respondent recommended that Exhibit H to subpart S of part 1951 be rewritten to provide: (1) A clear statement of appeal rights; (2) full disclosure of terms and conditions of the easement, including provisions for payment of property taxes; (3) uniform and consistent determinations of the value of the credit which directly relates to the loss in land value as a result of the easement as determined by the terms and conditions of the easement; (4) clear application procedures and timeframes for old and new applicants; (5) clear procedures for delineating the easement boundaries and determining the terms and conditions of the easement; (6) clear procedures for determining how the borrower's farm plan will be altered to reflect lost income due to the easement; (7) a clear statement of whether the credit is considered income, and subject to income tax; and (8) far less County Supervisor discretion. The Agency does not adopt these comments. Issues No. 1, 4, 6, and 7 of the above respondent's recommendations are exclusive to Exhibit H to subpart S of part 1951 and are not specific to this final rule. Comment No. 2 was raised by another respondent and is discussed above, except for the property tax issue. This issue is between the purchaser and the local county or parish treasurer. As to issue No. 3, the sale price of the inventory property takes into account the placement of the conservation easement. The sale price will reflect the easement determination and will be based upon the three value approaches to an appraisal: (1) Comparable sales, (2) capitalization value, and (3) summation value. Issue No. 5 was raised by another respondent and is addressed above. The regulation as proposed sets forth a clear method for developing the easements to protect the wetlands. As to issue No. 8, the County Supervisor's posture in the easement establishment process is limited to that of coordinator. The determinations as to the presence and the locations of wetlands are done by the SCS. The recommendations for the establishment of the individual easements come from the Easement Review Team. The final decision as to any reductions in the scope of a particular easement is left to the FmHA State Director. The County Supervisor is not in a decision making role in the wetland conservation easement establishment process.

One respondent commented that the Easement Review Team should include members of the ASCS, SCS and FmHA County Committee. An additional respondent commented that FmHA and ASCS County Committee members should be included on the Easement Review Team in order that a "farmer's view," be included in the determination process. A third respondent commented that a local farmer should be appointed to the team in order to add representation from production agriculture. The Agency does not adopt this comment. The Agency considered including non-USDA/FWS personnel in the formulation of the Easement Review Team at the time the proposed rule was drafted. However, an administrative determination was made to exclude non-USDA/FWS personnel as the Agency believes that the easement establishment process is technical in nature and should be formulated by persons having the appropriate technical knowledge and expertise.

One respondent commented that all easement determinations should be subject to appeal. The respondent further stated that all of the terms and conditions of the easement should be clearly spelled out in writing before the inventory property is offered back to the former owner (leaseback/buyback cases) and other prospective buyers. The respondent also stated that the determination of comparability and marketability should also be appealable. The Agency only partially adopts this suggestion. The Agency does not believe it is appropriate to allow the placement of conservation easements to be

appealable except for the two exceptions discussed below. When property comes into FmHA's inventory, it becomes Federal property. As such, it may become subject to certain technical considerations relative to the placement of conservation easements. The classification of the property as wetland, prior converted cropland, frequently cropped wetland, and forage-producing wetlands are made by SCS, not FmHA, and therefore are not subject to FmHA's administrative appeal procedures. The requirements for the establishment of these easements are set forth by statute and are separate and apart from a prospective purchaser's rights to the property. Likewise, the marketability and comparability determination is exclusive to the property and does not take into consideration the resources or liabilities of the prospective purchases. In general, we do not believe that a prospective purchaser should have input into the easement establishment process as the property is owned by the Government at that time. However, dispute over the terms and conditions of a lease or purchase agreement involving persons with preservation servicing rights are appealable under the CONACT. Therefore, a dispute concerning either the particular placement of an easement (that is, the actual acreage covered by the easement) or the percentage of an easement when the marketability issue is involved may be appealed by a purchaser (or lessee) with preservation servicing rights to the particular property.

One respondent recommended that FmHA develop a nationwide inventory of its inventory properties with proposed easements, on a county-by-county basis, in order to allow for assessment of the impact of the legislation. The Agency does not adopt this recommendation. The provisions of section 335(g) of the CONACT are specific, in that the Secretary is directed to establish wetland conservation easements on FmHA inventory property in a prescribed manner. The study is not relevant as to whether the easements are established.

One respondent commented: "This rule will eliminate valuable land from the production base in many counties." Additionally, the respondent stated: "To place a mandatory easement on these lands is senseless and ridiculous." The Agency does not adopt this comment. Section 335(g) of the CONACT is explicit as to the establishment of easements to protect wetlands on FmHA inventory property. The statute does not allow for administrative discretion on the part of the Agency on this issue.

One respondent commented that: "Although you will be limiting the percentage of land being taken, we are opposed to the taking of any land that can and will be used for the production of an agricultural commodity." The respondent also commented that: "The proposed rule will not only lower the market value of this land, but all land in general." The Agency does not adopt this comment. Again, section 335(g) of the CONACT is explicit as to the establishment of easements to protect wetlands on FmHA inventory property. The statute does not allow for administrative discretion on the part of the Agency on this issue.

One respondent commented that: "The use of deed restrictions or easements are equivalent to the taking of land by the Federal Government without due process. We are strongly opposed to this action." The Agency does not adopt this comment. This rule applies only to property after it is in FmHA's inventory (Government property). This rule does not apply to property in private ownership. There can be no "taking" of property which is already owned by the Government.

One respondent commented that a new Federal Manual for Identifying and Delineating Jurisdictional Wetlands is proposed. The respondent questioned: "Will FmHA remove the deed restrictions or easements if the original wetland determination is not correct?" We believe the respondent is questioning how FmHA will handle easements which are established on lands which may (at a later time) be determined not to be wetlands. The respondent closed by saying: "We can not find any value in the proposed rule; therefore we are opposed to its implementation." The Agency manages its inventory property based upon current statutes through the promulgation of regulations. As statutes (or the resulting regulations) change, so will the property management activities of the Agency. Section 335(g) of the CONACT provides in part : "the Secretary shall establish perpetual wetland conservation easements * * *". Thus, once established these easements will serve in perpetuity. As to the respondent's comments on not finding value in the proposed rule, the Agency has no choice but to promulgate regulations implementing section 335(g) as written.

One respondent commented, in response to the marketability issue, that the comparison of other farms in the area, to the subject inventory property, is not relevant when making this determination. The respondent stated that the Easement Review Team should simply assess the farming operation as it existed at the time that the property was taken into inventory, to determine if the conservation easement recommended for establishment on the inventory property, will substantially change the farming operation by reducing the farm's value as a marketable unit. The Agency does not adopt this suggestion. The Agency considered both sides of this issue (evaluating the subject properties' productivity with easements in comparison to the productivity that existed prior to the establishment of easements; or evaluating the subject property in comparison to other farms in the area) at the time the proposed rule was drafted. The Agency made a decision to evaluate the subject inventory farm in comparison to other similar farms in the area when making the marketability analysis. The Agency believes that this approach more accurately reflects Congressional intent to protect as much property as possible within certain specified limitations. Under the suggested approach, less land would probably end up being protected. Therefore no change to the proposed rule was made.

One respondent commented that FmHA must assure leaseback/buyback property along with property for beginning farmers is a marketable agricultural production unit, but there is no directive to assure that all inventory property is required to be a marketable agricultural production unit. The Agency does not adopt this suggestion. Section 335(g) of the CONACT is explicit. The easement variance, "to allow a marketable agricultural production unit, " is limited to persons with leaseback/buyback rights and beginning farmers.

One respondent commented that each Agency representative on the Easement Review Team having the final say for their respective component area of responsibility leaves much to be desired. If there is a disagreement within the team, both sides of the issue should be passed along to the State Director. The Agency adopts this suggestion. The State Director should be aware of both sides of the issue prior to making his/her decision when there is a disagreement among team members. The Agency has revised the regulation to further clarify this matter.

List of Subjects in 7 CFR Part 1955

Government property, Government property—management, Loan programs—housing and community

development, Government property—Sale of Surplus Government property.

Accordingly, chapter XVIII, part 1955, title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

§ 1955.15 [Amended]

1A. Section 1955.15(b)(3) is amended in the first sentence by changing the reference "§ 1955.137(b)" to "§ 1955.137(e)."

Subpart B—Management of Property

§ 1955.64 [Amended]

1B. Section 1955.64(a)(3) is amended in the fifth sentence by changing the reference "§ 1955.137(c)(2)" to "§ 1955.137(f)(2)."

2. Section 1955.66 is amended by revising paragraph (a)(2)(iii)(F) to read as follows:

§ 1955.66 Lease of real property.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(F) The property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M of subpart G of part 1940 of this chapter. All prospective lessees of inventory property will be notified in writing of the presence of highly erodible land, converted wetlands and wetland. This notification will include a copy of the completed and signed Form SCS-CPA-26, "Highly Erodible Land and Wetland Conservation Determination," which identifies whether the property contains wetland or converted wetlands or highly erodible land. The notification will also state that the lease will contain a restriction on the use of such property and that FmHA's compliance requirements for wetlands, converted wetlands, and highly erodible land are contained in Exhibit M of subpart G of part 1940 of this chapter. If converted wetlands are present, the notification will also state that FmHA will not lease converted wetlands for the purpose of producing an agricultural commodity, except as provided in § 1955.137 of subpart C of this part concerning prior converted cropland or frequently cropped wetlands. Additionally, a copy of the completed and signed Form SCS-CPA-26 will be attached to the lease and the lease will contain a special stipulation as provided on the FMI to Form FmHA 1955-20, "Lease of Real Property," prohibiting the use of the property as specified above.

* * * * *

Subpart C—Disposal of Inventory Property

3. Section 1955.103 is amended by placing the definition of "Auction sale" after the definition of "Approval official" and by adding, in alphabetical order, the definitions of "Agricultural production unit," "Cropland," "Forage production area," and "Marketable agricultural production unit comparable to that acquired" to read as follows:

§ 1955.103 Definitions.

* * * * *

Agricultural production unit. An agricultural production unit is the sum total of all acreage obtained by FmHA from an owner.

* * * * *

Cropland. Those lands as determined or identified by the Soil Conservation Service (SCS).

* * * * *

Forage production area. Those lands determined or identified by SCS as having a history of being harvested for hay or grazed by domestic livestock within 3 out of 5 years prior to coming into FmHA's inventory, and are not recognized as cropland.

* * * * *

Marketable agricultural production unit comparable to that acquired. It is an economically viable production unit (taking into consideration the commodities which were being grown when the farm was acquired by FmHA) that is reasonably comparable to other agricultural production units of the same basic enterprise in the community which are successful. Maintaining a property's marketability is intended to mean maintaining sufficient productive cropland and/or forage areas on the property so that it is marketable for agricultural production purposes. Marketing the property comparable as acquired means marketing a property that can continue to function as the same basic enterprise as when it was acquired (*i.e.*, the production unit is marketable, taking into consideration the commodities which were grown when the property was acquired by FmHA, and is reasonably comparable to other agricultural production units of the same basic enterprise in the community which are successful).

* * * * *

4. Section 1955.137 is amended by revising the heading of paragraph (a), redesignating existing paragraphs (b), (c), (d) and (e) as (e), (f), (g) and (h), respectively, and by adding new paragraphs (b), (c) and (d) to read as follows:

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland (except for Farmer Program inventory farm property), or Coastal Barrier Resources System (CBRS).*

* * * * *

(b) *Wetlands located on farm inventory property (suitable and surplus)—Farmer Programs only.* Perpetual wetland conservation easements (restrictions in leases and encumbrances in deeds) to protect and/or restore wetlands or converted wetlands that exist on suitable or surplus inventory property will be established prior to sale or lease of such property. The provisions of paragraphs (a)(2) and (3) of this section also apply, as does paragraph (a)(1) of this section insofar as floodplains are concerned. This requirement applies to either cash or credit sales and all leases. Technical considerations of the potential functions and values of the wetlands on the property, as set forth in the U.S. Fish and Wildlife Service's (FWS) recommendations, will determine the size of the easements, not to exceed the following limits:

(1) All wetlands located on FmHA inventory property which have not been cropped to an agricultural commodity, are cropped less than frequently, were converted after December 23, 1985, or do not have a history of haying or grazing will receive full perpetual conservation easement coverage to protect and/or restore the wetlands. Prior converted cropland, frequently cropped wetlands, and wetlands having a history of haying and grazing will be handled as follows:

(i) Wetlands which were converted prior to December 23, 1985 (prior converted cropland), as identified by SCS, and which were not abandoned as of the time acquired by FmHA will be encumbered with a perpetual conservation easement not exceeding 10 percent of the existing cropland on the FmHA inventory property. Whether the prior converted cropland is abandoned, at the time the inventoried property is

accepted into inventory or subsequent to that time, will be determined by SCS in accordance with its criteria for abandonment. In no case may the wetland conservation easement placed on the prior converted cropland represent more than 10 percent of the total cropland on the FmHA inventory property, unless increased by waiver in writing by the purchaser.

(ii) Wetlands which have been frequently cropped to agricultural commodities (as identified by SCS) but are not prior converted cropland and were not abandoned as of the time acquired by FmHA, will be encumbered with a perpetual wetland conservation easement not exceeding 20 percent of the existing cropland on the FmHA inventory property. Frequently cropped means that over a period of several years the wetland is cropped more often than not. The overall 20 percent limitation includes the 10 percent prior converted cropland easement limitation referenced in paragraph (b)(1)(i) of this section. In no case may the wetland conservation easement placed on the frequently cropped wetland and the prior converted cropland represent more than 20 percent of the total cropland on the FmHA inventory property, unless waived in writing by the purchaser. Whether the frequently cropped wetland is abandoned, at the time the farm is accepted into inventory or subsequent to that time, will be determined by SCS in accordance with its criteria for abandonment.

(iii) Wetlands which have a history of haying or grazing will be encumbered with a perpetual wetland conservation easement not exceeding 50 percent of the existing forage-producing lands on the FmHA inventory property. In no case may the wetland conservation easement placed on wetlands having a history of haying or grazing, exceed 50 percent of the forage-producing lands on any FmHA inventory property, unless waived in writing by the purchaser. Easements placed on wetlands that have a history of haying and grazing practices shall permit those practices which are in accordance with forage management standards that provide for the protection and restoration of wetland functional values. The FWS and the SCS in consultation with Land Grant Professionals (Cooperative Extension Service) having experience in range and forage management shall jointly develop, agree and recommend to FmHA the practices designed to protect these values, before the property is sold out of inventory.

(2) FmHA will request the SCS to identify the wetlands and wetland boundaries of each wetland, which are set forth as follows:

(i) Wetlands that have not been cropped to an agricultural commodity or are cropped less than frequently, and wetlands converted after December 23, 1985.

(ii) Prior converted cropland (wetland converted to cropland before December 23, 1985).

(iii) Wetlands that are frequently cropped.

(iv) Forage-production area wetlands (those wetlands having a history of haying and/or grazing).

(v) The wetlands in above categories shall reflect the wetlands definitions in use by SCS for Swampbuster purposes.

(3) The croplands used as buffer areas, which are established to protect the wetlands, are to be included in the calculation of the total amount of cropland that is placed under easement, and are therefore, subject to the 10 percent and 20 percent overall cropland acreage limitations irrespective of whether these contain prior converted cropland or frequently cropped wetlands. Areas classified other than cropland when used as buffer areas, will be in addition to the 10 and 20 percent limitation. Buffer areas adjacent to the wetland generally will not be more than 100 feet in average width.

(4) The wetland conservation easement will provide for access to other portions of the property as necessary for farming and other uses.

(5) The appraisal of the property must be updated to reflect the effect of the conservation easement on the property.

(6) The purchaser has the right to waive the wetland easement percentage limitations. To activate this process the purchaser shall request in writing, that FmHA include additional wetland acres in the easement. The request must be accompanied by a technical recommendation from the FWS supporting the placing of additional acres under easement. Acres eligible for additional easements include prior converted cropland, frequently cropped wetland, and haying/grazing wetlands. Other types of land may be eligible as additional easement acres where included in wetland buffer areas.

(7) Applicable restrictions will be incorporated into leases and encumbrances in quitclaim deeds with the advice and approval of OGC. A listing of these restrictions will be included in the notices required in paragraph (a)(2) of this section. Wetland conservation easements will be established by FmHA in accordance with the procedure in paragraphs VII (C) through (E), and (H) (except that Forms FmHA 1951–39 and FmHA 1951–39A will not be used) of Exhibit H of subpart S of part 1951 of this chapter. The characterization of property as wetland, prior converted cropland, frequently cropped wetland, etc. is not appealable. The determination as to the actual acreage covered by the easement also is not appealable, except by a purchaser (or lessee) with preservation servicing rights to the particular property.

(8) The FWS shall be responsible for easement management and administration responsibilities for such areas unless: The wetland easement area is an inholding in Federal or State property and that entity agrees to assume such responsibility, or a State fish and wildlife agency having counterpart responsibilities to the FWS is willing to assume easement management and administration responsibilities. The costs associated with such easement management responsibilities shall be the responsibility of the agency that assumes easement management and administration.

(c) *The County Supervisor will establish an Easement Review Team consisting of the appropriate field offices of the Agricultural Stabilization and Conservation Service (ASCS), Soil Conservation Service (SCS), and the U.S. Fish and Wildlife Service (FWS).* The Easement Review Team will be composed of an FmHA, ASCS, SCS, and FWS representative. The purpose of the Easement Review Team is to provide the FmHA State Director with a recommendation as to whether the inventoried property is a marketable agricultural production unit comparable to the property as acquired, taking into consideration any wetland easements. The FmHA representative selected by the FmHA State Director will coordinate the responsibilities of the Easement Review Team, schedule any site visits, maintain a running record of Team activity, and summarize and present the recommendations of the Team to the State Director. The individual duties and responsibilities of the Team members are set forth in a memorandum of understanding between the respective agencies. The SCS, ASCS, FWS and FmHA (jointly) documents its analysis and conclusions as to whether an inventory property is a marketable agricultural production unit in Exhibit F of this subpart (available in any FmHA office). (This exhibit will be completed and filed in the inventory property case file, and will be the basis for establishing conservation easements below the 10 and 20 percent levels on FmHA inventory properties which

contain prior converted and/or frequently cropped wetlands). The FmHA State Director, after considering the Easement Review Team's recommendations, will make the final decision on all aspects of establishing the wetland conservation easements. If there is a disagreement within the team, the State Director will be provided both sides of the issue. It is the State Director who bears the ultimate responsibility for establishing perpetual wetland conservation easements on FmHA's suitable and surplus inventory property in accordance with the provisions of this subpart. The Survey to establish the location of the easement boundaries will be completed after the State Director makes the final determinations on the establishment of the easements.

(d) *Special provisions for persons having preservation servicing rights and for beginning farmers and ranchers on properties containing prior converted and/or frequently cropped wetlands.* The FmHA must assure that property with preservation servicing rights to it along with property for beginning farmers and ranchers are marketable agricultural production units comparable to those acquired. For the purposes of this paragraph, beginning farmers and ranchers are those farmers and ranchers who met the definition of "beginning farmer or rancher" found in § 1955.103 of this subpart except for the requirement of paragraph (1) of that definition. There are certain circumstances where the amount or location of wetland easements, in relation to other croplands on the property, would prevent the property with preservation servicing right to it or beginning farmer/rancher property, from being marketable as an agricultural production unit, comparable to the property as acquired. Under these circumstances the easements recommended for these properties may be reduced by the State Director, in consultation with the Easement Review Team, to the extent necessary to obtain marketability and comparability. This flexibility can be utilized only in situations where it can be shown that to do otherwise would result in the property not being comparable or marketable. This flexibility shall not be utilized to exercise administrative preference relative to providing full easement coverage up to the established percentage limits set forth in paragraph (b)(1) of this section. A recommendation will be made by the Easement Review Team to the State Director as to whether the inventory property is a comparable marketable agricultural production unit. THE STATE DIRECTOR WILL MAKE THE FINAL COMPARABILITY/MARKETABILITY DECISION. An agricultural production unit will be comparable and marketable if it is determined to be an economically viable production unit (taking into consideration the commodities which were being grown when the property was acquired by FmHA) that is reasonably comparable to other agricultural production units of the same basic enterprise in the community which are successful farming operations. For example, if the inventory property was utilized for the production of dairy products upon acquisition, a typical dairy farmer could be expected to successfully operate the property for dairy farming purposes with easements at the 10 and 20 percent levels. In such cases, the State Director would conclude that the property is a comparable marketable agricultural production unit, and the easements would be established at the 10 and 20 percent levels. THE SUBJECT OF THIS ANALYSIS IS THE AGRICULTURAL VALUE OF THE PROPERTY IN QUESTION AND NOT THE RESOURCES OR LIABILITIES OF THE PROSPECTIVE PURCHASERS OR OF THEIR FARMING OPERATIONS. If, however, the property is deemed by either the State Director or the Easement Review Team not to be a comparable marketable agricultural production unit with easements at the 10 and 20 percent levels, the Easement Review Team will further evaluate the property's viability as a comparable marketable agricultural production unit on the basis of reducing the easements below the 10 percent level on the prior converted acres; and if necessary to establish marketability/comparability, the easements on the frequently cropped acres will be modified (to allow crop production), until the property is deemed to be a comparable/marketable agricultural production unit. If the Easement Review Team recommends, and the State Director determines, that the establishment of easements at a level below the 10 and 20 percent levels is necessary to maintain a particular property as a comparable marketable agricultural production unit, the easements may be established below the 10 and 20 percent levels when the property is being sold or leased through leaseback/buyback to the previous owner, the immediate family of the prior owner, the previous operator of the farm, or through a sale to a beginning farmer or rancher. IF THE ANALYSIS CONCLUDES THAT, EVEN IF THE EASEMENT LEVELS WERE REDUCED TO 0 PERCENT, THE INVENTORY PROPERTY WOULD NOT BE A COMPARABLE/MARKETABLE AGRICULTURAL PRODUCTION UNIT, THE EASEMENTS WILL BE ESTABLISHED AT THE 10 AND 20 PERCENT LEVELS. The purchaser (not a lessee) will be able to waive the marketability and comparability determination and allow easements at or above the 10 and 20 percent levels. The final determination under paragraph (d) of this section as to what percentage of the property will be included in an easement is appealable by the purchaser (or lessee) with preservation servicing rights to the particular property. In all cases, the easements established on the wetlands which have a history of haying and grazing will be at the 50 percent level unless the limitation is waived by the purchaser.

* * * * *

§ 1955.139 [Amended]

4A. Section 1955.139(c)(2)(v) is amended in the first sentence by changing the reference "§ 1955.137(b)" to "§ 1955.137(e)."

5. Exhibit A to Subpart C is added to read as follows:

Exhibit A—Notice of Flood, Mudslide Hazard or Wetland Area

TO:_____

DATE:_____

This is to notify you that the real property located at _____ is in a floodplain, wetland or area identified by the Federal Insurance Administration of the Federal Emergency Management Agency as having special flood or mudslide hazards. This identification means that the area has at least one percent chance of being flooded or affected by mudslide in any given year. For floodplains and wetlands on the property, restrictions are being imposed. Specific designation(s) of this property is(are) (special flood) (mudslide hazard) (wetland)*. The following restriction(s) on the use of the property will be included in the conveyance and shall apply to the purchasers, purchaser's heirs, assigns and successors and shall be construed as both a covenant running with the property and as equitable servitude subject to release by the Farmers Home Administration (FmHA) when/if no longer applicable:

(INSERT RESTRICTIONS)

The FmHA will increase the number of acres placed under easement, if requested in writing, provided that the request is supported by a technical recommendation of the U.S. Fish and Wildlife Service. Where additional acreage is accepted by FmHA for conservation easement, the purchase price of the inventory farm will be adjusted accordingly.

_____

(County Supervisor, District Director or Real Estate Broker)

*ACKNOWLEDGEMENT*_____

*DATE:*_____

I hereby acknowledge receipt of the notice that the above stated real property is in a (special flood) (mudslide hazard) (wetland) * area and is subject to use restrictions as above cited. [Also, if I purchase the property through a credit sale, I agree to insure the property against loss from (floods) (mudslide) * in accordance with requirements of the FmHA.]

(Prospective Purchaser)

* Delete the hazard that does not apply.

Dated: June 26, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-16848 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS92-1]

Appraisal Regulation; Rules of Practice for Proceedings

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Final rule.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) adopts Rules of Practice For Proceedings as part of its appraisal regulations. These Rules are designed to govern proceedings under section 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) for the nonrecognition of State real estate appraiser licensing and certification designations and systems and other proceedings to take such further action to carry out the purposes of Title XI under section 1119(c) of that Title. Congress intended Title XI of FIRREA and the ASC and the Federal Financial Institutions Regulatory Agencies and the Resolution Trust Corporation (RTC) (collectively "Agencies") to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser.

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634-6520, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 9, 1989, Congress adopted FIRREA,[1] including section 1102 [2] of title XI, which established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of the federal financial institutions regulatory agencies [3] and the Department of Housing and Urban Development. Congress intended title XI of FIRREA, the ASC and the Agencies to protect federal financial and public policy interests [4] in real estate-related financial transactions [5] requiring the services of an appraiser.[6-9]

The ASC has several statutory duties under title XI. Among other things, it must monitor the appraisal regulations adopted by the Agencies. Those regulations set out appraisal standards for federally related transactions [10] and define those federally related transactions requiring the services of a State certified or State licensed appraiser. The ASC also must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. And last, the ASC must monitor each State's certification and licensing programs for real estate appraisers [11] and must review each State's compliance with the requirements of title XI. It also is authorized by title XI to take action against non-complying States.[12]

II. Statutory Authority

A. Non-recognition Proceedings

Pursuant to section 1118 [13] of title XI, financial institutions,[14] the Agencies, the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) generally must accept appraisals in federally related transactions performed by persons licensed or certified by a State agency. In monitoring State compliance with title XI, the ASC, however, can "disapprove" or "not recognize appraiser certifications and licenses from States whose appraisal policies, practices or procedures are found to be inconsistent with [Title XI]."[15]

Paragraph (b) of section 1118 describes what is meant by "non-recognition" in the context of title XI and sets out the grounds on which the ASC can order non-recognition. If the ASC were to order non-recognition of a State agency's certifications and licenses, the ASC, all Federal financial institutions, and the Agencies, together with FNMA and FHLMC, could not rely on appraisals prepared by persons who are licensed and/or certified to appraise federally related transactions within that State agency's jurisdiction. The ASC can order non-recognition only if it makes a written finding that the State is failing to meet one or more of these statutory duties:

(1) The [State agency must] recognize and enforce the standards, requirements, and procedures prescribed pursuant to [Title XI];

(2) The [State agency must be] granted authority by the State which is adequate to permit the agency to carry out its functions under [Title XI]; or

(3) Decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices [must be] made in a manner that carries out the purposes of [Title XI].[16]

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[1] Pub. L. 101-73, 103 Stat. 183 (1989), as amended by Pub. L. Nos. 102-233, 105 Stat. 1761 (1991) and 102-242, 105 Stat. 2236 (1991).

[2] 12 U.S.C. 3310 (1990).

[3] These agencies are the Board of Governors of the Federal Reserve System ("FRS"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA"). See section 1122(6) of title XI, 12 U.S.C. 3350(6) (1990).

[4] Title XI's general purpose is to provide the Federal financial and public policy interests will be protected by requiring that certain real estate appraisals are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. See section 1101 of title XI, 12 U.S.C. 3331 (1990).

[5] See section 1121(5) of title XI, 12 U.S.C. 3350(5) (1990), for the definition of "real estate-related financial transaction."

[6-9] The Agencies have adopted appraisal regulations that, among other things, clarify the phrase, requires the services of an appraiser. See 12 CFR part 34 (OCC); part 225, subpart G (FRS); part 323 (FDIC); part 564 (OTS); part 722 (NCUA); and part 1608 (1991) (RTC).

[10] See section 1121(4) of title XI, 12 U.S.C. 3350(4) (1990), which defines a "federally related transaction."

[11] The ASC is required to monitor State appraiser regulatory agencies ("State agencies") for the purpose of determining whether the agency's policies, practices, and procedures are consistent with [Title XI]. See section 1118(a) of title XI, 12 U.S.C. 3347(a) (1990). See, also, section 1103(a)(1) of title XI, 12 U.S.C. 3332(a)(1) (1990). The ASC must maintain a national registry of all state certified and licensed appraisers who are eligible to perform appraisals in federally related transactions. Each State with an appraiser certifying and licensing agency is responsible for transmitting to the ASC a roster of these appraisers, long with an annual registry fee.

[12] See section 1118 of title XI, 12 U.S.C. 3347 (1990).

[13] Id.

[14] A "financial institution" is "an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act." Section 1121(7) of title XI, 12 U.S.C. 3350(7) (1990).

[15] Section 1118(a) of title XI, 12 U.S.C. 3347(a) (1990).

[16] Section 1118(b) of Title XI, 12 U.S.C. 3347(b) (1990).

Paragraph (c) of section 1118 [17] provides a State with certain procedural protections before the ASC can choose not to recognize its appraiser certifications and licenses. First, the ASC must provide the offending State agency with a "written notice of [the ASC's] intention not to recognize the State's certified or licensed appraisers."[18] Second, the ASC must give the State agency "ample opportunity to provide rebuttal information or to correct the conditions causing the refusal."[19] Last, the ASC must "adopt written procedures for * * * [non-recognition] actions."[20]

B. "Other Proceedings" under Section 1119(c) of Title XI

Section 1119(c) [21] requires the ASC to "report any action of a State certified or licensed appraiser that is contrary to the purposes of [Title XI] * * * to the appropriate [State agency] for a disposition of the subject of the referral." The State agency then must provide the ASC "with a report on its disposition of the matter referred."[22] After receiving the report, the ASC "may take such further action, pursuant to written procedures, it deems necessary to carry out the purposes of [Title XI]." [23]

III. Summary of Comments and Recommendations

The ASC published 12 CFR part 1102, subpart B (subpart B or subpart) for public comment at 57 FR 10146 (March 24, 1992) (Proposal). As discussed and analyzed in detail below, the ASC received a total of seven comment letters: five from financial industry trade associations and two from financial institutions in response to the Proposal. No comment letters, however, were received from State agencies even though they are most directly affected by the proposal.

Comment letters were received from the (1) American Bankers Association (ABA) [24]; (2) Independent Bankers Association (IBAA) [25]; (3) United States League of Savings Institutions (USL) [26]; (4) Mortgage Bankers Association of America (MBA) [27]; (5) Independent Community Banks of North Carolina (ICB) [28]; (6) The Fountain Trust Company (FT) [29]; and (7) Meridian Bancorp, Inc. (MB).[30] The ASC thanks the commenters for their thoughtful observations and suggestions.

Most of the commentators generally supported the adoption of subpart B, either by explicit statement or by implication. For example, the IBAA and the USL stated explicitly their support for adoption of the subpart, while others, like the MBA, signalled their general support by noting that "[i]n general, MBA believes the proposed rule strikes an appropriate balance between [outside input and the need to act expeditiously [31]]." Other commentators, like the ABA, focused on technical aspects of the proposed subpart and did not criticize it in a general way. The commentators' suggestions concentrated on: (1) The devastating effects of a non-recognition order; (2) the need to liberalize the proposed subpart's time frames; (3) the desirability of ensuring the broadest possible participation of affected persons in proceedings; and (4) the clarification of other, more technical, requirements. In response to those comments, the ASC today is adopting a modified version of subpart B.

IV. Discussion of Comments and Responses

A. The Devastating Effect of Non-recognition Findings and the Use of Out-of-State, Certified or Licensed Appraisers

In the Proposal, the ASC described the effects of a non-recognition order in this manner:

[T]he State's real estate market in federally related transactions would be hindered, and Federally-insured banks and credit unions might have to bring in out-of-State certified or licensed appraisers (from complying States) to perform needed appraisals.[32]

Six of the seven commentators criticized the ASC for understanding the effects of a non-recognition order. Most of them commented that such an order would bring the State's real estate market to a "halt" and would be "devastating" to the State and its lenders, borrowers, real estate agents, builders and others.[33]

The ASC agrees with these observations and assures the commentators and other interested members of the public that it has been, and will remain, acutely aware of these likely consequences. Indeed, the entire structure of subpart B, i.e., the balancing of due process concerns with expeditious treatment, reflects the ASC's sensitivity to the severity of these consequences. The ASC, however, notes that Congress also must have been aware of these likely consequences when it crafted and adopted section 1118 of title XI. In fact, title XI, it is up to the States (and indirectly all persons involved in the State's marketplace for Federally related transactions, such as financial institutions, appraisers, purchasers and sellers) to comply full with those sections of title XI that concern them. And, it is certainly within each State's control to avoid a non-recognition order. In contrast, the Congress gave the ASC the responsibility to monitor each State's real estate appraiser licensing and

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[17] 12 U.S.C. 3347(c) (1990).

[18] Section 1118(c)(1) of title XI, 12 U.S.C. 3347(c)(1) (1990).

[19] Section 1118(c)(2) of title XI, 12 U.S.C. 3347(c)(2) (1990).

[20] Section 1118(c)(3), 12 U.S.C. 3347(c)(3), specifically makes ASC non-recognition decisions subject to judicial review.

[21] 12 U.S.C. 3348(c) (1990)

[22] Section 1119 of title XI also authorizes any other Federal agency or instrumentality, or any federally recognized entity to report questionable individual appraiser activities to State agencies and to receive disposition reports from those State agencies respecting those referrals.

[23] Only the ASC and any other Federal agency or instrumentality can take further action.

[24] May 26, 1992 letter from John C. Rasmus, Senior Federal Administrative Counsel Manager, ABA, to Edwin W. Baker, Executive Director, ASC.

[25] May 28, 1992 letter from Robert W. Hawkins, President, IBAA, to Edwin W. Baker, Executive Director, ASC.

[26] May 28, 1992 letter from Samuel E. Pincich, Vice President & Director, Real Estate Markets and Operations, USL, to Edwin W. Baker, Executive Director, ASC.

[27] May 26, 1992 letter from Robert M. O'Toole, Senior Staff Vice President, MBA, to Edwin W. Baker, Executive Director, ASC.

[28] May 26, 1992 letter from Terry J. Jorde, President, ICB, to Edwin W. Baker, Executive Director, ASC. The ASC received this letter on June 1, 1992, after the formal comment period closed.

[29] May 12, 1992 letter from Kip White, Executive Vice President, FT, to Edwin W. Baker, Executive Director, ASC.

[30] May 21, 1992 letter from Kathleen A. Wolfe, Assistant Vice President, MB, to Edwin W. Baker, Executive Director, ASC.

[31] In this regard, the ABA commented that "it is essential that the proposed regulation respond to the need for expeditious handling of a state's non-recognition status."

[32] 57 FR 10143, at 10144.

[33] Two of these commentators stated a concern that publications in a State that is the target of an ASC non-recognition proceeding would fail to provide adequate information to persons within the State about the proceeding. For example, one commentator stated that "it is very likely that lenders could wake up one morning and find out they no longer have certified appraisers." Given the potential adverse effects of a non-recognition decision on a State and its real estate market, as described by these and other commentators, the ASC believes that media within the State would provide prominent coverage of the proceeding. In any event, the ASC notes that, like all other Federal agencies, its significant formal actions will be published nationally in the Federal Register.

certification scheme and to take action, in a fair manner, under section 1118 of the title XI whenever such action is appropriate. While the ASC hopes that it will never have to order the non-recognition of a State's appraiser licenses or certifications, it must be prepared to do so. At the very least, the existence of the draconian remedy of non-recognition should help to assure that each State will: (1) Communicate, cooperate and coordinate its efforts with the ASC; (2) implement Title XI fully, promptly, efficiently and effectively; and (3) fairly and persistently enforce compliance with the spirit and letter of Title XI within its borders.

Four of the seven commentators criticized the ASC for its statement regarding the use of out-of-State licensed or certified appraisers. The commentators noted that the use of such appraisers would "impose significant delays and additional unnecessary costs * * * [and] be a practical impossibility" (ABA) and would "not be feasible" (ICB); and that those appraisers would "have no reason to travel to * * * a non-recognized state * * *." (IBAA), and "the price of [those] appraisers, when you could get them, would shoot up astronomically" (FT).

The ASC's remark merely was intended to remind the States and other interested persons that licensed or certified appraisers in other States may be available to reduce some of the hardships following a non-recognition order. The ASC agrees with the commentators that out-of-State licensed or certified appraisers will not alleviate to any substantial degree a "non-recognized" State's difficulties, and that significant delays in obtaining appraisals in Federally related transactions and higher appraisal costs would result. The possibility of these difficulties, however, serves a positive purpose under Title XI because they are necessary and foreseeable consequences of a State's failure to comply with title XI, i.e., Federal Law.

B. ASC Sensitivity to Special State Considerations

Three commentators noted the need for the ASC to be aware of considerations unique to the States when deciding whether to issue a non-recognition order. More specifically, the USL noted that the ASC "must be sensitive to the limitations to which individual states might be subject * * * [and be] aware of the problems faced by states in implementing a system which for most is a completely new undertaking [and evolving]." Further, the IBAA and, to some degree, the FT, underlined the need for the ASC to consider that "many states' legislatures meet only a few months a year and in some states only once every two years * * *," and that the real estate market in such an offending State could "be paralyzed for months" until corrective legislation can be passed. The IBAA further recommended that "the ASC allow financial institutions in such a State to continue to use licensed and certified appraisers from the state until the state legislature amends its appraiser laws * * *."

The ASC assures the commentators and other interested members of the public that it has been, and will remain, sensitive to special situations, whether mitigating or aggravating, existing in the States, and the evolutionary nature of appraisal reform. As the ASC noted in the Proposal at 10144, subpart B contains "provisions implementing the ASC's intentions to make a good faith effort, whenever possible, to work out all disputes, problems, issues, misunderstandings, and other difficulties * * * before * * * the commencement of formal proceedings." The ASC will make every effort to consider all relevant factors, including those presented by the commentators, in determining whether to commence a non-recognition proceeding against a particular State.

The ASC also will consider in its deliberations the infrequency in which some State legislatures meet. To ensure that the ASC has the flexibility to address these concerns, the ASC has amended § 1102.37 of subpart B to allow the ASC to issue a non-recognition order "containing specified terms and conditions as it deems appropriate," States, however, should not rely heavily on this new flexibility; the ASC believes that its remarks above in connection with the consequences from a non-recognition order are also applicable here. The States, together with other potentially affected persons within the States, can avoid the consequences of a non-recognition order by making a good faith effort to comply fully with title XI.

C. The Proposed Subpart's Time Frames

All of the commentators, except the ABA, recommended an extension of the time frames in §§ 1102.32, 1102.33(a), 1102.34 and 1102.36(b) of the proposed subpart.[34] As discussed below, the ASC agrees with the commentators and, in general, is extending the various time frames in subpart B. The ASC continues to believe, however, that its proceedings under subpart B should be vigorously and expeditiously pursued, given the fundamental interests involved. As noted above, the need for expeditious treatment was acknowledged by commentators.

More specifically, the IBAA and the ICB respectively suggested that the minimum 21 calendar day information gathering phase in § 1102.32 be extended to 30 working days and 60 calendar days. The ASC has determined to extend this time frame from 21 calendar days to 30 working days and has amended § 1102.32 accordingly. This additional two weeks or so should help to assure the ASC and the other parties to the proceeding that there is sufficient time to file and develop all pertinent information relating to the proceeding.

The MBA, USL, IBAA, FT and MB stated that the 15 calendar day deadline for filing a Rebuttal or a Notice Not To Contest was too brief. The MBA and USL respectively suggested that the period be extended to 20 and 30 days. The IBAA, however, recommended an extension to 20 working days. The ASC has determined to extend this time frame from 15 calendar days to 20 working days. This extension ordinarily should provide a party with an additional week to prepare a response to the Notice of Intention.

Finally, the MBA and MB criticized as too short the 10 calendar day period for responding to briefs, memoranda and statements under § 1102.34 of the subpart. The MBA suggested that the response period be lengthened to 20 calendar days. In response, and in keeping with the general change to working days, the ASC is amending § 1102.34's time period to 15 working days. This extension should provide the responding party with an additional week.

D. Broader Participation in the Proceeding

A number of the commentators requested that the ASC amend the subpart to allow the participation of all entities and individuals that will be directly affected by an adverse ASC decision.[35] For example, the IBAA commented:

[34] The IBAA suggested that the ASC's use of calendar days (which includes Saturdays, Sundays and Federal holidays in § 1102.27 and elsewhere in the proposal), rather than working (or business) days, is undesirable. The ASC agrees with the IBAA and is amending subpart B accordingly. The ASC notes, however, that Saturdays, Sundays and Federal holidays were included in the proposal's time calculation only when the time period involved was seven calendar days or less.

[35] In a somewhat related comment, the MBA and MB stated that the ASC should not have the ability to exclude immediately from a proceeding any

Continued

Because of the dramatic impact a decision of nonrecognition would have on a state's overall economy and in the "public interest[.]" the ASC must allow banks lenders, consumer groups, and residential and commercial building industries from the affected state to express their concerns to the ASC and participate in the proceedings.

In response, the ASC has amended § 1102.34 of the subpart. New paragraph (b) of the section allows "any person with *a demonstrable, direct* interest in the outcome of [a nonrecognition] proceeding" to file with the ASC's Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention.[36] [Emphasis added.]

Two features of paragraph (b) merit some discussion. First, the paragraph only relates to non-recognition proceedings, i.e., proceedings under section 1118 of title XI.[37] It does not apply to other ASC proceedings pursuant to section 1119(c) of that title.[38]

Second, the ASC and its staff will not assume that any person has a demonstrable, direct interest in the outcome of a non-recognition proceeding. The submitting person has that responsibility. Paragraph (b) authorizes the ASC's Chairperson or his or her designee not to accept any such document if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. For example, in a non-recognition proceeding against State A where the ASC is seeking non-recognition of State A's licenses and not its certifications, a letter from an appraiser who is certified in State A generally would not be accepted by the Chairperson or his or her designee. In all likelihood, rejection also would occur even if a licensed appraiser from State A submits a letter to the ASC but the appraiser fails to clearly identify his or her direct interest in the outcome of the proceeding. On the other hand, the ASC most likely would accept a submission from a financial institutions trade association, such as the ABA, which has members in State A, even though it may be headquartered in State B.

E. The Burden of Proof

The MBA and MB criticized the burden of proof standard in § 1102.31 of the subpart.[39] In pertinent part, the MBA said that it "does not believe it necessary to require a respondent [to] bear the ultimate burden of proof in all proceedings. Since the ASC would be taking action against a respondent for alleged violations of title XI, it seems more reasonable that the ASC should bear the burden of proof. Otherwise the ASC could successfully accuse a respondent of violating title XI without supplying evidence." MB similarly noted that the "burden of proof in matters heard by the ASC should not be on the respondent. The burden of proof should be on the ASC to establish a violation."

The ASC agrees with both commentators and notes that their comments and the standard § 1102.31 are consistent and in accord with Section 556(d) of the Administrative Procedure Act ("APA").[40] That section states, "[e]xcept as otherwise provided by statue, the proponent of a rule or order has the burden of proof." Courts have interpreted this section of the APA to require the proponent of the action, in this instance the ASC, to prove a *prima facie case*.[41] Such a case has been defined to be "of sufficient evidence in the type of case to get plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a non-jury case; it is the evidence necessary to require the defendant to proceed with this case."[42] Thus, the ASC has to present sufficient evidence to prove the basic elements of its case, which, in a non-recognition proceeding, can be found in Section 1118(b) of Title XI.[43] After that point, the respondent "has the burden to go forward to persuade" the ASC otherwise.[44]

F. Section 1102.38—Compliance Activities

Two areas of § 1102.38 were of concern to the commentators, one substantive and the other technical. Turning to the substantive comment, the ABA noted that the language of § 1102.38, which enables the ASC staff to "commence an informal, preliminary inquiry" when "it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder * * *," seems to authorize the ASC to initiate inquiries directed against banks, among other persons, who could be accused of noncompliance with rules and regulations administered by Federal agencies or instrumentalities other than the ASC. The ABA concluded that "[t]his rather broad mandate * * * appears to exceed the authority specifically granted to the [ASC] in section 1119(c)."

The ASC is amending proposed paragraph (a) of § 1102.38 for clarification purposes. As noted in the Proposal, the ASC and its staff receives information about potential violations of title XI from various sources. Some of these potential violations of title XI involve financial institutions that allegedly are not complying with one or more rules and regulations adopted by the Agencies pertaining to appraisals. In such a situation, the new language in paragraph (a) simply recognizes that the ASC staff can conduct an informal, preliminary inquiry into the matter. If that inquiry shows that the potential violation or violations concern regulations primarily administered by

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participant who engages in "improper language or conduct, refusal to comply with directions, use of dilatory tactics or refusal to adhere to reasonable standards of orderly and ethical conduct * * *." The commentators thought that the "reasonable standards" language was too broad and that exclusion should apply "only in the most egregious of circumstances." The ASC is sensitive to the commentators' concerns and will make every effort not to exclude participants. Nevertheless, the ASC believes that, given the seriousness of proceedings under this subpart, the ASC must have the tools to ensure and enforce the orderly and professional conduct of those proceedings and participants therein.

[36] Paragraph (b) further provides that when a written brief, memorandum or other statement is accepted, the ASC's Secretary will copy the document and send one copy of it to each party to the proceeding. Parties then have ten days after service of the copy within which to file a written response with the Secretary. A responding party must simultaneously serve a copy of the response on other parties. The Secretary will place a copy of such brief, memoranda, statements and responses in the public file.

[37] 12 U.S.C. 3347 (1990).

[38] 12 U.S.C. 3348(c) (1990).

[39] The standard contained in § 1102.31 is identical to the burden of proof standard recently incorporated in the Uniform Rules of Practice and Procedure of the FDIC (12 CFR 308.114, 308.115(b), and 308.160(b)).

[40] 5 U.S.C. 556(d) (1991). The ASC notes that the APA, including section 556(d), does not formally apply to any ASC proceeding under the subpart. *See American Trucking Ass'ns* v. *U.S., AL & IN*, 344 U.S. 298 (1953).

[41] *Sovoge* v. *Commodity Futures Trading Commission*, 546 F.2d 192 (7th Cir. 1977). *See, also, Hazordous Waste Treotment Council* v. *U.S. E.P.A.*, *886 F. 2d 355 (D.C. Cir. 1989)*.

[42] *Black's Law Dictionary* 1190 (6th ed. 1990), citing *White* v. *Abrams*, 495 F.2d 724, 729 (9th Cir. 1974).

[43] As noted above, to make a non-recognition finding, the ASC must show that: (1) the State agency has failed to recognize and enforce the standards, requirements, and procedures prescribed pursuant to title XI; (2) the State agency is not granted authority by the State which is adequate to permit the agency to carry out its functions under Title XI; or (3) the decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices are not made in a manner that carries out the purposes of Title XI.

[44] *See supra Savage. See olso Steodmon* v. *SEC*, 450 U.S. 91 (1981), in which the U.S. Supreme Court held, among other things, that Congress intended section 556(d) of the APA to require an agency of the Federal government "to weigh [evidence] and decide in accordance with the preponderance." *Steadman*, quoting H.R. Rep. No. 1980, 79th Cong., 2d Sess., at 37 (1946). Thus, the ASC will use this preponderance-of-the-evidence standard in deciding proceedings under the subpart.

another Federal agency, then the ASC must refer the matter to the other agency for appropriate action. The ASC subsequently will retain a monitoring role pertaining to the referral consistent with the letter and spirit of its responsibilities under sections 1103(a)(2) [45] and 1119(c) [46] of title XI.

The ASC also has amended § 1102.38 in response to comments from the MBA and MB. Both commentators expressed a concern about making information public during the preliminary stages of an inquiry and about the ASC not being required to advise a target of an inquiry or investigation of its termination. Paragraph (c) no longer will allow the Secretary to place in a public file a written statement voluntarily submitted by a person involved in a preliminary inquire. As amended, the Secretary will place the statement in the public file only if the ASC commences a formal investigation or a proceeding under this subpart. In addition, paragraph (d) of § 1102.38 has been changed to require the ASC staff to advise a person of the termination on the staff's inquiry when the staff has concluded not to recommend the commencement of a formal investigation or a proceeding involving that person.

G. Other Issues

1. ASC Warnings

Three commentators suggested that the ASC provide advance warnings of consequences at two different times. First, the IBAA, recommended that the ASC should provide a State with a warning when it is approaching the threshold for ASC commencement of a non-recognition proceeding. This warning would provide the State an opportunity to correct its deficiencies and avoid such a proceeding.

The ASC believes that such a warning would be unnecessary. Barring extraordinary circumstances, the ASC cannot foresee a State or State agency ever being surprised by the commencement of a non-recognition proceeding. Indeed, the ASC will resort to instituting a non-recognition proceeding only as a last resort, *i.e.*, when all other reasonable avenues of reconciling the situation have been explored and closed. Moreover, the ASC believes that it already has addressed these concerns by including § 1102.39 into the subpart. That section requires the ASC "to cooperate"; that is, to "provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner."

Two of the commentators (MBA and MB) recommended that the ASC amend § 1102.33(d) to provide a party who fails to respond to the Notice of Intention an additional warning notice before the ASC can assume that the party has waived his or her opportunity to rebut and then find the facts as presented in the Notice of Intention and make a decision on those facts. The ASC does not believe such an additional formal notice is necessary. First, it is clear from the last sentence of § 1103.33(d) that a party may still avoid the effects of not responding to a Notice of Intention. The ASC, for good cause shown, will permit the filing of a Rebuttal after the prescribed time for doing so. Second, to ensure that the consequences of failing to respond to the Notice of Intention are clear to any party, the ASC is amending § 1102.32 of the subpart to require the ASC to include in the Notice of Intention a "bold-faced warning respecting the defect of a failure to file a Rebuttal or Notice Not To Contest under § 1102.33(d) * * *."

2. Commencement of a Proceeding

The IBAA requested a clarification of the exact time when a proceeding begins and suggested that it should "began no sooner than upon the * * * receipt of the Notice." The ASC agrees that this time frame needs clarification and is amending § 1102.32 to include the phrase, "and shall commence at the time of service," at the end of the second sentence of the proposed section. Thus, the time of commencement of a proceeding will be guided by §§ 1102.25, 1102.26 and 1102.27 of the subpart, which relate to methods of service, the effectiveness of service and how time frames are computed.

3. Conference Summaries

Both the MBA and MB commented on § 1102.29(f) of the subpart pertaining to how conferences are handled. Under that section, the Secretary is required to place in the proceeding's public file a memorandum summarizing the results of the conference. That memorandum controls the subsequent course of proceedings, unless the ASC for good cause modifies the results and instructs the Secretary to place an amendatory memorandum to that effect in the public file. The commentators noted that a party disagreeing with the substance of a memorandum would have no way to register his or her disagreement under this provision. While the ASC is of the view that the "for good cause" language would allow parties to obtain a modification of the memorandum, it also believes that some clarification may be useful. In that regard, the ASC has amended § 1102.29(f) by inserting the phrase, "by one or more parties to the conference," after the word, "shown," and before the word, "modifies."

4. Broader Notification of Proceeding

The IBAA recommended that "[b]ecause of the seriousness of a non-recognition decision, the State's Governor and the Secretary of the Department of Commerce should receive the Notice of Intention * * *. [This] would ensure that the state appraiser agency gives proper attention to the Notice and also serves to provide senior officials notice of a possible negative affect [sic] on the state economy." While the ASC agrees with the IBAA that benefits very well may accrue from sending the Notice of Intention to these State officials, the ASC believes that those benefits would be marginal. As discussed above, the ASC will use non-recognition only as a last resort. No one will be surprised, including the problem State's Governor. As also discussed above, absent extraordinary circumstances, the ASC will make every possible effort to be in contact with the Governor's office well before the commencement of a non-recognition proceeding. For these reasons, the ASC has determined not to amend this portion of the subpart.

5. Oral Presentations

The MBA and MB stated that the ASC should not have the discretion to deny a party the opportunity to make an oral presentation under § 1102.36(a). Both believe that parties should have a right to an oral presentation. The ASC believes that such discretion is necessary and appropriate in view of the need for expeditious handling of matters under the subpart and the new ability of persons with a demonstrable, direct interest in the outcome of a non-recognition proceeding to provide, in effect, written testimony on the matters at issue. However, to assure that requests for oral presentations will not be unreasonably denied, the ASC has amended this paragraph to say that a

[45] 12 U.S.C. 3332(a)(2) (1990). This portion of title XI requires the ASC to "monitor the requirements established by the [Agencies] with respect to—(A) appraisal standards for federal related transactions under their jurisdiction, and (B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser."

[46] 12 U.S.C. 3348(c) (1990). *See supra* text at II.B. The ASC believes that the intent of this section, which authorizes the ASC to "take such further action * * * it deems necessary to carry out the purposes" of title XI respecting a referred matter after its disposition, when read together with the balance of title XI, reaches alleged violators of title XI in a disposed matter than concerns a Federally regulated financial institution.

party's request to make an oral presentation may be denied only if such a denial is appropriate and reasonable under the circumstances.

V. Conclusion

On the basis of the foregoing, the ASC has determined to adopt the subpart as revised to reflect modifications to account for the commentators' suggestions.

VI. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the ASC certifies that this notice of adoption of subpart B of 12 CFR part 1102 is not expected to have a significant adverse economic impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

VII. Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980,[47] the forms, reporting, and recordkeeping requirements included in final Subpart B were approved by the Office of Management and Budget (OMB) on July 7, 1992, through July 31, 1995, and were assigned OMB No. 3139–0005. On January 1, 1993, all federally insured financial institutions must use State licensed or certified appraisers in federally related transactions. About one-half of the States already have in place mandatory appraiser licensing and certification requirements.

The final Rule will enable the ASC to fulfill its compliance and enforcement duties under title XI of FIRREA. There is a total possible universe of 57 States and Territories that can be sanctioned by the ASC. It is very difficult to estimate the number of ASC enforcement actions at this early stage of title XI implementation. In addition, the ASC is authorized by title XI to take "further action" against State agencies respecting individual appraisers. We estimate conservatively that 75,000 appraisers eventually will be licensed or certified. Against this backdrop, the ASC estimates that it will initiate six proceedings per year under subpart B (one non-recognition proceeding, with the balance being "other proceedings"), each of them requiring on average about 60 hours of information collection burden. The annual burden of information collection therefore should total 360 hours. No commentators raised any cost implications. Therefore, this final Rule is considered to be nonmajor under Executive Order 12291.

[47] 44 U.S.C. 35 (1990).

VIII. Statutory Basis of New Rules

Subpart B is being adopted pursuant to Sections 1103, 1106, 1118 and 1119(c) of title XI of FIRREA.[48]

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, banking, Mortgages, Reporting and recordkeeping requirements.

Text of the Rule

Chapter XI, title 12 of the Code of Federal Regulations, is amended as set forth below:

PART 1102—APPRAISER REGULATION

1. By adding new subpart B, consisting of §§ 1102.20 through 1102.39, to part 1102, to read as follows:

Subpart B—Rules of Practice for Proceedings

Sec.

Subpart B—Rules of Practice for Proceedings

Authority: 12 U.S.C. 3332, 3335, 3347, and 3348(c).

§ 1102.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued under sections 1103, 1106, 1118 and 1119(c) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3332, 3335, 3347, and 3348(c)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing non-recognition proceedings under section 1118 of Title XI (12 U.S.C. 3347); and other proceeding necessary to carry out the purposes of Title XI under section 1119(c) of Title XI (12 U.S.C. 3348(c)).

[48] 12 U.S.C. § 3332, 3335, 3347, and 3348(c) (1990).

§ 1102.21 Definitions.

As used in this subpart:

(a) *Subcommittee* or *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, as established under section 1011 of Title XI (12 U.S.C. 3310).

(b) *Party* means the ASC or a person, agency or other entity named as a party, including, when appropriate, persons appearing in the proceeding under § 1102.22 of this subpart.

(c) *Respondent* means any party other than the ASC.

(d) *Secretary* means the Secretary of the ASC under its Rules of Operation.

§ 1102.22 Appearance and practice before the Subcommittee.

(a) *By attorneys and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State or of the District of Columbia, or of any possession, territory, or commonwealth of the United States, may represent parties before the ASC upon filing with the Secretary a written notice of appearance stating that he or she is currently qualified as provided in this paragraph and is authorized to represent the particular party on whose behalf he or she acts.

(b) *By non-attorneys.* An individual may appear on his or her own behalf. A member of a partnership may represent the partnership, and an officer, director or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority. The partner, officer, director or employee must file with the Secretary a written statement that he or she has been duly authorized by the partnership, government unit, agency, institution, corporation or authority to act on its behalf. The ASC may require the representative to attach to the statement appropriate supporting documentation, such as a corporate resolution.

(c) *Conduct during proceedings.* All participants in a proceeding shall conduct themselves with dignity and in an orderly and ethical manner. The attorney or other representative of a party shall make every effort to restrain a client from improper conduct in connection with a proceeding. Improper language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct constitute grounds for immediate

exclusion from the proceeding at the direction of the ASC.

§ 1102.23 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this subpart must be double-spaced and printed or typewritten on 8½" x 11" paper. All copies shall be clear and legible.

(b) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the ASC and of the filing party, the title and/or docket number of the proceeding and the subject of the particular paper.

(c) *Party names, signatures, certificates of service.* All papers filed must set forth the name, address and telephone number of the attorney or party making the filing, must be signed by the attorney or party, and must be accompanied by a certification setting forth when and how service has been made on all other parties.

(d) *Copies.* Unless otherwise specifically provided in the notice of proceeding or by the ASC during the proceeding, an original and one copy of all documents and papers shall be furnished to the Secretary.

§ 1102.24 Filing requirements.

(a) *Filing.* All papers filed with the ASC in any proceeding shall be filed with the Secretary, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(b) *Manner of filing.* Unless otherwise specified by the ASC, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

§ 1102.25 Service.

(a) *Methods; appearing party.* A serving party, who has made an appearance under § 1102.22 of this subpart, shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

(b) *Methods; non-appearing party.* If a party has not appeared in the proceeding in accordance with § 1102.22 of this subpart, the ASC or any other party shall make service by any of the following methods:

(1) By personal service;

(2) By delivery to a person of suitable age and discretion at the party's last known address;

(3) By registered or certified mail addressed to the party's last known address; or

(4) By any other manner reasonably calculated to give actual notice.

(c) *By the Subcommittee.* All papers required to be served by the ASC shall be served by the Secretary unless some other person shall be designated for such purpose by the ASC.

(d) *By the respondent.* All papers filed in a proceeding under this subpart shall be served by a respondent on the Secretary and each party's attorney, or, if any party is not so represented, then upon such party. Such service may be made by any of the appropriate methods specified in paragraphs (a) and (b) of this section.

§ 1102.26 When papers are deemed filed or served.

(a) *Effectiveness.* Filing and service are deemed effective:

(1) For personal service or same-day commercial courier delivery, upon actual delivery; and

(2) For overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in, or delivery to, an appropriate point of collection.

(b) *Modification.* The effective times for filing and service in paragraph (a) of this section may be modified by the ASC in the case of filing or by agreement of the parties in the case of service.

§ 1102.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not included. The last day so computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *For service and filing responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time periods are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period; and

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period.

§ 1102.28 Documents and exhibits in proceedings public.

Unless and until otherwise ordered by the ASC or unless otherwise provided by statute or by ASC regulation, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the Secretary in the proceeding's public file and will be available for public inspection and copying at the address set out in § 1102.24 of this subpart.

§ 1102.29 Conduct of proceedings.

(a) *In general.* Unless otherwise provided in the notice of proceedings, all proceedings under this subpart shall be conducted as hereinafter provided.

(b) *Written submissions.* All aspects of the proceeding shall be conducted by written submissions only, with the exception of oral presentations allowed under § 1102.36 of this subpart.

(c) *Disqualification.* A Subcommittee member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record and decision in the case.

(d) *User of ASC staff.* Appropriate members of the ASC's staff who are not engaged in the performance of investigative or prosecuting functions in the proceeding may advise and assist the ASC in the consideration of the case and in the preparation of appropriate documents for its disposition.

(e) *Authority of Subcommittee Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings in accordance with this subpart.

(f) *Conferences.* (1) The ASC may on its own initiative or at the request of any party, direct all parties or counsel to meet with one or more duly authorized ASC members or staff at a specified time and place, or to submit to the ASC or its designee, suggestions in writing for the purpose of considering any or all of the following:

(i) Scheduling of matters, including a timetable for the information-gathering phase of the proceeding;

(ii) Simpliafication and clarification of the issues;

(iii) Stipulations and admissions of fact and of the content and authenticity of documents;

(iv) Matters of which official notice will be taken; and

(v) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of persons submitting affidavits or other documents and exhibits which may be introduced into the public file of the proceeding.

(2) Such conferences will not be recorded, but the Secretary shall place in the proceeding's public file a memorandum summarizing the results of the conference and shall provide a copy of the memorandum to each party. The memorandum shall control the subsequent course of the proceedings, unless the ASC for good cause shown by one or more parties to the conference, modifies those results and instructs the Secretary to place an amendatory memorandum to that effect in the public file.

(g) *Changes or extensions of time and changes of place of proceeding.* The ASC, in connection with initiating a specific proceedings under § 1102.32 of this subpart, may instruct the Secretary to publish in the **Federal Register** time limits different from those specified in this subpart, and may, on its own initiative or for good cause shown, issue an exemption changing the place of the proceeding or extending anytime limit prescribed by this subpart, including the date for ending the information-gathering phase of the proceeding.

(h) *Call for further briefs, memoranda, statements; reopening of matters.* The ASC may call for the production of further information upon any issue, the submission of briefs, memoranda and statements (together with written responses), and, upon appropriate notice, may reopen any aspect of the proceeding at any time prior to a decision on the matter.

§ 1102.30 Rules of evidence.

(a) *In general.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted under this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may be deemed or ruled admissible in a proceeding conducted under this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Stipulations.* Any party may stipulate in writing as to any relevant matters of fact, law, or the authenticity of any relevant documents. The Secretary shall place such stipulations in the public file, and they shall be binding on the parties.

(c) *Official notice.* Every matter officially noticed by the ASC shall appear in the public file, unless the ASC determines that the matter must be withheld from public disclosure under applicable Federal law.

§ 1102.31 Burden of proof.

The ultimate burden of proof shall be on the respondent. The burden of going forward with a *prima facie* case shall be on the ASC.

§ 1102.32 Notice of Intention To Commence a Proceeding.

The ASC shall instruct the Secretary or other designated officer acting for the ASC to publish in the **Federal Register** a Notice of Intention To Commence A Proceeding (Notice of Intention). The Notice of Intention shall be served upon the party or parties to the proceeding and shall commence at the time of service. The Notice of Intention shall state the legal authority and jurisdiction under which the proceeding is to be held; shall contain, or incorporate by appropriate reference, a specific statement of the matters of fact or law constituting the grounds for the proceeding; and shall state a date no sooner than 25 days after service of the Notice of Intention is made for termination of the information-gathering phase of the proceeding. The Notice of Intention also must contain a bold-faced warning respecting the effect of a failure to file a Rebuttal or Notice Not To Contest under § 1102.33(d) of this subpart. The ASC may amend a Notice of Intention in any manner and to the extent consistent with provisions of applicable law.

§ 1102.33 Rebuttal or Notice Not To Contest.

(a) *When required.* A party to the proceeding may file either a Rebuttal or a Notice Not to Contest the statements contained in the Notice of Intention or any amendment thereto with the Secretary within 15 days after being served with the Notice of Intention or an amendment to such Notice. The Secretary shall place the Rebuttal or the Notice Not To Contest in the public file.

(b) *Requirements of Rebuttal; effect of failure to deny.* A Rebuttal filed under this section shall specifically admit, deny or state that the party does not have sufficient information to admit or deny each statement in the Notice of Intention. A statement of lack of information shall have the effect of a denial. Any statement not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of a statement, the party shall admit so much of it as is true and shall deny only the remainder.

(c) *Notice Not To Contest.* A party filing a Notice Not To Contest the statement of fact set forth in the Notice of Intention shall constitute a waiver of the party's opportunity to rebut the facts alleged, and together with the Notice of Intention and any referenced documents, will provide a record basis on which the ASC shall decide the matter. The filing of a Notice Not To Contest shall not constitute a waiver of the right of such party to a judicial review of the ASC's decision, findings and conclusions.

(d) *Effect of failure to file Rebuttal or Notice Not To Contest.* Failure of a party to file a response required by this section within the time provided shall constitute a waiver of the party's opportunity to rebut and to contest the statements in the Notice of Intention and shall constitute authorization for the ASC to find the facts to be as presented in the Notice of Intention and to file with the Secretary a decision containing such findings and appropriate conclusions. The ASC, for good cause shown, will permit the filing of a Rebuttal after the prescribed time.

§ 1102.34 Briefs, memoranda and statements.

(a) *By the parties.* Until the end of the information-gathering phase of the proceeding, any party may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The filing party shall simultaneously serve other parties to the proceeding with a copy of the document. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve a copy thereof on the other parties to the proceeding. The Secretary will receive documents and responses and will place them in the public file.

(b) *By interested persons, in non-recognition proceedings.* Until the end of the information-gathering phase of a proceeding under section 1118 of FIRREA (12 U.S.C. 3347), any person with a demonstrable, direct interest in the outcome of the proceeding may file with the Secretary a written brief,

memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The ASC's Chairperson or his or her designee may not accept any such written brief, memorandum or other statement if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. Upon acceptance of the written brief, memorandum or other statement, the Secretary shall make copies of the document and forward one copy thereof to each party to the proceeding. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve one copy thereof on the other parties to the proceeding. The Secretary will place a copy of such briefs, memoranda, statements and responses in the public file.

§ 1102.35 Opportunity for informal settlement.

Any party may at any time submit to the Secretary, for consideration by the Subcommittee, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be included in the proceeding's public file over the objection of any party to such proceeding. This paragraph shall not preclude settlement of any proceeding by the filing of a Notice Not To Contest as provided in § 1102.33(c) or by the submission of the case to the ASC on a stipulation of facts.

§ 1102.36 Oral presentations.

(a) *In general.* A party does not have a right to an oral presentation. Under this section, a party's request to make an oral presentation may be denied if such a denial is appropriate and reasonable under the circumstances. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding.

(b) *Method and time of request.* Between the commencement of the proceeding and ten days before the end of the information-gathering phase, any party to the proceeding may file with the Secretary a letter requesting that the Secretary schedule an opportunity for the party to give an oral presentation to the ASC. That letter shall include the reasons why an oral presentation is necessary.

(c) *ASC processing.* The Secretary must promptly forward the letter request to the Chairman of the ASC. The Chairman, after informally contacting other ASC members and the ASC's senior staff for their views, will instruct the Secretary to forward a letter to the party either: Scheduling a date and time for the oral presentation and specifying the allowable duration of the presentation; or declining the request and providing the reasons therefor. The party's letter request and the ASC's response will be included in the proceeding's public file.

(d) *Procedure on presentation day.* On the appropriate date and time, the party or his or her attorney (if any) will make the oral presentation before the ASC. Any ASC member may ask the party or the attorney, as the case may be, pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. The Secretary must enter promptly into the proceeding's public file a memorandum summarizing the subjects discussed during the oral presentation.

§ 1102.37 Decision of the Subcommittee and judicial review.

At a reasonable time after the end of the information-gathering phase of the proceeding, but not exceeding 35 days, the ASC shall issue a final decision, containing specified terms and conditions as it deems appropriate, in the matter and shall cause the decision to be published promptly in the **Federal Register.** The final decision shall be effective on issuance. The Secretary shall serve the decision upon the parties promptly, shall place it in the proceeding's public file and shall furnish it to such other persons as the ASC may direct. Pursuant to the provisions of chapter 7 of title 5 of the U.S. Code and section 1118(c)(3) of title XI of FIRREA (12 U.S.C. 3348(c)(3)), a final decision of the ASC is a prerequisite to seeking judicial review.

§ 1102.38 Compliance activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of information by the ASC, or otherwise, it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder, the ASC staff may commence an informal, preliminary inquiry into the matter. If, upon such inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348)), shall monitor the matter. If, upon inquiry, it appears that one or more allegations are within the ASC's jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation respecting the matter and shall instruct the Secretary to create a public file for the formal investigation. The Secretary shall place in that file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation.

(b) Unless otherwise instructed by the ASC or required by law, the Secretary shall ensure that all other papers, documents and materials gathered or submitted in connection with the investigation are non-public and for ASC use only.

(c) Persons who become involved in preliminary inquiries or formal investigations may, on their own initiative, submit a written statement to the Secretary setting forth their interests, positions or views regarding the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them and the amount of time that may be available for preparing and submitting such a statement prior to the presentation of a staff recommendation to the ASC. Upon the commencement of a formal investigation or a proceeding under this subpart, the Secretary shall place any such statement in the appropriate public file.

(d) In instances where the staff has concluded its inquiry of a particular matter and has determined that it will not recommend the commencement of a formal investigation or a proceeding under this subpart against a person, the staff shall advise the person that its inquiry has been terminated. Such advice, if given, must in no way be construed as indicating that the person has been exonerated or that no action may ultimately result from the staff's inquiry into the particular matter.

§ 1102.39 Duty to cooperate.

In the course of the investigations and proceedings, the ASC (and its staff, with appropriate authorization) must provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: July 9, 1992.

Fred D. Finke,

Chairman.

[FR Doc. 92-16599 Filed 7-16-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-06; Amendment 39-8305, AD 92-15-11]

Airworthiness Directives; Pratt & Whitney Canada PT6A Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney Canada (PWC) PT6A series turboprop engines, that requires removal of the compressor delivery air line (P3) filter assembly. This amendment is prompted by aircraft flight test results that have revealed an engine configuration and a set of operating conditions where engine acceleration is insufficient to provide for required aircraft balked landing performance. The actions specified by this AD are intended to prevent excessive engine acceleration time that could result in an aircraft's inability to safety perform the required balked landing maneuver.

EFFECTIVE DATE: August 17, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, Manager, Engine Certification Branch, ANE-142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7080; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Pratt & Whitney Canada (PWC) PT6A series turboprop engines was published in the Federal Register on March 1, 1991 (56 FR 8733). That action proposed to require inspection for and removal of the compressor delivery air line (P3) filter assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments contained in 23 comment letters received. All of the comments received are addressed in the following paragraphs.

Three comments reference the content of the Notice of proposed rulemaking (NPRM). One commenter states that too little technical information was provided to evaluate the merit of the proposed AD. The FAA disagrees. The detail of technical content in the Notice of proposed rulemaking (NPRM) is in accordance with prescribed FAA practices. Several comments contain detailed technical discussions relative to information contained in the NPRM. Therefore the FAA believes the NPRM adequately described the proposed action.

Two commenters state that the comment period was too short, and object to the FAA's denial of a request for an extension. The FAA disagrees. The NPRM 45 day comment period is in accordance with established FAA practices. Also, none of the comments provided justification to support the request. A number of comments were received after the comment period closing, and were considered in the decision making process.

One commenter also states that the NPRM was inadequately advertised. The FAA disagrees. Publication in the Federal Register is the official method by which proposed AD's are made known to the public.

Several comments address the service history of affected PWC PT6A engines, and question whether the data demonstrates a need for installation of P3 filters to prevent fuel control unit (FCU) pneumatic contamination. The FAA has reviewed available sources of information, and can find no pattern of engine failures or power losses in service due to FCU pneumatic contamination. In addition, Transport Canada, the responsible airworthiness authority, has reviewed their own service difficulty data base, and that of PWC, and cannot identify a service problem pattern relating to FCU pneumatic contamination. Lastly, the FAA has no information relative to any National Transportation Safety Board (NTSB) probable cause findings related to engine failures or power losses associated with FCU pneumatic contamination. The P3 filter option offered by PWC is intended for operations in harsh environments as a method for extending useful FCU installed life. However, FCU failure modes and effects due to pneumatic contamination are identical with or without P3 filter installation. One commenter describes one such harsh environment, noting FCU problems when operating in an area where pollutant particles from paper processing mills were discharged into the atmosphere. While the FAA concurs that a P3 filter could be useful when operating in such an environment, another commenter points out that service difficulty reports describe slow or no accelerations with clogged P3 filters.

Two commenters state that certain tests have shown a definitive need to install P3 filters. The FAA has no information of any of these tests, and none were submitted. As discussed above, existing service difficulty data does not support the conclusions stated in the comments. One commenter states that a "roll-back" or power loss event can result in a high propeller drag condition, leading to an accident. The FAA disagrees. An engine power loss due to FCU pneumatic contamination is no more severe than any single engine power loss for any other reason. The affected airplanes are all twin-engine airplanes, and must meet all applicable Civil Aviation Regulations (CAR) or Federal Aviation Regulations (FAR) requirements for single engine operation.

Two comments address the U.S. Navy's use of Beech Aircraft Company (BAC) T-34C (PWC PT6A powered) airplanes. The two comments state that the Navy had engine power loss problems related solely to the lack of P3 filters in BAC T-34C airplanes, and therefore P3 filters must be necessary. The FAA disagrees. The FAA does not have direct access to the Navy's service difficulty database, however, the FAA has identified nine BAC and PWC field service documents that pertain to a BAC T-34C power loss problem. Of this group, one action to address this problem was to install a P3 filter. Further research has shown that the most dramatic improvement to the BAC T-34C engine power loss problem was made by adjusting the torque controller setting, not installation of a P3 filter. The incorporation of these nine service documents, together, coincides with the apparent reduction in BAC T-34C engine power loss problems.

Also, it is significant that the BAC T-34C idle is 62% to 65% core speed (Ng),

while the idle of the affected airplanes is only in the 51% Ng range. Therefore, no engine acceleration problems associated with P3 filter installation would be expected on these higher idle installations. Lastly, there is little comparison of mission or operating environment between a single engine military trainer (T-34C), and a twin engine business type airplane. Therefore, the FAA has determined that the noted BAC T-34C service history is not relevant to this issue.

One commenter states that PWC issuance of a service bulletin offering the P3 filter as an option is sufficient evidence of the necessity of installing the filter. The FAA disagrees. As discussed previously, the FAA has determined that the service history data base does not indicate the need to require P3 filter installation. Also, PWC's publication of an optional service bulletin does not mean that operation of a PT6A engine without a P3 filter is unsafe.

Two comments address the airplane applicability of this AD. The comments question why other airplane types powered by affected PWC PT6A engines were not included in the AD action. The FAA agrees that other model airplanes are potentially affected, and has reviewed with appropriate airplane manufacturers the possible effects of P3 filter installation. At this time, the FAA has identified one additional model series (Cessna 406) that is directly affected. Flight tests similar to the final phase BAC tests have been completed on this model, yielding similar results of slow engine acceleration, and concurrent airplane handling difficulty during balked landing maneuvers. Corrective action for this model series airplane is being evaluated and additional rulemaking may follow.

Several comments address the controlling test parameters used during the final phase of the Beech test program, specifically idle Ng values and generator load factor. In particular, several comments question the use of 51% idle Ng inflight as not being an approved value. The FAA disagrees. The FAA has reviewed BAC and PWC service documents (*i.e.*, the Airplane Flight Manual (AFM) and Engine Installation Manual), and has determined that a ground or inflight idle Ng of 51% is approved in accordance with both manufacturers' limitations. Comments also state that the BAC King Air Model C90 AFM, Limitations Section, prohibits the use of generator load factor greater than 50% with an idle Ng below 57%. The FAA disagrees. The FAA has reviewed the AFM, and has determined that the Emergency Procedures Section instructions can allow, under certain circumstances, a maximum generator load factor while the engine is operated at low idle (51% Ng) during approach and landing. It has also been determined that the Ng/generator load limits address a generator cooling requirement as opposed to an engine operating concern, and that such a limit is actually not required on C90 aircraft. Also, the use of maximum generator load at 51% Ng is allowed by PWC limitations. Also, several comments state that the BAC fuel control adjustments were improper, exceeded approved limits, and were inappropriate for field service. The FAA disagrees. The FAA has reviewed the final phase BAC test FCU calibrations, and compared them to approved type design limits. All values (*i.e.*, Ng, acceleration fuel flow, etc.) have been found to be within approved type data limits. As to the appropriateness of the calibrations, the FAA believes that test calibrations represent a worst case approved configuration relative to engine acceleration. The fact that the FCU calibrations are not typical of in-service units does not affect the appropriateness of the worst case test configuration.

One commenter states that the BAC C90 AFM Limits Section "Minimum Ng vs. Generator Load" table is not related to starter-generator cooling requirements, but more closely related to engine operational considerations. The FAA disagrees. The noted limit table has been confirmed by BAC to be related to hot day (125°F) starter-generator cooling. Increased engine speeds increase the cooling air flow in order to keep the starter-generator within its component temperature limit. It must also be noted that the final phase BAC C90 tests were conducted within the horsepower and bleed extraction limits noted in the applicable PWC PT6A Installation Manual.

Several comments address inflight idle Ng, and whether a particular Ng value on the ground can be maintained during the subject flight conditions, and whether this value can change from flight-to-flight. The FAA has reviewed the PWC PT6A control system design, and has determined that the idle Ng value on the ground will be maintained ±1% inflight, up to the altitude (barometric pressure) where decreasing idle fuel flow equals the FCU mechanical stop minimum fuel flow. This is due to the FCU scheduling to maintain a specific Ng value within the range of its authority over low end fuel flow. Above that altitude, the previously constant (±1%) idle Ng becomes a variable, increasing with altitude. It is possible to reduce this idle Ng value with horsepower or bleed extraction, if the demand is beyond the range of FCU authority. In support of this review, the FAA has conducted several independent flight tests that verified the expected idle Ng profile with altitude. The FAA flight tests also verified that there were no significant flight-to-flight variations in the idle Ng values. It should also be noted that during the final phase BAC tests, idle Ng was never artificially adjusted to a lower value, either on the ground or inflight. One commenter also suggests that a typical in-service airplane (nominal FCU calibration) would be more representative for engine acceleration testing. The FAA disagrees, and believes the configuration tested in the last phase of the Beech program is a proper worst case configuration relative to approved type design data.

Four commenters state that the BAC test results were erroneous and invalid due to not meeting type design requirements. The FAA disagrees. The FAA has closely reviewed the airplane configuration tested in the final phase of BAC testing, and closely reviewed the demonstrated test conditions. The FAA has determined that the airplane configuration and test parameters meet type design data. The test configuration and test parameters represent a worst case relative to engine acceleration performance, and airplane balked landing performance.

Several comments address the final phase of BAC tests, specifically the flight test on August 17, 1990. One commenter states that the FAA observer log of engine acceleration time data did not agree with the BAC log. The FAA disagrees. The FAA has reviewed the logs for the last flight test on August 17, 1990, and finds that the two logs contain equivalent data. Also, the commenter identifies the August 17, 1990, test as BAC Flight No. 18, which is incorrect. The August 17, 1990, test is identified as BAC Flight No. 19. The BAC test report contains log sheets for both tests. BAC Flight No. 18 was flown on August 16, 1990. The noted test points were timed engine accelerations. BAC Flight No. 19 on August 17, 1990, also included several touch-and-go landings, which evaluated airplane handling. Another commenter states that there is a discrepancy in the target Ng engine speeds between various Flight No. 19 test conditions. In particular, the commenter questions the variation in Ng values encountered in a series of touch-and-go landings, and those reported by BAC during Conditions 3 and 4, which were

conducted in stabilized level flight conditions. The FAA has reviewed the test procedures and test results related to this comment. Flight No. 19 Conditions 3 and 4 allowed Ng to stabilize at the idle value of 51% Ng. The touch-and-go tests were conducted as a variation to the BAC Configuration 6 test procedures. Configuration 6 required a go-around procedure, initiated from 50 feet above the runway. Initial tests showed this to be an unacceptably dangerous procedure. Consequently, the FAA concurred with the BAC recommendation to alter the procedure to a touch-and-go test. For these tests, the airplane was landed in a normal manner with the condition levers at the low idle positions. After touchdown, the power control levers were moved to the idle positions, the flaps were retracted and the airplane retrimmed for takeoff. At that time, both power control levers were rapidly advanced to full power positions. The test site runway length precluded permitting the engines to decelerate fully to the idle 51% Ng speeds. Three tests were conducted, and the minimum recorded Ng values were 60%, 57%, and 54%, during the engine deceleration on the ground, and prior to throttle burst to full power and takeoff. The Condition 3 and 4 tests were conducted in an entirely different manner and for the purpose of collecting entirely different data than the modified Configuration 6 tests. Another commenter states that the final phase BAC tests were conducted without known FCU calibrations. The FAA disagrees. The FCU calibrations for the final phase BAC tests were forwarded to the FAA. The FAA has reviewed the FCU calibration reports and has determined that the FCU's were calibrated prior to the final phase BAC tests and that the FCU calibrations were within approved limits.

Another commenter states that BAC Flight No. 19 was invalid due to only one engine having a P3 filter installed. The FAA disagrees. There are no airplane or engine manual restrictions requiring that both engines be configurated the same relative to P3 filter installation. Since individual engine change-outs do occur on BAC models affected by this AD, it is reasonable to expect that some airplanes may be configured with only one engine having a P3 filter installed. The FAA is aware of at least one airplane affected by this AD that had incorporated the PWC P3 filter on only one engine. The commenter also states that no baseline testing exists for either engine, and surmises that the long acceleration times for the P3 filter equipped engine could only be due to an engine problem. The FAA disagrees. BAC Flight No. 19 was conducted using the same airplane and engines as was used for all of the BAC final phase tests. Therefore, baseline test data with and without P3 filters exists for both engines. Engine operation during BAC Flight No. 19 was very similar to the previous test flights, with the P3 filter configured engine demonstrating increased acceleration time consistent with those encountered in the previous tests. The engine not equipped with a P3 filter also performed very similarly to previous baseline flight tests. No unusual engine anomalies were noted during BAC Flight No. 19, other than the effect of having a P3 filter installed.

Several comments address the effect of a P3 filter on engine acceleration. Five commenters state that the installation of a P3 filter has no effect on engine acceleration. One commenter also states that generator load and ambient temperature are the only significant factors in the BAC engine acceleration tests. One commenter states that P3 filter installation can have a negative effect on engine acceleration, as shown by the final phase BAC tests. The FAA has determined by test that under certain combinations of ambient temperature, bleed air, horsepower extraction, and power setting, engine acceleration time can be negatively affected by P3 filter installation. One commenter suggests that the FAA should not rely on engine acceleration times alone in evaluating the effect of P3 filter installation. The FAA agrees. The primary criteria for acceptable engine acceleration is airplane handling during a balked landing maneuver, not a timed engine acceleration. One commenter states that Piper Aircraft Corporation (PAC) airplanes equipped with P3 filters have not experienced engine acceleration service problems as identified by the BAC tests. The FAA disagrees. The FAA does have records of PAC PWC PT6A powered airplanes that have had acceleration problems due to clogged P3 filters. However, there are no service problems on record indicating engine acceleration problems due to clean (unclogged) installed P3 filters.

Two commenters state that the P3 filter is effective in collecting pneumatic contamination. The FAA agrees that the P3 filter does perform its intended function of collecting pneumatic particle contaminants. One commenter also states that a *clogged* filter will manifest itself with slow accelerations or no-starts. The FAA agrees. The FAA is aware of engine no-starts, minimum-flow on start-up, slow accelerations and no accelerations with concurrent high inter-turbine temperature, and rollbacks to minimum-flow occurring due to clogged P3 filters. However, as stated earlier, there are no service difficulty records indicating a safety problem for PWC PT6A engines not equipped with P3 filters. The FAA has reviewed available sources of information, and can find no pattern of engine failures or power losses in service due to FCU pneumatic contamination for PWC PT6A engines not equipped with P3 filters. Lastly, the PWC PT6A FCU failure modes and effects due to pneumatic contamination are identical with or without a P3 filter.

One commenter states that additional BAC tests (Model A100) showed a left to right engine acceleration time difference of 2 seconds, with or without P3 filters installed, and questions why a 2 second difference is acceptable for A100 models. The FAA evaluation criteria for both tests was airplane handling performance during balked landing maneuvers, and not left to right engine acceleration time differentials. The supplemental BAC A100 tests were designed to fully evaluate airplane balked landing performance on a high minimum idle configuration (63% Ng range), with and without P3 filters installed. The FAA has determined that the effect of P3 filter installation on these installations is significantly less than on lower idle installations (51% Ng range), and that A100 handling during the balked landing maneuvers was acceptable. During the supplemental A100 tests, the maximum engine acceleration time increase due to P3 filter installation was 1.98 seconds, while the left to right engine acceleration time differential increased 0.84 seconds. During the final phase BAC Model C90 tests, which are the basis for this AD, the maximum engine acceleration time increase due to P3 filter installation was 25.04 seconds, while the maximum left to right engine acceleration time differential increased 14.99 seconds. The FAA evaluation criteria for both tests was airplane handling performance during balked landing maneuvers, as affected by increased engine acceleration time due to P3 filter installation. The FAA did not evaluate either airplane by a timed engine acceleration alone, nor solely by left to right engine acceleration time differentials.

One commenter questions why results from the initial phase of the BAC tests were not also considered in the AD action. They were not considered because the initial phase of BAC tests were conducted without benefit of a type design P3 system configuration and

known FCU calibration. Post-test inspection found the P3 system to be not in conformity with approved type design, and the FCU calibration to be in error. No definitive results were obtained from these tests for the above reason. This AD action is based on the final phase BAC tests that incorporated a worst case approved engine configuration relative to engine acceleration. All BAC final phase tests were fully coordinated with the FAA, and the FAA was invited to participate in all tests.

Several comments discuss the possibility of exploring methods by which a P3 filter may remain as a installed option. In particular, the commenters suggest either a redesign of the filter, or modification of certain engine operating limits so as to yield acceptable engine/airplane performance. As discussed earlier, no safety issues have been identified that would require that an AD be issued to require P3 filter installation, therefore the FAA cannot mandate that the manufacturers change either the filter design or associated operating limits. However, the AD process does provide a method by which an alternate means of compliance to AD requirements can be approved by the FAA. This method is available to any affected person. One comment suggests that an installed engine acceleration check would be sufficient to establish acceptable airplane performance. The FAA disagrees. FAA type design requirements are such that acceptable engine/airplane performance is required for the worse case certified configuration. Also, allowing an individual installed engine acceleration check does not account for engine or FCU deterioration or change out. One commenter states that BAC did not investigate engine acceleration performance at the maximum certified minimum idle value of 53% Ng. The comment is accurate. However, the tested configuration of the final phase BAC tests represents the worst case relative to engine acceleration. The BAC final phase tests were not intended to develop alternatives, but to investigate a potentially unsafe condition. One commenter questions what consideration has been given to the original intent to the PWC P3 filter option. The FAA has considered the original intent of the P3 filter option. The P3 filter is a method of dealing with atmospheric contamination, which can cause wear within the FCU. The P3 filter can, under certain conditions, reduce the expense of maintaining the FCU in an airworthy condition. It must also be noted that engine failure modes and operational effects are identical with or without a P3 filter installed. Also, as previously discussed, no safety issues have been identified which would require that P3 filters be mandated. However, relative to the original intent of the PWC P3 filter option, the FAA has coordinated with PWC to define a test program that may identify an engine configuration allowing P3 filters to remain as an option. This AD will be amended to include a P3 filter installation option if it is developed.

One commenter states that use of the engine inlet inertial separator can have a significant affect on engine acceleration characteristics. The FAA disagrees. The inertial separator is a device which promotes the bypass of airborne debris (ice, rain, hail, *etc.*) away from the engine inlet. The inertial separator does not significantly affect engine inlet airflow parameters. The type design approval by Transport Canada requires that PWC PT6A engines demonstrate fully acceptable operating characteristics with and without the inertial separator extended. Design requirements for the airframe portion of the engine inlet system are found in the applicable Installation Manual. The final phase BAC tests were conducted with the inertial separator retracted. The FAA does not concur that use of the inertial separator has a significant effect on engine acceleration characteristics.

One commenter questions whether the FAA has considered the increased maintenance cost associated with P3 filter removal. The FAA has determined that the fleet potential for increased FCU maintenance cost is believed to be minimal, primarily due to the low rate of installation of P3 filters in service, which is estimated to be less than 5% of the fleet.

One commenter states that if the BAC tests are valid, then the airplane is improperly certificated if it is unable to perform the balked landing maneuver, and should be grounded by emergency AD. The FAA disagrees. The FAA has determined that the affected aircraft were probably certificated with the P3 filter available as an engine option. The BAC tests are valid in that they establish that an unsafe condition under special operating conditions has developed due to the installation of the P3 filter. To date the only actual service problems identified with P3 filters on PWC PT6A engines are no-starts, minimum-flow on start-up, slow accelerations and no accelerations with concurrent high interturbine temperature, and rollbacks to minimum flow, all due to clogged P3 filters. Therefore, the FAA has determined that the proposed action is appropriate.

Two comments address pending class action litigation concerning P3 filter installation on certain PWC PT6A powered airplanes. The commenters suggest that the FAA should consider this pending civil action relative to this AD. The FAA is taking this action in response to the findings of an unsafe conditions. Further action may be taken if circumstances warrant.

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, with the following change to the economic evaluation.

The FAA estimates that there are approximately 4,330 PWC PT6A series engines installed on aircraft of U.S. registry, and that approximately 225 engines have a P3 filter installed. The FAA estimates that for those 225 engines with a P3 filter installed it will take approximately 4 work hours to remove the filter at $55 per work hour. The FAA estimates also that there will be no part cost associated with this AD. Based on these figures, it is estimated that the total cost impact of this AD will be $49,500. Pratt & Whitney Canada has advised the FAA that they may assume any parts and labor costs to remove the subject filter assemblies from affected engines. Consequently, there should be minimal cost impact on U.S. operators for parts or labor.

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 "major rule" under Executive Order 12291; (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 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-15-11 Pratt & Whitney Canada: Amendment 39-8305; Docket No. 91-ANE-06.

Applicability: Pratt & Whitney Canada (PWC) PT6A-6, PT6A-6/C20, PT6A-20, PT6A-20A, PT6A-21, PT6A-27, PT6A-28, PT6A-34, PT6A-34B, and PT6A-36 turboprop engines installed on Beech Aircraft Corporation Models 65-A90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-90-A4, 99, 100, 99A, B90, C90, C90A, E90, H90, A99, A99A, B99, and C99 aircraft.

Compliance: Required within the next 180 days after the effective date of this AD, unless accomplished previously.

To prevent excessive engine acceleration time that could result in an aircraft's inability to safely perform the balked landing maneuver required by Federal Aviation Regulations (FAR) part 23, paragraphs 23.75(d), 23.77 and 23.143(a)(5), accomplish the following:

(a) Perform a visual inspection to determine if a compressor delivery air line (P3) filter assembly has been installed on the engine.

Note: The compressor delivery air line assembly may have been installed on the engine as original equipment, or may have been installed per any of the following PWC Service Bulletins: 1205, 1253, 1290, 1294, 1330, 1343, or 1378.

(b) Remove from service, if installed, the P3 filter assembly.

Note: The engine compressor delivery air line assembly can be returned to an approved configuration without a P3 filter. For information, refer to the applicable PWC Maintenance Manual and Parts Catalog.

(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, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

(e) This amendment becomes effective on August 17, 1992. Issued in Burlington, Massachusetts, on June 29, 1992.

Jay J. Pardee,

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

[FR Doc. 92-16880 Filed 7-16-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 785

[Docket No. 920777-2177]

Humanitarian Shipments to Vietnam; General License G-NGO

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As further steps in the ongoing normalization of relations between the United States and Vietnam, the Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by adding a new General License G-NGO and revising policy to allow issuance of licenses for commercial exports of humanitarian goods. The general license authorizes donations of humanitarian items by non-governmental organizations to carry out humanitarian projects in Vietnam. The types of donations eligible for export under this general license are those described in the Humanitarian License procedure of the EAR. The types of goods that may be licensed for sale are also those eligible for the Humanitarian License. These new procedures should reduce paperwork and allow expanded trade in eligible items.

EFFECTIVE DATE: This rule is effective July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4819.

SUPPLEMENTARY INFORMATION:

Background

The United States is engaged in a step-by-step process to normalize relations between the U.S. and Vietnam. On April 29, 1992, the State Department announced additional steps in the normalization process. The first is to permit commercial sales to meet basic human needs and the second is to lift restrictions on humanitarian projects by non-governmental, non-profit organizations in Vietnam. Effective May 11, 1992, the Department of the Treasury's Office of Foreign Assets Control (OFAC) amended the Foreign Assets Control Regulations (31 CFR part 500) by establishing a general license authorizing non-governmental organizations to engage in all transactions incident to the carrying out of humanitarian projects in Vietnam (57 FR 20765 of May 15, 1992). This OFAC rule also provides for case-by-case licensing of commercial sales of foreign-origin goods and services to meet basic human needs in Vietnam.

BXA is now issuing a final rule establishing General License G-NGO to authorize the export of certain donated items to support humanitarian projects in Vietnam. These donations may only be made by non-governmental, non-profit organizations that are registered with OFAC, and only commodities for humanitarian projects to meet basic human needs are eligible for export under this general license. This final rule also allows issuance of individual validated licenses on a case-by-case basis for exports or reexports to Vietnam of commercially-supplied goods to meet basic human needs. Previously, only exports of donated goods to meet basic human needs were allowed under a validated license.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information which have been approved by OMB under Control Numbers 00694-0005 and 0694-0048. The collection found in § 771.27(b) is estimated to average 30 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington,

DC 20503, Attn: Paperwork Reduction Project.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Moreover, this rule liberalizes the licensing requirement for exports to Vietnam. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

15 CFR Part 785

Exports.

Accordingly, parts 771 and 785 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 771 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*.); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for 15 CFR part 785 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 771—[AMENDED]

3. A new § 771.27 is added to read as follows:

§ 771.27 General license G–NGO; commodities for humanitarian projects in Vietnam.

(a) *Scope.* A general license G–NGO is established, subject to the provisions of this § 771.27, authorizing non-governmental, non-profit organizations to export donated commodities necessary to carry out small-scale humanitarian projects in Vietnam.

(b) *Eligible commodities.* (1) The commodities eligible for export under this general license are limited to those found in Supplement No. 7 to part 773 of this subchapter. An eligible donor organization using this general license is required to ensure that a given item to be exported is covered by this procedure. For example, even though "generators" are included in Supplement No. 7 to part 773 of this subchapter, only small generators suitable and necessary to administer and operate a humanitarian project are authorized for export under this general license.

(2) If an eligible donor organization is in doubt whether an item is included within the scope of one of the entries listed in the Supplement, or seeks authorization for items not included in the Supplement, a letter of inquiry should be submitted to the Office of Export Licensing, Special Licensing Division, room 2075, U.S. Department of Commerce, Washington, DC 20230. The request should describe the type of goods intended for export, the projects for which the goods will be used, and how the goods are intended to meet basic human needs.

(c) *Ineligible commodities.* Commodities not eligible under this general license, even though of a type described in Supplement No. 7 to part 773 of this subchapter, are those controlled for national security, nuclear, missile, or chemical/biological weapons proliferation, or crime control reasons as indicated in the "Reason for Control" paragraphs on the Commerce Control List (CCL) (Supplement No. 1 to § 799.1 of this subchapter), and communications intercepting devices (ECCN 5A80). Commodities not eligible for shipment under General License G–NGO must be authorized for shipment to Vietnam under an individual validated license.

(d) *Recordkeeping requirements.* Records of donations made under this general license must be kept in accordance with § 787.13 of this subchapter.

(e) *Special provisions.* (1) Only those items meeting the basic human needs and donations provisions described in § 773.5, (a) and (b) of this subchapter, are eligible for shipment under general license G–NGO.

(2) Only non-governmental, non-profit organizations carrying out humanitarian projects in Vietnam may use this general license. For purposes of this section, the term "non-governmental, non-profit organizations" is defined as any private voluntary organization accorded tax exempt status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), as well as any other non-profit organization engaged in voluntary charitable assistance activities that receives funding from private sources, including but not limited to accredited degree-granting institutes of education, private foundations, and research institutions.

(3) The non-governmental, non-profit organization and the humanitarian project must be registered with the Office of Foreign Assets Control, Department of the Treasury, pursuant to 31 CFR 500.572, before exporting goods for humanitarian projects in Vietnam under general license G–NGO.

(4) The non-governmental, non-profit organization must have a monitoring system that would alert the donor if eligible commodities exported under this general license have been or will be diverted to unintended recipients or unauthorized end-uses, end-users, or destinations.

(f) *Definitions.* For purposes of this general license, the following definitions apply:

(1) *Basic human needs* is defined by § 773.5(a) of this subchapter.

(2) *Donations* is defined by § 773.5(b) of this subchapter.

(3)(i) *Humanitarian project* is any project that is to support basic human needs, is small-scale in nature, is strictly intended for the civilian population, and is not intended for comprehensive economic growth. Small-scale refers to a project that will benefit only a finite group of people (for example a small rural village, hospital, or orphanage), rather than the general population. Examples of small-scale humanitarian projects include donations of cloth or sewing machines to an orphanage to make clothes for their own use, small water pumps to improve irrigation or the drinking water supply in a rural village, medicines or medical supplies for hospitals, and educational supplies for schools. Examples of projects not eligible to receive commodities under General License G–NGO include donations of commodities for building a dam to supply electricity to the general population, large shipments of fabric for use in making clothing for the general population, large shipments of fabric for use in making clothing for the general public or for export, automobiles or other vehicles donated for use in a humanitarian project (these may be authorized for shipment under an individual validated license), and any commodity destined for use by the police or military.

(ii) In addition to the criteria in paragraph (f)(3)(i) of this section, a donor organization's project must also meet the following criteria:

(A) Have identified beneficiaries;

(B) Have identified specific needs of the beneficiaries;

(C) Have a long-term commitment to the humanitarian project;

(D) Have an established structure to ensure distribution or delivery of the donated items to the intended beneficiaries; and

(E) Have a system for monitoring the distribution and use of the donated items (see § 771.27(e)(4)).

PART 785—[AMENDED]

4. Section 785.1 is amended:

a. By revising the phrase "in North Korea" in the seventh sentence of paragraph (a) to read "in North Korea and Vietnam"; and

b. By adding a sentence following the third sentence in paragraph (a) to read as follows:

§ 785.1 Country Group Z: [1] North Korea, Vietnam, and Cuba.

(a) * * * Exports to Vietnam of donations to meet basic human needs by non-governmental, non-profit organizations may be authorized under General License G–NGO, as described in § 771.27 of this subchapter.* * *

* * * * *

Dated: July 13, 1992.

William L. Clements,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92–16800 Filed 7–16–92; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

15 CFR Part 945

[Docket No. 920665–2165]

Rules for Guidance of the Public

AGENCY: National Weather Service, NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA is removing 15 CFR part 945 which contains a number of miscellaneous general regulations regarding the National Weather Service (NWS). Several of these provisions are informational rather than regulatory in nature and were inappropriately published as a regulation. One provision merely repeats a statutory prohibition and has no independent regulatory effect. Two provisions concerning certified NWS data for use in court and court appearances by NWS employees are redundant to provisions in 15 CFR part 909.

EFFECTIVE DATE: July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1325 East West Highway, room 18119, Silver Spring, MD 20910, (301) 713–0053.

SUPPLEMENTARY INFORMATION: NOAA is removing 15 CFR part 945 which contains a number of miscellaneous provisions regarding the National Weather Service (NWS). Several of these provisions are informational rather than regulatory in nature and were inappropriately published as a regulation. One provisions merely repeats a statutory prohibition and has no independent regulatory effect. Two provisions concerning certified NWS data for use in court and court appearances by NWS employees are redundant to provisions in 15 CFR part 909. Accordingly, 15 CFR part 945 is withdrawn.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule.

Because a notice of proposed rulemaking is not required by section 553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

List of Subjects in 15 CFR Part 945

Courts, Radio, Television, Weather.

Robert C. Landis,

Deputy Administrator, National Weather Service.

PART 945—[REMOVED]

For the reasons set forth in the preamble, 15 CFR chapter IX, subchapter C consisting of part 945 is removed, and the subchapter is reserved.

[FR Doc. 92–16760 Filed 7–16–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 91–032]

RIN 2115–AD79

Prince William Sound Automated Dependent Surveillance System; Equipment Carriage Requirement

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends the Prince William Sound Vessel Traffic Service (VTS) regulations by incorporating the use of Automated Dependent Surveillance (ADS) using a Differential Global Positioning System (DGPS). The amended regulations will require tank vessels of 20,000 DWT or more, operating in Prince William Sound, to carry Automated Dependent Surveillance Shipborne Equipment (ADSSE). The ADSSE will automatically provide the Vessel Traffic Center (VTC) in Valdez, AK, with position information on tank vessels at greater distances than now available, allowing traffic management decisions to be made in a more timely and reliable fashion. The automatic feature will also enhance vessel safety by reducing the amount of

[1] See Supplement No. 1 to part 770 for a listing of Country Groups.

time the tank vessel's officers spend communicating by voice radio with the VTC.

DATES: This regulation is effective August 17, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager, Vessel Traffic Services Division, Tel. (202) 267–0412.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On September 26, 1991, the Coast Guard published a notice of proposed rulemaking entitled "Prince William Sound Automated Dependent Surveillance System, Equipment Carriage Requirement" in the Federal Register (56 FR 48771). The Coast Guard received five letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Section 5004 of the Oil Pollution Act of 1990 (the Act), as codified in 33 U.S.C. 2734, directed the Coast Guard to acquire, install, and operate additional equipment, as necessary, to provide surveillance of tank vessels carrying oil from the Trans-Alaskan Pipeline through Prince William Sound.

While endeavoring to meet the requirements of the Act, the Coast Guard investigated various types of surveillance systems, including radar and dependent surveillance systems.

The Coast Guard determined an ADS system that uses DGPS will meet the Coast Guard's requirements without being cost prohibitive to the Government and the user. The shipboard portion of the system, the ADSSE, includes a 12 channel all-in-view DGPS receiver, a marine radiobeacon band receiver capable of receiving DGPS error correction messages, a VHF/FM transceiver using Digital Selective Calling (DSC), and a control unit.

The amended regulations will require tank vessels of 20,000 DWT or more by August 1, 1993, to carry an operating ADSSE while transiting Prince William Sound.

Discussion of Comments and Changes

Two comments recommended changing the requirement for the ADSSE to use a 4 or 6 channel DGPS receiver, rather than the required 12 channel DGPS receiver. The comments justified using the 4 or 6 channel receiver by stating that it would provide an acceptable accuracy level at a reduced cost. The comment stated that the Coast Guard was only using the 12 channel receiver to provide an increased level of accuracy. The Coast Guard is mandating the use of a 12 channel receiver for integrity reasons, not to increase accuracy. The 12 channel receiver ensures that the user's equipment will utilize the identical constellation that the Coast Guard's performance monitor station is using, thus preventing the user's equipment from being corrupted by a degraded satellite (a condition to which the monitor station is relatively immune). Additionally, with the 12 channel receiver, the user is less likely to lose position information due to shadowing by cliffs or other obstacles. Thus, the Coast Guard determined that the additional cost associated with a 12 channel receiver is justified.

Two comments expressed a concern that voice communications between the vessel and the VTC would cease to exist should the automatic position reporting system proposed by these rules be adopted. Voice communications between the vessel and the VTC will continue, but the frequency and length of the communications will be reduced, allowing more time for the ship's officers to concentrate on navigating the vessel.

Three comments indicated that the carriage requirement should not be limited to tank vessels. Section 5004 (1) of the Act, as codified in 33 U.S.C. 2734, specifically requires additional surveillance in Prince William Sound for the purpose of locating and tracking tank vessels carrying oil from the Trans-Alaska Pipeline. Additionally, 33 U.S.C. 1223(a)(3) exempts fishing vessels under 300 gross tons and recreational vessels 65 feet or less from any requirements to carry or use equipment or devices necessary to participate in a VTS. These regulations do not prohibit any vessel from purchasing, installing, and operating the ADS equipment necessary to participate in the VTS.

Two comments recommended that a vessel's course, speed, and Lloyd's registration number not be included with the position transmission to the VTC. Course and speed information is automatically determined by the processing unit and can be transmitted to the VTC without interfering with scheduled position transmissions. The Lloyd's registration number was chosen for ADS vessel identification because it is assigned to the vessel's hull. An International Radio Call Sign or the Global Maritime Distress and Safety System (GMDSS) number is assigned to and remains with the radio transceiver which can be moved from vessel to vessel. The Lloyd's number is the only identification that remains with the hull and it can provide access to a comprehensive database of particulars on the vessel. The Lloyd's database is also used by the Coast Guard's AMVER Center and, as a result, is kept current. Identification of the ADSSE equipped vessel using the Lloyd's number and a VTC database can be accomplished automatically, without intervention by the shipboard operator.

Another comment questioned the operational availability of the Global Positioning System (GPS) and whether it is a proven system or the best available technology. GPS probably will not be declared "operational" until it can perform all of the functions that it was designed to do. While not yet used in a VTS format, DGPS is currently being used in other maritime applications around the world with excellent results. GPS with differential corrections (DGPS), can provide unsurpassed performance in position determination, course and speed in marine applications. This was verified by the Coast Guard after seven years of testing. The differential aspect presently available greatly enhances the accuracy and integrity of GPS.

One comment addressed the issue of installing an additional radar site in the vicinity of Bligh Reef to track vessel and ice movements. The National Transportation Safety Board (NTSB) recommended this action following their investigation of the EXXON VALDEZ incident. While the operation of an additional radar in the vicinity of Bligh Reef would provide enhanced vessel tracking capabilities in the 12–15 miles surrounding the reef, it would not provide the anticipated security of tracking ice. Use of additional radar sites to locate and track tank vessels was investigated by the Coast Guard, but the cost for the construction and operation of the radar sites far outweighed any potential benefits.

One comment indicated that the proposed regulation did not comply with the Act since the regulation specifies 20,000 DWT as a limit, while the Act does not specify a limit. The use of the 20,000 DWT limit is consistent with current regulations which already require special requirements for tank vessels of this size. In addition, there are

currently no tank vessels less than 20,000 DWT transporting oil from the Trans-Alaskan Pipeline in Prince William Sound. Therefore, the Coast Guard added the ADS carriage requirements to the special requirements section.

One comment stated that the accuracy requirement should be deleted since accuracy is dependent upon the corrections supplied by the Coast Guard and the vessel cannot be held responsible for inaccuracies should the government supplied corrections be erroneous or nonexistent. The rule only addresses the required capabilities of the equipment, it does not state that the ADSSE or the shoreside equipment necessary to determine position must operate continuously, without failure. The rulemaking was revised by adding paragraphs (a)(5)(iv), (v), and (vi) to address procedures to be followed in the event of a failure of the ADSSE or non-availability of the position correction information.

One comment addressed the section of the NPRM that concerns the cost of the ADSSE as it relates to the financial status of the owners of the affected tankers. It was not the intention of this paragraph to infer that all tanker owners were wealthy oil companies, but rather to indicate that in relation to the total cost of a tanker, the cost of the ADSSE should not represent a financial burden to the owner. The cost of components which would be included in the ADSSE has been dropping steadily and total cost should be considerably less than the amount quoted in the NPRM.

Another comment questioned the availability of a reference station in Prince William Sound. The Coast Guard is installing a DGPS reference station and a performance monitor in Prince William Sound in conjunction with an upgrade of the VTC in Valdez. Should an equipment failure occur, alarms would notify the VTC and the user of possible erroneous signals.

One comment questioned the compatibility and reliability of VHF/FM channel 70 for use with DSC. After a full assessment of vessel traffic handled by the VTC in Valdez, the Coast Guard determined that adequate capacity exists on VHF/FM channel 70 for the transmission of vessel position information.

One comment noted that there should no longer be a need or a requirement to report at designated reporting points for ADSSE equipped vessels. The NPRM did not address the position reporting requirements for ADSSE equipped vessels. Paragraph (a)(5)(iii) has been added to § 161.376 of the rule to indicate that ADSSE equipped vessels will not be required to report positions by voice. Information other than position reports will continue to be required.

Following the word "Have" in section 161.376(a)(5) of the rule, the words "an operating" have been inserted. Following the number "3" in § 161.376(a)(5)(i)(B) of the rule, the number "5" has been inserted. These words and number were inadvertently left out of the NPRM.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 161.109 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary.

Recent indications are that the cost to outfit tank vessels with the required equipment may be less than the original estimate of $50,000 per vessel. A more reasonable estimate now would be approximately $30,000 per vessel. The Coast Guard estimates that 40 to 50 tank vessels will be affected by this rulemaking. Therefore, the Coast Guard estimates that the total cost of implementing this rule will be $1.5 million.

Small Entities

This regulation will only affect owners and operators to tank vessels of 20,000 or more DWT operating in Prince William Sound and carrying oil from the Trans-Alaska Pipeline. The construction and operating costs of vessels of this size is such that their owners tend to be major corporations or subsidiaries of major corporations. Business entities with the capital and operating costs of this magnitude do not meet the definition of "small entities."

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking mandates the use of DGPS by tank vessels of 20,000 or more DWT transporting oil from the Trans-Alaska Pipeline. The authority to regulate concerning the carriage of specified electronic equipment necessary to comply with a vessel traffic service is committed to the Coast Guard by statute. Therefore, the Coast Guard intends to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. This rulemaking is intended to benefit the environment by reducing the potential for catastrophic oil spills which may result from tank vessels involved in groundings, rammings, or collisions. While this rulemaking may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings, the impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available for inspection or copying in the rulemaking docket.

List of Subjects in 33 CFR Part 161

Harbors, Incorporation by Reference, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 161 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 is revised to read as follows:

Authority: 33 U.S.C. 1231, 2734; 49 CFR 1.46.

2. Section 161.109 is added to read as follows:

§ 161.109 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C.

552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Vessel Traffic Services Division, (G-NVT), 2100 2nd Street, SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

Radio Technical Commission for Maritime Services (RTCM), P.O. Box 19087, Washington, DC 20036
RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0, RTCM Paper 134–89/SC 104–68, 1990.....161.376

3. Section 161.376 is amended by adding paragraph (a)(5) to read as follows:

§ 161.376 Tank vessels in the VTS Area.

(a) * * *

(5) Not later than August 1, 1993, have an operating Automated Dependent Surveillance Shipborne Equipment (ADSSE) consisting of a 12 channel all-in-view Differential Global Positioning System (DGPS) receiver, a marine band Non-Directional Beacon receiver capable of receiving differential GPS error correction messages, a VHF/FM transceiver using Digital Selective Calling (DSC) on channel 70 (156.525 MHz), and a control unit.

(i) The ADSSE must have the following capabilities:

(A) Using differential GPS, sense the position of the tank vessel and determine time of the position, Universal Coordinated Time (UTC).

(B) Fully utilize the broadcast type 1, 2, 3, 5, 6, 7, 9, and 16 messages as specified in RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0, dated January 1, 1990, in determining the required information;

(C) Achieve a position error which is less than 10 meters (32.8 feet) 2 distance root mean square (2 drms) from the true North American Datum of 1983 (NAD 83) position as transmitted to the VTC;

(D) Achieve a course error which is less than 0.5 degrees from true course over ground as transmitted to the VTC and a speed error which is less than 0.05 knots from true speed over ground as transmitted to the VTC.

(E) Receive and act upon commands from the VTC broadcast as DSC messages on channel 70 (156.525 MHz);

(F) Transmit the vessel's position, which is tagged with the UTC at position solution, and the vessel's course over ground, speed over ground, and vessel's Lloyd's identification number to the VTC;

(G) Receive and act upon the RTCM messages which are broadcast as minimum shift keying modulated medium frequency signals in the marine radiobeacon band and supply the messages to the DGPS receiver;

(H) Display a visual alarm to indicate to shipboard personnel when a failure to receive or utilize the RTCM messages occurs;

(I) Display a separate visual alarm which is triggered by the VTC utilizing a DSC message to indicate to shipboard personnel when the VTS cannot provide the required system accuracy; and

(J) Display two RTCM type 16 messages, one of which must display the position error when it is broadcast.

(ii) The ADSSE will be considered to be non-operational should it fail to:

(A) Respond to the required VTS commands;

(B) Utilize broadcast messages; or

(C) Provide the VTS with the required information at the required accuracies.

(iii) ADSSE equipped vessels will not be required to make vessel position reports by voice radio as indicated in § 161.338(b). All other reports required by § 161.338 must be made unless otherwise indicated by the VTC.

(iv) Whenever a vessel's ADSSE equipment becomes non-operational, before entering or while underway in the VTS Area, the master shall:

(A) Notify the VTC;

(B) Make the required position reports in accordance with § 161.338; and

(C) Restore the ADSSE to operating condition as soon as possible.

(v) Whenever a vessel's ADSSE becomes non-operational due to loss of the position correction information, the master shall make the required position reports in accordance with § 161.338.

(vi) Whenever a vessel's ADSSE equipment becomes non-operational before getting underway in the VTS Area, permission to get underway must be obtained from the VTC.

* * * * *

Dated: June 12, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–16767 Filed 7–16–92; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Huntington 92–02]

Safety Zone; Ohio River, Mile 310.0–311.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone between mile 310.0 and 311.0 of the Ohio River. This safety zone will protect waterborne traffic from a potential hazard associated with an attempt by a stuntman to launch a motorcycle from a ramp on the Ohio bank across the Ohio River at mile 310.5 to a barge on the West Virginia Bank. Entry into this zone is prohibited unless authorized by the Captain of the Port, Marine Safety Office, Huntington, WV.

EFFECTIVE DATE: This regulation becomes effective on 5 September 1992 at 12:30 p.m. It terminates on 5 September 1992 at 4:30 p.m. unless sooner terminated by the Captain of the Port, Huntington, WV.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Diane J. Hauser, Project Officer, Port Operations Department, at (304) 529–5524.

SUPPLEMENTARY INFORMATION: On May 20, 1992, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** at 57 FR 21366. Interested persons were invited to participate in this rulemaking by submitting written views, data or arguments no later than June 19, 1992. No requests for a public hearing were received and none was held. No comments were received.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Diane J. Hauser, Project Officer for the Captain of the Port, Huntington, West Virginia; and, Lieutenant Michael A. Suire, Project Attorney, District Legal Office, Second Coast Guard District, St. Louis, Missouri.

Discussion of Proposed Regulations

The circumstances requiring this regulation result from the potential hazards associated with an attempt by a stuntman to launch a motorcycle from a ramp on the Ohio bank across the Ohio River at mile 310.5 to a barge on the West Virginia bank. This regulation is issued pursuant to 33 U.S.C 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

This rule has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. In addition, this rule is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. The above conclusions follow from the fact that the duration of the safety zone will be limited, anticipated to be no more than 4 hours. Pursuant to 5 U.S.C. 601, et seq., Regulatory Flexibility Act, it is certified that these regulations will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and determined to be categorically excluded from further documentation in accordance with paragraph 2.B.2.c. of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion certification is available on the docket for public review.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612, and determined not to have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, the safety zone proposed by this rulemaking is anticipated to be of extremely limited duration.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Security measures, Vessels, Waterways.

Final Rule

In consideration of the foregoing, the Coast Guard is amending part 165 of title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and § 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 160.5.

2. A new § 165.T02013 is added to read as follows:

§ 165.T02013 Ohio River, Mile 310.0 to 311.0—safety zone.

(a) *Location.* The following is a safety zone: The waters of the Ohio River between mile 310.0 and mile 311.0.

(b) *Effective Date.* This regulation becomes defective on 5 September 1992 at 12:30 p.m. It terminates on 5 September 1992 at 4:30 p.m., unless sooner terminated by the Captain of the Port, Huntington, WV.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port, Huntington, WV.

Dated: June 23, 1992.

J.T. Kuchin,

Commander, U.S. Coast Guard, Captain of the Port, Huntington, West Virginia.

[FR Doc. 92–16885 Filed 7–16–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ–177–CN]

RIN 0938–AE28

Medicare Program; Clinical Laboratory Improvement Act—Program Fee Collection

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: In the February 28, 1992 issue of the **Federal Register** (FR Doc. 92–4052) (57 FR 7188), we established the methodology used to determine the amount of fees laboratories must pay for various certificates that assure compliance with Federal requirements, as mandated by the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This notice corrects typographical errors made in that document.

EFFECTIVE DATE: These regulations are effective on March 30, 1992.

FOR FURTHER INFORMATION CONTACT: Nola Petrovich, (410) 966–4671.

SUPPLEMENTARY INFORMATION: The final rule with comment period, "Clinical Laboratory Improvement Act Program Fee Collection," published in the **Federal Register** on February 28, 1992 (57 FR 7188) contained two typographical errors in the text of the regulations, as indicated below:

PART 493—[CORRECTED]

§ 493.633 [Corrected]

1. On page 7215, column three, in §493.633(b), line two, "laboratory's is changed to read "laboratory's".

§ 493.639 [Corrected]

2. On page 7216, column two, in § 493.639(b) introductory text, line 9, the cross reference to "§ 493.643(e)" is changed to read "§ 493.643(d)".

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 13, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Informotion Resources Management.

[FR Doc. 92–16882 Filed 7–16–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–283; RM–7222, RM–7313, RM–7485, RM–7486]

Radio Broadcasting Services; Southampton, Bridgehampton, Westhampton, Calverton-Roanoke, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harrison Gray, allots Channel 225A to Southampton, New York, as the community's second local commercial FM service. At the request of Garnet Tuttle, the Commission allots Channel 273A to Bridgehampton, New York, as the community's first local FM service. At the request of Calverton-Roanoke Broadcasting Company, the Commission allots Channel 287A to Calverton-Roanoke, New York, as the community's first local FM service. The Commission, at the request of Tern Communications, allots Channel 253A to Westhampton, New York. *See* 55 FR 23107, June 6, 1990 and *Supplementary Information, infra.* With this action, this proceeding is terminated.

DATES: Effective August 27, 1992. The window period for filing applications for each channel will open on August 28, 1992, and close on September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–283, adopted June 24, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 225A can be allotted to Southampton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 40–53–18 and West Longitude 72–23–06. Channel 273A can be allotted to Bridgehampton with a site restriction of 13.7 kilometers (8.5 miles) southwest to avoid short-spacings to Station WVVE, Channel 272A, Stonington, Connecticut, and Station WCRB, Channel 273B, Waltham, Massachusetts, at coordinates 40–52–00; 72–26–00. Channel 253A can be allotted to Westhampton with a site restriction of 2.2 kilometers (1.4 miles) northeast to avoid a short-spacing to Station WRKS–FM, Channel 254B, New York, New York, at coordinates 40–50–12; 72–38–45. Channel 287A can be allotted to Calverton-Roanoke with a site restriction of 6.9 kilometers (4.3 miles) east to avoid a short-spacing to Station WMXV, Channel 286B, New York, New York, at coordinates 40–54–12; 72–39–45.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 225A at Southampton, by adding Bridgehampton, Channel 273A, by adding Calverton-Roanoke, Channel 287A, and by adding Westhampton, Channel 253A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–16831 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–88; RM–7962]

Radio Broadcasting Services; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 233C for Channel 233C1 at Great Falls, Montana, and modifies the construction permit for Station KMON–FM to specify operation on Channel 233C in response to a petition filed by Staradio Corp. See 57 FR 14688, April 22, 1992. Canadian concurrence has been obtained for this allotment at coordinates 47–09–34 and 111–00–39. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–88, adopted June 29, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 233C1 and adding Channel 233C at Great Falls.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–16928 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–84; RM–7925]

Radio Broadcasting Services; Ladson, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of RJM Broadcasting, allots Channel 292A to Ladson, South Carolina, as the community's first local FM service. See 57 FR 14555, April 21, 1992. Channel 292A can be allotted to Ladson in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.6 kilometers (2.9 miles) south to avoid short-spacings to Stations WTUA–FM, Channel 291A, St. Stephen, South Carolina, and WSYN, Channel 293C2, Georgetown, South Carolina, at coordinates North Latitude 32–56–47 and West Longitude 80–05–39. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants for channel 292A at Ladson may avail themselves of § 73.213(c)(1) with respect to Stations WTUA–FM, WSYN, and WFXH, Channel 291C2, Hilton Head, South Carolina. With this action, this proceeding is terminated.

DATES: Effective August 27, 1992. The window period for filing applications will open on August 28, 1992, and close on September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–84, adopted June 29, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Ladson, Channel 292A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-16926 Filed 7-16-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure and inseason adjustments.

SUMMARY: NMFS announces the closure of the recreational salmon fishery for chinook salmon in the exclusive economic zone (EEZ) from Heceta Head to Humbug Mountain, Oregon. Also, the northern management boundary, which is currently at Florence South Jetty, has been moved north to Heceta Head (44°08'18" N. lat.). All of the 1992 annual recreational management measures that were applicable from Humbug Mountain to Florence South Jetty are now extended north to Heceta Head. This action is intended to ensure conservation of chinook salmon, to extend the duration of the season in this modified subarea, and to address enforcement concerns by moving the boundary separating two adjacent management areas, subject to different species retention restrictions, away from a major landing port.

DATES: Effective at 2400 hours local time, July 2, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23. Comments will be accepted through July 31, 1992.

ADDRESSES: Comments may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg.1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: The commercial and recreational salmon fisheries are managed under the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP). Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) specify that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and preseason notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the recreational salmon fishery for all salmon species in the EEZ from Florence South Jetty to Humbug Mountain, Oregon, would have two seasons: May 3 through the earlier of June 11 or attainment of the subarea chinook salmon quota, and June 14 through the earliest of September 20 or attainment of the subarea chinook salmon quota or the overall coho salmon quota. The recreational fishery in this subarea is limited through August 31 by an impact quota (including hooking mortality associated with any all-except-chinook fishery) of 3,700 chinook.

Section 661.21(b)(v) provides authority to the Regional Director to modify boundaries inseason after consideration of appropriate factors. If the management subarea boundary were to remain at Florence South Jetty, there would be difficulties in enforcing the chinook retention restriction at the nearby port of Florence because landings of chinook salmon would be allowed by vessels fishing north of Florence South Jetty, but prohibited by vessels fishing south of Florence South Jetty. Therefore, NMFS moved the subarea boundary from Florence South Jetty northward to Heceta Head, avoiding the enforcement problem that may have been created by having a major port at the boundary of two adjacent management areas with different species retention restrictions. This adjustment is consistent with other provisions and requirements of the FMP.

The Florence South Jetty to Humbug Mountain subarea impact quota of 3,700 chinook is projected to be reached on August 31, 1992. The Regional Director closed the directed recreational chinook fishery in the Heceta Head to Humbug Mountain subarea as of midnight July 2, 1992. Closure on this date takes into account the estimated incidental hooking mortality associated with the all-except-chinook fishery, which will immediately follow through August 31, 1992, in accordance with the preseason notice of 1992 management measures. The Regional Director's determination to close was based on the best available salmon catch and effort data as of June 30, 1992, and was made in consultation with representatives of the Pacific Fishery Management Council (Council) and the Oregon Department of Fish and Wildlife.

For further clarification, possession and landing of chinook salmon in the recreational fishery is prohibited from Heceta Head to Humbug Mountain, Oregon, for the remainder of 1992. Heceta Head is located at (44°08'18" N. latitude.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to the times listed above by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Council and the Oregon Department of Fish and Wildlife regarding this action affecting the recreational fishery from Heceta Head to Humbug Mountain, Oregon. The State of Oregon will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through July 31, 1992.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-16918 Filed 7-16-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 13

RIN 0560-AC23

Excessive Manufacturing (Make) Allowance in State Marketing Orders for Milk

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document announces a 60-day extension of the time for submitting comments on the proposed rule, published in the **Federal Register** on June 19, 1992, (57 FR 27371), for implementing section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended.

DATES: All comments on the proposed rule now must be received on or before September 18, 1992, in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415, 202–720–7601.

SUPPLEMENTARY INFORMATION: Section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) provides that no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk ("make allowance") than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.

On June 19, 1992, a proposed rule was published to implement section 102. The proposed rule specified that comments had to be received by July 20, 1992, in order to be assured of consideration. Requests have been received from interested parties who indicate that they need additional time to prepare an analysis of the proposed rule. Based upon our review of those requests, it has been determined that an additional 60 days will be allowed for comment. Accordingly, comments on the proposed rule must now be received by September 18, 1992, in order to be assured of consideration.

Notice

Notice is hereby given that the period of time for submitting comments on the proposed rule published on June 19, 1992 (57 FR 27371), is extended to September 18, 1992.

Signed this 13th day of July 1992 in Washington, DC.

Ann M. Veneman,

Acting Secretary of Agriculture.

[FR Doc. 92–16872 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–05–M

Federal Grain Inspection Service

7 CFR Part 800

Certification of Additive-Treated Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to revise the regulations under the United States Grain Standards Act (USGSA) concerning the certification of additive-treated export grain at export port locations. The proposal would establish a requirement for showing a statement on official inspection and weight certificates whenever additives (except fumigants applied for the purpose of insect control) are applied to export grain at export port locations. FGIS is very concerned about potentially improper additive applications. This proposed action would ensure that buyers of export grain are properly informed when additives have been applied.

DATES: Comments must be submitted on or before August 3, 1992.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telemail users may respond to IRSTAFF/FGIS/USDA; telex users may respond to 7607351, ANS:FGIS UC; and telecopy users may respond to the automatic telecopier machine at (202) 720–4628.

All comments received will be made available for public inspection in room 0632, USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because most users of the inspection and weighing services and those persons that perform these services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this rule have been previously approved by OMB under control number 0580–0013.

Background

In the March 4, 1987, **Federal Register** (52 FR 6493), FGIS amended the regulations under the United States Grain Standards Act (USGSA) to establish provisions for officially inspecting and weighing additive-treated grain. These provisions were established to offer the grain industry the opportunity to utilize available dust suppression technology, apply insect and fungi controls, and mark grain for identification purposes with Food and Drug Administration (FDA) approved additives.

Industry comments received during the rulemaking process supported the new provisions but also expressed concern over the possible misuse of additives. A total of 15 comments were received. Three commenters were in favor of the proposed regulations without any reservations. Two commenters were opposed to the proposed additive provisions, as related to dust-suppressing agents. They asserted, in part, that water may be added just to increase the weight of the grain. Additionally, three of the commenters who were in favor of the proposed provisions expressed concern about the potential for improper addition of additives for the purpose of adding weight to the grain.

The final rule specified that if additives are applied during loading to outbound grain after sampling or weighing for the purpose of insect or fungi control, dust suppression, or identification, the inspection and/or weight certificate must show a statement that describes the type and purpose of the additive application. A statement was not required to be shown when additives are applied prior to sampling and weighing outbound grain or after sampling and weighing inbound grain. All incidents or suspected incidents of unapproved additive usage or improper additive application would be reported to the appropriate Federal, State, or local authorities for action.

Recently, FGIS received several complaints from both foreign and domestic grain merchants concerning the application of water to grain. The complainants expressed concern over potential quality degradation due to water application, emphasized that alternative dust control techniques are available that are practical and effective, and contended that the primary purpose of applying water is to increase the weight of the grain and, thereby, gain a market advantage. They further expressed deep concern about possible negative market reaction by both domestic and foreign buyers of U.S. grain. That is, buyer confidence in U.S. grain quality will decline if concerns develop over potential quality degradation and "paying grain prices for water." Those who support allowing the application of water to grain contend that it is an effective method for reducing dust emissions.

FGIS is very concerned about potentially improper additive applications. Applying any substance for the purpose of increasing weight would be prohibited by the Food, Drug, and Cosmetic Act (see 21 U.S.C. 342(b)). FGIS has and will continue to report all incidents and suspected incidents of unapproved additive usage or improper additive application to FDA. In addition, FGIS is planning action to control or prohibit additives, especially water, that will address all grain handling activities, both export and domestic.

Even properly applied additives may affect the manner in which grain may be used or stored, particularly export grain that may be stored aboard an ocean-going vessel for extended periods. Therefore, to inform foreign buyers of export grain when additives have been applied, FGIS proposes to require a statement to be shown on all official export inspection and weight certificates whenever additives are applied to export grain, at export port locations, regardless of whether the additives are applied before or after sampling and weighing. The statement will describe the type of additive that was applied, the point in the handling process where it was applied, and the specific reason for its application.

FGIS is also proposing to revise the regulatory language concerning the use of fumigants as an additive. Fumigants are gaseous in nature and will not adversely affect the physical condition of grain. No statement would be required to be shown on official inspection and weighing certificates when the additive is a fumigant applied for the purpose of insect control.

FGIS is not proposing to require a statement on all official certificates when additives are applied to grain in the domestic market. A statement is already required to be shown on such certificates when additives are applied during loading to outbound grain after sampling or weighing, or during unloading to inbound grain before weighing or sampling.

Proposed Action

FGIS is proposing to revise:

1. Section 800.88(d) to require a statement on official inspection certificates whenever additives (except fumigants applied for the purpose of insect control) are applied to export grain, at export port locations, regardless of whether the additives are applied before or after sampling.

2. Section 800.96(c)(2) to require a statement on official weight certificates whenever additives (except fumigants applied for the purpose of insect control) are applied to export grain, at export port locations, regardless of whether the additives are applied before or after weighing.

It has been determined that a 15-day comment period to comment on this proposed action is appropriate because the proposed changes, if adopted, concerning additive-treated export grain at export port locations should be implemented as soon as possible so that buyers would be informed as to when additives have been applied.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain, Export.

PART 800—GENERAL REGULATIONS

For reasons set out in the preamble, 7 CFR part 800 is amended as follows:

1. The authority citation for part 800 continues to read as follows:

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

2. Section 800.88(d) is revised to read as follows:

§ 800.88 Loss of identity.

* * * * *

(d) *Additives.*[1]

(1) *General.* If additives are applied during loading to outbound grain after sampling or during unloading to inbound grain before sampling for the purpose of insect or fungi control, dust suppression, or identification, the inspection certificate shall show a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

(2) *Export grain.* If additives are applied to export grain, at export port locations, the inspection certificate shall show a statement indicating the type,

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

purpose, and location of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

3. Section 800.96(c)(2) is revised to read as follows:

§ 800.96 Weighing procedures.

* * * * *

(c) * * *

(2) *Additives.*[1]

(i) *General.* If additives are applied during loading to outbound grain after weighing or during unloading to inbound grain before weighing for the purpose of insect or fungi control, dust suppression, or identification, the weight certificate shall show the actual weight of the grain after the application of the additive for inbound grain or the actual weight of the grain prior to the application of the additive for outbound grain and a statement showing the type and purpose of the additive application as prescribed in the instructions, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

(ii) *Export grain.* If additives are applied to export grain, at an export port location, the weight certificate shall show a statement showing the type, purpose, and location of the additive application as prescribed in the instructions, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

* * * * * * *

Dated: June 15, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92-16671 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-EN-M

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

Agricultural Marketing Service

7 CFR Part 910

[Docket No. FV-91-289FR]

Lemons Grown in California and Arizona; Withdrawal of Proposed Rule on Weekly Levels of Volume Regulation for the 1991-92 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule concerning the need for regulation of the quantity of fresh California-Arizona lemons that may be shipped to domestic markets, the shipping schedule, and the application of volume regulation for the 1991-92 year. After a review of current marketing conditions, it is the U.S. Department of Agriculture's (Department) view that the implementation of volume regulation for the 1991-92 season will not be necessary.

EFFECTIVE DATE: July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525, South Building, Washington, DC 20090-6456; telephone (202) 690-3670.

SUPPLEMENTARY INFORMATION: This action withdraws a proposed rule issued under Marketing Order 910, as amended [7 CFR part 910], regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." The order is effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

On July 1, 1991, a proposed rule was issued concerning the need for regulation of the quantity of fresh California-Arizona lemons that may be shipped to domestic markets, the shipping schedule, and the application of volume regulation for the 1991-92 season. The proposal was published in the **Federal Register** on July 8, 1991 [56 FR 30879], and was based on a marketing policy which was unanimously adopted by the Lemon Administrative Committee (committee) on May 7, 1991. The committee is responsible 'for local administration of the marketing order covering lemons grown in California and Arizona. The comment period on the proposed rule ended on August 7, 1991.

Considering the marketing conditions and the supply of lemons available during the current marketing season, it has become apparent to the Department, from the prevailing conditions, that volume regulation during the 1991-92 lemon season is not necessary to effectuate the purposes of the Act. In addition, the committee has recommended open movement since August 10, 1991. Therefore, the Department has found that volume regulations are not desirable for the remainder of the season, and the proposed rule published in the **Federal Register** on July 8, 1991 [56 FR 30879], is hereby withdrawn.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 910.1048 [Removed]

2. Section 910.1048 is removed.

Dated: July 13, 1992.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 92-16852 Filed 7-16-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 987

[Docket No. FV-92-073]

Domestic Dates Produced or Packed in Riverside County, California; Proposed Increase in Expenses for 1991-92 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the California Date Administrative Committee (Committee), established under Marketing Order 987, for the 1991-92 fiscal year (October 1, 1991, through September 30, 1992). The expenses would be increased from $479,400 to $634,400. The $155,000 increase is needed to cover advertising and promotion expenditures in excess of those authorized in the Committee's 1991-92 budget.

DATES: Comments must be received by July 27, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer, Marketing Specialist,

Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S., Washington, DC 20090–6456, telephone (202) 205–2829.

SUPPLEMENTARY INFORMATION: This action is proposed under Marketing Order No. 987 [7 CFR part 987] regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. This proposed rule would authorize an increase in expenditures for the Committee for the remainder of the 1991–92 fiscal period. This proposed rule would not preempt any State or local laws, regulations or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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

There are approximately 25 handlers of California dates regulated under this marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $479,400 for the Committee for the fiscal year ending September 30, 1992, was published in the **Federal Register** on October 8, 1991 [56 FR 50467]. That action also fixed the assessment rate to be levied on date handlers during the 1991–92 fiscal period. At a meeting held on April 23, 1992, the Committee unanimously voted to increase its budget of expenses from $479,400 to $634,400.

The proposed $155,000 increase is needed to cover additional expenses in the Committee's market promotion and advertising program.

No change in the assessment rate was recommended by the Committee. Adequate funds are available to cover the proposed increase in expenses that may result from this action. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget increase approval needs to expedited because the Committee needs to have authority to cover the additional expenses associated with its market promotion program.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that § 987.336 be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 987.336 is amended as follows:

§ 987.336 [Amended]

Section 987.336 is amended by changing "$479,400" to "$634,400."

Dated: July 13, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16851 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 77, 78, and 92

[Docket No. 88–098–2]

Brucellosis and Tuberculosis Regulations That Require or Allow Hot-Iron Branding of Animals on the Jaw

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: withdral GE advance notice of proposed rulemaking.

SUMMARY: We are providing notice to the public of the results of our review of the regulations that require or allow animals to be hot-iron branded on the jaw as part of the Brucellosis and Bovine Tuberculosis Eradication Programs. We had requested public count on those regulations after receiving a petition asking that we initiate rulemaking proceedings with regard to all brucellosis and tuberculosis regulations that require or allow hot-iron branding. This notice will serve to inform the public of our decision not to proceed with rulemaking to change our current regulations.

DATES: The advance notice, of proposed rulenaking is withdrawn as of July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. James Davis, Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–4923.

SUPPLEMENTARY INFORMATION:

Background

In accordance with regulations in 9 CFR parts 50, 51, 77, 78, and 92, the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate brucellosis and tuberculosis in cattle and bison. Brucellosis, also called Bang's disease or undulant fever, is a contagious bacterial disease affecting cattle, bison, and other species, including humans. It can cause fever, sterility, slow breeding, abortion, and loss of milk production. Bovine tuberculosis is a contagious, infectious, and communicable disease of cattle, bison, and other species, including humans. Tuberculosis in affected animals causes weight loss and general debilitation.

Under the Brucellosis and Bovine Tuberculosis Eradication Programs, hot-iron branding on the jaw is required or allowed in the following cases: (1) To identify animals that have contracted or been exposed to one of the diseases, (2) to identify certain cattle or bison that have been immunized against brucellosis, and (3) to permanently identify, for tuberculosis surveillance purposes, steers imported from Mexico.

Petition

In December 1987, we received a petition requesting that APHIS initiate rulemaking regarding all regulations that require or allow hot-iron branding on the jaw under the Brucellosis and Bovine Tuberculosis Eradication Programs. The petition was filed on behalf of the American Society for the Prevention of Cruelty to Animals, the Animal Protection Institute, the Humane Society of the United States, the Fund for Animals, and the Massachusetts Society for the Prevention of Cruelty to Animals. These petitioners suggested that freezebranding, or an identification method comparable to freeze-branding, is more humane and should be substituted for hot-iron branding as the exclusive method of branding animals under the Brucellosis and Bovine Tuberculosis Eradication Programs. As an alternative to a complete ban on hot-iron branding, the petitioners suggested that the regulations be amended to allow animal owners the option of having animals identified by freeze-branding or an identification method similar to freeze-branding.

On February 12, 1988, we published a notice in the **Federal Register** (53 FR 4179, Docket No. 88–007) advising the public that we had received and were studying the petition.

Comments

In response to the petition, we published an advance notice of proposed rulemaking in the **Federal Register** on July 12, 1988 (53 FR 26262, Docket No. 88–098). In that notice, we asked for public comment on our current regulations that require or allow animals to be hot-iron branded on the jaw. We sought input from the public in order to gain as much information as possible on the subject, which would help us decide whether the regulations should be changed and, if so, how they should be changed. We required that comments be postmarked or received by September 12, 1988.

In response to our request, we received 395 letters of comment. The comments came from animal welfare groups, veterinarians and a veterinary medical association, private citizens, cattle industry associations, private agricultural organizations, State agricultural agencies, brand organizations, and several trade groups. Eighty-nine percent of the commenters opposed hot-iron branding and asked that APHIS consider alternative methods of identification such as freeze-branding. The remaining 11 percent supported the continued use of hot-iron branding on the grounds that it is the only effective method of identifying cattle and bison for the purposes of the Brucellosis and Bovine Tuberculosis Eradication Programs.

Options

Because the Brucellosis and Bovine Tuberculosis Eradication Programs deal with diseases that threaten humans and animals alike, our criteria for dealing with exposed and diseased animals are necessarily strict. In order that we may prevent the spread of these diseases, it is imperative that exposed and diseased animals be instantly recognizable from the time of their identification until they are slaughtered. To this end, APHIS requires that an identifier be easily seen and readable, instantly visible upon application, and permanent.

The petition and many of the commenters offered alternative methods of identifying exposed and diseased animals. Some of the suggestions were rejected because of their failure to satisfy the criteria mentioned above. After examining the remaining comments, APHIS considered four options: (1) Cattle or bison identified as diseased or exposed would be destroyed and disposed of on the premises; (2) cattle or bison identified as diseased or exposed would be transported directly to slaughter in a sealed vehicle; (3) freeze-branding would be recognized as the method of choice for identifying steers imported from Mexico and diseased and exposed cattle and bison; or (4) hot-iron branding would continue to be recognized as the method of choice for identifying steers imported from Mexico and diseased and exposed cattle and bison, but we would continue to search for effective alternatives.

The first and second options would eliminate the need for branding cattle and bison that have been exposed to or infected with tuberculosis or brucellosis. Under the terms of the first option, once an animal was identified as exposed or diseased, it would be destroyed and disposed of on the premises. This option, while it would eliminate the need for branding or moving the animals, would unreasonably deny the owners of exposed or diseased cattle and bison the opportunity to sell the animals through an approved slaughtering facility. Additionally, the disposal of carcasses on the premises of origin would have environmental implications that would require study.

The second option would have exposed or diseased animals transported, in a vehicle closed with an official seal, directly to slaughter without branding. The regulations in § 78.8(a)(2) currently allow brucellosis-exposed cattle to be moved interstate directly to a recognized slaughtering establishment in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by APHIS. Similarly, provisions in § 77.5(b)(1) allow tuberculosis-exposed cattle or bison to be moved interstate directly to slaughter in vehicles closed with official seals that are issued and removed by a Federal or State employee specifically designated by the Administrator of APHIS. If all cattle and bison exposed to or infected with brucellosis or tuberculosis were required to be moved directly to slaughter in a sealed vehicle, additional disease surveillance personnel would be needed to handle the increased workload. Additionally, some brucellosis exposed cattle or bison are currently allowed under § 78.8 to be moved interstate directly to a quarantined feedlot for feeding prior to slaughter. To require transport directly to slaughter would deny the owners of those animals the economic benefits of feeding them before slaughter.

The third and fourth options would require some type of branding. Under the terms of the third option, steers imported from Mexico and cattle and bison exposed to or infected with

tuberculosis or brucellosis would continue to be branded on the jaw, but with a liquid nitrogen or dry ice freeze brand. This is the option that was proposed in the petition and supported by the majority of those commenters who opposed hot-iron branding. A study of freeze branding sponsored by the U.S. Department of Agriculture and conducted by the Agricultural Research Service at its Clay Center, Nebraska, facility [1] showed that even a properly applied freeze brand takes 14–21 days to become clearly visible, and that freeze brands are often not easily visible on cattle with white facial hair. Additionally, freeze branding resulted in an unacceptable number of unreadable brands. As mentioned above, the needs of the Brucellosis and Bovine Tuberculosis Eradication Programs demand that an identifier be easily seen and readable, instantly visible upon application, and permanent.

The U.S. Department of Agriculture is not alone in its view that freeze branding fails to satisfy the first two of those criteria. The Mexican Government, for example, requires that slaughter steers imported from the United States be identified with either a hot-iron "U" on the left jaw or by a legible freeze-brand "U" on the left jaw that is applied at least 15 days prior to shipment. Even if the "instantly visible upon application" requirement were to be waived to allow freeze branding, the owners of diseased or exposed cattle and bison would have to keep those animals under quarantine for the 14–21 days that it takes for a freeze brand to become visible. That extra time on the farm would increase the chances that new animals might become exposed or infected. A central goal of the Brucellosis and Bovine Tuberculosis Eradication Programs is to identify diseased animals and get them away from unexposed animals before the disease can be spread. To require the animals to be kept on the farm runs counter to that goal. The owners of the quarantined cattle and bison would also be subject to economic losses associated with feeding and caring for the animals, potential drops in market prices, and animals dying before sale.

The fourth option, to retain hot-iron branding as the accepted method of identifying steers imported from Mexico and cattle and bison for the Brucellosis and Bovine Tuberculosis Eradication Programs, is the course of action that we have decided to follow. Until an acceptable alternative is found, hot-iron branding is the only method that results in an identifier that is easily seen and readable, instantly visible upon application, and permanent. Therefore, we will not proceed with rulemaking to change our current regulations.

APHIS is concerned that its identification methods be both humane and effective. We will consider any suggestions and continue our research in an effort to find other methods of identification that will meet the needs of the programs and be more acceptable from a humane standpoint.

Done in Washington, DC, this 2nd day of July 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–16147 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–34–M

[1] Further details concerning this study may be obtained from the individual listed under "FOR FURTHER INFORMATION CONTACT."

FARM CREDIT ADMINISTRATION

12 CFR Parts 607 and 618

RIN 3052–AB19

Assessment and Apportionment of Administrative Expenses; General Provisions

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice of meeting of FCA Assessment Regulations Negotiated Rulemaking Committee.

SUMMARY: In accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act, the FCA hereby gives notice of the fourth meeting of the FCA Assessment Regulations Negotiated Rulemaking Committee, which has been convened to negotiate and develop proposed amendments to FCA assessment regulations. These regulations prescribe the method for assessing Farm Credit System (System) institutions for the FCA's annual expenses in administering the Farm Credit Act of 1971.

DATES: The fourth meeting of the Assessment Regulations Negotiated Rulemaking Committee will be a 2-day session. The meeting will be on July 20, 1992 from 10:30 a.m. to 5 p.m., continuing on July 21, 1992 from 8 a.m. to 3 p.m. All time are Central Daylight Savings Time.

ADDRESSES: The Committee will meet at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado. The location of the meeting room will be posted in the Stapleton Plaza Hotel lobby.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Senior Credit Specialist, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4189, TDD (703) 883–4444.

or

William L. Larsen, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Pursuant to the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581, 585, and the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10, the FCA gives notice of the fourth meeting of its Assessment Regulations Negotiated Rulemaking Committee. The meeting will be held at the Stapleton Plaza Hotel, Denver, Colorado, and will be open to the public.

The Committee is meeting to develop and negotiate proposed amendments to FCA assessment regulations. The agenda for the fourth meeting will continue to focus on development of an assement formula for banks, associations and banks for cooperatives of the System. The need for future meetings of the Committee will depend upon whether the Committee reaches consensus on the assessment formula and related issues.

On May 6, 1992, the FCA published notice of its intent to establish a negotiated rulemaking committee to develop and negotiate proposed amendments to its assessment regulations. 57 FR 19405. The Notice of Intent describes the negotiated rulemaking process and how it will apply to development of proposed assessment regulations.

The assessment regulations prescribe the method for assessing System institutions for the FCA's annual expenses in administering the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.* A complete discussion of the current assessment procedures and the need for new regulations can be found in the FCA's Notice of Proposed Rulemaking published at 56 FR 13424, April 2, 1991.

As permitted by General Services Administration Federal Advisory Committee Act regulations (See 41 CFR 101–6.1015(b)(2)), this meeting notice will appear in the **Federal Register** less than 15 days before the meeting is to occur. This is due to the fact that the Committee scheduled this meeting at its July 9, 1992 meeting, only 11 days before the July 20–21 meeting. The FCA believes that all members of the public who attended the July 7–9, 1992 meeting received notice of the July 20–21 meeting. In addition, the FCA will post a public meeting notice.

Dated July 14, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–16895 Filed 7–16–92; 8:45 am]

BILLING CODE 6705–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner, but Which Are Independently Controlled

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission"), in October 1988, adopted Commission Rule 150.3(a)(4), 17 CFR 150.3(a)(4) (1989), an exemption from speculative position limits for positions which have a common owner, but which are independently controlled, 53 FR 41563 (October 24, 1988). This rule included a requirement that the Commission review and approve all applications for this exemption. In adopting this exemption, the Commission did not close the door on the possibility that, at some future date, this exemption could become selfexecuting, but indicated that it believed that a more cautious approach was warranted at that time. In April 1991, after a period of study of the operation of this rule, the Commission amended Commission Rule 150.3(a)(4) to broaden the scope of eligibility for this exemption, and to simplify the application process. The Commission is now proposing to amend Commission Rule 150.3(a)(4) to eliminate the requirement that the Commission review and approve applications for this exemption.

DATES: Comments must be received by August 17, 1992.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, and should make reference to "Speculative Position Limits Which Are Independently Controlled." Telephone (202) 254–3310.

FOR FURTHER INFORMATION CONTACT: John F. Fenton, Industry Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 R Street NW., Washington, DC 20581, (202) 254–3310.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Framework

Speculative position limits have been a tool for the regulation of futures markets for over half a century. See, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1). Generally, there are three elements to the Commission's regulatory framework of speculative position limits. They are the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts. Since its creation, the Commission periodically has reviewed each of these policies pertaining to speculative position limits. For a discussion of the Commission's initiatives in revising its speculative position limit policies, see, 57 FR 12766–67 (April 13, 1992). The Commission's efforts in this regard are continuing. Most recently, the Commission proposed revisions to the Federal speculative position limits, 57 FR 12766, after considering the comments received in response to Petitions for Rulemaking by the Chicago Board of Trade and the New York Cotton Exchange to increase the levels of those Federal limits and to amend certain exemptions therefrom, 56 FR 37049 (August 2, 1991).

B. Exemption for Commonly-Owned, but Independently Controlled, Positions

1. The 1979 Aggregation Policy

In the 1979 Aggregation Policy Statement, the Commission provided guidance to futures commission merchants and others regarding the aggregation of positions for participants in controlled and guided account programs. Specifically, the 1979 Aggregation Policy provided guidance with respect to the meaning of the "control" criterion of the aggregation standard contained in section 4a of the Act. The 1979 Aggregation Policy stated that FCMs control all discretionary customer accounts and accounts which are part of a customer trading program unless specified conditions indicative of the absence of control exist.[1]

2. Exemption From Speculative Limits Under Commission Rule 150.3(a)(4)

In 1988, the Commission promulgated Commission Rule 350.3(a)(4), an exemption from speculative position limits for the a positions of multi-advisor commodity pools and other similar entities which use independent account controllers. See, Commission Rule 150.3, 53 FR 41563 (October 24, 1988). Unlike the 1979 Aggregation Policy, the Commission determined not to amend directly its aggregation policies. Rather, in recognition of the growth of such multi-advisor commodity funds and to accommodate these changing market conditions, the Commission determined to exempt such entities, on a case-by-case basis, from speculative position limits, 53 FR 13290. The salient characteristics of the exemption adopted by the Commission included: Defined eligibility for the exemption, requirement that independent account controllers be unaffiliated, application of the exemption only to trading months outside of the spot month, case-by-case determinations, and the Commission's ability to condition or withdraw the exemption in its discretion.

Eligibility for this exemption was initially limited to commodity pool operators or the operators of similar entities excluded from the definition of "pool" or "commodity pool operator" under Commission Rule 4.5 that have delegated trading authority to independent account controllers. The Commission had proposed to limit the coverage of the exemption under Commission Rule 150.3(a)(4) to independent account controllers which were, by definition, "unaffiliated", 53 FR 13295. However, in response to comments received, the exemption adopted by the Commission permits otherwise affiliated account controllers to be deemed to be unaffiliated by demonstrating that they meet specified indicia of independence.[2]

In contrast to the 1979 Aggregation Policy, this exemption required the filing of an application. In determining to require an application process, the Commission noted at 53 FR 41567,

the issues concerning control of trading are dependent upon the circumstances of each

[1] That policy provided that with respect to commodity pools: The positions held in all commodity pools operated by a commodity pool operator, other than a commodity pool operator who is an officer, partner, or employee of a futures commission merchant, shall be considered positions controlled by such commodity pool operator unless: 1. A trader other than the commodity pool operator directs trading for such commodity pool; 2. The commodity pool operator maintains only such control over trading in the commodity pool as is necessary to fulfill its duty to supervise diligently all accounts of the pool; and 3. Each trading decision of the commodity pool is determined independently of all trading decisions in other commodity pools and positions in accounts which the commodity pool operator holds, has a financial interest in, or controls.—44 FR 33846. Unlike the relief granted to the guided account programs of FCMs, however, the 1979 Aggregation Policy did not relieve individual commodity pools from the requirement that they aggregate their positions, even if they used independent advisors to control their trading.

[2] These indicia of independence include appropriate screening procedures, separate registration and marketing, and a separate trading system, 53 FR 41568.

individual case. This is especially true in light of the Commission's determination to permit employees or other affiliates to demonstrate that specific conditions and procedures exist to rebut the presumption that affiliated account controllers do not possess the requisite independence to qualify for this exemption. That is not to say, however, that a self-executing application procedure could never be instituted; however, the Commission believes that a more cautious approach is warranted at this time.

After observing the operation of the exemption under Commission Rule 150.3(a)(4) for more than two years the Commission determined that the exemption process had worked well, but that eligibility for this exemption could be expanded to include commodity trading advisors and that the application procedures could be streamlined. Initially the exemption was not extended to commodity trading advisors. However, several commenters argued, that by virtue of their being Commission registrants who trade professionally on behalf of others, sometimes using multi-advisor structures, commodity trading advisors were similarly situated to commodity pool operators. These commenters also pointed out that the independent commodity trading advisors of a futures commission merchant are included under the Commission's 1979 Aggregation Policy and that commodity trading advisors not associated with a futures commission merchant should be accorded equivalent treatment by inclusion in the exemption relief.

The Commission also amended Commission Rule 150.3(b) to reduce the amount of documentation required to be filed as part of the application for exemptions, and to rely instead on affidavits to provide the basic information necessary to the Commission to make a routine determination on the application for exemption. The Commission noted that those submitting affidavits as part of their application should assume the responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their statement of independence in the affidavit. In this regard, the Commission noted that under the 1979 Aggregation Policy, the Commission does not require the futures commission merchant or other trader to submit evidence that it meets the applicable standards prior to trading. Rather, the futures commission merchant must, itself, determine compliance in light of the indicia outlined in the Commission's policy statement.

II. The Proposed Rule

The Commission has observed the application process for this exemption for more than three years, and the operation of the revised filing requirements for approximately one year. Twenty applications have been received during this three year period. These applications have been essentially routine in nature. Moreover, the circumstances of independence and the control of trading involved in these applications were essentially similar to that contemplated in the 1979 Aggregation Policy.

Based on this experience, the Commission believes that it now is appropriate to amend Commission Rule 150.3(a)(4) to make this exemption self-effectuating, by placing the responsibility for assuring that an entity meets the standards to be eligible for this exemption on the entity itself. This modification is in harmony with the approach that the Commission adopted under its 1979 Aggregation Policy in determining issues of independence. Under the proposed rule, the treatment of entities eligible for exemption from speculative position limits will be essentially the same as that afforded to commodity trading advisors of futures commission merchants under the 1979 Aggregation Policy.[3]

Specifically, the Commission is proposing to amend Commission Rule 150.3 (a)(4) to eliminate the requirements that entities eligible for the exemption file an application with the Commission and receive prior commission approval before being permitted to exceed speculative position limits. Under this proposal, the entities eligible for, and the standards for, relief would remain the same, but the eligible entities would themselves be responsible for ascertaining whether or not they qualify for the exemption and for monitoring continued compliance. No filing, other than a standard CFTC Form 40 which accurately reflected the control relationship, would be required with the Commission.

This proposal is a consistent extension of the direction of Commission policy with regard to this exemption. The Commission has progressively broadened the eligibility and reduced the filing requirements as it has gained experience in this area. With regard to the filing requirements for this exemption, initially, significant documentary evidence was required to demonstrate, among other things, the independence of the account controllers. As the Commission gained experience in this area, it determined that the documentary evidence it was receiving could be replaced with affidavits in which the applicants certified to meeting the standards required to be eligible for this exemption. This reduced an unnecessary filing burden on the applicant and resulted in a more rapid approval process.

The effect of the proposed rule would be to apply the speculative limit only to each independent account controller trading for the eligible entity, not to the eligible entity itself, so long as the eligible entity does not control trading done on its behalf. Currently, the Commission, in granting the exemption on a case-by-case basis, has determined maximum exemption levels for eligible entities, as a whole, which were sometimes less than the multiple of the speculative position limit based on the total number of independent account controllers. These overall levels were determined based on market conditions in each particular futures contract market. It appears, however, that the positions of eligible entities have been well below their overall maximum levels. The overall maximum limits, therefore, in practice have not been a constraining factor. In addition, the Commission points out that the exemption applies only to positions outside the spot month. Therefore, the Commission believes that the proposed change with regard to the maximum permissible position levels will not be detrimental to the market.

The Commission stresses that under the proposed rule entities must assume responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their eligibility for this exemption. These standards will not be changed by the proposed rule. In particular, both the eligible entities and affiliated account controllers must continue to have in place procedures to assure the independence of the account controllers in order to meet the requirements of the exemption.

In addition, the Commission is also proposing to add § 150.3(b) which provides that, upon call by the Commission, the Director of the Division

[3] The 1979 Aggregation Policy, in effect, disaggregated, for reporting and speculative limit purposes, positions of independent account controllers of futures commission merchants in any futures contract month. The current rule involves an exemption to speculative position limits, for independent account controllers of eligible entities, but not in the spot futures month if there is a position limit which applies to individual trading months during their expiration. Therefore, while generally in harmony, the 1979 Aggregation policy and the proposed Commission Rule 150.3(a)(4) result in differing treatment with regard to positions in the spot month if there is a position limit which applies to individual trading months during their expiration.

of Economic Analysis, or the Director's delegee, any entity exempt from speculative position limits under Commission Rule 150.3(a) must provide to the Commission such information as specified in the call, relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, the futures, options, or cash market position which support the claim of exemption, and the relevant business relationships supporting a claim of exemption.

Although, under the proposed rule, the exemption will be self-executing, the Commission cautions that, to the extent market surveillance uncovers trading patterns between such independent account controllers which suggest actual trading together or otherwise lack of independence on the part of various account controllers, the Commission will take those regulatory or enforcement actions which are appropriate and warranted.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq. requires that agencies, in proposing rule, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1962). These proposed rules are exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reason, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe the promulgation of these amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget ("OMB"). OMB approved the collection of information associated with the rule on November 2, 1990 and assigned OMB control No. 3038–0013 to the rule. The burden associated with this entire collection including this proposed rule is as follows:

Average burden hours per response	3.00
Number of respondents	12
Frequency of response	1

Persons wishing to comment on the information which would be required by these proposed rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Exemptions from speculative position limits, Position limits.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, sections 2(a)(11), 4a, and 8a(5) of the Act, 7 U.S.C. 4a(j), 6a, and 12a(5), the Commodity Futures Trading Commission hereby proposes to amend part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a and 12a(5)(1988).

2. Section 150.1 is proposed to be amended by revising paragraph (e)(3), (e)(4) by redesignating current paragraph (e)(4) as paragraph (e)(5) and by adding a new paragraph to read as follows:

§ 150.1 Definitions.

* * * * *

(e) *Independent account controller* means a person—

(1) * * *

(3) Who trades independently of the eligible entity and of any other independent account controller trading for the eligible entity;

(4) Who has no knowledge of trading decisions by any other independent account controller; and

* * * * *

3. Section 150.3 is proposed to be amended by revising paragraph (a)(4), by adding new paragraph (a)(4)(i), and by revising paragraph (b) to read as follows.

§ 150.3 Exemptions.

(a) * * *

(4) Carried for an eligible entity as defined in § 150.1(d) of this part, in the separate account or accounts of an independent account controller, as defined in § 150.1(e) of this part, and not in the spot month if there is a position limit which applies to individual trading months during their expiration; *Provided however,* That the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2 of this part.

(i) Additional Requirements for Exemption of Affiliated Entities. If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; *Provided however;* That such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately-developed and independent trading systems; and

(C) Market such trading systems separately and solicit funds for such trading by separate Disclosure Documents that meet the standards of § 4.21 or § 4.31 of this chapter, as applicable.

(b) Call for information. Upon call by the Commission, the Director of the Division of Economic Analysis or the Director's delegee, any person claiming an exemption from speculative position limits under this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person; trading done pursuant to the claimed exemption; the futures, options or cash market positions which support the claim of exemption; and the relevant

business relationships supporting a claim of exemption.

Issued in Washington, DC, this 13th Day of July, 1992, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 92-16843 Filed 7-16-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Field Organization—Boundaries of Washington and Norfolk Districts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to change the field organization of the Customs Service by realigning the Washington District to include Frederick, Clarke, and Prince William Counties, Virginia, and by removing these counties from the Norfolk District. This would permit the airport at Winchester, Virginia, and the airport and a number of Customs bonded warehouses at Manassas, Virginia, to be served by Customs personnel in the Washington District, who are more closely situated to such facilities than are Customs personnel in the Norfolk District.

DATES: Comments must be received on or before September 15, 1992.

ADDRESSES: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Peg Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202)-566-8157.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to redefine the boundaries of its Washington and Norfolk Districts. Specifically, the Washington District would be revised to include Frederick, Clarke and Prince William Counties, Virginia, which counties would then be removed from the Norfolk District within whose boundaries they are currently included. The proposal would thus essentially establish a corridor in the Northern Virginia area which would fall within the boundaries of the Washington District.

The proposed realignment would permit personnel from the Washington District (particularly Dulles Airport) to service the airport at Winchester, Virginia, when the need arises. At present, any aircraft clearances required at the Winchester Airport are being handled by an inspector from the Port of Richmond, Virginia (Norfolk District). This, however, is not in Customs best interests inasmuch as it takes approximately two hours to travel from Richmond to Winchester, but considerably less from Dulles. Furthermore, there are an airport and a number of Customs bonded warehouses in Manassas, Virginia, which could more effectively be served by personnel from Dulles Airport or the Port of Alexandria which is also in the Washington District. Notably, other operational services in any of the affected locations would not be materially compromised or impaired should the proposed realignment become effective.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization and management, it is not subject to Executive Order 12291. Also, for the same reason, although Customs is soliciting public comments, no notice of proposed rulemaking is required under 5 U.S.C. 553 (a) (2). Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Harbors, Imports, Organization and functions (Government agencies), Seals and insignia, Vessels.

Proposed Amendment

Accordingly, it is proposed to amend part 101, Customs Regulations (19 CFR part 101), as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedules of the United States), 1623, 1624.

§ 101.3 [Amended]

2. It is proposed to amend the list of Customs regions, districts and ports of entry in § 101.3(b) in the following manner:

a. In the Southeast Region directly opposite "Washington, D.C." (in the "Name and headquarters" column), the description in the "Area" column would be revised to read as follows: "The District of Columbia, the counties of Montgomery and Prince George's in the State of Maryland, the counties of Loudoun, Fairfax, Arlington, Frederick, Clarke, and Prince William, and the city of Alexandria in the State of Virginia, including any independent cities and towns within such boundaries of such counties."

b. In the Southeast Region directly opposite "Norfolk, Va." (in the "Name and headquarters" column), the description in the "Area" column would be revised to read as follows: "The State of Virginia, except the counties of Loudoun, Fairfax, Arlington, Frederick, Clarke, and Prince William, and the city of Alexandria, including any independent cities and towns within the boundaries of such counties, and the State of West Virginia."

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 29, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-16724 Filed 7-16-92; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 12-7-5150; FRL-4133-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will. USEPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State implementation plan (SIP).

Among the State rules that USEPA disapproved was 35 Illinois Administrative Code (35IAC) subpart F, § 215.204(m), which established VOC limits for "Existing Diesel-Electric Locomotive Coating Lines in Cook County." USEPA based this disapproval on its determination that the emission limits prescribed by the State did not represent RACT for EMD's locomotive coating operations. In lieu of this State rule, USEPA promulgated revised emission limits for diesel-electric locomotive coating operations. The only source affected by this rule is the General Motors (GM) Electro-Motive Division (EMD) facility in LaGrange (Cook County), Illinois.

In response to USEPA's actions, pursuant to section 307(d)(7) of the Clean Air Act (CAA), GM filed a petition for administrative reconsideration with the USEPA Regional Administrator for Region V.[1] GM requested that USEPA reconsider its decision to subject GM to 3.5 pounds VOC per gallon for its "topcoat" and "final repair coating" operations.[2]

USEPA has considered EMD's contentions concerning the locomotive coating operation and is presenting a discussion of the principal issues and a newly proposed rule applicable to EMD's locomotive coating operations. The Agency solicits public comments both on the issues being reconsidered and on USEPA's proposed rulemaking action.

DATES: Comments on this proposal must be received by August 17, 1992, at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by August 17, 1992, at the address below. Interested persons may call Mr. Bortzer at (312) 886-1430 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604. Again, comments should be strictly limited to the subject matter of this proposal.

Docket: Pursuant to sections 307(d)(1)(B) and (N) of the CAA, 42 U.S.C. 7607(d)(1) (B) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5-AR-91-2, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloria Butler before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Twenty Sixth Floor, Northeast, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

U.S. Environmental Protection Agency, Docket No. 5-AR-91-2, Air Docket (LE-131), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 245-3639.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, (312) 886-6036, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1982, the Illinois Pollution Control Board (IPCB) adopted VOC rules for a number of source categories that are covered by the second group (Group II) of Control Techniques Guideline (CTG) documents.[3] On July 11, 1985 (50 FR 28224), USEPA proposed to disapprove some of these GROUP II RACT rules, including the rule limiting VOC emissions from coatings applied to heavy off-highway vehicle products. This rule, to which EMD was subject, allowed a maximum of 4.3 pounds of volatile organic material (VOM) per gallon (lbs/gal) of coating for air-dried extreme performance topcoats and 4.8 lbs/gal for air-dried final repair coatings. USEPA based its disapproval on the fact that the CTG for miscellaneous metal parts and products (MMPP) (which covers coatings applied to heavy off-highway vehicle products, including locomotive coating operations) specifies a limit of 3.5 lbs/gal for both of these coating operations.[4]

On November 25, 1987, the IPCB adopted a rule applicable to existing diesel-electric locomotive coating lines in Cook County. As discussed above, the applicable CTG for Diesel-electric locomotive coating is the MMPP CTG. The IPCB rule, for which the EMD facility was the only subject source, specified limits of 4.3 and 4.8 lbs/gal for top coating and final repair coating, respectively (which are less stringent than the 3.5 lbs/gal limit specified in the MMPP CTG).

On July 29, 1988, Illinois submitted this revised rule to USEPA. USEPA proposed to disapprove the revised Illinois rule on December 28, 1989 (54 FR 53080), because Illinois had not demonstrated that its limits were consistent with RACT. In that same **Federal Register** notice, USEPA also proposed to promulgate Federal emission limits for diesel-electric locomotive coating operations for 40 CFR 52.741(e)(1)(i)(M). After reviewing public comments, including EMD's, USEPA published its final disapproval of the Illinois rule and the promulgation of its Federal rule on June 29, 1990 (55

[1] GM also filed a petition for review of the Agency's June 29, 1990, action in the United States Court of Appeals for the Seventh Circuit, *General Motors Corporation* v. *EPA*, No. 90-2889. That action has been held in abeyance by the Court, pending USEPA action of EMD's petition for reconsideration.

[2] In its petition for reconsideration, GM also requested that USEPA reconsider the rules applicable to EMD's silicone rubber priming and electrical insulating varnish operations. These two issues are not being addressed in this rulemaking action.

[3] CTG documents have been prepared by USEPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. The Group II CTGs are those which were issued between January 1978 and January 1979. RACT is defined as the lowest emission limit that a particular Source is capable of meeting the application of control technology that is reasonable available considering technological and economic feasibility.

[4] The MMPP coating CTG (EPA-450/2-78-015) covers SIC Code major group 37, transportation equipment, which includes group 374, railroad equipment.

FR 26814). The Federal rule requires, *inter alia*, that EMD's locomotive topcoat and final repair operations meet a VOC emission limitation of 3.5 lbs/gal.

II. EMD's Petition for Reconsideration

On March 2, 1990, EMD submitted extensive comments to USEPA concerning the Agency's December 27, 1989, proposed disapproval of Illinois rule 215.204(m) for locomotive topcoat and final repair coating operations, and on USEPA's proposed Federal rule specifying a limit of 3.5 lbs/gal for the coatings used in these operations. USEPA responded to these and the other public comments received on the proposal in a document entitled, "Public Comments and USEPA Responses on Notice of Proposed Rulemaking (54 FR 53080, December 27, 1989)", May 1990, as well as in the final rulemaking. The document was placed in docket 5A–89–01 for the Federal promulgation as item XXX–8, and was used to support USEPA's final action on June 29, 1990.

On August 28, 1990, EMD submitted a petition for reconsideration to USEPA, supported by its own technical support document (TSD). This TSD contained additional comments regarding the degree of support provided for the rule and on certain procedural aspects of the rulemaking. These comments can be considered under two main categories. First, EMD contended that USEPA's reliance on the MMPP CTG as support for the 3.5 lbs/gal emission limit was misplaced. Second, the company stated that the information received from General Electric Company (GE) on the locomotive coatings used at its Erie, Pennsylvania facility and relied upon by USEPA in its rulemaking was not made available for public review and that the information that was made available failed to demonstrate the successful use of 3.5 lbs/gal coatings as topcoats and final repair coats. These comments, along with USEPA's responses, are summarized below.

Comment: EMD repeated its contention that reliance on the MMPP CTG was improper, citing documents the company received in response to a Freedom of Information Act (FOIA) request to USEPA. EMD claimed that these documents indicate the USEPA had not considered locomotive coatings in developing the CTG, and that no coatings suitable for use on finished locomotives at a VOC content below 4.3 lbs/gal were recognized by USEPA as available as late as 10 years after the issuance of the CTG. EMD also believed that background documentation for this CTG should have been included in the rulemaking docket.

Response: The Agency continues to maintain that its reliance on the MMPP CTG in defining the presumptive norm of control applicable to EMD's coating operations was proper. When this CTG was developed, no representation was made that every sector in the broad MMPP industrial category had been thoroughly evaluated. As discussed in the next section, USEPA augmented its reliance on the CTG for MMPP by considering whether the MMPP facility most similar to EMD was in fact meeting the CTG presumptive norm. The Agency has examined the documentation in the CTG and all subsequent evidence, as well as the experience of the sole other source performing the same type of operations, and concludes that 3.5 lbs/gal as the locomotive topcoat and final repair coat VOC limit is reasonably available for EMD.

As a practical matter, USEPA often cannot locate, reproduce, and include all of the supporting documentation for its CTGs in its rulemaking dockets under the time and resource constraints of each project. Nor does the Agency consider this to be necessary, because the CTGs are written to reflect the pertinent information in the referenced materials.

Comment: EMD objected to USEPA's reliance on the information received from GE in response to a request under section 114 of the CAA. EMD pointed out that USEPA did not seek the data until after the public comment period had ended, and has still not made the data available for public review and comment. Under section 307(d)(6)(C) of the CAA, the Agency may not rely on information not in the docket at the time of promulgation.

EMD also believes that the record does not demonstrate, and no test data are available to show, that satisfactory results are being achieved at GE using paints with "as applies" VOC contents of 3.5 lbs/gal. EMD stated that it had acquired and tested samples of certain coatings ostensibly in use at GE and had achieved unsatisfactory results with regard to adhesion and surface quality.

Response: The timing issue of when USEPA sought and made available for review, data received from GE is moot in light of today's proposal. The material are now available and a new comment period has begun. Moreover, USEPA has relieved EMD of having to comply with the SIP rule promulgated pursuant to the June 29, 1990, rulemaking. By today's action, USEPA is proposing the rule to which EMD is subject.

During the comment period, EMD suggested that USEPA review data from GE. USEPA followed that advice and received a variety of information from GE. However, at the time of USEPA's promulgation (June 29, 1990), GE had requested that its submission be treated as Confidential Business Information (CBI), pursuant to 40 CFR Part 2, and USEPA has begun its review of the GE information with respect to its status as CBI. Due to GE's request to keep the information confidential, USEPA was legally barred at that time from divulging the information to any other party pending the results of its CBI investigation. In December 1990, USEPA completed its confidentiality determination, concluding that part of the information provided by GE was "emissions data", and thus was required to be disclosed pursuant to section 114(c) of the CAA, 42 U.S.C. 7414(c) and 40 CFR 2.208(d). Thus, the Agency is now free to discuss certain additional technical information on coating use at GE. This information is summarized under the section entitled "General Electric Data". In this rulemaking, USEPA has relied only upon information found not to be confidential and, therefore, information that is available to the public.

The information conclusively documents that GE is using, and has been using for some time, paints with as-applied VOC contents of 3.5 lbs/gal or less for locomotive topcoat and final repair coating operations. The record further demonstrates that each coating is required to pass the necessary company quality criteria tests, including tests for finish quality and adhesion, for regular use on its locomotive products. EMD has neither documented that it has carried out a comprehensive coating evaluation program as apparently was done by GE, nor documented that it has, in fact, tested the same coating system that is used by GE. Furthermore, it has not documented that the tests it used are appropriate for locomotive coatings.

III. General Discussion of the Basis for USEPA's Determination

EMD, in its comments on the December 27, 1989, proposal, objected to USEPA Region V's supposed reliance on the SIP call issued to the Pennsylvania Department of Environmental Resources (DER) by USEPA Region III. However, this SIP call was not the fundamental basis for the Agency's determination that a coating emission limit of 3.5 lbs/gal represents RACT for locomotive coating operations. Instead, this SIP call, along with subsequent statements and actions by the State (as discussed below), reflects the feasibility of this emission limit at an operation very similar to the operation at EMD.

EMD also objected to USEPA's reliance on the MMPP coating CTG, stating that the CTGs were developed as general guidance, without consideration of the unique problems and requirements of all industry segments such as the coating of assembled locomotives. In general, USEPA relies on its CTGs to identify the control levels determined to reflect RACT for various source categories. Since the CTGs have been prepared based on a careful and thorough evaluation of the capabilities and problems associated with the control approaches available to particular source categories of industry, USEPA believes that it may rely (and, in the past, has relied) solely on the CTGs to define the presumptive norm for RACT. Where a State finds the presumptive norm to not be applicable to an individual source, for economic or technological reasons, it may develop a site-specific RACT requirement.

EPA has determined that EMD has not made an adequate demonstration for an alternative RACT standard. EMD has not demonstrated that the EMD facility is substantially different from the industry norm (i.e., the GE plant). In supporting an alternative RACT determination the source should present the different technical and economic circumstances of the EMD facility. These might include such technical differences as: Whether the facilities' products differ substantially from the others in the industry; whether the facility has unique performance specifications; whether the conditions necessary to meet the standard are patented or otherwise unavailable;[5] and whether a facility utilizes substantially different coating equipment than others in the industry.

In terms of the differences in economic circumstances, a source might present information on the cost to develop RACT sufficient coatings; the additional cost of any capital equipment needed to meet RACT; the additional cost of using the necessary coatings in terms of additional applications or higher unit cost; and the cost effectiveness of alternative RACT standards. Consideration would be made on a case-by-case basis because of the difficulty of addressing the unique circumstances facing individual sources.

In selecting limits applicable to EMD, USEPA has relied on the CTG for MMPP and, as further support, has considered whether comparable companies are complying with the CTG or similar limitations. USEPA policy (as discussed in September 17, 1979, guidance on plan revisions for nonattainment areas at 44 FR 53761) is that, in determining RACT for an individual source or group of sources, the control agency, using the available guidance, should select the best available controls, deviating from those controls only where local conditions are such that they cannot be applied there and imposing even more stringent controls where conditions allow. The Agency believes that if a certain level of control technology is available to and being used by a comparable operation, and no unique "local conditions" are identified that would make this technology impracticable at the subject facility, then RACT for the two sources should be considered to be the same. The central issue is whether the only other locomotive manufacturing (and coating) operation in the United States, General Electric, is comparable for this purpose and whether any local conditions would prevent EMD from applying the same control technology that has allowed a satisfactory product to be manufactured at GE.

Upon reviewing the available information on both of these operations, USEPA has concluded that EMD has not made a showing that the performance requirements its topcoat and final repair coatings must meet are unique or exceptional with respect to those at GE. Further, the Agency has determined that GE is currently using coatings that comply with the CTG presumptive norm of 3.5 lbs/gal. The discussion below provides more specific support for the requirement to use, and the availability of, complying coatings.

IV. USEPA Region III Actions

As part of a series of SIP calls made to several States, USEPA Region III sent a letter to the State of Pennsylvania on June 14, 1988, citing the 4.3 lbs/gal standard for locomotive (and heavy-duty truck) topcoats as deficient because it did not constitute RACT. As part of the Agency's effort to promote national regulatory consistency, the CTG presumptive norm limit of 3.5 lbs/gal was required for this source category.

V. State of Pennsylvania Rulemaking

Pennsylvania's DER determined in facility inspections as far back as 1986 that the locomotive topcoats being used by GE are essentially in compliance with the 3.5 lbs/gal limit. Pennsylvania adopted revisions to its VOC regulations that included lowering the 4.3 lbs/gal limit for locomotive and heavy-duty truck topcoats to 3.5 lbs/gal. In a background document supporting (what were then) proposed rule revisions, the DER provided the following rationale:

Reason for change: The EPA identified the emission limit for top coats of locomotives and heavy-duty trucks as not complying with the CTG limit. The CTG did not provide for the 4.3 pound per gallon standard adopted by the Department. This standard had been justified as necessary for specialty coatings on these vehicles. In the seven years since this standard was adopted, the industry has converted to low solvent coatings as a means of compliance. The Department has surveyed users and has found that coatings meeting the 3.5 pound per gallon standard are available.

On July 25 and 30, and August 1, 1990, the State held public hearings on a proposal that included lowering its allowable locomotive topcoat VOC limit from 4.3 lbs/gal to 3.5 lbs/gal. Neither GE (the only source that would be directly affected by the new locomotive topcoat requirements), nor any other commenter objected to the proposed lower (and more stringent) emission limit. On March 19, 1991, the Pennsylvania Environmental Quality Board adopted the 3.5 lbs/gal limit as final rulemaking and on June 20, 1991, the Independent Regulatory Review Commission approved the rule package containing this revision. This rule revision has completed all steps in the State regulatory process and will be published in the Pennsylvania Bulletin and submitted to USEPA as a SIP revision.

VI. General Electric Data

On February 7, 1990, EMD requested that USEPA use its authority under section 114 of the CAA to obtain accurate, up-to-date, and comprehensive data on the actual as-applied VOC content of the final locomotive topcoats and final repair coatings used by General Electric (docket item XXII–1). EMD further requested that this information be made available so that it could review it and provide comments.

In response to this request, USEPA on March 1, 1990, sent a letter to GE containing a request for comprehensive information on the company's locomotive coating operations (docket item XXVIII–10). On March 28, 1990, GE sent a letter to USEPA (docket item XXVIII–11) offering to provide the requested information, but asked that the information be considered confidential. USEPA replied in an April 6, 1990, letter to GE that the Agency would maintain the confidentiality of any information GE claimed to be confidential, pending a final determination as to its confidentiality

[5] A discussion of RACT determination when there is a question of product availability is contained in appendix A of the November 9, 1988, **Federal Register** notice (53 FR 45287) dealing with Easco Aluminum Corporation.

under 40 CFR part 2, subpart B, by USEPA (docket item XXVIII–12). On April 12, 1990, GE submitted a response to USEPA's request for information, repeating its request that the information be kept confidential (docket item XXVIII–13). A followup letter dated April 18, 1990, clarified some of the statements made in the original response letter (docket item XXVIII–15). (Almost all of the information received from GE was marked by the company as "Confidential". This material is listed in the June 29, 1990, promulgation docket index, but at promulgation was being kept in a separate, locked file in the USEPA Region V offices.)

USEPA stated in its original May 1990, EMD RACT analysis (docket item XXX–10) that the information received from GE was not being released to the public at that time, on the basis of the company's request that strict confidentiality for all submitted materials be maintained. However, the Agency did confirm in the RACT analysis that GE, in response to USEPA's request for information, had stated that:

1. Its topcoat paints are applied to final assembled locomotives at 3.5 lbs VOC/gal or less, and
2. Its final repair coats, for the final repair of assembled locomotives, are applied at 3.5 lbs VOC/gal or less.

On November 19, 1990, USEPA made its final CBI determination with regard to the GE submittal. Subsequent to comments by GE on December 3, 1990, and a letter from USEPA to GE on December 6, 1990, the Agency supplemented its CBI determination by making a few additional minor changes to finalize the determination.

USEPA has prepared an EMD RACT analysis, dated August 1991, to support this rulemaking action. This RACT analysis incorporates GE's April 12, 1990, letter with the confidential information deleted. It also includes the April 18, 1990, followup letter from GE, which emphasizes that the company applies both topcoat paints and repair coats to assembled locomotives at 3.5 lbs/gal VOC or less. This RACT analysis contains documents and other information that support this rulemaking, and the RACT analysis has been placed in the rulemaking docket. As discussed in the RACT Analysis (and Appendices) one of EMD's main technical contentions is that paint cracking results from high film builds. However, data provided by EMD showed no relation between film thickness and cracking.

The April 12, 1990, letter summarizes GE's sequential coating operations applicable to locomotives. Primer paint is first applied at 3.5 lbs VOC/gal. A sealer coat is also then applied as received at 3.5 lbs/gal. The topcoat materials are then applied, again at 3.5 lbs/gal. Finally, the information in the April 12 and April 18 letters makes it clear that final repair coats are applied at 3.5 lbs/gal VOC or less.

The enclosures for the April 12, 1990, GE letter (which are also included in the August 1991, EMD RACT analysis) provide additional details concerning the specific coatings in use for assembled locomotives at General Electric. The company provided "Specification and Properties" sheets that indicate coating type and use, and the maximum applied VOC content (3.5 lbs/gal for all primers, topcoats, and final repair coats). These enclosures also show that these coatings are required to pass the GE tests for adhesion, gloss/color, and other critical properties.

VII. Compliance Date

On May 31, 1991, (56 FR 24722) the emission limitations and compliance date for EMD's "Topcoat" and "Final Repair Coating" operations were stayed until USEPA completes its reconsideration. As stated in that **Federal Register** notice, the stay is to remain in effect until withdrawn by a subsequent rule, but only if and as necessary to complete reconsideration. USEPA further indicated that, upon taking final rulemaking, it would publish a rule in the **Federal Register** notifying the public of the withdrawal of this stay.

USEPA also stated in its May 31, 1991, notice that if the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of one year from the date of final action on reconsideration.

Today USEPA is proposing emission limits for EMD that are more stringent than those contained in the applicable (on May 31, 1991) Illinois rule. Therefore, USEPA is proposing a compliance period of one year from the date of final action on reconsideration, for EMD to comply with 3.5 lbs VOC/gal "topcoat" and "final repair coat" limits. USEPA is also proposing to withdraw the May 31, 1991, stay pending reconsideration.

VIII. Summary and Conclusions

USEPA's determination of RACT for EMD is based on several factors which clearly demonstrate the company's ability to apply topcoat and final repair coatings, which do not exceed 3.5 lbs VOC per gallon, to assembled locomotives. These factors are as follows:

- CTG Presumptive Norm is 3.5 lbs/gal. The MMPP coating CTG covers SIC Code Major Group 37 (Transportation Equipment), which includes Group 374, Railroad Equipment. The emission limit recommended for air-dried items, parts to which heat-sensitive materials are attached, certain assembled equipment, or parts that undergo outdoor or harsh exposure or require extreme performance characteristics, is 3.5 lbs/gal.
- Competitor Successfully Uses 3.5 lbs/gal Coatings. EMD's sole domestic competitor, GE–Erie, Pennsylvania, the only other original equipment locomotive coating facility in the country, performs the same types of coating operations. GE has extensively documented to USEPA that all of the topcoat and final repair coatings it uses for final assembled locomotives are applied at 3.5 lbs/gal or less. USEPA policy is to apply similar RACT requirements to similar sources. EMD has not demonstrated any relevant dissimilarities with respect to this other operation, nor would it be expected that there would be any for these two facilities, both of which coat new locomotives.
- SIP Call Was Issued to Pennsylvania. USEPA Region III in the 1988 SIP call cited a deficiency in Pennsylvania's rule for locomotive coating operations. The 4.3 lbs/gal limit was cited as a deficiency which must be changed to 3.5 lbs/gal.
- Pennsylvania has lowered the locomotive and heavy-duty truck topcoat limit to 3.5 lbs/gal based on a finding that such complying coatings are available to the industries involved. General Electric did not comment in opposition to this proposal during the comment period, and the Pennsylvania Environmental Quality Board adopted the 3.5 lbs/gal limit as final rulemaking on March 19, 1991. On June 20, 1991, the Independent Regulatory Review Commission approved the rule package containing this revision.
- EMD Has Not Supported Its Technical Arguments. One of EMD's main technical contentions is that paint cracking results from high film builds. However, data provided by EMD showed no relation between film thickness and cracking.

The factors outlined above support USEPA's contention that topcoats and final repair coats that can be satisfactorily applied to assembled locomotives at 3.5 lbs/gal or less are available and in use. General Electric's April 18, 1990, letter to USEPA confirms that:

1. The company's topcoat paints are applied to final assembled locomotives at 3.5 lbs VOC/gal or less, and
2. The coatings GE uses for the final repair of assembled locomotives are applied at 3.5 lbs VOC/gal or less.

Based on these factors, the Agency has concluded that the 3.5 lbs/gal emission limit represents RACT for these coating operations and is the appropriate limit for this proposed rule. Compliance with the 3.5 lbs/gal emission limit is required

one year from the date of final action on reconsideration. If, based upon public comments, final limits are promulgated for EMD which are not more stringent than the Illinois rules in effect in May 1991, then additional time will not be given to comply.

Public comment is solicited on the petition for reconsideration filed by EMD and on USEPA's proposed rulemaking action in response to it. Public comments received by the date shown above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant impact on a substantial number of small entities (See 46 FR 8709). No new requirements are imposed and only a single entity is involved, EMD.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: May 6, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by revising paragraphs (e)(5), and (z)(1), and adding paragraph (e)(7) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

* * * * *

(e) * * *

(e)(5) *Compliance schedule.* Except as specified in paragraph (e)(7) of this section, every owner or operator of a coating line (of a type included within paragraph (e)(1)(i) of this section) shall comply with the requirements of paragraph (e)(1), (e)(2) or (e)(3) of this section and paragraph (e)(6) of this section in accordance with the appropriate compliance schedule as specified in paragraph (e)(5)(i), (ii), (iii) or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section. Wood furniture coating lines are not subject to paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

* * * * *

(7) *Compliance schedule for diesel electric locomotive coatings.* Notwithstanding any other provision of this subpart, the compliance date for the emission limitations and standards for "topcoat" and "final repair coat" operations only as applied to General Motors Corporation at their diesel electric locomotive coatings lines in Cook County, Illinois, codified at 40 CFR 52.741(e)(1)(i)(M)(*2*) and (*3*) is specified in this paragraph (e)(7). Compliance with the requirements of paragraph (e)(1), (e)(2) or (e)(3) of this section and paragraph (e)(6) of this section must be in accordance with the appropriate compliance schedule as specified in paragraph (e)(7)(i), (ii), (iii) or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after [one year from 30 days after **Federal Register** publication of final rule], unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

* * * * *

(z) *Rules stayed.* Not withstanding any other provision of this subpart, the effectiveness of the following rules is stayed as indicated below.

(1) The following rules are stayed from July 1, 1991, until USEPA completes its reconsideration as indicated:

(i) 40 CFR 52.741 (u) and (v), including 40 CFR 52.741 (u)(4) and (v)(4) only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois; and

(ii) 40 CFR 54.741(u), including 40 CFR 52.741 (u)(4), only as applied to Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois.

When USEPA concludes its reconsideration, it will publish its decision and any actions required to effectuate that decision in the **Federal Register**.

[FR Doc. 92–14750 Filed 7–16–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the regulations on block grant programs to: Modify the definition of a State; require periodic financial reports on block grant obligations and expenditures; make certain clarifications regarding direct funding of Indian tribes and tribal organizations; provide due dates for completion of applications from Indian tribes and tribal organizations for certain block grants; clarify procedures related to withholding of funds; modify the reallotment requirements for the Low-Income Home Energy Assistance Program; establish procedures for termination, reduction, and suspension of funding under the Community Services Block Grant; require grantee application and reporting procedures under the Alcohol, and Drug Abuse and Mental Health Service Block Grant; and modify the standard principle for interpretation of statutory requirements as it is applied to the latter program.

DATES: Comments must be submitted by September 15, 1992.

ADDRESSES: Send comments to Glenn Kamber, Office of the Secretary for Planning and Evaluation, room 447D, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. The comments received in response to this notice may be inspected or reviewed at the same address, Monday through Friday, between 8 a.m. and 4:30 p.m., beginning one week after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Glenn Kamber (202) 254–7316.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Budget Reconciliation Act of 1981 established seven blocks grants to be administered by the Department of Health and Human Services (HHS). Subsequent legislation repealed the Primary Care Block Grant. An interim final regulation to implement the block grants was published in the **Federal Register** on October 1, 1981 (46 FR 48582) and the final regulation was issued on July 6, 1982 (47 FR 29472). Subsequent legislation changed certain provisions of the block grants and the regulation was modified on October 13, 1987 (52 FR 37957) and again on March 3, 1988 (53 FR 6824). A notice of proposed rule making of April 5, 1990 (55 FR 12678), addresses reporting requirements for the Social Services Block Grant.

Based on our experience in administering the block grants, we have identified several aspects of the block grant rule that require, or would benefit from, clarification. These are discussed below.

Section-by-Section Analysis of Changes in the Regulations

Section 96.2 Definitions

The Federated States of Micronesia and the Republic of the Marshall Islands were until 1986 components of the Trust Territory of the Pacific Islands. In that year, compacts of free association were adopted by those entities and the United States. Under the compacts, most Federal assistance programs were phased out over a three-year period. However, legislation approving the compacts provided that programs of the Public Health Service would be continued in the new jurisdictions. Palau was expected to approve a similar compact; however, it has not yet done so. As a result, Palau is the sole remaining entity encompassed by the term, "Trust Territory of the Pacific Islands." To take account of these changes in the Trust Territory, we are proposing to modify the definition of "State" as used in the block grant rule.

Subpart B—General Procedures

Section 96.10 Prerequisites To Obtain Block Grant Funds

In general, the block grant statutes provide states and other grantees with substantial discretion in preparing applications and related forms. Thus, the current § 96.10(a) reads: "No particular form is required for a State's application or the related submission required by statute." This language may be misleading, however, inasmuch as some block grant statues do, in fact, require grantees to submit applications and other information in a particular form in order to ensure that the information is useful for statutorily intended purposes, e.g., congressional oversight. An example is the application requirements for the Alcohol and Drug Abuse and Mental Health Services block grant. Therefore, we are proposing to modify this section to allow the Department to specify the form of an application when this is required or clearly contemplated by the authorizing statute.

Subpart C—Financial Management

Section 96.30 Fiscal and Administrative Requirements

We propose to add a new paragraph to § 96.30 that would require block grant recipients to submit information on the obligation and expenditure status of each block grant allocation. For block grants whose statutory authorizations include time limits on both obligation and expenditure of funds, this information would include: (1) The dollar amount of the funds obligated by the recipient and the date of the last obligation; and (2) the dollar amount of the funds expended by the recipient and the date of the last expenditure.

For block grant statutes which have time limits on the obligation of funds but not on the expenditure of funds, this information would include the dollar amount of the funds obligated during the period funds were available for obligation and the date of the last obligation.

For block grant statutes which have time limits only on the expenditure of funds, this information would include the dollar amount of the funds expended and the date of the last expenditure.

The information would be required for each block grant award allocation after the close of the statutory period(s) for obligation of funds and/or expenditure of funds.

The proposed rule would require recipients to answer an inquiry issued to the recipient by the Department's Office of Payment Management Systems. This letter would be sent at the end of the statutory period for obligation or expenditure of funds. Recipients would have 90 days after the end of the applicable statutory period (or 90 days after receipt of the letter, whichever is the later date) to return the letter with the required information.

This information would allow HHS and the recipient to verify the financial status of block grant funds and allow the Department to determine aggregate obligation, expenditures, and available balances. The reporting requirement would not affect a recipient's right to subsequent reimbursement or to draw down funds for authorized obligations or expenditures made within the statutory periods.

We do not believe the proposed requirement would be a significant burden on block grant recipients, as they are already required to maintain this information under current requirements of § 96.30. Section 96.30 states that recipients are to maintain information sufficient to: "* * * (b) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant."Furthermore, the Department now periodically sends recipients letters indicating the status of their block grant funds and asks recipients to confirm this information.

We are interested in obtaining the views of block grant recipients regarding

this proposed rule change and the reporting burden associated with it. See discussion of burden estimate under the topical heading "Paperwork Reduction Act" below.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

Section 96.41 General Determination

Each of the block grant statutes provides direct funding for States and territories. Statutes for four block grant—Low-Income Home Energy Assistance Program (LIHEAP), Community Services (CSBG), Preventive Health and Health Services, and Alcohol and Drug Abuse and Mental Health Services—authorize the Secretary to fund certain Indian tribes and tribal organizations directly if the Secretary determines that tribal members would be better served by the tribe than by the State(s) in which the tribe is located. These four statutes provide that the funds for grants to tribes and tribal organizations that request funding directly from the Department are to be offset from the allotments of the State(s) in which the tribes and tribal organizations are located.

Section 96.14(a) provides that the Department will award block grant funds directly to an eligible Indian tribe or tribal organization upon receipt of a complete application for funds that meets the statutory requirements. The preamble to the original block grant final rule (47 FR 29480, July 6, 1982) states the Department's policy on direct funding of Indian tribes as follows:

"By regulation, the Secretary has determined that members of Indian tribes and tribal organizations would be better served by direct Federal funding than by funding through the States in every instance that the Indian tribe or tribal organization requests direct funding."

This language reflects our view that, as a general rule, tribal rather than State priorities and program administration will result in better service to tribal members. The final rule established the primacy of the Indian tribe in determining the services to provide and how best to provide them. It avoids the need for a Departmental assessment of the relative efficiency and effectiveness of alternative services systems, lodges primary responsibility with the tribe for administering the programs, and establishes the tribe's accountability for providing appropriate services to its service population.

The proposed rule would add a paragraph (c) to the existing rule to clarify that under certain limited circumstances, the Secretary may use his or her discretionary authority to determine that the members of a particular Indian tribe eligible for block grant funds would be better served by the State in which the tribe is located. The proposed amendment clarifies the rule and applies only to the circumstances specified in paragraph (c):

(1) The Department has determined that the tribe has not used its block grant funds substantially in accordance with the block grant statute;

(2) The Department has withheld block grant funds from the tribe based on that determination and in accordance with procedures established by the block grant regulations; and

(3) The tribe has not provided sufficient evidence that it has taken action to correct the problems leading to the withholding of funds.

The Secretary's determination to award funds to the State rather than directly to the tribe would be limited to the situations described above. If a tribe is located in more than one State, funds that had been set aside for a direct grant to the tribe would be awarded to these States in the same proportion as they were offset from the States' allotments for direct award to the tribe. When the Department withholds block grant funds from a tribe, the Department would make the determination to award funds to the State only after allowing as much time as it determines to be reasonable for the tribe to correct the conditions that led to withholding, consistent with provision of timely and meaningful services to the tribe's service population during the fiscal year. For example, if LIHEAP funds were withheld from a tribe effective October 1, the first day of the Federal fiscal year, but funds were not yet available to the Department for distribution to grantees, the Department probably would allow additional time for the tribe to correct these conditions. However, if LIHEAP funds were withheld effective December 1, during the winter heating season, and funds were available for distribution to grantees, the Department probably would make the determination to award funds to the State when it took the official withholding action.

To assure that well-planned, uninterrupted, and timely services are provided to the service population of a tribe from which funds are withheld, the State would receive all remaining funds reserved for the tribe for that fiscal year and all funds for subsequent fiscal years until the Secretary determines that the tribe has corrected the problems which resulted in the withholding. Where funds have been withheld and the tribe has not taken satisfactory corrective action by the first day of the following fiscal year, all of the funds to serve the tribe's service population for the following fiscal year will be awarded to the State. The State is then responsible for serving the tribe's service population.

If the tribe takes satisfactory corrective action during the following fiscal year, the tribe may receive direct funding for that fiscal year with the concurrence of the State. This is consistent with 45 CFR 96.42(e), which provides for acceptance of a tribal application submitted after September 1 only with the concurrence of the State(s) in which the tribe is located. For example, if the State had provided LIHEAP services for a fiscal year to the tribe's service population before the tribe took corrective action, the State would be unlikely to concur in the acceptance of an application from the tribe for this fiscal year. This proposal is intended to clarify responsibility for serving these tribal households and assure that services will be provided in a timely manner. It is intended to provide clear, published notice so that all parties concerned—including the tribe or tribal organization, the tribe's service population, and the State—will understand the actions that the Department will take and understand the State's responsibility to serve the tribal service population while funds are withheld from the tribe or tribal organization.

The preamble to the original block grant final rule affirms the Department's commitment to continue the government-to-government relationship between the United States and Indian tribes and affirms the policy of self-determination for tribes. The Department continues to be committed to these policies; it is neither the intent nor the effect of this clarification to change them.

The Department will withhold block grant funds from a grantee only after determining, in accordance with the due process procedures specified in the block grant statutes and regulations, that the grantee is not using its block grant funds substantially in accordance with statutory requirements to which the grantee had agreed. In such a case, the grantee has violated its agreement to abide by the terms and conditions of the grant, and the Department must act, in accordance with the law, to assure accountability for public funds.

The proposed rule also would amend paragraph (a) to clarify that paragraph (c) constitutes a limited exception to the principle of direct funding of Indian

tribes and tribal organizations. The proposed rule would apply when funds are withheld from a tribal organization, as well as from a tribe. (A tribe that was to be served by a separate tribal organization from which funds are withheld may rescind its resolution authorizing that role for the tribal organization and, consistent with statutory and regulatory requirements including § 96.42(e), may request direct funding for itself—on its own—or through another tribal organization. Because the tribal organization would be the grantee from which funds are withheld, a tribe separate from the tribal organization would be eligible for its own funding.)

We anticipate there would be very few instances in which the exception to the Department's policy on direct tribal funding would apply. Over the past nine years of HHS administration of the four block grants with direct tribal funding—with over 100 tribes and tribal organizations receiving direct funding each year—there has been only one instance in which the Department has withheld block grant funds from a tribe. The proposed rule is consistent with the actions taken by the Department in that case.

Section 96.42 General Procedures and Requirements

Paragraph (f) of Subpart D, § 96.42 of the block grant regulations, provides that a State receiving block grant funds is not required to use those funds to provide tangible benefits (e.g., cash or goods) to Indians who are within the service population of an Indian tribe or tribal organization that received direct funding from the Department under the same block grant program for the same fiscal year. A State, however, may not deny Indians access to intangible services funded by block grant programs (e.g., treatment at a community health center) even if the Indians are members of a tribe receiving direct funding for a similar service.

The original preamble to the regulations (July 6, 1982, 47 FR 29482) provides the following clarification of this provision.

"Thus, for example, States are not required to provide cash payments or weatherization assistance to Indians included in the service population of a tribe receiving funds under the low-income home energy assistance program."

The proposed amendment would clarify that tribes receiving direct block grant funding are not required to use those funds to provide tangible benefits to non-Indians residing within the tribe's service area, unless a written tribe-State agreement so provides. In the case of tangible benefits such as those provided under the LIHEAP block grant, where the service unit is the household, the clarification would apply to non-Indian households.

The justification for this policy is clear. The LIHEAP statute authorizes the direct funding of Indian tribes for the provision of benefits to Indian households. The statue specifies that a tribe with reservation is eligible to receive LIHEAP funds based on the number of Indian households eligible for the program and residing on the tribe's reservation or adjacent trust land, as a proportion of the eligible households in the State, or a larger amount based on agreement between the tribe and its State. The tribe's allotment is to be offset from the allotment of the State. Unless a tribe-State agreement provides otherwise, the tribe's LIHEAP allotment is not based on the total eligible population of its reservation and nearby trust land. The tribe does not receive LIHEAP funds to serve non-Indian households residing in these areas. This is the responsibility of the State. Similarly, the statute provides that a tribe without a reservation is to receive LIHEAP funds based on the number of Indian households eligible for the program, as determined by the Secretary in consultation with the tribe and its State.

Thus, unless a tribe-State agreement provides otherwise, tribes receive LIHEAP funds based only on the number of eligible Indian households in their service areas.

The proposed amendment, therefore, would clarify that States have the responsibility to serve the non-Indian households residing in the service area of a direct-grant tribe, unless the tribe and the State agree that the tribe will do so.

Section 96.49 Due Date for Receipt of All Information for Completion of Applications for the Community Services and Low-Income Home Energy Assistance Block Grants

We propose to add a new § 96.49 to establish due dates for receipt of all information necessary to complete applications under the Community Services Block Grant and the Low-Income Home Energy Assistance Programs for Indian tribes and tribal organizations. A deadline of June 30 for the Community Services Block Grant is proposed because it would allow HHS to release funds to a State—following a tribe's failure to submit information necessary to complete its application—prior to the expiration of the fiscal year and the lapse of those funds. A deadline for completed LIHEAP application would allow the Department to provide sufficient notice to States that they must provide LIHEAP assistance to the service population of a tribe that has not completed its application for a direct grant. Because most LIHEAP funds are spent for winter heating assistance, it is important that States know by mid-winter, at least, whether they will be required to serve a tribe's service population. Therefore, under the proposed rule, the due date for receipt of all information necessary to complete LIHEAP tribal applications would be January 31.

Section 96.53 Length of Withholding

Five of the six block grant statutes provide for withholding of funds from grantees under certain circumstances. (The Social Services Block Grant has no provision for withholding of funds.)

The Preventive Health and Health Services and the Alcohol and Drug Abuse and Mental Health Service statutes provide that the Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of the statute or the certification provided under the statute. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

The Maternal and Child Health Services Block Grant statute provides that the Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this title in accordance with this title. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

The LIHEAP and the Community Services statutes provide that the Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this statute and the assurance such State provided under the statute.

The proposed new § 96.53, under Subpart E—Enforcement, would clarify that, under LIHEAP and the Community Services Block Grant, the Secretary may withhold funds until the Secretary finds that the reason for withholding has been

removed. It would put grantees on notice concerning authority which is implicit in the LIHEAP and CSBG statutes. The proposed language is similar to that of the other three statutes which provide for withholding of funds.

Subpart H—Low-Income Energy Assistance Program (LIHEAP)

Section 96.81 Reallotment

Section 2607(b)(2) of Public Law 97–35, as amended, provides that Low-Income Home Energy Assistance Program grantees may hold available for use in the following fiscal year to 10 percent of the amount payable to them in a fiscal year and not transferred to another HIS block grant. Section 2607(b)(1) provides for reallotment in the following fiscal year of any amounts unused (unobligated) as of the end of a fiscal year which exceed the amount which may be held available (carried over) for use in the following fiscal year.

Currently, § 96.81 of the block grant regulations provides that LIHEAP grantees must submit to HHS by August 1 of each year a reallotment report which includes information on the amount of the grantee's funds, if any, which are subject to reallotment in the following fiscal year. Section 2607 of Public Law 97–35 requires HHS to notify the chief executive officer of a grantee with funds subject to reallotment and to publish notice in the **Federal Register** that, after a 30-day comment period, these excess funds may be reallotted. Section 2607 also requires HHS to notify the chief executive officer and publish in the **Federal Register** any final decision to reallot funds. Because of the time required for a grantee to determine the exact amount available for reallotment and for HHS to meet the notification and publication requirements, any excess funds are not actually available for reallotment until well into the following fiscal year.

In FY 1986, HHS reallotted among LIHEAP grantees $251,247 in unobligated FY 1985 LIHEAP funds. In FY 1987, $16,706 in unobligated FY 1986 LIHEAP funds were available for reallotment, and in FY 1988, $2,858 in unobligated FY 1987 funds were available for reallotment. If these funds had been reallotted, a large number of grantees would have received grant awards of less than $1; many others would have received awards of less than $25. HHS determined that it would not have been cost effective for HHS to award these small amounts or for grantees to account for and expend them. For these reasons, HHS published notices in the **Federal Register** announcing the Secretary's decision that no funds from FY 1986 or FY 1987 would be reallotted. There were no FY 1988 LIHEAP funds available for reallotment. A grantee returned $3,288 in FY 1989 funds to HHS, because they exceeded the amount the grantee could carry forward to FY 1990. HHS did not reallot these funds because the amount was small; and we did not learn that the funds were available for reallotment until January, 1990.

Because a similar situation may occur in the future, we proposed to amend § 96.81 of the block grant regulations to state that HHS will not reallot LIHEAP funds if less than $25,000 is available. If $25,000 or more is available, HHS would reallot these funds. However, HHS would not award less than $25 in reallotted funds to a grantee. If a tribe's share of reallotted funds would be less than $25, the tribe's share would be awarded to the State (or, proportionately, to the States) in which the tribe is located. If a territory's share of reallotted funds would be less than $25, the territory's share would be distributed proportionately among the other territorial grantees receiving shares of $25 or more. If $25,000 were available for reallotment, all States would receive at least $25.

The current § 96.81, which describes the annual reallotment report required of grantees, would be redesignated at § 96.81(b). The substance of this paragraph would not be changed. The proposed amendment would be designated at §§ 96.81(a) and (c).

Subpart I—Community Services Block Grant

Section 96.92 of Title 45 of the Code of Federal Regulations sets out the process followed by the Department in reviewing allegations that a State has terminated funding to a grantee without notice and an opportunity for a hearing on the record as required by section 675(c)(11) of the CSBG Act. Section 676A of the Act, as amended by section 203(d) of Public Law 98–558 and section 104 of Public Law 101–501, further requires that whenever a State violates section 675(c)(11) and terminates or reduces disproportionately the funding of certain entities without adequate notice and an opportunity for a hearing and prior to the Secretary's review as required by section 676A of the CSBG Act, the Secretary must assume responsibility for providing financial assistance to the entity affected. Section 676A also requires the Secretary to reduce a State's current allotment by the amount of the funds to be provided to the affected entity.

The proposed regulation would define "termination" and "reduction"; establish uniform procedures which will be implemented when States are alleged to have violated the assurances contained in section 675(c)(11); describe procedures for requesting direct funding from the Department as mandated in section 676A; and provide for partial withholding of funds from a State.

Section 96.92 Definition of Termination of Funding

Section 96.92 of the current regulation describes the process to be followed by States in notifying an organization of an opportunity for a hearing on the record prior to terminating Community Services block Grant funding. It establishes a time frame within which the Department must confirm or reject a State's decision when the grantee requests a review. The proposed rule would redesignate the current § 96.92, Termination of Funding, as § 96.93, and add a new § 96.92, Definition of Termination and Reduction of Funding. The new § 96.92 proposes to define "termination" as the permanent withdrawal of funds, i.e., for more than 30 days, as well as the refusal of a State to renew the funding of a community action agency or a migrant and seasonal farm workers organization. A State and its grantees often are able to resolve compliance disputes through informal negotiations without initiating a formal complaint under 45 CFR Part 96.50 or the filing of litigation. In order to continue to encourage these informal negotiations, we propose that States be given the latitude to temporality withhold funding, up to thirty days (30) prior to instituting the formal termination procedures under section 675(c)(11) of the Community Services Block Grant Act. Many States have independently interpreted section 675(c)(11) to allow for such a temporary withholding of funds. This section would also clarify circumstances which do not constitute a termination of funding. Also, this section incorporates the statutory definition of "reduction" as found in Public Law 101–501.

Section 96.94 Petition to direct fund

It is the Department's view that direct funding is a temporary measure until such time that a State resumes compliance with the assurances contained in section 675(c)(11) of the Community Service Block Grant Act. Since the States will continue to be responsible for grant funds received through direct funding, the initial award amount shall be limited so as not to exceed one-fourth of the affected agency's allocation and shall be based on the affected agency's current allocation or the allocation for the previous year, as determined by the

State. This is consistent with the block grant principles that a State will be afforded the maximum flexibility to resume responsibility for administering the program, including budget negotiation, monitoring, and audit resolution.

Section 96.95 Partial withholding

The proposed amendment would add a new § 96.95, Partial Withholding. This would permit the Department to withhold a portion of funds for a State. If, as a result of a hearing conducted under section 679, the Secretary find that a State is in violation of CSBG assurances, it may be more appropriate to withhold a portion of the funds rather than the entire allotment, until the reason for the withholding has been resolved. For example, this may be appropriate when a State violates assurances in section 675(c)(2)(A) by funding—out of the 90 percent restricted portion of its allotment—an entity that is not an eligible entity under in section 673(1).

Subpart L—Alcohol and Drug Abuse and Mental Health Service Block Grant

Section 96.121, 96,122, 96.123

We propose to delete the current text of § 96.121, dealing with earmarks related to new or expanded services. This provision is no longer necessary because of recent statutory changes.

The Department is proposing three new provisions in Subpart L governing the Alcohol and Drug Abuse and Mental Health Services block grant. These provisions implement significant statutory changes enacted by the Anti-Drug Abuse Act of 1988, Public Law 100–690, and help support Departmental effort to enhance treatment for substance abuse. Specifically, we proposed to add new § 96.121, *Application for Funding*, 96.122, *Needs assessment, intended use, plan*, and 96.123, *Reports*.

Section 96.121, *Application for Funding*, would authorize the Secretary to prescribe the form, manner, and time of submission of State applications under the Alcohol, and Drug Abuse, and Mental Health Services Block Grant and require States to submit with the application additional data, information, or reports. This provision is authorized by § 1916(a) of the Public Health Service Act, 42 U.S.C. 300x-4(a), and is necessary to allow the Department to collect the data and other information which is currently collected from States under OMB § 0930–0080 (exp. 1/1/92), 55 FR 224, Nov. 22, 1990.

New § 96.122, *Needs assessment; intended use; plan*, would implement sections 1916(c)(10) and (21) and (d) of the Public Health Service Act, 42 U.S.C. 300x-4(c)(10) and (21) and (d), that require each State to describe its needs assessment for alcohol, drug abuse, and mental health services, describe how those needs will be met through its intended use of block funds, and provide, at the Secretary's request, a plan which describes how the State could provide alcohol, drug abuse, and mental health services to all individuals in need of such services if the resources were available and an estimate of the resources necessary to do so. With respect to mental health services, we do not intend that the requirements of § 96.122 duplicate the planning which States already perform under sections 1924–1927 of the Public Health Service Act, 42 U.S.C. §§ 300x–10–x–13, and thus, the information provided under the latter sections of the Act will meet the requirements of this section.

The new § 96.123, *Reports*, would require States to submit reports and other information required by sections 1916(f) and 1917(a) of the Public Health Service Act, 42 U.S.C. 300x–4(f) and 300x–5(a), in such form, manner, and times as the Secretary prescribes.

The Department has engaged in extensive consultation with States over the past two years in the development of a standardized format for applications and reports for the Alcohol, Drug Abuse and Mental Health Services Block Grant Program. The Department has worked with individual State officials and the National Association of State Alcohol and Drug Abuse Directors to refine current application and report formats to ensure that they are reasonable in terms of burden, and evolving State data collection and reporting capabilities. In fiscal year 1991, twenty six States voluntarily submitted all or part of applications in accord with a new format developed by the Department. Based upon experience with the 1991 process, and in response to comments received from a number of States and national organizations, the Department revised and simplified the applications format and instructions. In August, 1991, a revised version of the new application format was sent to all States and other block grant jurisdictions for review and comment. Sixteen States submitted comments. In September, 1991, two focus groups involving representatives from thirty States were conducted by the Department to gather additional comments on the application format and its instructions. Followup discussions were held with representatives from all States at a national conference in December, 1991. Additional refinements have been made to the application format as a result of these consultations.

The Department intends to continue this process of close and continuous consultation with States in the evolution of application and reporting requirements for the Alcohol, Drug Abuse and Mental Health Services Block Grant Program. Detailed information collection requirements shall be as jointly agreed upon by this Department and the States, consistent with applicable law and Administration policy Technical assistance, in the form of written materials, workshops, and Federally-financed consultants, will continue to be made available to States as they refine and strengthen needs assessment, planning, data collection and reporting activities.

The public should be aware that Congress is in the process of considering legislation that would spell out more specific requirements pertaining to Block Grant information submissions by States, including needs assessment, applications for funding, and post-expenditure reports. If and when these contemplated changes in Block Grant reporting requirements are enacted into law, the Department will propose additional regulations implementing the new requirements.

Section 96.124

In resolving any issue raised by a complaint or a Federal audit the Department will defer to a State's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous.

The proposed new section 96.124 would modify the "clearly erroneous" provision only as it applies to the alcohol and drug abuse and mental health services block grant. The proposed change is based on an amendment to the statute that eliminates from the program statute a provision that prohibited the Secretary from specifying the manner of a state's compliance with selected provisions of the statute. The new rule provides that there may be instances in which the Department determines that a State's interpretation is contrary to Federal law or regulation. In doing so, the Department will give appropriate consideration to written opinions of the State's attorney general. We are interested in receiving comments from states on the proposed provision and whether it should be applied to the other HHS block grants.

Executive Order 12291

The regulation would implement legislative or administrative changes which are minor or technical in nature. None would involve a substantial cost. Therefore, this is not a major rule under Executive Order 12291.

Regulatory Flexibility Act

The Department of Health and Human Services certifies that this regulation would have no significant impact on a substantial number of small entities, small businesses, small organizational units, or small governmental jurisdictions. The rule principally affects State administration of block grant funds. States are not "small entities" for purposes of the Act, and the regulation would not have any substantial or significant effects on other eligible entities.

Paperwork Reduction Act

The proposed rule contains information collection requirements regarding grantee obligation and expenditure of funds. The public reporting burden related to these requirements is estimated to be less than an hour each for a grantee, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Proposed new requirements for the Alcohol, Drug Abuse and Mental Health Services Block Grant, including §§ 96.121, *Application for Funding*, 96.122, *Needs assessment, intended use, plan*, and 96.123, *Reports*, may require that each grantee spend 400 hours on complying with application and needs assessment reporting requirements, and an additional 300 hours in preparing required reports, for a total of 700 hours per grantee, or 42,000 hours for all 60 grantees. These estimates are similar to those made under the current authority for the Department to collect this data and other information under OMB § 0930–0080 (exp. 1/31/93). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: OS Reports Clearance Officer, Division of Organization and Management Analysis, room 4300, 330 Independence Avenue, SW., Washington, DC, 20201; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503, Attention: Jenny Main, Desk Officer for ADAMHA.

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Aged, Alcoholism, Child welfare, Community action program, Drug abuse, Energy, Grant programs-energy, Grant programs-health, Grant programs-Indians, Grant programs-social programs, Health, Indians, Individuals with disabilities, Investigations, Low and moderate income housing, Maternal and child health, Mental health programs, Public health, Reporting and record keeping requirements, Social security.

(Catalog of Federal Domestic Assistance Program Numbers: 93.667, Social Services Block Grant; 93.028, Low-Income Home Energy Assistance Program; 93.031, Community Services Block Grant; 93.991, Preventive Health and Health Services Block Grant; 93.992, Alcohol and Drug Abuse and Mental Health Services Block Grant; 93.994, Maternal and Child Health Block Grant)

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 96—[AMENDED]

1. The authority for part 96 of title 45 is revised to read as follows:

Authority: 42 U.S.C. 300w *et seq.*; 42 U.S.C. 300x *et seq.*; 42 U.S.C. 300y *et seq.*; 42 U.S.C. 701 *et seq.*; 42 U.S.C. 8621 et seq.; 42 U.S.C. 9901 *et seq.*; 42 U.S.C. 1397 *et seq.*; 31 U.S.C. 1243 note.

Subpart A—Introduction

2. Section 96.2, is amended by revising paragraph (d) to read as follows:

§ 96.2 Definitions.

* * * * *

(d) *State* includes the fifty States, the District of Columbia, and as appropriate with respect to each block grant, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands comprised of Palau, and for purposes of the block grants administered by the Public Health Service, the Federated States of Micronesia and the Republic of the Marshall Islands.

Subpart B—General Procedures

3. Section 96.10 is amended by revising paragraph (a) to read as follows:

§ 96.10 Prerequisite to obtain block grant funds.

(a) Except where prescribed elsewhere in this rule, no particular form is required for a State's application or the related submission required by statute.

* * * * *

Subpart C—Financial Management

4. Section 96.30 is amended by designating text of the current paragraph as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 96.30 Fiscal and administrative requirements.

* * * * *

(b) Financial Summary of Obligation and Expenditure of Block Grant Funds.

(1) *Block grants containing time limits on both the obligation and the expenditure of funds.* After the close of each statutory period for the obligation of block grant funds and after the close of each statutory period for the expenditure of block grant funds, each recipient shall report to the Department:

(i) Total funds obligated and total funds expended by the recipient during the applicable statutory periods; and

(ii) The date of the last obligation and the date of the last expenditure.

(2) *Block grants containing time limits only on obligation of funds.* After the close of each statutory period for the obligation of block grant funds, each recipient shall report to the Department:

(i) Total funds obligated by the recipient during the statutory period; and

(ii) The date of the last obligation.

(3) *Block grants containing time limits only on expenditure of funds.* After the close of each statutory period for the expenditure of block grant funds, each recipient shall report to the Department:

(i) Total funds expended by the recipient during the statutory period; and

(ii) The date of the last expenditure.

(4) *Request for information.* The Department will request the information required by paragraph (b) (1), (2), and (3) of this section, in a letter of inquiry sent to the recipient at the close of the applicable statutory periods. Recipients are to respond by providing the requested information within 90 days of the close of the applicable period or 90 days after the receipt of the letter of inquiry, whichever is later.

5. Section 96.41 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 96.41 General determination.

(a) The Secretary has determined that, with the exception of the circumstances addressed in paragraph (c) of this section, Indian tribes and tribal organizations would be better served by means of grants provided directly by the

Secretary to such tribes and organizations out of their State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, with the exception of situations described in paragraph (c) of this section, the Secretary will, upon request of an eligible Indian tribe or tribal organization and where provided for by statute, reserve a portion of the allotment of the State(s) in which the tribe is located, and, upon receipt of a complete application and related submission meeting statutory and regulatory requirements, grant it directly to the tribe or organization.

* * * * *

(c) The Secretary has determined that Indian tribal members eligible for the funds or services provided through the block grants would be better served by the State(s) in which the tribe is located rather than by the tribe, where:

(1) The tribe has not used its block grant allotment substantially in accordance with the provisions of the relevant statute(s);

(2) Following the procedures of 45 CFR 96.51, the Department has withheld tribal funds because of those deficiencies; and

(3) The tribe has not provided sufficient evidence that it has removed or corrected the reason(s) for withholding.

In these cases, block grant funds reserved or set aside for a direct grant to the Indian tribe will be awarded to the State, and the State will provide block grant services to the service population of the tribe. Before awarding these funds to the State(s), the Department will allow as much time as it determines to be reasonable for the tribe to correct the conditions that led to withholding, consistent with provision of timely and meaningful services to the tribe's service population during the fiscal year. If a State is awarded funds under this paragraph (c), the State will receive all remaining funds set aside for the tribe for the Federal fiscal year for which the award is made. Where the Department has withheld funds from a tribe and the tribe has not taken satisfactory corrective action by the first day of the following fiscal year, all of the funds to serve the tribe's service population for the following fiscal year will be awarded to the State. The State is responsible for providing services to the service population of the tribe in these cases. This paragraph (c) also applies when funds are withheld from a tribal organization.

6. Section 96.42 is amended by adding a new sentence to the end of paragraph (f) to read as follows:

§ 96.42 General procedures and requirements.

* * * * *

(f) * * * A tribe receiving direct block grant funding is not required to use those funds to provide tangible benefits to non-Indians living within the tribe's service area unless the tribe and the State(s) in which the tribe is located agree in writing that the tribe will do so.

7. Section 96.49 is added to subpart D to read as follows:

§ 96.49 Due date for receipt of all information required for completion of applications for the Community Services and Low-income Home Energy Assistance Block Grants.

(a) For the Community Services Block Grant, Indian tribes and tribal organizations who make direct requests for funding from the Secretary must insure that all information necessary to complete their applications is received by June 30, for a given fiscal year. After June 30, funds will revert to the State(s) in which the tribe is located.

(b) For the Low-Income Home Energy Assistance Program, Indian tribes and tribal organizations who make direct requests for funding from the Secretary must insure that all information necessary to complete their applications is received by January 31, for a given fiscal year. After January 31, funds will revert to the State(s) in which the tribe is located.

8. Section 96.53 is added to subpart E to read as follows:

§ 96.53 Length of withholding.

Under the Low-Income Home Energy Assistance and Community Services Block Grants, the Secretary may withhold funds until the Secretary finds that the reason for the withholding has been removed.

9. Section 96.81 is revised to read as follows:

§ 96.81 Reallotment.

(a) *Scope.* This section concerns reallotment of funds pursuant to section 2607 of Pub. L. 97–35 (45 U.S.C. 8626).

(b) *Reallotment report.* Each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(1) The amount of funds that the grantee desires remain available for obligation in the succeeding fiscal year, not to exceed 10 percent of the funds payable to the grantee and not transferred pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f));

(2) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(3) A description of the types of assistance to be provided with the amount held available; and

(4) The amount of funds, if any, to be subject to reallotment.

(c) *Conditions for reallotment.* If the total amount available for reallotment for a fiscal year is less than $25,000, the Department will not reallot such amount. If the total amount available for reallotment for a fiscal year is $25,000 or more, the Department will reallot such amount, except that the Department will not award less than $25 in reallotted funds to a grantee.

10. Section 96.92, *Termination of funding,* is redesignated as § 96.93.

11. Section 96.92 is added to read as follows:

§ 96.92 Definition of termination and reduction of funding.

(a) Termination of funding means the permanent withdrawal by the State of the authority of a community action agency or migrant and seasonal farmworkers organization to obligate previously awarded funds before that authority would otherwise expire. Permanent is defined as a suspension of more than 30 days from the date the State withdraws the authority of a community action agency or migrant and seasonal farmworkers organization to obligate previously awarded funds. Termination also means the refusal of a State to renew funding of a community action agency or migrant and seasonal farmworkers organization.

(b) The voluntary relinquishment of present or future funding is not a termination, provided a written acknowledgement is provided by the community action agency or migrant and seasonal farmworkers organization. Termination also does not include:

(i) Suspension of 30 days or less;

(ii) Recovery of unobligated balances after the expiration of the project period; or

(iii) The refusal of the State to provide continued financial support for discretionary or special projects.

(c) Reduction of funding is defined statutorily as a decrease in a community action agency's or a migrant and seasonal farmworkers organization's CSBG funding level below the proportional share of funds received in the previous fiscal year.

12. Section 96.94 is added to read as follows:

§ 96.94 Petition for direct funding.

(a) Petitions to direct fund must be submitted in writing to the Department within 10 days from the date the eligible organization receives an official notice of termination or reduction of funding from the State. Such petitions must specify the date when the alleged termination occurred and explain in what way the State violated section 675(c)(11) of the Community Services Block Grant (CSBG) Act or provide details surrounding the alleged disproportionate funding reduction.

(b) The Department shall within 7 working days after receiving a petition furnish a copy of the petition to the State by certified mail. At the same time, the State will be notified that the allotment for the State may be reduced by an amount of funds necessary to fund the affected grantee.

(c) The State will be given 10 working days from the receipt of the copy of the petition to provide written comments to the Department or to comply with the assurances in section 675(c)(11) of the CSBG Act. A State may resume funding at any time.

(d) Within 7 days of receipt of written comments from the State, the Department shall issue to the State and the affected organization a written statement based on the information provided. At this time, if it appears that the State did not comply with section 675(c)(11) of the CSBG Act, the State will be offered an opportunity for a hearing, to be conducted within 7 days.

(e) Within 14 days from the date of the hearing, the Department will provide a written determination. If the State is found in violation of section 675(c)(11) of the CSBG Act, the Department shall fund the affected agency directly and immediately. The award amount shall not exceed one-fourth of the affected agency's allocation as determined by the State. The amount will be based on the affected agency's current or previous year's allocation.

(f) At the time of the start of direct funding and in accordance with § 96.93, the Department shall instruct the State to give notice and an opportunity for a hearing on the termination or reduction of funding to the community action agency or migrant and seasonal farmworkers organization and issue a decision within 30 days of the hearing.

(g) If the State finds, and the Department confirms, that there was cause to terminate an organization, the effective termination date is the date the direct funding will cease. If the State or the Department does not find that there is cause for termination, the State will be ordered to resume funding immediately.

(h) If the State finds, and the Department confirms, that there was just cause for a disproportionate reduction in the CSBG funding level, the new funding level as determined will be official. Cause is statutorily defined as:

(1) A statewide redistribution of funds to respond to

(i) The results of the most recently available census or other appropriate data;

(ii) The establishment of a new eligible entity;

(iii) Severe economic dislocation; and

(2) The failure of an eligible entity to comply with the terms of its agreement to provide CSBG services. If the State, or the Department, does not confirm that there was cause for the reduction of funding, the State will be ordered to provide the eligible entity its proportional share of the State's CSBG allotment.

(i) The State will be responsible for the auditing of funds received through direct funding.

13. Section § 96.95 is added to read as follows:

§ 96.95 Partial withholding.

Partial withholding may occur in circumstances in which the Secretary finds as a result of a hearing conducted under section 679 of the CSBG Act that a State has failed to carry out assurances in accordance with section 675(c) of the CSBG Act. A specific circumstance where partial withholding after a hearing may occur would include the funding of an ineligible entity by the State.

14. Section 96.121 is revised to read as follows:

§ 96.121 Application for funding.

In accordance with the provisions of sections 1911–1927 of the Public Health Service Act, 42 U.S.C. 300x–300x–13, including section 1916(a), 42 U.S.C. 300x–4(a), each application by a State for an alcohol and drug abuse and mental health services block grant shall be in such form, contain such information, and be submitted by such date as the Secretary shall prescribe. The Secretary may require, as part of such application or at the same time as such application, such additional information, reports, or data as the State is required to provide under the statutory authority or the provisions of this part, including any data which the Secretary collects under the authority of sections 509D and 1916(c)(20) of the Public Health Service Act, 42 U.S.C. 290aa-11 and 300x4(c)(20).

15. Section 96.122 is added to read as follows:

§ 96.122 Needs assessment; intended use; plan.

In accordance with sections 1916(c) (10) and (20) and (d) of the Public Health Service Act, 42 U.S.C. 300x–4(c) (10) and (21) and (d), each State which receives an alcohol and drug abuse and mental health services block grant shall provide in such form and manner, containing such information, and at such time as the Secretary prescribes—

(a) A detailed description of those populations, areas, and localities in the State which the State has identified have a need for mental health, alcohol abuse and alcoholism, and drug abuse services;

(b) A detailed description of the intended use of the payments the State will receive under the block grant, including information on the programs and activities to be supported and services to be provided;

(c) A plan that describes how the State can provide services to all individuals seeking mental health, alcohol abuse and alcoholism, and drug abuse treatment services if sufficient resources are available and an estimate of the financial and personnel resources necessary to provide such treatment; and,

(d) Such other information as the Secretary determines is necessary and appropriate to meet the requirements and objectives of sections 1916(c) (10) and (21) and (d) of the Public Health Service Act 42, U.S.C. 300x–4(c) (10) and (21) and (d) and paragraphs (a), (b), and (c) of this section.

16. Section 96.123 is added to read as follows:

§ 96.123 Reports.

In accordance with sections 1916(f) and 1917(a) of the Public Health Service Act, 42 U.S.C. 300x–4(f) and 300x–5(a), each State which receives an alcohol and drug abuse and mental health services block grant shall submit, in such form and manner, containing such information, and at such time as the Secretary shall prescribe—

(a) Information which describes how funds received under the block grant were expended in accordance with statutory authority and consistent with the needs within the State identified in accordance with sections 1916(c)(10) of the Public Health service Act, 42 U.S.C. 300x–4(c)(10) and § 96.122(a) of this part;

(b) A detailed description of the activities of the State under the block grant;

(c) A detailed description of the new or expanded programs and services initiated and provided in accordance with sections 1916(c) (2), (14), and (15) of the Public Health Service Act, 42 U.S.C. 300x–4(c)(2), (14), and (15);

(d) A detailed description of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes for which the funds were provided; and

(e) Such other information as the Secretary determines is necessary and appropriate to meet the requirements and objectives of sections 1916(f) and 1917(a) of the Public Health Service Act, 42 U.S.C. 300x–4(f) and 300x–5(a).

17. Section 96.124 is added to read as follows:

§ 96.124 Interpretation of requirements.

(a) This section applies to the Department's interpretation of sections 1911–1927 of the Public Health Service Act, 42, U.S.C.–300x–300x–13, in lieu of the provisions of § 96.50(e) of this part.

(b) The Department will accept a State's interpretation of the Alcohol, Drug Abuse and Mental Health Services block grant statute unless the Department determines that the State's interpretation is contrary to Federal law or regulation. In making this determination, the Department will give due consideration to any written opinion provided by the Attorney General of the State which supports the State's interpretation. Such opinion, if any, must be provided to the Department with the comments which are submitted by the State under § 96.50(c) of this part in response to any complaint of noncompliance. Any determination by the Department that a State's interpretation is not contrary to Federal law or regulation shall not preclude or otherwise prejudice the State auditor's consideration of the question.

Dated: March 27, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–16662 Filed 7–16–92; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–143, RM–8010]

Radio Broadcasting Services; Eagle, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Eagle Broadcasting, Inc., requesting the substitution of Channel 300C for Channel 300C2 at Eagle, Idaho, and modification of its license for Station KRVG (FM) to specify the higher powered Channel. Channel 300C can be allotted to Eagle in compliance with the Commission's minimum distance separation requirements at the construction permit site, without the imposition of a site restriction. The coordinates are North Latitude 43–45–18 and West Longitude 116–05–52.

DATES: Comments must be filed on or before September 1, 1992, and reply comments on or before September 16, 1992.

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: Gerald Stevens-Kittner, Lisa E. Kopf, Arter & Hadden, 1801 K Street, NW., Suite 400K, Washington, DC 20006 (Attorneys for Eagle Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket No. 92–143, adopted June 22, 1992, and released July 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st, Street, 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.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–16829 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–147, RM–7951]

Radio Broadcasting Services; Fruitland and Weiser, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Treasure Valley Broadcasting Company, licensee of Station KWEI (FM), Channel 257A, Weiser, Idaho, seeking the substitution of Channel 258C1 for Channel 257A, the reallotment of Channel 258C1 from Weiser, Idaho, to Fruitland, Idaho, and the modification of its license to specify Fruitland as its community of license, in accordance with § 1.420(i) of the Commission's rules. The coordinates are North Latitude 44–03–44 and West Longitude 116–54–22.

DATES: Comments must be filed on or before September 3, 1992, and reply comments on or before September 18, 1992.

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 R. Zaragoza, John Joseph McVeigh, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125 (Attorneys for Treasure Valley Broadcasting Company).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket No. 92–147, adopted June 30, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, 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.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-16830 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-142, RM-8014]

Radio Broadcasting Services; Brighton, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Renard Communications Corp. seeking the allotment of Channel 231A to Brighton, New York, as the community's first local FM service. Channel 231A can be allotted to Brighton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5 miles) east to avoid a short-spacing to Station WACZ, Channel 230A, Dansville, New York, at coordinates North Latitude 43-08-55 and West Longitude 77-27-04. Canadian concurrence in the allotment is required since Brighton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before September 1, 1992, and reply comments on or before September 16, 1992.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Craig L. Fox, President, Renard Communications Corp., 4853 Manor Hill Drive, Syracuse, New York 13215-1336 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.92-142, adopted June 19, 1992, and released July 10, 1992.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st 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.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-16832 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-73; RM-7954]

Radio Broadcasting Services; Warrenton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses a petition filed by William P. Eaton which proposed an allotment of Channel 254A to Warrenton, Georgia. See 57 FR 13328, April 16, 1992. Petitioner failed to file a continuing expression of interest in the allotment. Petitioner's petition for reconsideration, on which the proposed rule making was based, is also dismissed. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-73, adopted June 22, 1992, and released July 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-16925 Filed 7-16-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-71, RM-7926]

Radio Broadcasting Services; Longwood, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the request of Longwood Broadcasters to allot Channel 237A to Longwood, North Carolina, as the community's first local FM service. See 57 FR 14554, April 21, 1992. Neither Longwood Broadcasters nor any other party filed comments expressing a continuing interest in applying for the channel. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-71, adopted June 29, 1992, and released July 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor,

Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–16927 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 12)]

Transfer or Operation of Lines of Railroads in Reorganization

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission modifies the notice of proposed rulemaking published on September 25, 1991 at 56 FR 48510. As now proposed, transfers or operations of lines of bankrupt carriers under plans of reorganizations under 11 U.S.C. 1172 would be governed by the Commission's regular procedures.

DATES: Comments must be submitted by August 17, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 12) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. It will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1180

Railroads.

Decided: July 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Subpart B of part 1180 is proposed to be revised to read as follows:

Subpart B—Transfer or Operation of Lines of Railroads in Reorganization

§ 1180.20 Procedures.

(a) Transactions under 11 U.S.C. 1172, for the transfer or operation of lines of bankrupt railroads under a plan of reorganization are governed by the following procedures:

(1) If the buyer or operator is not a carrier, the Notice of Exemption procedures in subpart D of part 1150 of this title.

(2) If the buyer or operator is a carrier, either:

(i) The application procedures in subpart A of this part; or

(ii) The procedures in Part 1121 of this title for a petition to exempt the transaction from prior approval requirements of 49 U.S.C. 11343, *et seq.*

(b) The Commission will establish or modify its existing procedures and deadlines as necessary in each proceeding to comply with appropriate orders of the Bankruptcy Court.

(c) Under 11 U.S.C. 1172(c)(1), the Commission is required to provide affected employees with adequate protection. The Commission will impose the minimum levels required by 49 U.S.C. 11347, unless a need is shown for different levels of protection.

[FR Doc. 92–16887 Filed 7–16–92; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

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.

ACTION

Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review

AGENCY: ACTION

ACTION: Information collection request submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: This notice provides information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency, covered under the Paperwork Reduction Act (44 U.S.C. chapter 35), currently under review by OMB.

DATES: OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements received on or before August 17, 1992. Copies of the proposed forms and supporting documents may be obtained by contacting ACTION.

ADDRESSES: Send comments to both—

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, (202) 606–5245.

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Office of Action Issuing Proposal: Office of Policy Research and Evaluation/Program Analysis and Evaluation Division.

Title of Forms: VISTA Project Supervisor Mail Questionnaire, VISTA Volunteer Mail Questionnaire, VISTA Community Mail Questionnaire and VISTA Former Project Supervisor Mail Questionnaire.

Need and Use: ACTION's legislation requires it to evaluate its programs every three years. These forms are needed to conduct an evaluation of the VISTA program. Information gathered in the evaluation will be used to examine the effects of VISTA in the following areas: success in addressing the needs of low-income communities, what supports a successful Volunteer experience, benefit accruing to Volunteers and low-income communities, resource mobilization practices and project sustainability.

Type of Request: New request.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: One time only.

Estimated Number of Responses: 2,300.

Average Burden Hours Per Response: 0.4 hours.

Estimated Annual Reporting or Disclosure Burden: 927 hours.

Regulatory Authority: 42 U.S.C. 5056(a).

Dated: July 14, 1992.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 92–16949 Filed 7–16–92; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forest Service

Middle Fork Timber Sales; Nez Perce National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest timber and construct and reconstruct roads in the Little Tinker Creek, Tahoe Creek, Number One Creek, Lodge Creek, and Decker Creek drainages located about 22 air miles northeast of Grangeville, Idaho. This EIS will tier to the Nez Perce National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to help satisfy short-term demands for timber and to move toward an equal distribution of timber age classes on suitable lands.

DATE: Written comments and suggestions should be received on or before August 17, 1992.

ADDRESS: Send written comments to Cynthia Lane, District Ranger, Selway Ranger District, HC 75, Box 91, Kooskia, Idaho 83539.

FOR FURTHER INFORMATION CONTACT: Jerry Bird, Planning Assistant, (208) 926–4258.

SUPPLEMENTARY INFORMATION: The timber management activities under consideration would occur within a 13,913-acre analysis area which includes all 10,170 acres of Inventoried Roadless Area 1842. The analysis area is immediately adjacent to the Selway and Middle Fork Clearwater Rivers, both of which have been classified Recreational Rivers under the Wild and Scenic Rivers Act.

The proposed action would harvest about 15.8 million board feet from 20 harvest units totalling 688 acres. Six miles of new road would be constructed and 2 miles of existing road would be reconstructed. About 35 percent of the roadless area would be directly or indirectly affected. None of the proposed roads would be visible from the river corridor.

Preliminary scoping, including public and agency participation, was initiated in May, 1988, and has continued through this year. Until recently, an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) were envisioned. However, it became apparent to the Interdisciplinary Team that impacts on Roadless Area 1842 could be significant. In such cases, an EIS is required.

The principal environmental issues identified to date are related to:

1. Impacts on Roadless Area 1842; including impacts on old-growth and second-growth vegetative patterns;
2. Impacts on the Selway and Middle Fork Clearwater Recreational Rivers, including view-sheds from U.S. Highway 12;
3. Impacts on fish habitat and water quality, including management and compliance with Best Management Practices;
4. Impacts on threatened and endangered wildlife and fish species, including the threatened grizzly bear, the endangered bald eagle, the endangered Northern Rocky Mountain gray wolf, and the threatened Snake River fall chinook salmon; and
5. Impacts on elk summer and winter habitat.

Development of alternatives is underway, and additional comments or

questions are being solicited at this time. Among the tentative alternatives is one which would schedule timber management outside the roadless area but not inside it. Helicopter yarding is being considered for all, part, and none of the project. Different harvest configurations on elk winter range are being analyzed. One tentative alternative would confine timber management to areas which can be reached by existing roads; another would require use of low-standard, temporary roads which would be obliterated as soon as possible.

Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be initiated with regard to listed species. The Idaho Department of Health and Welfare Division of Environmental Quality, the Idaho Department of Fish and Game, and the Nez Perce Indian Tribe have been and will continue to be consulted.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in September, 1992. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the Federal Register. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in January, 1993. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the Federal Register.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: July 8, 1992.

Michael King,

Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville ID 83530.

[FR Doc. 92–16839 Filed 7–16–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 4, 1992, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Report on status of U.S. implementation of Core List.
5. Status of COCOM negotiations, including Segment A proposals.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. 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 the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: July 14, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 92–16903 Filed 7–16–92; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International

Trade Administration, 202/377–5131. 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 an Export Trade Certificates of Review. A 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 Act 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 a Certificate should be issued. An original and five (5) copies 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, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–00009." A summary of the application follows.

Summary of the Application

Applicant: Northern Textile Export Trading Company, Inc. ("NTETC"), 230 Congress Street, Third Floor, Boston, Massachusetts 02110, Contact: Karl Spilhaus, President, Telephone: (617) 542–8220.

Application No.: 92–00009.

Date Deemed Submitted: July 10, 1992.

Members (in addition to applicant): Cascade Woolen Mill, Inc., Oakland, Maine; L.W. Packard & Co., Inc., Ashland, New Hampshire; Charles W. Fifield, Jr. Co., Inc., Hingham, Massachusetts; and Woolrich, Inc., Woolrich, Pennsylvania.

Export Trade

1. Products

Fibers, yarns and fabrics for both commercial and apparel uses in every segment of the textile industry including, but not limited to, man-made fiber, wool, cotton, elastic, flock, felt and luxury fiber products.

2. Services

Engineering, design and affiliated services related to the Products and to articles that incorporate the Products.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, technical expertise, physical and computer modeling and designs associated with Products, Services, or Export Trade Facilitation Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Technical service; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; testing and certification of products; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. NTETC and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in the Export Markets and allocate any proceeds resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to specifications and engineering requirements demanded by specific potential customers for Products and Services for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit Non-Members to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of NTETC and/or its Members;

g. Coordinate with respect to the servicing of Products and/or services in Export Markets;

h. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing and enhancing existing or new Export Market opportunities;

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product requirements of specific export customers or Export Markets;

j. Operate joint ventures and/or jointly owned entities, such as for-profit corporations and partnerships and/or other joint venture entities owned exclusively by Members, for the purpose of engaging in the Export Trade Activities and Methods of Operation herein described. NTETC and/or one or more of its Members may establish contractual methods of distribution in the Export Markets with Non-Members including, but not limited to, sales agents, exclusive or non-exclusive distributors and joint ventures;

k. Provide Export Trade Facilitation Services as an exclusive or non-exclusive Export Intermediary for the Members whereby NTETC and/or more or more of the Members may:

i. Arrange to have NTETC and/or one or more of the Members and/or Non-Members act as an exclusive or non-exclusive Export Intermediary for the Members;

ii. Establish an entity owned jointly and exclusively by Members to act as an exclusive or non-exclusive Export Intermediary for the Members;

iii. Act as an Export Intermediary negotiating and concluding licenses and sub-licenses of Technology Rights which are consistent with subparagraph n, as set forth below.

l. Agree that any information obtained pursuant to this Certificate shall not be provided to any Non-Member;

m. Forward inquiries to the appropriate individual Members concerning requests for information received from entities in the Export Markets;

n. Individually license and sub-license Technology Rights in the Export Markets. Such licenses and sub-licenses may:

i. Convey exclusive or non-exclusive rights in the Export Markets;

ii. Impose requirements as to the prices at which Products and/or Services incorporating or manufactured, or produced, using Technology Rights may be sold or leased in the Export Markets;

iii. Impose requirements as to pricing and other terms and conditions of

licenses or sub-licenses of Technology Rights in the Export Markets;

iv. Restrict licensees and sub-licensees as to the field of use, or maximum sales or operations, in the Export Markets;

v. Impose territorial restrictions relating to any Export Market on foreign licensees and sub-licensees;

vi. Require the assignment back or exclusive or non-exclusive grant back to the licensor Member of rights in the Export Market to all improvements in Technology Rights, whether or not such improvement falls within the field of use authorized in such license;

vii. Require package licensing of Technology Rights; and

viii. Require products and/or services (including, but not limited to, Products and/or Services) to be used, sold, or leased as a condition of the license of Technology Rights.

o. Refuse to provide Export Trade Facilitation Services or participation in Export Trade, Export Trade Activities and Methods of Operation to Non-Members;

p. Individually purchase Products and/or Services for export to the Export Markets;

q. Enter into agreements whereby one or more Members, or an entity owned jointly and exclusively by Members, will provide transportation services to Members, such as the chartering and space chartering of vessels, the negotiation and utilization of intermodal rates with common and contract carriers for inland freight transportation for export shipments to the United States export terminal, port or gateway;

r. Provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products, Services, or Technology rights to Export Markets. This may be accomplished by NTETC itself, or by agreement with Members of other parties;

s. Meet to engage in the Export Trade, Export Trade Activities and Methods of Operation certified herein;

t. Agree, that in the case of withdrawal, the former Member will not, directly or indirectly, sell to, through, or with the assistance of any customer, consultant, employee, co-venturer, distributor, sales agent, or other representative of NTETC the Product or Service it has made available for commercialization concerning Export Market for a period of two years. This prohibition, however, shall not apply to restrict a Member from resuming a business relationship with any party with whom the Member was doing business prior to becoming a Member. The Members shall have an option to sell all of their equity shares to NTETC. The price shall be at "book value" except that in the event a Member exercises its option within two (2) years after its purchase of the stock, then the price shall be the lesser of "book value" or one half of the purchase price paid by the Member.

2. NTETC and/or its Members may exchange and discuss the following types of information:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic, sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods; that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services and the transfer of Technology Rights to and in the Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products, Services, and Technology Rights available from competitors for sale or transfer to particular Export Markets; and the prices and value for such Products, Services, and Rights; and customer specifications for Products, Services, and Rights, in the Export Markets;

c. Information about export prices, quality, quantity, source, ability to supply Products, Services, and Technology Rights in sufficient form to meet an export opportunity, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to Product quantity, source, export prices, ability to supply in sufficient form shall be on a transaction-by-transaction basis only and shall relate solely to Products, Services, and Technology Rights intended for or available for export and involve only those Members who are participating or have a genuine interest in participating in that particular transaction or trade opportunity;

d. Information about terms and conditions on contracts for sales in Export Markets to be considered and/or bid on by NTETC and/or its Members;

e. Information about joint bidding, selling or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales or transfers to Export Markets;

h. Information about NTETC or its Members' export operations, including without limitation sales and distribution networks established by NTETC and/or its Members in Export Markets, and prior export sales or transfers by Members (including export price information); and

i. Information necessary to the conduct of Export Trade Activities and Methods of Operation in the Export Markets.

Dated: July 13, 1992

George Muller,

Director, Office of Export trading Company Affairs.

[FR Doc. 92-16909 Filed 7-16-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Proposed Boundary Expansion for the Narragansett Bay (Rhode Island) National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice with request for comments.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric and Atmospheric Administration, U.S. Department of Commerce is considering the State of Rhode Island's request to expand the boundary of the Narragansett Bay National Estuarine Research Reserve.

FOR FURTHER INFORMATION CONTACT: Ms. Annie Hillary or Ms. Cheryl A. Graham at (202) 606-4122.

SUPPLEMENTARY INFORMATION: The Narragansett Bay National Estuarine Research Reserve (Reserve) was designated in 1980 pursuant to section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The Reserve includes more than 1,110 acres of land and tidal wetlands and mroe than 1,600 acres of water adjoining the islands to the 18-foot isobath.

The State of Rhode Island recently requested NOAA approval to amend the Reserve's boundary to include all state-owned land on Prudence Island managed by the Department of Environmental Management as well as the proposed 454 acres of land at the southern end of Prudence Island currently owned by the Heritage Trust of Rhode Island. The Reserve boundaries for Hope Island and Patience Island would remain unchanged.

The Reserve expansion would enhance the opportunities for research and education as well as enhancing the State's resource protection efforts around Narragansett Bay.

The expansion proposes inclusion of 454 acres of land at the southern end of Prudence Island currently owned by the Heritage Trust of Rhode Island. Negotiations are currently underway between the Nature Conservancy, the state and the Prudence Conservancy for the purchase of this property. This property includes a vast forested area with mixed stands of oak and maple. This woodland supports a dense understory of shrubs and vines, providing excellent cover or wildlife. The tract also contains "Schoolhouse Swamp", the largest freshwater wetland on Prudence Island. It is a forest wetland with a red maple overstory. Drainage is both north, toward the "Barre" property which is within the Reserve, and south into "Crow Swamp" which is in the "Jiacovelli" parcel, also included in this boundary expansion proposal.

The proposed properties include 600 acres at the southern tip of Prudence Island, that is currently in state ownership. The site contains a mix of woodland, open fields, freshwater wetlands and approximately 2½ miles of shoreline on Narragansett Bay. A large wharf extending far out into the Bay provides a platform for education programs and recreational fishing. A smaller dock in a protected cove is used by recreational boaters to access the site and may be used as a ferry dock as it has been in the past. A few buildings on the property may be easily refurbished to serve as a lab and an office.

The proposed expansion also includes the 27 acre "Gallagher" parcel and the 140 acre "Jiacovelli" parcel which are in state ownership. These two parcels contain upland habitat, freshwater wetland habitat, and frontage on Narragansett Bay. They provide a wildlife corridor connecting the 454 acre Heritage Trust parcel and the 600 acre South Prudence parcel.

Any person wishing to comment on the proposed boundary expansion may forward written comments to Ms. Annie Hillary, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC, 20235. Comments must be submitted no later than thirty (30) calendar days from issuance of this notice.

(Federal Assistance Catalog Number 11.420 Coastal Zone Management—Estuarine Sanctuaries)

Dated: July 8, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-16778 Filed 7-16-92; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 17, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557-1145.

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 commodity listed below from a nonprofit agency employing individuals 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 organization that will furnish the commodity to the Government.

2. The action will result in authorizing a small entity to furnish the commodity 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 commodity 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.

It is proposed to add the following commodity to the Procurement List:

Heater, Flameless, 8970-01-321-9153

Nonprofit Agency: Consolidated Products and Services, Inc. North Quincy, Massachusetts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-16922 Filed 7-16-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a service to be furnished by nonprofit agencies employing persons with severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 17, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

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 the designated 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 does not appear to have a severe economic impact on the current contractor for the service.

3. The action will result in authorizing small entities to furnish the service 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 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.

It is proposed to add the following service to the Procurement List for provision by the designated nonprofit agency:

Janitorial/Custodial, (excluding buildings 4543, 5155, 5224, 5167 and 4714), Barksdale Air Force Base, Louisiana.

Nonprofit Agency: North Louisiana Goodwill Industries, Rehabilitation Center, Inc., Shreveport, Louisiana.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–16923 Filed 7–16–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 17, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 24 and May 22, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 15059 and 21768) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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 commodity or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity or services.

3. The action will result in authorizing small entities to furnish the commodity or 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 commodity or services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Mask, Extreme Cold Weather, 8415–01–181–1398.

Services

Janitorial/Custodial, Federal Aviation Administration, Air Route Traffic Control Center, 326 E. Lorain Street, Oberlin, Ohio.

Janitorial/Custodial, Tacoma Union Station Federal Building, 1733–1739 Pacific Avenue, Tacoma, Washington.

Switchboard Operation, Keesler Air Force Base, Mississippi.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–16924 Filed 7–16–92; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Regulatory Coordination Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2. 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the new Hearing Room at the Commission's Washington, DC headquarters located at level B–1, 2033 K Street, NW., Washington, DC 20581, on Wednesday, August 12, 1992, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Report from the Working Group on International Competitiveness on Risk-Based Capital.

2. Report from the Working Group on Clearance and Settlement.

3. Report on regulatory barriers to the use of futures and derivatives by pension plans including discussion of ERISA issues.

4. Follow-up on issues discussed at earlier Committee meetings including Reports on Beginning Net Asset Value and Excellence 2000.

5. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1992 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Chairman Wendy L. Gramm, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a

copy of the statement to the attention of: The Commodity Futures Trading Commission Regulatory Coordination Advisory Commodity Committee, c/o Ms. Kate Hathaway or Mr. Robert Zwirb, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Ms. Hathaway or Mr. Zwirb in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on July 13, 1992.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 92-16842 Filed 7-16-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The U.S. Army Survey of Registered Nurses and Nursing Students.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 30.96 minutes.

Responses per Respondent: 1.

Number of Respondents: 5,000.

Annual Responses: 5,000.

Annual Burden Hours: 2,580.

Needs and Uses: This survey is to help the Federal Government learn more about the work environment, beliefs, and aspirations of nurses and nursing students, and their knowledge and view of the Army Nurse Corps.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 13, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-16844 Filed 7-16-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Alter a Record System

AGENCY: Department of the Navy, DOD.

ACTION: Alter a record system.

SUMMARY: The Department of the Navy proposes to alter an existing system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The alteration will be effective on August 17, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22671, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51794, Dec. 18, 1989
54 FR 52976, Dec. 28, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48678, Nov. 21, 1990
55 FR 53167, Dec. 27, 1991
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
55 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59217, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991
57 FR 2719, Jan. 23, 1992
57 FR 2726, Jan. 23, 1992
57 FR 2898, Jan. 24, 1992
57 FR 5430, Feb. 14, 1992
57 FR 9246, Mar. 17, 1992
57 FR 12914, Apr. 14, 1992
57 FR 14698, Apr. 22, 1992
57 FR 18472, Apr. 30, 1992
57 FR 24822, Jun. 10, 1992
57 FR 26821, Jun. 16, 1992

The altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on July 6, 1992, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: July 13, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520-5

SYSTEM NAME:

Navy Joint Adjudication and Clearance Systems (NJACS), (52 FR 22671, June 15, 1987).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Primary: (System Control) - Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388-5029; (System Computer Facility) - Defense Investigative Service, Personnel Investigations Center, 2200 Van Deman Street, Baltimore, MD 21224-6603.

Decentralized Segments:
Headquarters, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington, DC 20390–5210; Headquarters, Naval Intelligence Command (NIC–04), Room 282, NIC Building, 4600 Silver Hill Road, Suitland, MD 20389–5000; and, Headquarters, Naval Investigative Service Command, Washington, DC 20388–5000.

Additionally, duplicate portions of records may be held at the security office at the activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices."

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Delete entry and replace with "All Department of the Navy (DON) military personnel and civilian employees and certain 'affiliated employees' whose duties require a DON security clearance or assignment to sensitive positions. 'Affiliated employees' include contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "The system contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the identification code (UIC) of the individuals's unit of assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files will also include duty-assignment designations, such as cryptographic information access or participation in the Personnel Reliability Program. The system also includes correspondence and documentation related to the adjudication decision."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 7311; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Orders 10450 and 9397."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "The system maintains NJACS records on persons as long as they continue to be employed by or affiliated with the DON. Computer data records are purged one year after an individual terminates DON employment or affiliation. Documents supporting adverse adjudicative actions which are not part of a Department of Defense or Federal investigative file are transferred to the Naval Investigative Service Command for retention. Files are retained for 25 years and then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.>

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

Individuals requesting personal records must provide a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury, full identifying data and mark the letter and envelope containing the request 'Privacy Act Request'. Proposed amendments to the information must be directed to the agency which conducted the investigation."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

The letter and envelope should be clearly marked "Privacy Act Request" and should include the full name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity or a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury for release to a third party."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Delete entry and replace with "Parts of this record system may be exempt pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager."

* * * * *

N05520–5

SYSTEM NAME:

Navy Joint Adjudication and Clearance System (NJACS).

SYSTEM LOCATION:

Primary: (System Control) - Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029; (System Computer Facility) - Defense Investigative Service, Personnel Investigations Center, 2200 Van Deman Street, Baltimore, MD 21224–6603.

Decentralized Segments:
Headquarters, Naval Security Group Command, 3801 Nebraska Avenue, NW, Washington, DC 20390–5210; Headquarters, Naval Intelligence Command (NIC–04), Room 282, NIC Building, 4600 Silver Hill Road, Suitland, MD 20389–5000; and, Headquarters, Naval Investigative Service Command, Washington, DC 20388–5000.

Additionally, duplicate portions of records may be held by: Chief of Naval Personnel (Pers 81), Washington, DC 20370–5000; Director, Office of Civilian Personnel Management, 800 N. Quincy Street, Arlington, VA 22203–1998; Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800; Commandant, Headquarters, U.S. Marine Corps (Code MIF), Navy Department, Washington, DC 20380–0001; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of the Navy (DON) military personnel and civilian employees and certain 'affiliated employees' whose duties require a DON security clearance or assignment to sensitive positions. Individuals adjudicated as a result of interservice and interagency support agreements. 'Affiliated employees' include

contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the identification code (UIC) of the individuals's unit of assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files will also include duty-assignment designations, such as cryptographic information access or participation in the Personnel Reliability Program. The system also includes correspondence, investigatory and other documentation related to the adjudication decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7311; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Orders 10450 and 9397.

PURPOSE(S):

To provide a comprehensive system to manage information required to adjudicate the eligibility of DON military, civilian, and certain affiliated employees for security clearances and to provide a record of those adjudications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, disks, and drums. Paper records, microfiche, printed reports, and other related documents supporting the system are filed in cabinets and stored in controlled access areas.

RETRIEVABILITY:

By name, Social Security Number, and date and place of birth.

SAFEGUARDS:

Controls have been established to restrict computer output only to authorized users at all system locations. Specific procedures are also in force for the disposal of computer output. Computer files are kept in secure, continually manned areas and are accessible only to authorized computer operators, programmers, and adjudicators who are directed to respond to valid official requests for information. This access is controlled and monitored by the security system. Files transferred to NIS for storage are monitored and stored on open shelves and filing cabinets located in secured areas accessible to only authorized personnel.

RETENTION AND DISPOSAL:

The system maintains NJACS records on persons as long as they continue to be employed by or affiliated with the DON. Computer data records are purged one year after an individual terminates DON employment or affiliation. Documents supporting adverse adjudicative actions which are not part of a Department of Defense or Federal investigative file are transferred to the Naval Investigative Service Command for retention. Files are retained for 25 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

Individuals requesting personal records must provide a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury, full identifying data and mark the letter and envelope containing the request 'Privacy Act Request'. Proposed amendments to the information must be directed to the agency which conducted the investigation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5029.

The letter and envelope should be clearly marked "Privacy Act Request" and should include the full name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity or a notarized statement or an unsworn declaration subscribed to be true under penalty of perjury for release to a third party.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the cognizant security manager or other official sponsoring the security clearance/ determination for the subject and from information provided by other sources, e.g., personnel security investigations, personal financial records, military service records and the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(1) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 92–16878 Filed 7–16–92; 8:45]
BILLING CODE 3810-01-F

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: the Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) (A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center (PETC) to the National Academy of Science for the continuation of their effort entitled "Future Directions in Fundamental Advanced Extraction and Process Technology."

SUPPLEMENTARY DATA:

Grant No.: DE–FG22–91BC14836.

Title: Support of "Future Directions in Fundamental Advanced Extraction and Process Technology."

Awardee: National Academy of Science.

Term: 6 months.

Cost: Total estimated cost is $121,000.

Scope: Based upon the authority of 10 CFR600.7(b)(2)(i) criteria (A) and (D), the objective of this proposed activity is to provide financial assistance to the National Academy of Science by means of a renewal grant, which will allow the Academy to develop and advance new concepts and technology in the Advanced Extraction and Process Technology Program. The purpose of this renewal grant is to request the assistance of the National Academy of Science in a more complete information gathering process. The process by which this input is gathered will obtain essential input and feedback from many different constituencies of the AEPT program. The report itself will be disseminated widely to the scientific and technical communities that have an interest in the program.

The Cooperative research program extends an unique opportunity to complete research with well-recognized institute research personnel which can have a major impact on the projects for assessing and identifying future direction in advanced extraction and process technology and has a very high probability of success.

The transaction of this project will benefit the public such that it will facilitate the cooperation between DOE personnel and the Academy for solutions to future directions in advanced extraction and process technology, and it will provide for the fruitful exchange of ideas between various members of the scientific community.

FUR FURTHER INFORMATION WRITE TO: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Cynthia Mitchell, Contract Specialist, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

Dated: July 2, 1992.

Dale A. Siciliano,

Chief, Contracts Group I, Acquisition and Assistance Div.

[FR Doc. 92–16913 Filed 7–16–92; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Environmental Restoration and Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Restoration & Waste Management Advisory Committee (EMAC).

Date and Time: Wednesday, August 5, 1992, 10 a.m. to 6 p.m., Thursday, August 6, 1992, 8:30 a.m. to 4 p.m.

Place: The Sheraton Washington Hotel—Maryland Room, 2660 Woodley Road & Connecticut Avenue, NW., Washington, DC 20008.

Contact: James T. Melillo, Executive Secretary, EMAC, AC–21, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4400.

Purpose of the Committee: The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The EMAC will help to improve the Environmental Restoration and Waste Management Program to assisting in the process of securing consensus recommendations, and providing the department's numerous publics with opportunities to make their views known on the Environmental Restoration and Waste Management Program.

Tentative Agenda

Wednesday, August 5, 1992

10 a.m. Chairman Glenn Paulson Opens Meeting
Opening Remarks Assistant—Secretary Leo Duffy on EMAC and over all EM Program
Environmental Restoration/Waste Management/Technology Development Presentations
Noon Lunch
1 p.m. Continuation of Presentations
6 p.m. Meeting Adjourned Until Next Day

Thursday, August 6, 1992

8:30 a.m. EM Public Participation Policy & Practice
Programmatic Environmental Impact Statement (PEIS)
12:30 p.m. Lunch
1:30 p.m. Public Comment Session
2:30 p.m. Committee Business
4 p.m. Meeting Ends

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo 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 on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the 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 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 13, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer

[FR Doc. 92–16916 Filed 7–17–92; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Taylor Lakes Area Relocation Project Floodplain and Wetland Involvement Notification

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Floodplain and Wetland Involvement, Wasco County, Oregon.

SUMMARY: BPA proposes to relocate tower structures on the Big Eddy-Chenoweth No. 1 and No. 2 230-kilovolt (kV) transmission lines and the Dalles-Goldendale No. 1 115-kV transmission line in order to remove existing structures from wet conditions and improve maintenance accessibility in the Taylor Lakes area, just north of the Chenoweth Substation in Wasco County, Oregon. BPA would remove 13 wood pole structures and rebuild with two new wood pole and two steel structures within ½ mile of the existing right-of-way. A new access road system would be designed in order to maintain the structures. The road system would be both within and outside of the right-of-way. Wetlands and the 100-year floodplain of the Columbia River occur in the area. No alternative locations for the poles or the access road system have been identified at this time.

DATES: Any comments are due on or before August 4, 1992.

FOR FURTHER INFORMATION CONTACT: John Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, 503–230–4995.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW PROCEDURES OR THE STATUS OF A NEPA REVIEW, CONTACT: Carol Brogstrom, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or 800–472–2756.

SUPPLEMENTARY INFORMATION: Portions of the project would be located in the 100-year floodplain in sections 21 and 38 within Township 2 North, Range 13 East bounded by Interstate Route 84N to the

west and the Columbia River to the east. All wooden structures would be removed from existing wet conditions and replaced with structures located in upland areas out of the 100-year floodplain. A portion of the access road system would be located in the 100-year floodplain.

Lacustrine and palustrine wetlands occur within the previously cited sections. Towers would be placed in the upland areas in order to minimize impacts to wetlands, while the line itself would span the wetlands. Most of the access road system would also be located in upland area. Approximately 1500 square feet of road would cover a semi-permanent wetland that is diked with vegetation ranging from persistent emergents to broad-leaved, deciduous scrub/shrub.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain/wetland assessment on this proposed action. If the project can be categorically excluded from further National Environmental Policy Act review, the results of the floodplain/wetland assessment will be included in the categorical exclusion and the floodplain statement of findings will be published in the **Federal Register**. If the project requires an environmental assessment or an environmental impact statement, the floodplain/wetland assessment would be included in the appropriate environmental document and the floodplain statement of findings will be included in the Finding of No Significant Impact or the Record of Decision. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on July 2, 1992.

John S. Robertson,

Deputy Administrator.

[FR Doc. 92-16912 Filed 7-16-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: comments must be filed on or before August 17, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FPC-14.
3. 1902-0027.
4. Annual Report for Importers and Exporters of Natural Gas.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for-profit.
9. 46 respondents.
10. 1 response.
11. 3.1 hours per response.
12. 142 hours.
13. The purpose of this report/filing requirement is to collect data used to assist in the monitoring and regulation of natural gas imports and exports in the United States.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-73.
3. 1902-0019.
4. Oil Pipeline Service Life Data.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 15 respondents.
10. 1 response.
11. 40 hours per response.
12. 600 hours.
13. FERC-73 data are used to perform service life analysis for oil pipeline properties. These data are necessary to determine book depreciation rates.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC July 9, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-16919 Filed 7-16-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-685-000, et al.]

PacifiCorp, et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 10, 1992.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER92-685-000]

Take notice that on July 1, 1992, PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Rules and Regulations, Eleventh revised Sheet No. 3.0 to

PacifiCorp's FERC Electric Tariff, Original Volume No. 5 (Tariff) and Service Agreements under Service Schedule TS–5 to the Tariff with the following utilities:

Utah Municipal Power Agency (UMPA)
Deseret Generation & Transmission Co–Operative (Deseret)
City of Bountiful, Utah (Bountiful)

The Service Agreements provide for non-firm transmission service under the Tariff.

PacifiCorp respectively requests, pursuant to § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of August 1, 1992 be assigned to the UMPA Service Agreement, such date being consistent with the effective date agreed to in the Service Agreement. PacifiCorp requests that the Deseret and Bountiful Service Agreements be accepted for filing effective sixty days after receipt of this filing. The waiver will have no effect upon purchasers under other rate schedules.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corp.

[Docket No. ER92–684–000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 176, an agreement between Niagara Mohawk and the Rochester Gas & Electric Corporation.

Rate Schedule No. 176 provides for the wheeling of certain loads by Niagara Mohawk to RG&E. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992. In support thereof, Niagara Mohawk states that RG&E has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223; and Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Co.

[Docket No. ER92–304–000]

Take notice that on June 30, 1992, Central Illinois Public Service Company (CIPS) tendered for filing a Letter Agreement, dated June 1, 1992, amending in minor respects the Power Supply and Transmission Services Agreement, dated January 9, 1992, between CIPS and Wabash Valley Power Association, Inc. (Wabash Valley) filed in this docket January 31, 1992. CIPS also provided additional information sought by the Staff.

Copies of the filing have been served on Wabash Valley, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER92–676–000]

Take notice that on June 30, 1992, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Termination of the Interconnection Agreement and Service Schedules A–1 and B–1 thereto between PNM and Utah Power and Light Company (predecessor to PacifiCorp) (PNM Rate Schedule FPC No. 17).

PNM requests that the Interconnection Agreement and Service Schedules thereto be terminated effective as of the date of the Commission's acceptance for filing of the Notice of Termination.

Copies of the filing have been served upon PacifiCorp and the New Mexico Public Service Commission.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corp.

[Docket No. ER92–681–000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 165, an agreement between Niagara Mohawk and the New York State Electric & Gas Corporation.

Rate Schedule No. 165 provides for the wheeling of certain loads by Niagara Mohawk to NYSEG. The proposed change revises the rates and the annual effective date for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992. In support thereof, Niagara Mohawk states that NYSEG has consented to this proposed effective date.

Copies of this filing were served upon the Public Service Commission of the State of New York and the New York State Electric & Gas Corp.

Comment date: July 24, 1992, in accordance with Standard Paragraph E end of this notice.

6. Northern States Power Co.

[Docket No. ER92–452–000]

Take notice that on July 6, 1992, Northern States Power Company (NSP) tendered for filing a proposed rate for Short Term Power for inclusion in the Interconnection and Interchange Agreement dated March 31, 1992, between NSP and the Central Minnesota Municipal Power Agency. This revised rate schedule constitutes an amendment to NSP's original filing dated April 9, 1992.

The Interconnection and Interchange Agreement (Agreement) between NSP and CMMPA provides for certain sales of power and/or energy between NSP and CMMPA pursuant to service schedules attached to the Agreement, including the terms and conditions of such services. The proposed amendment will establish a weekly rate cap for daily service for Service Schedule B—Short Term Power.

NSP requests that the Agreement (as amended) be accepted for filing effective May 1, 1992, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Co.

[Docket Nos. ER91–337–002 and EL91–031–001]

Take notice that on June 25, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a compliance report in FERC Docket Nos. ER91–337–000 and EL91–31–000. FERC Docket No. ER91–337–000 included reduced rates to the Western Area Power Administration (Western) due to the Tax Reform Act of 1986, for the period July 1987 through March 1991. The Commission required that PG&E submit a compliance report showing the return of the revenues in excess of the Tax Reform Act of 1986 rates with interest. After reviewing the calculations with Western, PG&E has submitted its compliance report, showing all monies were refunded with interest as of November, 1991.

Copies of this filing were served upon Western, the California Public Utilities Commission and the parties to the Service List to FERC Docket Nos. ER91–337–000 and EL91–31–000.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. The United Illuminating Co.

[Docket No. ER92-677-000]

Take notice that on June 30, 1992, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination involving the sale of capacity entitlements to UNITIL Power Corp. (UPC). The rate schedule corresponds to a letter agreement, dated June 10, 1991, between UI and UPC. The commencement date for service under the agreement is June 16, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's Bridgeport Harbor Station Unit #2.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corp.

[Docket No. ER92-683-000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Company.

Rate Schedule No. 142 provides for the wheeling of certain loads by Niagara Mohawk to LILCO. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992 and requests waiver of the Commission's notice requirements. In support thereof, Niagara Mohawk states that LILCO has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223; and

Long Island Lighting Company, 157 East Old Country Road, Hicksville, NY 11801.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corp.

[Docket No. ER92-682-000]

Take notice that on July 1, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 141, an agreement between Niagara Mohawk and the Central Hudson Gas and Electric Corporation.

Rate Schedule No. 141 provides for the wheeling of certain loads by Niagara Mohawk to CHG&E. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1992. In support thereof, Niagara Mohawk states that CHG&E has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223; and

Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12601.

Comment date: July 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol 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). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16857 Filed 7-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-573-000, et al.]

Transcontinental Gas Pipe Line Corp. et al.; Natural Gas Certificate Filings

July 10, 1992.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corp.

[Docket No. CP92-573-000]

Take notice that on July 2, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-515-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the firm and interruptible transportation services for United, which were authorized by the Commission in Docket No. CP78-296 and carried out according to the provisions of Transco's Rate Schedule X-166. Transco proposes to replace the services with comparable service under blanket authorization pursuant to Transco's blanket certificate issued in Docket No. CP88-328-000. In order to protect United's priority as a shipper, Transco requests a waiver of the priority queue provisions of its tariff.

Comment date: July 31, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-565-000]

Take notice that on June 30, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-565-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially sales to 6 existing jurisdictional sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon sales by reducing contract demand as follows:

Customer	Current annualized CD (Mcf)	Annualized reduction CD (Mcf)	Proposed annualized CD (Mcf)
Central Illinois Light Company	23,085,300	9,746,100	13,339,200
Ohio Gas Company	4,013,000	604,000	3,409,000
Union Electric Company	22,605,000	3,495,675	19,109,325
Central Illinois Public Service Company	28,697,000	8,381,000	20,316,000
Illinois Power Company	24,400,000	5,198,261	19,201,739

Customer	Current annualized CD (Mcf)	Annualized reduction CD (Mcf)	Proposed annualized CD (Mcf)
Citizens Gas and Coke Utility	22,285,000	5,038,000	17,247,000

Panhandle states that it would replace the existing service agreements with the customers listed above with new service agreements to take effect November 1, 1992, for terms ending October 31, 1993. It is stated that the partial abandonments requested would allow the customers to reduce their contract demand and demand charges to better reflect their actual needs. It is asserted that no customers would lose service as a result of the proposed abandonment. It is further asserted that no facilities would be abandoned as a result of the proposal.

Comment date: July 31, 1992, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16863 Filed 7-16-92; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Floodplain/Wetlands Involvement Determination for Lingle Substation Repairs and Oil Spill Containment; Goshen County, Wyoming

AGENCY: Western Area Power Administration, DOE.

ACTION: Statement of findings.

SUMMARY: The Western Area Power Administration (Western) proposes to repair structures and provide oil spill containment at the existing Lingle Substation in Goshen County, Wyoming. According to the Federal Emergency Management Agency floodplain maps, the proposed action is located near the floodplain of the North Platte River. According to 10 CFR 1022.3(b), DOE shall incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decision-making processes. Executive Order 11988, "Floodplain Management," states that if an agency proposes to allow an action to be located in a floodplain, the agency is required to consider alternatives to avoid adverse effects in the floodplain. Therefore, Western prepared a Floodplain/Wetlands Assessment for the project. Executive Order 11990, "Protection of Wetlands," requires a finding (1) that there is no practicable alternative to such construction and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

Currently the substation transforms power for the cities of Fort Laramie, Lingle, and Torrington, Wyoming. The Lingle Substation is located 2.0 miles south and 1.0 mile west of the town of Lingle, Wyoming. It is situated south of the North Platte River.

Western is proposing to replace and repair concrete structures and foundations within the Lingle Substation. Concrete structures and foundations would be repaired in place within the substation boundaries. Proposed repairs at the substation and location of the new oil containment tank would be 14 feet above the 100-year floodplain elevation. The tank, sized to accommodate oil spills from transformers and circuit breakers, would be located underground immediately adjacent to or within the fenced substation yard.

Construction of the proposed action is unavoidable since there are no practicable alternatives. The no action alternative would result in unacceptable conditions at the site relative to soil erosion and oil spill containment. Relocating the substation would be very expensive and would still require crossings or construction in the floodplain, resulting in greater environmental consequences than the proposed action.

No applicable floodplain protection standards would be violated. Surface disturbance associated with the proposed action is not expected to alter the floodplain storage volume or cause a local increase in the flood stage. No watercourses would be altered or relocated as a result of the project. Disturbed areas will be revegetated with species recommended by the U.S. Soil Conservation Service.

A freshwater pond is located immediately adjacent to the site. This wetland formed in the tailrace of the old powerplant after it was abandoned. Because accidental oil spills within the substation would be contained by the retention tank, no effects to this wetland are expected.

Prior to implementing a proposed floodplain action, DOE shall endeavor to allow at least 15 days of public review after publication of the statement of findings.

FOR FURTHER INFORMATION OR COPIES OF THE FLOODPLAIN/WETLANDS ASSESSMENT CONTACT:

Mr. Robert H. Jones, Acting Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, (303) 490-7200.

Mr. Bill Karsell, Director, Division of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, (303) 231-1706.

Issued at Golden, Colorado, June 30, 1992.
William H. Clagett,
Administrator.
[FR Doc. 92-16914 Filed 7-16-92; 8:45 am]
BILLING CODE 6450-01-M

Central Valley Project—Proposed Power Rate Adjustments, Revenue Adjustment Clause Evidentiary Hearing

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Hearing Procedures, Western File No. 1993 Central Valley Project Revenue Adjustment Clause Hearing.

SUMMARY: Under a separate **Federal Register** notice published elsewhere in this issue, the Western Area Power Administration (Western) has proposed a power rate adjustment for the Central Valley Project (CVP), a multipurpose Federal water project with ten hydroelectric generation plants, located in northern California. Power rates are set as low as possible consistent with sound business principles and must, by law, also be sufficient to recover the annual power expenses plus repay the power and certain nonpower investments of the CVP within the prescribed time periods. Western adopted a Revenue Adjustment Clause (RAC) as part of its CVP Rate Schedule CV-F6, which was approved by the Federal Energy Regulatory Commission (FERC) on October 21, 1988. The RAC effective period was May 1, 1988, through April 30, 1993. The RAC periodically adjusts estimated purchased power expenses to actual and, at the same time, adjusts estimated revenues from capacity an energy sales to actual. The difference between the estimated and actual purchased power expenses when combined with the difference between the estimated and actual revenues is either collected from or refunded to the customers on a 6-month cycle, with a $15 million limit each cycle.

Because the RAC could allocate revenue credits to the CVP customers during times that the CVP repayment was showing deficits and could allocate surcharges during times when the CVP repayment was showing surpluses, Western amended the RAC to include a qualifier that would remedy this. The amended RAC was approved by FERC on May 8, 1992, and was effective May 1, 1992.

Western has proposed a revision to the RAC as part of its rate adjustment to be effective May 1, 1993. The RAC would annually compare estimated net revenue (the amount of annual revenue remaining after paying annual expenses, including interest) to actual net revenue. The net result of the comparison would be a surcharge or credit to the CVP customers' subsequent bills for over or under collections. Billing adjustments would occur on a 9-month cycle (January through September). The limit to any adjustment would be $20 million during the 9-month cycle. Any amount greater than $20 million would be carried over to the next fiscal year, to be included in that year's RAC calculation.

Unlike other Western projects, the CVP power marketing program is significantly supported by power purchases made from various sources including the Pacific Northwest and the Pacific Gas and Electric Company. Changes in the hydrology of the CVP system and costs or amounts associated with these purchases can have a major impact on the CVP annual expenses. The RAC will be used to collect adequate revenues to repay CVP expenses in a timely manner, without over or under collection of revenues in any 1 year.

The CVP annually sells over 500 million kilowatthours of electric energy for purposes other than resale. Because of the CVP's volume of this type of sale, Western is required to comply with certain provisions of the Public Utilities Regulatory Policies Act (PURPA), 16 U.S.C. sections 2601-2645. Since the proposed RAC fits the statutory definition of an automatic adjustment clause found in PURPA section 2625(e)(B)(3), Western is required to make a determination whether it is appropriate to implement a RAC in the proposed CVP power rates. PURPA sections 2623 and 2625(e) require the nonregulated electric utility to give public notice and conduct an evidentiary hearing, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 500-576, prior to adopting any standard.

Western will conduct a hearing under PURPA section 2602(6)(B) and the APA, 5 U.S.C. 554 and 556-557, in revising the RAC. Opportunities will be available for interested persons to review the proposed RAC, to participate in the hearings, and to submit written testimony. During the development of the record for the RAC, Western will evaluate all written and oral testimony submitted during the hearings. A Findings of Fact and Law will be issued to determine if the revised RAC is appropriate to be placed in the rate after all testimony is submitted.

The document entitled "Western Area Power Administration United States Department of Energy Rules of Procedure Governing PURPA Hearings" (Procedures) has been prepared specifically for this RAC evidentiary hearing and will be mailed to all CVP customers on or about the date of publication of this **Federal Register** notice. Also, a copy of these Procedures will be provided to anyone upon request directed to the Area Manager or General Counsel listed below.

DATES: Persons wishing to become a formal party to the proceedings must file a motion to intervene to be received by August 18, 1992, addressed as follows: Hearing Officer, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825-1097.

FOR FURTHER INFORMATION CONTACT:

Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825-1097, (916) 649-4418, or

Mr. Michael S. Hacskaylo, General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, (303) 231-1534.

Western requests that all comments and documents submitted as part of the Official Record compiled in the process of developing the revenue adjustment clause contain the file number designation: 1993 CVP RAC Hearing.

ACTIVITIES: A prehearing conference will be held before the Hearing Officer at 3 p.m. on August 18, 1992, at the Holiday Inn-Holidome, 5321 Date Street, Sacramento, California 95841 (following the public information forum on the proposed rate adjustment). Registration for the prehearing conference will begin at 2:30 p.m.

The evidentiary hearing will be held before the Hearing Officer at 10 a.m. on August 25, 1992, at the Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, suite 105, Sacramento, California 95825.

Both the prehearing conference and the evidentiary hearing will be documented by transcript.

During the discovery period, scheduled to begin July 17, 1992 through August 17, 1992, customers or interested parties may:

1. Request data from Western which is to be provided to the requestor, to the extent possible, within 5 working days.

2. Obtain party status by filing a motion to intervene and may file written testimony, thereby obtaining full judicial rights (e.g., right to comment, cross examine, etc.).

3. Obtain participant status by providing written comments on the RAC, or make oral or written comments

at the evidentiary hearing. A participant shall not have full judicial rights.

For item 1 above, the request for data should be directed to the Area Manager of the Sacramento Area Office at the address given above. For items 2 and 3, letters, comments, and testimony, as appropriate, should be sent to the Hearing Officer at the address given above.

Western's written testimony on the RAC will be distributed during the discovery period to all CVP customers, previously identified parties, and other interested parties who request testimony from the Sacramento Area Office at the address shown above during the discovery period.

SUPPLEMENTARY INFORMATION: Under section 553(b)(3)(A) of the APA, "rules of agency organization, procedure, or practice" are exempt from notice and comment rulemaking procedures (5 U.S.C. 553(b)(3)(A)). In *Southern California Edison* v. *FERC*, 770 F. 2d 779 (9th Cir. 1985), the court held that the procedural rules of agency organization, procedure, or practice are exempt from the notice and comment requirement of the APA. Western finds that these are also procedural rules exempt from notice and comment rulemaking procedures. Accordingly, these rules are effective upon publication, for the PURPA hearing, to determine if the revised RAC is appropriate to be placed in the 1993 CVP rate.

Issued at Golden, Colorado, July 7, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-16921 Filed 7-16-92; 8:45 am]

BILLING CODE 6450-01-M

Central Valley Project—Proposed Commercial Firm Power Rates, Firm and Nonfirm Transmission Service Rates, and Peaking Capacity Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Central Valley Project Commercial Firm Power Rate, Firm and Nonfirm Transmission Rate, and Peaking Capacity Rate Adjustments.

SUMMARY: The Western Area Power Administration (Western) is proposing rate adjustments (Proposed Rates) for commercial firm power, firm and nonfirm transmission service, and peaking capacity for the Central Valley Project (CVP), a multipurpose Federal water project with ten hydroelectric generation plants, located in Northern California. The power repayment study (PRS) and other analysis indicate that the Proposed Rates are necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The rate impacts are detailed in a rate brochure to be distributed to all interested parties. The Proposed Rates are expected to become effective May 1, 1993.

The Proposed Rates for commercial firm power are based on composite rates consisting of base energy rates up to 70-percent load factor, tier energy rates over 70-percent load factor, and capacity rates.

The Proposed Rates are designed to recover 45 percent of the revenue requirements from the capacity rate and 55 percent from the energy rate through fiscal year (FY) 1995. Thereafter, the rates will recover 40 percent from capacity and 60 percent from energy.

The Proposed Rates provide for composite rate increases beginning on May 1, 1993; October 1, 1995; and October 1, 1997. The Proposed Rates and applicable revenue requirement split are provided in Table 1. Table 2 provides the percentage increases in rates.

The Proposed Rates for commercial firm power are subject to adjustment upward or downward prior to approval of Provisional Rates if the Project Dependable Capacity dispute with Pacific Gas and Electric Company (PG&E) is settled or decided by a court ruling before Provisional Rates are approved or if it is determined that the California drought will have a more severe impact on the rates than projected.

TABLE 1.—PROPOSED COMMERCIAL FIRM POWER RATES

Effective period	Total composite (mills/kWh)	Capacity ($/kW)	Energy (mills/kWh)		Capacity/ energy split
			Base	Tier	
05/01/93 to 09/30/93	36.90	8.60	20.29	None	45/55
10/01/93 to 09/30/95	33.50	7.83	17.75	27.23	45/55
10/01/95 to 09/30/97	34.70	7.23	20.00	31.48	40/60
10/01/97 to 04/30/98	36.40	7.58	20.94	33.61	40/60

The Tier Rate will be applied to the commercial firm energy at 70-percent load factor and above with the load factor based on the lessor of the customer's (1) maximum demand or, if a scheduling customer, scheduled demand; or (2) contract rate of delivery for commercial firm power.

A 13.2-percent composite rate increase is proposed for the 5-month period of May 1, 1993, to September 30, 1993, due to the projected impact that the California drought and wildlife protection measures will have on CVP generation. Reduced generation requires additional power purchases to serve the CVP customer load. The 5-month rate increase is necessary to compensate for higher purchased power costs in FY 1992, which causes a projected deficit in FY 1992 and in the first 7 months of FY 1993. The higher rates in FY 1993 along with projected Revenue Adjustment Clause (RAC) surcharges in FY 1992 and FY 1993 are needed to prevent the CVP repayment remaining deficit in the first fiscal year of the rate adjustment period.

The PRS results indicate that this 5-month rate increase will provide adequate revenues to repay all annual expenses in FY 1993. The rates can be reduced after FY 1993 because the proposed rates will be applied for a full year to provide adequate revenues to repay all projected costs.

The Deputy Secretary, U.S. Department of Energy (DOE), approved the existing rate schedules on an interim basis on March 7, 1988, and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedules on a final basis on October 21, 1988. The existing rate schedules were effective on May 1, 1988. The existing CVP commercial firm power composite rate (before adjusting for contract dependable capacity (CDC) credits) is 32.60 mills per kilowatthour (mills/kWh). The existing energy rate is 16.30 mills/kWh and the capacity rate is $7.74 per kilowatt-month (kW-mo). Table 2 provides a comparison of CVP existing rates and the Proposed Rates:

TABLE 2.—PERCENTAGE CHANGE IN COMMERCIAL FIRM POWER RATES

Effective period	Total composite (mills/kWh)	Percent change	Capacity ($/kW-mo)	Percent change	Energy composite (mills/kWh)	Percent change
Existing Rates 10/01/91 to 04/30/93	32.60		7.74		16.30	
Proposed Rates 05/01/93 to 09/30/93	36.90	13.2	8.60	11.1	20.29	24.5
10/01/93 to 09/30/95	33.50	(9.2)	7.83	(9.0)	18.43	(9.2)
10/01/95 to 09/30/97	34.70	3.6	7.23	(7.7)	20.82	13.0
10/01/97 to 04/30/98	36.40	4.9	7.58	4.9	21.84	4.9
Total Percentage Change		11.7		(2.1)		34.0

Special Adjustment Clauses Associated With the Proposed CVP Power Rates

Power Factor Adjustment Clause

Western's Integration Agreement with PG&E requires Western's customers to maintain a 95-percent power factor at their points of delivery. Western proposes to amend its surcharge for noncompliance with this power factor requirement to bill on kilovars, rather than a percentage of the total power bill. Western is proposing that the kilovars at 95-percent power factor be compared to actual kilovars. The customer will be charged for the excess kilovars.

Revenue Adjustment Clause

The CVP power marketing program is significantly supported by power purchases made from the Pacific Northwest and PG&E. Due to the dynamic nature of these purchased power expenses, Western is proposing to continue its RAC. However, the proposed RAC will measure against net revenue, rather than the existing method that measures only purchased power expenses and firm power revenues. The net result of these adjustments would be surcharged or credited to the CVP customer's subsequent bills based on the customer's contribution to the revenue collected during the RAC period, the same as the existing RAC. It is proposed that adjustments would occur on an annual cycle. The limit to any annual adjustment would be $20 million overall.

Low Voltage Loss Adjustment

The billed amounts for low-voltage customers' (below 44 kV) deliveries on the PG&E system will be the metered amounts of energy and capacity at the point of delivery, multiplied by a loss adjustment factor of 1.035. This is identical practice to that presently required by CVP Rate Schedule CV–F6 and is designed to account for the fact that deliveries to the low-voltage customers incur 8-percent losses, while high-voltage customers incur 4.5-percent losses.

Rate Schedule for CVP Transmission

The Proposed Rate for firm transmission is $0.43 per kW-mo., a 10.6-percent reduction in the existing rate of $0.481 per kW-mo. The Proposed Rate for nonfirm transmission is 1.23 mills/kWh, a 20.4-percent increase from the existing 1.022 mills/kWh rate. The Proposed Rates for CVP transmission are applicable to third parties requesting service over the CVP transmission system for other than CVP power. The Proposed Rates for transmission service are based on the revenue required to pay certain network transmission system costs for facilities associated with third-party transmission.

Rate Schedule for CVP Power Transmission by Others

Transmission service charges incurred by Western in the delivery of CVP power over a third-party's transmission system to a CVP customer will be directly passed through to that customer. Rates under this schedule are proposed to be automatically adjusted as third-party transmission charges are adjusted.

Rate Schedule for Peaking Capacity

The Proposed Rates for peaking capacity are the same as proposed for commercial firm capacity, as follows:

TABLE 3.—PROPOSED PEAKING CAPACITY RATES

Effective period	Firm ($/kW-mo)
05/01/93 to 09/30/93	8.60
10/01/93 to 09/30/95	7.83
10/01/95 to 09/30/97	7.23
10/01/97 to 04/30/98	7.58

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the Proposed Rates for approval on an interim basis by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the DOE.

DATES: The consultation and comment period will begin July 17, 1992 and will end not less than 90 days later, or October 15, 1992. A public information forum will be held on August 18, 1992, beginning at 10 a.m. at the Holiday Inn-Holidome, 5321 Date Street, Sacramento, California 95841. A pubic comment forum at which Western will receive oral and written comments will be held on September 3, 1992, beginning at 10 a.m. at the Holiday Inn-Holidome, 5321 Date Street, Sacramento, California 95841.

In addition to the public information and comment forums, Western is scheduling an evidentiary hearing regarding the merits of the proposed RAC. This hearing is required by the Public Utility Regulatory Policies Act. The hearing will be held at 10 a.m. on August 25, 1992, at the Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento, California 95825. Further information regarding the hearing dates and procedures for participation in the hearing published in a separate **Federal Register** notice elsewhere in this issue and to be distributed to all CVP customers and interested parties.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825-1097, (916) 649-4418.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Toenyes, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street,

suite 105, Sacramento, CA 95825-1097, (916) 649-4421.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the CVP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 28, 1954 (Ch. 241, 68 Stat. 143).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of DOE delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the Federal Register at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Prosposed Rates for commercial firm power, firm and nonfirm transmission service, and peaking capacity are and will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, suite 105, Sacramento, California 95825.

Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the CVP firm power and firm and nonfirm transmission service rate adjustements are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the CVP commercial firm power, firm and nonfirm transmission service, and peaking capacity rates are of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291:

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of the Executive Order 12291 (46 FR 13193), published February 19, 1981. In addition, Western has an exemption from section 3, 4, and 7 of said Order 12291 and, therefore, will not prepare a regulatory impact statement.

Paperwork Reduction Act of 1980:

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided in the proposed rules for the interested public to participate with the power marketing administration in the development of rates. Nevertheless, this is at their sole selection. There is no requirement that members of the public participating in the development of the CVP firm power and firm and nonfirm transmission service rates supply information about themselves to the Government. It follows that the CVP firm power and firm and nonfirm transmission service rates are exempt from the Paperwork Reduction Act.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508), and DOE guidelines published at 57 FR 15122 on April 24, 1992, Western conducts environmental evaluations of the CVP commercial firm power, firm and nonfirm transmission service, and peaking capacity rate adjustments and develops the appropriate level of environmental documentation prior to the implementation of any rate adjustment.

Issued at Golden, Colorado, July 7, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-16920 Filed 7-16-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4155-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 17, 1992. For futher information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Preliminary Assessment Information Rule (PAIR)—(EPA ICR No. 0586.06; OMB #2070-0054). This is an extension of the expiration date of a currently approved collection.

Abstract: The Preliminary Assessment Information Rule (PAIR) was promulgated under Section 8(a) of the Toxic Substances Control Act (TSCA). PAIR gives EPA, as well as other Federal agencies, The authority to request information on specific chemical products that are subject to TSCA Section 8(a) regulations. Manufacturers or importers of chemicals listed under the Section 8(a) rule, must report to the Agency and keep records of production, import, use, environmental releases, and exposure data. The information that the EPA receives from a PAIR report is, in most cases, sufficient to support preliminary risk determination, or decision to require testing of a chemical.

Burden Statement: The public burden for this collection of information is estimated to average 35.3 hours per response for reporting and 2.1 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, complete the form, and review the collection of information.

Respondents: Chemical Manufactures and importers

Estimated No. of Respondents: 63.

Estimated No. of Responses per Respondent:1.

Estimated Total Annual Burden on Respondents: 2,781 hours.

Frequency of Collection On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401M Street, SW., Washington, DC 20460

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs 725 17th Street, NW., Washington, DC 20503.

Dated: July 10, 1992.

Richard Westlund,

Acting, Directar, Regulatary Management Divisian.

[FR Doc. 92-16901 Filed 7-16-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4154-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 29, 1992 Through July 02, 1992 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) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-AFS-L65167-AK Rating EC2, Alaska Pulp Corporation (APC) Long-Term Timber Sale Contract, Implementation, Southeast Chicago Project Area, Tongass National Forest, AK.

Summary: EPA expressed environmental concerns regarding the sales potential impacts to water quality. Additional information monitoring to ensure that best management practices will be implemented and water quality standards will be met was requested by EPA.

ERP No. D-FAA-E51043-TN Rating EC2, Memphis International Airport, Construction and Operation, Runway 18L-36R, Relocation of Swinnea Road, portion of Winchester Road and Shelby Drive, Airport Layout Plan (ALP) Approval, Funding and section 404 Permits, Shelby County, TN.

Summary: EPA reviewed the DEIS and found that the information provided in the document was not sufficient to adequately assess all noise impacts and noise mitigation issues.

ERP No. D-FHW-E50288-AL Rating EC2, William S. Keller Bridge Replacement on US-31 across the Tennessee River, City of Decatur, Funding, Coast Guard Bridge Permit, COE Section 404 Permit and TVA section 26a Permit, Morgan and Limestone Counties, AL.

Summary: EPA requested additional information on wetland mitigation and toxic spill measures to adequately assess the project impacts.

ERP No. D-FHW-E54009-NC Rating EC2, US 117 Corridor Improvement Project, US 13/70 at Goldsboro, north to US 301 in Wilson, Funding and section 404 Permit, Wayne and Wilson Counties, NC.

Summary: EPA expressed concerns for wetlands impacts, noise mitigation and water quality impacts and asked for additional information in the final EIS. EPA also identified alternative 1 as the environmentally preferred alternative.

ERP No. D-FHW-K40186-AZ Rating E02, AZ-87/Beeline Highway Upgrading, Saguaro Lake Road to near the Maricopa-Gila County Line, Funding, Land Exchange with the Forest Service and COE section 404 Permit Issuance, Maricopa County, AZ.

Summay: EPA expressed objections concerning impacts on water quality, wetlands and biological resources. EPA requested that the final EIS provide additional information on these issues.

ERP No. D-FHW-K40187-CA Rating L02, CA-17 at Lexington Reservoir Interchange Project, Interchange and Frontage Roads Construction, south of the Town of Los Gatos, Funding and section 404 Permit, Santa Clara County, CA.

Summary: EPA requested additional wetland data be included in the Final EIS. The final EIS should clearly identify the total acreage of wetlands and other waters of the US that will be filled under the various build alternatives and the mitigation to be adopted to compensate for unavoidable loss of wetlands and other waters of the US. The final EIS should also identify the least environmentally damaging practicable alternative under the Clean Water Act.

ERP No. D-FHW-L40179-AK Rating EC2, Third Street Widening Project, Improvement, Old Steese Highway and Hamilton Avenue, Funding and Right-of-Way Acquisition, Fairbanks North Star Borough, AK.

Summary: EPA expressed concern regarding the air quality analysis and requested that additional supporting data be included in the final EIS.

ERP No. D-FRC-H05023-NB Rating 3, Kingsley Dam Project (FERC. No. 1417) and North Platte/Keystone Diversion Dam (FERC. No. 1835 Hydroelectric Project, Application for Licenses, Near the confluence of the North/South Plattes, Keith, Lincoln, Garden, Dawson and Gasper Counties, NE.

Summary: EPA determined that the EIS was inadequate due to its failure to discuss all alternatives, present currently analyzed alternatives in a quantitative fashion and to meet the requirement under sections 404 and 313 of the Clean Water Act.

ERP No. D-SFW-C36069-NJ Rating EC2, Delaware River Watershed Basin, Introduction of an Anadromous Salmonid Species, Implementation, Funding, Delaware River, NJ.

Summary: EPA had environmental concerns with the proposed project because of the potential for water quality and endangered species impacts and its potential conflict with the NASCO policies governing salmonid introductions. Moreover, the proposed project's monitoring effort does not consider the potential impacts of chinook straying outside the Musconetcong River or contingency measures. Accordingly, we request that additional information be provided in the final EIS to address these issues.

ERP No. D-UAF-H10003-MO Rating L01, Whitman Air Force Base (AFB) Minuteman II of the 351st Missile Wing Deactivation, Implementation, Johnson County, MO.

Summary: EPA had no objections to the proposed project and recommended that the final EIS contain specific detailed language regarding the storage, removal transport and ultimate disposition of any toxic and/or hazardous materials.

ERP No. DS-COE-A35046-IA Rating L01, Perry Creek Flood Control Project. Construction of Channelization and Conduit Systems, Implementation, Souix City and Woodbury Counties, IA.

Summary: EPA recommended that riffle structures and the use of native prairie plant materials be included in the flood control structure design.

ERP No. DS-NOA-L91007-AK Rating EC2, Halibut and Sablefish Fixed Gear Fisheries Individual Fishing Quota Management (IFQ) Alternative, Additional Information on the specific IFQ Program recommended by the Council in December 1991, Approval and Implementation, Gulf of Alaska and Bering Sea/Aleutian Islands, AK.

Summary: EPA raised environmental concerns based on the potential for adverse impacts on sablefish and halibut stocks from high grading and under reporting. Additional information was requested to clarify whether these activities could put the halibut and sablefish stocks at risk.

Final EISs

ERP No. F–AFS–K61112–CA Sugar Bowl Ski Resort Master Plan, Development and Expansion, Tahoe National Forest, Special Use Permit and section 404 Permit, Placer and Nevada Counties, CA.

Summary: EPA felt that the FEIS addressed most of the concerns raised on the DEIS. EPA suggested that the Forest Service consider preparing additional NEPA documentation at the operations plan phase so that plans for mitigation, erosion control and monitoring would be available for public review and comment.

ERP No. F–BOP–E81031–NC Butner Federal Correctional Institution Complex, Construction and Operation, Durham-Granville County Line, NC.

Summary: EPA concerns on most impacts in the DEIS stage were addressed in the FEIS. Minor unresolved issues are related to noise impacts from construction and from operational traffic.

ERP No. F–COE–C32034–00 Delaware River Comprehensive Navigation Channel Improvement, Beckett Street Terminal in New Jersey through Philadelphia Harbor, Implementation, Several Counties, NJ, DE and PA.

Summary: EPA indicated that the implementation of the proposed project, which will incorporate the results of the supplementary studies performed and documentation developed during the upcoming preconstruction engineering and design phase, will not pose significant adverse environmental impacts. Moreover, the project will be in compliance with the Clean Water Act section 404(b)(1) Guidelines.

ERP No. F–COE–D36109–PA Lackawanna River Basin Flood Protection Plan, Funding, Implementation, Borough of Olyphant, City of Scranton, Lackawanna County, PA

Summary: EPA had no objections to the proposed project given the Corps' plans to minimize adverse environmental impacts by: (1) Managing construction activities to reduce erosion, (2) replanting vegetation immediately following construction and (3) creation of a permanent greenway.

ERP No. F–COE–K36103–CA Sacramento Metropolitan Area Flood Control Plan, Implementation, Yolo and Sacramento Counties, CA.

Summary: EPA noted that the FEIS was responsive to several concerns raised in EPA's comments on the DEIS. However, EPA expressed its continuing belief that a single programmatic evaluation of a comprehensive flood protection system for the Sacramento metropolitan area would have been a more appropriate means to evaluate assurance of adequate flood protection for the area. A programmatic NEPA document could have more accurately portrayed the collective environmental impacts of numerous interim and long-term flood control projects, including the subject EIS.

ERP No. F–FHW–B40070–NH New Hampshire Route 101/51 Corridor Improvement, Eppington to Hampton, Funding, COE section 10 and 404 Permits and U.S. Coast Guard Permit, Rockingham County, NH.

Summary: EPA supported the FEIS and the 404 permit issuance. EPA made additional recommendations for commitments to be included in the ROD to protect wetland creation sites and drinking water supplies.

ERP No. F–FHW–E40733–NC West Charlotte Outer loop Construction, I–77 South near Westinghouse Boulevard to NC–27, Funding and section 404 Permit, Mecklenburg County, NC.

Summary: EPA continued to have concerns about the lack of mitigation for noise impacts and recommended that additional consideration be given to providing noise relief to the affected homeowners where noise barriers are not deemed cost effective.

ERP No. F–FHW–K40173–CA CA–267 Bypass Construction, between I–80 and Truckee Area Bypass, Funding and section 404 Permit, Nevada County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F–SCS–H36103–MO Town Branch Watershed Protection Plan, Flood Reduction and Fish and Wildlife Improvements, Funding and section 404 Permit, City of Albany, Gentry County, MO.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F–SCS–H36104–KS Doyle Creek Watershed Protection Plan, Funding and Implementation, Possible 404 Permit, Arkansas-White-Red River Basin, Harvey and Marion Counties, KS.

Summary: EPA reviewed the Final EIS and found the project to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F–SFW–K60021–CA Stone Lakes National Wildlife Refuge Management Plan, Land Acquisition and Easement, Possible COE section 10 and 404 Permits, Central Valley, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F1–COE–D36109–PA Lackawanna River Basin at Olyphant, Flood Protection Plan, Funding and Implementation, Borough of Olyphant, Lackawanna County, PA.

Summary: EPA lacked objections to the proposed project given the Corps' efforts to minimize adverse impacts. EPA acknowledges COE's efforts to minimize adverse environmental impacts in the following ways: (1) Use of BMP during construction, (2) construction of drainage structures to minimize residual flooding impacts and (3) landscaping in the riparian corridor where EPA recommended that a variety of species be planted and will be available to provide assistance in restoration planning.

Dated: July 15, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–17016 Filed 7–16–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4154–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Availability of Environmental Impact Statements Filed July 06, 1992 Through July 10, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920267, Draft EIS, FHW, OK, OK–99/OK–3E/US 377 North of Ada Transportation Corridor Reconstruction, Funding, Section 404 and NPDES Permits, Pontotoc and Seminole Counties, OK, Due: August 31, 1992, Contact: Gary E. Larson (405) 231–4724.

EIS No. 920268, Draft EIS, AFS, WY, Strawberry Gulch Timber Sale, Timber Harvest and Road Construction, Implementation, Medicine Bow National Forest, Hayden Ranger District, Carbon County, WY, Due: August 31, 1992, Contact: Michael B. Murphy (307) 327–5481.

EIS No. 920269, Final EIS, UMT, NY, Queens Subway Improvement Options Study, 63rd Street to Archer Avenue, Funding, Queens, NY, Due:

August 17, 1992, Contact: Steve Faust (212) 264–8162.

EIS No. 920270, Final EIS, BIA, CA, AZ, NV, Fort Mojave Indian Reservation Planned Community Development, Mojave Valley Resort, Lease Approval and Site Selection, Section 404 Permit and Coast Guard Permit, San Bernardino Co., CA, Clark Co., NV and Mohave Co., AZ, Due: August 17, 1992, Contact: George R. Farris (202) 208–4791.

EIS No. 920271, Draft EIS, AFS, CO, Routt National Forest Oil and Gas Exploration and Development, Approval and Leasing, Routt, Moffat, Jackson, Grand, Garfield and Rio Blanco Counties, CO, Due: August 31, 1992, Contact: Richard Hall (303) 879–1722.

EIS No. 920272, Draft EIS, SCS, NV, Moapa Valley Unit, Irrigation Systems, Irrigation Water Management and Delivery System Improvements, Colorado River Salinity Control Program, Funding and Possible Section 404 Permit, Clark and Lincoln Counties, NV, Due: August 31, 1992, Contact: William D. Goddard (702) 784–5863.

EIS No. 920273, Final EIS, AFS, UT, East Fork Black Forks Multiple Use Management Project, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Due: August 17, 1992, Contact: Steve Ryberg (307) 789–3194.

EIS No. 920274, Final EIS, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Construction, Operation and Maintenance, Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties and San Juan County, NM, Due: August 17, 1992, Contact: Chuck Finch (303) 249–7791.

EIS No. 920275, Draft EIS, AFS, CO, Martinez Creek Timber Sale, Timber Harvest and Road Construction, Implementation, San Juan National Pagosa Ranger District, Archuleta County, CO, Due: August 15, 1992, Contact: Sam Sanga (303) 259–3027.

EIS No. 920276, Final EIS, GSA, MD, Internal Revenue Service National Office Consolidation and Construction, Site Selection, First Capital Realty Site, Meridan Site, Riverside Site or Metroview Site, Prince George's, MD, Due: August 17, 1992, Contact: Sonia Rivera-Hersha (202) 708–5334.

Amended Notices

EIS No. 920213, Draft EIS, AFS, CO, Trout Mountain Analysis Area Timber Harvest, Road Construction and Aspen Management Plan Projects, Implementation, Trout and Decker Creeks, Del Norte Ranger District, Rio Grande National Forest, Rio Grande and Mineral Counties, CO, Due: July 27, 1992, Contact: James B. Webb (719) 852–5941.

Published FR–06–05–92—Review period extended.

Dated: July 14, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–16917 Filed 7–16–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–42052K; FRL–4078–9]

Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice invites manufacturers of chemical substances who wish to participate in testing negotiations for various chemicals to develop and submit testing program proposals to EPA. Public meetings to initiate testing negotiations for selected chemicals will be announced in a separate notice.

DATES: Submit written request to be designated an interested participant along with your testing proposals on or before September 15, 1992.

ADDRESSES: Submit testing proposals to: Gary E. Timm, Chief, Chemical Testing Branch, Office of Pollution Prevention and Toxics (TS–778), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA's procedures for requiring the testing of chemical substances under section 4 of the Toxic Substances Control Act (TSCA) include the adoption of enforceable consent agreements and the promulgation of test rules. EPA has on numerous occasions been approached by chemical companies interested in negotiating consent agreements for testing ITC chemicals or chemicals which are the subject of proposed test rules. By this notice, EPA is establishing an "open season" or period of time to receive industry testing proposals for consent agreement consideration for all chemical substances for which the Agency has not yet issued final test rules. The procedures EPA will follow are outlined below.

1. *Submission of testing proposals for consent agreement negotiations.* Following publication of this notice, manufacturers have 60 days to develop testing proposals for chemical substances they wish EPA to consider as candidates for consent agreement negotiations. The testing proposals should describe the testing to be performed in detail (test guideline or protocol, including route of administration, species, etc.) and explain in detail where there are deviations from tests proposed by EPA or recommended by the Interagency Testing Committee (ITC). The Agency suggests as a model, the testing proposal submitted on acrylic acid by the Basic Acrylic Monomer Manufacturers on April 5, 1991 [Docket number OPTS–42146A]. This document is available from the Environmental Assistance Division by calling 202–554–1404.

2. *Agency selection of most likely candidates for the program.* EPA will review the submissions and select the most promising submissions as candidates for negotiation. Submissions which fully address the EPA's or ITC's concerns will have a higher chance of success than those which do not fully address all data needs issues. In some cases, where pollution prevention or risk minimization is within the control of the manufacturer, this may be offered as a substitute for more in-depth testing.

3. *Formal solicitation of "interested parties" in the* **Federal Register.** If EPA selects a proposal as a candidate for negotiation, such negotiations will be conducted pursuant to the procedures described in 40 CFR 790.22. Accordingly, EPA will publish a notice in the **Federal Register** soliciting persons interested in participating in or monitoring negotiations for the development of a consent agreement, to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties." Submitters of testing proposals will be considered interested parties and need not respond to the solicitation notice.

4. *Negotiation of testing program and development of a testing consent agreement.* Negotiations will be

conducted in meetings open to the public. EPA will conduct separate negotiations on each individual chemical substance or related group of chemical substances (e.g. chemical category). Notification of meetings will be given only to persons identified as interested parties. The first negotiation meeting will establish the period for negotiation. If agreement is not reached within this prescribed time limit and EPA chooses not to extend the negotiation period, negotiations will be terminated and testing will be required under a rule.

5. *Approval of the testing consent agreement by interested parties and EPA and publication of a notice in the* Federal Register announcing approval of the consent agreement. After EPA and interested parties have agreed in principle on the terms of the consent agreement, the consent agreement text will be sent for approval to interested parties who are actual participants in the negotiation. Subsequent to approval of the agreement, EPA will publish a notice in the Federal Register summarizing the testing program and announcing that the Agency has accepted the consent agreement in lieu of a test rule.

Specific information about the testing protocols, and the negotiations may be obtained by contacting Gary E. Timm, Chief, Chemical Testing Branch, at (202) 260–8130.

Authority: 15 U.S.C. 2603.

Dated: July 7, 1992.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–16896 Filed 7–16–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 92–792]

Commission Establishes Random Selection Procedures for Lotteries Where Mass Filings Must Be Rank Ordered for Processing

June 18, 1992.

Congress has authorized the use of lotteries to randomly select successful applicants for certain classes of applications filed with the Federal Communications Commission. Communications Amendments Act of 1982, Public Law No. 97–259, 47 U.S.C. 309(i). Generally, one of two basic tools, dependent upon the circumstances, are employed when random selection procedures are used: Either (1) a plexiglas raffle drum, complete with capsules, or (2) a forced air ping-pong ball blower. See FCCINST 1159.1B.

The random selection tools can be employed and licenses granted expeditiously when the number of licenses to be granted in a given geographic area is limited. When, however, as in the case of the over 58,000 applications received for non-nationwide licenses in the 220 MHz land mobile radio service and the over 39,000 applications received for licenses in the 900 MHz multiple address service (MAS), large numbers of applications are filed for an unspecified number of licenses over a wide area, it is necessary to rank order all of the applications received during the relevant filing window to begin processing. Under these circumstances, the most efficient method for rank ordering applications is through the use of computer assisted random selection techniques. To select successful applicants from among a large number of applications using a plexiglas raffle drum or forced air ping-pong balls could take many months, if not years, to complete. This abnormal length of time, coupled with the numerous security problems presented to the agency to protect the integrity of the procedure, precludes using or traditional tools for selecting among competing applications. Therefore, instead of using a plexiglas raffle drum or forced air ping-pong balls, a random number generator that employs the Data Encryption Standard of the National Institute of Standards and Technology (NIST) will be used in Commission lotteries involving the non-nationwide 220 MHz land mobile and the 900 MHz MAS applications, as well as similar situations that may arise.

The NIST Date Encryption Standard (DES) (*See* Federal Information Processing Standards, Publication 46–1), which is normally used to encrypt data, also functions as an excellent random number generator. It uses a 55 bit binary key to determine a randomized mapping of a 64 bit input to a 64 bit output. The algorithm has excellent statistical properties of randomness. By drawing 40 balls numbered 0 through 7, a 120 binary key will be selected. The first 56 bits of this key will serve as the key or "seed number" for the Data Encryption Standard. The other 64 bits will seed a 64-bit feedback shift register for input to the DES. The feedback shift register assures that the period before repetition in the generated random numbers has maximal length. The generated random numbers will be used to permute the list of applicants into a random sequence that is solely determined by the sequence of 40 balls drawn. This permuted sequence will determine applicant ranking in the lottery. The cryptologic complexity of DES assures that sequencing of applicants will be completely unbiased. The fact that the algorithm is publicly documented will allow results based on the random 40 balls to be independently confirmed by any interested parties. A copy of the computer program that will select the random numbers and associate them with applications is available for public inspection in room 424, 1919 M St. NW., Washington DC 20554.

The NIST data Encryption Standard computer program will be used, when appropriate, to rank order large numbers of applications filed in response to Commission announcements for new services, including the 220 MHz land mobile radio service and the 900 MHz multiple address service. As noted above, the random number program to be employed requires the input of a "seed number" to initiate the generation of numbers. This number will be selected through the use of forced air ping-pong balls at the beginning of the random selection process. The computer will then generate a series of random numbers that will be associated with the file number of each application. During the rank ordering session, the computer will print out the results of the rank ordering exercise, which will be made available for public inspection. The entire random selection process will be held in the Commission Meeting Room and be open for public viewing.

The Commission will issue further Public Notices announcing the time and date of the random selection process for these lotteries.

For information, contact Michael Gilbride of the Office of Managing Director, 202–632–7132, or Edward R. Jacobs, Private Radio Bureau, 202–632–7597.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–16879 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

Hearing Designation for Richard A. Burton, Harbor City, CA

[PR Docket 92–144; DA 92–876]

AGENCY: Federal Communications Commission.

ACTION: Notice of designation.

SUMMARY: This action designates for hearing the application for Amateur Radio Service station and operator licenses for Mr. Richard A. Burton. It is

necessary to determine whether in light of previous license revocation/suspension and convictions that the application should be granted. The effect is to determine whether the public interest, convenience and necessity would be served by granting the application.

FOR FURTHER INFORMATION CONTACT: Thomas Fitz-Gibbon, Private Radio Bureau, Federal Communications Commission, Washington, DC, 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: 1. Mr. Richard A. Burton has applied for Amateur Radio Service station and operator licenses. For the reasons stated below, his application will be designated for a hearing to determine whether the application shall be granted.

2. On September 11, 1981, the Commission revoked Burton's license for amateur station WB6JAC and affirmed the suspension of his General Class amateur operator license. These actions were based on Burton's willful and repeated violations of the Commission's Rules.

3. In *United States of America* v. *Richard A. Burton*, No. CR 82–378–R (C.D. Calif. June 28, 1982), Burton was convicted in the U.S. District Court for Central District of California (District Court) on four counts of transmitting without a license, in violation of section 318 of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 318, [1] and on two counts of transmitting obscene, indecent or profane words, language or meaning, in violation of 18 U.S.C. 1464.[2] The District Court sentenced Burton to eight years of imprisonment, of which six months were to be served in a jail-type institution and the remainder suspended. Burton was also placed on probation for five years and required to devote 1,500 hours to a charitable organization approved by his probation officer.

4. Upon appeal, the U.S. Court of Appeals for the Ninth Circuit (Court of Appeals) affirmed Burton's conviction of having violating 47 U.S.C. 318, and reversed his conviction concerning 18 U.S.C. 1464. *United States of America* v. *Richard A. Burton*, No. 82–1391 (9th Cir. October 25, 1983). On January 16, 1984, the District Court resentenced Burton. On or about October 1, 1984, the Court of Appeals ruled that the January 16, 1984, resentencing was invalid. On December 17, 1984, the District Court again resentenced Burton. Burton was sentenced to four concurrent one year terms of imprisonment, of which six months was to be served in a jail-type institution and the remainder suspended. Burton was also placed on probation for five years. On December 31, 1984, Burton violated the terms of his probation by operating radio apparatus without a license. As a result, his sentence was modified on May 1, 1985, to include therapy during the period of his probation.

5. On March 17, 1990, Burton again transmitted without a license. In *United States of American* v. *Richard A. Burton*, No CR–90–357–RMT (C.D. Calif. October 1, 1990), Burton was again convicted to having violated 18 U.S.C. 318. Burton was sentenced to one year of probation and a fine of $2,000.

6. In view of the amateur license revocation/suspension and the criminal convictions described above, it appears that Burton may lack the requisite qualifications to become an amateur service licensee. Certainly, his convictions for unlicensed operation are relevant to evaluating the likelihood that he will comply with the Commission's Rules as a licensee in the amateur service. See Character Qualifications, 5 FCC Rcd 3252 (199); *TeleSTAR, Inc.*, 3 FCC Rcd 2860, 2866 (1988); Character Qualifications, 102 FCC 2d 1179, 1183, *recon. denied*, 1 FCC Rcd 421, 424 (1986).

7. Section 309 (e) of the Communications Act, 47 U.S.C. 309 (e), requires the Commission to designate an application for hearing of its is unable to find that granting the application would serve the public interest, convenience and necessity. Accordingly, the application of Richard A. Burton for amateur station and operator licenses is hereby Designated for Hearing pursuant to section 309(e) of the Communications Act. If Burton desires to present evidence at a hearing, he must file a notice of appearance within 20 days from the release of this order. A time, place, and Presiding judge will be designated, if necessary, by later order. If Burton does not file a timely notice appearance, his application will be subject to dismissal under § 1.961(b) of the Commission's Rules, 47 CFR 1.961(b).

8. Based upon the above information, this case will be decided upon the following issues.

(a) To determine whether, in light of the license revocation/suspension and the convictions described above, Richard A. Burton is qualified to become a Commission licensee.

(b) To determine, in light of the foregoing issue, whether granting Richard A. Burton's application would serve the public interest, convenience and necessity.

Federal Communications Commission.

Robert H. McNamara,

Chief, Special Services Division.

[FR Doc. 92–16827 Filed 7–16–92; 8:45 am]

BILLING CODE 6712–01–M

[1] 47 U.S.C. 318 provides, in pertinent part: "The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission . . ."

[2] 18 U.S.C. 1464 provides: "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both."

FEDERAL MARITIME COMMISSION

Agreements Filed; Southeastern Caribbean Discussion Agreement; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011038–014.

Title: Southeastern Caribbean Discussion Agreement.

Parties: United States Atlantic and Gulf/Southeastern Caribbean Conference, West Indies Shipping Corporation, Blue Caribe Line, Seafreight Line.

Synopsis: The proposed amendment will add Bernuth Lines as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 224–200060–022.

Title: Port of New Orleans/Coastal Cargo Terminal Agreement.

Parties: The Port of New Orleans ("Port") Coastal Cargo Company ("Coastal").

Synopsis: The amendment acknowledges Coastal's options to cancel ten sections of leased premises at the Galvez Street Wharf located at the Port and to have Coastal's rent reduced proportionately.

Agreement No.: 224–200259–002.
Title: Jacksonville Port Authority/TMT/Amtrans, Terminal Agreement.
Parties:
Jacksonville Port Authority ("JPA")
Trailer Marine Transport and Affiliates ("TMT/Amtrans")

Synopsis: This modification extends the term of the Agreement between JPA and TMT/Amtrans for one year and makes adjustments to the various rents and charges currently in effect.

Agreement No.: 224–200370–002.
Title: Georgia Ports Authority/Star Shipping Terminal Agreement.
Parties:
Georgia Ports Authority
Star Shipping A/S

Synopsis: The amendment provides for successive annual renewals of the Agreement until cancelled by either party.

Agreement No.: 224–200520–002.
Title: Georgia Ports Authority/Independent Line Terminal Agreement.
Parties:
Georgia Ports Authority
Pan American Independent Line

Synopsis: The amendment established a new rate schedule applicable to the Agreement.

Agreement No.: 224–200687–001.
Title: City of Los Angeles/Crescent Warehouse Company, Ltd. Terminal Agreement.
Parties:
City of Los Angeles ("City")
Crescent Warehouse Company, Ltd. ("Crescent")

Synopsis: This modification extends for no more than 120 days the term of the current agreement between the parties which permits Crescent to offer public warehouse services in City owned facilities at the port of Los Angeles.

Dated: July 13, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–16833 Filed 7–16–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Commodore Cruise Line Limited and Olympia Caribbean Shipping Co., Inc., 800 Douglas Road, Coral Gables, Florida 33134, Vessel: CROWN JEWEL.

Dated: July 13, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–16834 Filed 7–16–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

New Examination for Alien Foreign Medical Graduates Visa Requirement

Section 601 of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94–484) amended section 212 of the Immigration and Nationality Act to, among other things, provide that certain aliens who are graduates of foreign medical schools coming to the United States principally to perform services as members of the medical profession or to receive graduate medical education, shall be excluded from entering the United States unless, in addition to meeting other requirements, they have passed the National Board of Medical Examiners' (NBME) Parts I and II examinations, or an equivalent examination, as determined by the Secretary of Health and Human Services.

Notice was given on July 18, 1983, that the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS), prepared by the NBME, had been determined by the Secretary of Health and Human Services to be equivalent to the NBME Parts I and II examinations for purposes of section 212 of the Immigration and Nationality Act (8 U.S.C. 1182).

The Federation of State Medical Boards (FSMB) and the NBME have announced that all current licensure programs will be replaced by a single examination program. The new three-step examination will be called the United States Medical Licensing Examination (USMLE) and will replace the FSMB's Federation Licensing Examination, and certification by the NBME. The Educational Commission for Foreign Medical Graduates (ECFMG) has announced that the FMGEMS will be replaced by the Step 1 and Step 2 USMLE examinations. The FMGEMS and the NBME Parts I and II examinations will be discontinued on a planned schedule between now and 1993. Current plans of the ECFMG are to administer the FMGEMS for the last time in 1993. It is expected that Step 1 of the USMLE will be administered for the first time in June 1992, and that the USMLE Step 2 examination will be initially administered in September 1992. Notice is hereby given that Step 1 and Step 2 of the USMLE, prepared by the NBME and the FSMB, have been recognized by the Secretary of Health and Human Services to be equivalent to the NBME Parts I and II examinations for purposes of Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) as amended by Title VI, Section 601 of Public Law 94–484. For purposes of Public Law 94–484 and with the phasing out of the NBME Parts I and II and the FMGEMS examinations, the Step 1 and Step 2 examinations of the USMLE have been determined to be equivalent to the NBME Parts I and II examinations in their power to assess medical knowledge. Like the NBME Parts I and II examinations, Step 1 and Step 2 of the USMLE assess understanding and application of key concepts in the basic biomedical and clinical sciences requisite for individuals seeking to practice medicine or to enter postgraduate medical education training in the United States.

The Secretary has further determined that the FMGEMS will retain its current equivalency status for as long as it is offered for purposes of Public Law 94–484.

Persons interested in obtaining information concerning this Notice should contact: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville Maryland, 20857. Telephone: (301) 443–6190.

Dated: July 8, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–16835 Filed 7–16–92; 8:45 am]

BILLING CODE 4160–15–M

Office of the Assistant Secretary for Health

Public Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and

Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 57 FR 24262–3, June 8, 1992) is amended to reflect more accurately the functions within the Division of Property Management, Administrative Services Center, Office of Management, Office of the Assistant Secretary for Health (ASC/OM/OASH).

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, Office of Management (HAU), Administrative Services Center (HAU1), Division of Property Management (HAU17), in the first sentence delete "PHS-wide" and insert "OASH-wide."

Dated: July 7, 1992.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 92–16883 Filed 7–16–92; 8:45 am]

BILLING CODE 4160–17–M

Administration for Children and Families

President's Committee on Mental Retardation; Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: Executive Committee meeting; Monday, August 31, 1992 8 a.m.—9 a.m.; Full Committee meeting: August 31—September 1, 1992, 9:30 a.m.–5 p.m.

PLACE: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

MATTERS TO BE CONSIDERED: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

THE PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect persons with mental retardation.

CONTACT PERSON FOR MORE INFORMATION: Sambhu N. Banik, Ph.D., Wilbur J. Cohen Building, room 5325, 330 Independence Avenue, SW., Washington, DC 20201–0001. (202) 619–0634.

Dated: July 8, 1992.

Sambhu N. Banik,

Executive Director, PCMR.

[FR Doc. 92–16837 Filed 7–16–92; 8:45 am]

BILLING CODE 4130–01–M

Centers for Disease Control

[Announcement Number 254]

Availability of Funds for Fiscal Year 1992 for Cooperative Agreements To Advance the Understanding of the Health of Racial and Ethnic Populations or Subpopulations

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for new competing cooperative agreements to advance the understanding of the health of racial and ethnic populations or subpopulations in the United States. There are two areas of research: (1) Special studies and analyses to improve existing knowledge; and (2) improvements in existing research methodologies or testing of innovative methodological techniques used to gather information on these groups.

These activities are pursuant to fulfilling the provisions of the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and the need for improved data to monitor objectives of Healthy People 2000.

A range of methodological, financial, cultural, and logistical problems have hindered study of minority health issues, especially among subpopulations. The authors of the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) recognized these difficulties and included mandates to refine and supplement existing data systems to focus on subpopulations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under Public Health Service Act, Section 306(n) [42 U.S.C. 242k(n)], as amended.

Eligible Applicants

Eligible applicants include public and private nonprofit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, and state and local health departments or their bona fide agents or instrumentalities are eligible to apply for these cooperative agreements.

Any of the following is acceptable evidence of nonprofit status:

- A reference to the applicant's organization in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code;
- A copy of a currently valid IRS tax exemption certificate;
- A statement from a state taxing body, state attorney general, or other appropriate state official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals;
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; or
- Any of the above proof for a state, regional, or national parent organization. Affiliates of state, regional or national organizations must also submit a statement signed by the parent organization that the applicant is a local nonprofit affiliate and is authorized to apply for funds.

Proof of nonprofit status must be provided with the application. No application will be accepted without proof of nonprofit status.

Availability of Funds

Approximately $900,000 will be available in FY 1992 to fund approximately 10–15 awards. It is expected that the awards will range from $50,000 to $200,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Applications requesting funds greater than an upper limit of $250,000 for any 12-month budget period will be returned to the applicant without review. Continuation awards within the project period will be made on the basis of an acceptable

application, satisfactory progress, and the availability of funds.

Purpose

The purpose of this program is to increase the quality and quantity of available information on the health of racial and ethnic populations or subpopulations in the United States. Funds will be awarded for the purpose of conducting (1) special studies and analyses; and (2) improvements in existing research methodologies or development of innovative methodological techniques used to gather information on such groups.

A CDC/NCHS-sponsored workshop was convened on December 4–6, 1991, to provide an opportunity for leading experts in minority health and minority health statistics to assist in setting research priorities which address the critical issues affecting current and future efforts to collect and analyze data on racial and ethnic minority populations. Approximately 85 minority health experts representing community-based organizations, academic institutions, and state, local, and Federal health agencies participated. CDC/NCHS intends that the research topics, opportunities, and priorities identified at this workshop will generate efforts that can be supported under this announcement and that proposals under this announcement will address workshop recommendations. A sample of key priority research areas that were identified during the workshop follows.

Sampling, Enumeration, and Denominator Issues

- Conduct research in development of new approaches to sampling frames for specific minority populations, for example, use of other data sources such as administrative records (INS, motor vehicle, etc.) and lists (telephone, etc.);
- Develop and improve techniques to update sampling frames in order to study minority populations between censuses;
- Conduct research to develop and/or evaluate alternative methods (e.g., non-probability case studies, network sampling, etc.) to improve enumeration of minorities who are not sampled or are under-sampled in national surveys (e.g., black males, urban Native Americans, and special populations such as undocumented migrants);
- Conduct research on new approaches for obtaining intercensual subpopulation and geographic-specific denominator data, especially for smaller subgroups;
- Conduct research designed to understand and improve self-reporting of race and ethnicity, including:
- How minority populations select and report (cognitive process, etc.); and
- Address mixed parentage;
- Test the reliability of race and ethnic information on vital and medical records (self-reports vs. proxy reports with a focus on mortality statistics and under-reporting); and
- Conduct research on what can be developed to improve the way health care providers record and report race and ethnicity of these patients.

Special, Analytic, and Data Studies

- Conduct special studies and or analysis to understand the health of racial and ethnic populations where there are known data gaps including:
- Age, gender, ancestry and generation/birthplace effects on health status;
- Social, economic, neighborhood, and psychological factors affecting health status;
- Mental health and stress;
- Payor sources;
- Cultural factors affecting health status (e.g., acculturation, assimilation, etc.); or
- Alternative health care.
- Conduct research to develop additional or enhanced predictors of health status that can explain observed differences between race and ethnic populations, including SES status measures such as:
- Generational status;
- Measures of family structure and living arrangements;
- Wealth;
- Per capital income;
- Labor force participation (including women);
- Socioeconomic status in early life;
- Income to needs ratios; and
- Other variables such as cultural, environmental, and societal.
- Develop and test analytical approaches to better understand the relationship between race, ethnicity, and SES as they pertain to or affect health outcomes.
- Study the appropriateness, reliability, and validity of health measures for particular ethnic groups by:
- Developing and testing new approaches for administering questionnaires that elicit comparable information between different racial and ethnic subgroups while allowing variation in the form of questioning to account for cultural differences, and
- Developing and testing alternative techniques to ask sensitive questions peculiar to specific race/ethnic groups.
- Develop and test instruments to measure and describe the use of non-traditional health care by various race/ethnic groups.
- Conduct special studies targeted to small groups not normally covered in national surveys or are of inadequate sample size to give estimates of events or attributes (e.g., rare populations or populations in transition).

Synthesizing Existing Research

- Conduct a critical synthesis of past theoretical and empirical research on a specific subgroup, analytic or methodological area; for example, synthesize current knowledge on the practicality and feasibility of using telephone survey methods in different racial and ethnic groups.

For a more complete report on the proceedings of the workshop, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Involve community members, official community tribal representatives and researchers from universities or private non-profit organizations throughout the research process. Involvement in these activities may include research design, implementation, analysis, and dissemination of research results.

2. Determine whether their proposed projects meet the criteria of the Protection of Human Subjects (45 CFR 46) requiring review by an institutional review board (IRB). If an IRB review is required and the applicant does not have the capacity to perform an IRB review, the applicant is strongly encouraged to enter into a partnership with universities or other organizations with the capacity to conduct an IRB review.

3. Address the activities in one or both of the following areas, as appropriate:

a. Special studies or analyses—

(1) Identify a problem or population where there is a unique opportunity to conduct special studies or there are gaps in existing information as identified through the research literature, Healthy People 2000, and/or the report of the agenda setting conference.

(2) Identify and define available sources of information and assistance for performing special studies or analyses (e.g., NCHS and other Federal organizations, state health departments,

universities, survey research organizations, existing Centers of Excellence, community organizations, etc.)

(3) Develop the research design, implementation and analytic plans for the conduct of special studies or analysis. Applicants should consider the professional acceptability of methodological approach (peer review journals/statistical standards, etc.), specific expectations of methods used, comparability to national data sources, and generalizability to other groups or subgroups.

(4) Execute the planned study.

(5) Develop and execute a plan to keep community representatives informed of the status of the study.

(6) Disseminate research findings in publications, reports, etc., and within the respective community.

b. Methodological Research—

(1) Examine existing methods for meeting defined data needs.

(2) Identify shortcomings, data gaps, state of the art methodologies, and limitations in methods as identified through the research literature and/or the priorities in the report of the agenda setting conference.

(3) Define research objectives, develop methodological approaches.

(4) Execute planned study.

(5) Disseminate findings in publications, reports, etc.

B. Centers for Disease Control Activities

1. Assist in the refinement of analytic and research plans.

2. Make available other information and technical assistance from government sources, as appropriate.

3. Provide liaison with other government agencies, as appropriate.

4. Provide technical assistance on individual analytic and research projects, including those conducted by contractors, as appropriate.

Evaluation Criteria

The initial application for the proposal to advance the understanding of the health of racial and ethnic populations or subpopulations will be reviewed on the evaluation criteria listed below:

A. The likelihood that the new knowledge that may be gained will subsequently help to improve the health of racial and ethnic populations and subpopulations, as well as contribute to the ability of the scientific community to identify and meet the data needs of the future. Factors to be considered include: uniqueness of the project objectives and their consistency with program priorities; the extent to which the proposed project responds to opportunities and priorities identified at the workshop; and the generalizability of the project findings to the population under study; (30 points)

B. Understanding the technical and substantive issues and the research priorities the project proposes to address; clarity, feasibility, and practicality of the goals and objectives of the project as well as the plan to meet them; (20 points)

C. Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions; conformance with accepted scientific standards, principles and techniques; involvement of members of minority populations in the design and execution of the research project; links to existing research networks and infrastructures at the local, state and/or national level; feasibility and appropriateness of the proposed evaluation plan and mechanism; (30 points) and

D. Capabilities of the proposed investigators, including qualifications, relevant experience in the content and execution of the proposed project, ties of the community, and adequacy of project management to keep project on track and on schedule. (20 points)

A second level program review will be conducted by senior Federal staff on applications referred from the initial review. All referred applications will be evaluated on an individual basis according to the criteria below:

A. Results of the initial review;

B. Balance in addressing the various racial and ethnic groups and geographic areas;

C. Non-duplication of currently supported research activities;

D. Generalizability and comparability of research results;

E. Match with available technical assistance; and

F. Impact on program budget.

Executive Order 12372 Review

Applications are not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and five copies of the application PHS Form 398 must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before August 14, 1992. States and local governments may use PHS form 5161–1, however PHS form 398 is preferred. If using PHS form 5161–1, submit an original and two copies to the address stated above.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Preapplication Letter of Intent

Although not a prerequisite of application, non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted by August 3, 1992, to the Grants Management Specialist (whose name is given in the **"WHERE TO OBTAIN ADDITIONAL INFORMATION"** section). The letter should identify the announcement number responded to, indicate the name and address of the organization and principal investigator, and specify the area addressed by the proposed project (e.g., methodological research, analysis of existing data, or special studies issues). The letter of intent does not influence review or funding decisions, but it will enable NCHS to plan the review more efficiently, and will ensure that each applicant receives relevant information prior to application submission.

Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management assistance may be obtained from Eddie L. Wilder, Grants Management

Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6805. Information regarding the proceedings from the Agenda-Setting Workshop referenced in the **PURPOSE** section of this announcement is included in the application kit. Programmatic technical assistance may be obtained from Marjorie S. Greenberg or Lynnette S. Araki, National Center for Health Statistics, room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7142.

Please refer to Announcement Number 254 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0 or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Information regarding the Directory of Minority Health Data Resources of the Public Health Service, referenced in the **PURPOSE** section may be obtained from an information specialist at the Office of Minority Health Resource Center, P.O. Box 3733, Washington, DC 20013–7337 (Telephone 1–800–444–6472).

Dated: July 14, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–16975 Filed 7–16–92; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

National Toxicology Program (NTP), Final Report of the Advisory Review by the NTP Board of Scientific Counselors; Request for Comments

Introduction

Established 14 years ago within the Public Health Service of the Department of Health and Human Services (DHHS), the National Toxicology Program (NTP) develops and provides data used to estimate human health hazards of environmental exposures. The Program coordinates pertinent toxicology activities of the National Institute of Environmental Health Sciences (NIEHS), NIH; the National Center for Toxicological Research (NCTR), FDA; and the National Institute for Occupational Safety and Health (NIOSH), CDC.

Dr. Kenneth Olden, Director of the NTP, has as one of his major goals to assure that the program serves the public health by strengthening its role as the Nation's premier toxicology research and testing program. To accomplish this goal and to assure the NTP's vitality well into the future, Dr. Olden proposed to have specific aspects of the function or purpose of the NTP reviewed by a special advisory group. The NTP Executive Committee, composed of the heads of Federal research and regulatory agencies, provides primary program oversight. The Committee recommended that the NTP Board of Scientific Counselors be asked to conduct such a review.

Background

Accordingly, the NTP Board assisted by *ad hoc* expert consultants met in public session at the NIEHS, Research Triangle Park, North Carolina, on April 14 and 15, 1992, to review and give advice to Dr. Olden and the Executive Committee on three specific issues. The charge to the Board was to make recommendations on how:

- To improve the quality of chemicals nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanisms of toxicity and carcinogenicity; and
- To develop and validate alternate assays that may reduce the need for long-term testing in animals.

The Board, composed of 25 members who are recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, mutagenesis, carcinogenesis, neurotocicology, reproductive and developmental toxicology, and biostatistics, is the primary scientific oversight body for the NTP.

Because the issues were considered to be toxicology endpoint specific, the major work of the Board and consultants during the meeting was performed by three work groups in (1) carcinogenesis, (2) reproduction and heritable effects, and (3) other toxicities and disposition. Opportunity was provided for public comments on these issues both prior to and during the meeting.

A fourth issue, for which advice was sought, was concerned with how to improve the procedures for alerting regulatory agencies and the public about test results on chemicals (particularly data which suggest potential hazard to humans from chemicals of widespread importance). Since this was considered to be a generic operational issue, the NTP Executive Committee was asked to review this topic separately.

The Advisory Review concluded on April 15 with a plenary session at which members of the three work groups presented summaries of their findings and recommendations. The Chairman of the Board and the chairmen of the three work groups completed draft reports of the Advisory Review which subsequently were sent to all reviewers for editing and corrections. The Chairman submitted a final report to Dr. Olden in June. A copy of the report with a listing of the Board members and consultants is appended here.

Action

The NTP seeks comments and views on the report and its recommendations. Additionally, comments on the fourth issue, having to do with improving procedures for early data release, will be accepted. Suggestions of other activities to improve the NTP also are welcomed. Comments should be specific and as brief as possible and should be addressed to the Executive Secretary, NTP Board of Scientific Counselors, Dr. Larry G. Hart, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

A further opportunity for comment will be provided by a public meeting to be held on September 11, 1992, in the first floor auditorium of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC. The meeting will begin at 9 a.m. with NTP agency scientific staff present to take public comments on the report as well as suggestions of other activities to improve the NTP.

For further information regarding the meeting, please contact Dr. Hart by mail at the above address, by FAX to 919/541–2260, or by telephone at 919/541–3971.

Dated: July 13, 1991.

Kenneth Olden,

Director, National Toxicology Program.

Attachment

NTP Advisory Review

Introduction

This report reflects the NTP advisory review conducted on April 14 and 15, 1992, by the 22 members of the NTP Board of Scientific Counselors and 16 ad hoc consultants who are listed at the end of the report. The report was prepared by dividing the review committee into three working groups who focused on Carcinogenesis (Dr. Jay Goodman, Chair); Reproduction and

Heritable Changes (Dr. Richard Miller, Chair); and Other Toxicities and Disposition (Dr. Curtis Klaassen, Chair). Each group addressed issues under three major headings, and commented to some extent on other specific questions raised in the "Synopsis" prepared by the Program. The three major areas that were addressed respond to the charge:

- To improve the quality of chemicals or other environmental agents or factors nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanisms of toxicity and carcinogenicity; and
- To develop and validate better assays that may reduce the need for long-term testing in animals.

Summary of Recommendations

In general, the three working groups were consistent in supporting the need to expand and refine the basis and process for nominating and selecting chemicals and agents for testing. Nominated agents should be prioritized and entered into targeted pathways for evaluation in regard to (1) reproductive toxicity, (2) other toxicity, and/or (3) carcinogenicity testing. Nomination for testing by the NTP now primarily carries the connotation of testing for carcinogenicity. Efforts should be made to increase the nomination of chemicals because of the potential for reproductive or other toxicities.

There is some difference in recommendations for setting priorities for testing among the three working groups. Testing of concepts or selection on the basis of gaps in data for compounds of some structural groups was given more weight in selection of agents for evaluation of toxicities other than carcinogenicity, whereas the potential for human exposure was given greatest weight in regard to selection for the two-year bioassay. In view of the relative costs for different types of tests, this difference in perspective seems practical.

The three groups concurred strongly that evaluation of mechanisms of toxicity and carcinogenesis should be supported. Mechanistic studies should pervade the activities of the NTP and might form part of initial evaluations that precede any long-term studies, be overlaid on and be part of long-term studies, or be undertaken in response to a positive result from a screening test in the late phase of evaluation of an agent. With this emphasis, the NTP should be able to strengthen its interpretation of test results in context of human health. Such interpretation should become part of reports issued by the NTP.

There was a general feeling that short-term assays, pharmacokinetic studies, structural analysis, mathematical modeling, and other alternate test systems (in vitro studies and non-mammalian species) will continue to be important primarily for analysis of mechanisms, dose selection, and extrapolation of results. The NTP should foster the development and validation of new test systems. For toxicity endpoints other than carcinogenesis, such systems may yield definitive data. Use of such approaches can improve the selection of agents for two-year bioassays in rats and mice, and perhaps reduce the number of animals required for the bioassays of some agents. But, the group felt that such approaches cannot be substituted for chronic toxicity testing or the long-term bioassay in rodents in regard to evaluation of carcinogenicity.

The group feels that one of the strengths of the NTP that should be preserved is the simultaneous involvement of talented scientists in (1) testing and (2) methods development or mechanistic research. We also favor increased involvement of scientists from the NIEHS intramural program and from the extramural scientific community in addressing research needs of the NTP. Studies of mechanism and methods development are especially appropriate areas for involvement of scientists from the intramural program, academia, and other research centers.

Reports of the three working groups follow. No effort has been made to remove redundancy or repetition of recommendations from the three reports because this would diminish the sense of concurrence among the groups on several points.

Report of the Carcinogenesis Working Group

Reviewers: Mr. Louis S. Beliczky, Drs. Kowetha A. Davidson, Robert H. Garman, Jay I. Goodman (Chairperson), David W. Hayden, Lawrence A. Loeb, Daniel S. Longnecker, Barbara McKnight, *Ad Hoc Reviewers:* Joseph D. Brain, Arnold L. Brown, John C. Harshbarger, James Swenberg, Jerrold Ward, James L. Whittenberger.

Summary Statement—Mechanisms

The National Toxicology Program (NTP) places too much emphasis on testing *per se*, and not enough emphasis on providing the mechanistic insight required for a realistic interpretation of the significance of the testing results with regard to human health. This should be changed. The carcinogen bioassay is a qualitative test, designed to ask if a chemical is or is not carcinogenic to laboratory animals under the conditions of the test employed (e.g., dose, species and strain of the test animal used).The bioassay is not a risk assessment. Studies directed towards discerning the mechanisms(s) of action of the chemical of interest need to be incorporated into, and juxtaposed with, the bioassay in order to place its results into proper perspective. Tests which place an emphasis on sensitivity over specificity (i.e., the extent to which noncarcinogens yield negative results) are not appropriate.

The major recommendations are:

(A) There should be a requirement that results of the bioassay be discussed with regard to their biological significance concerning human health coupled with the requirement to facilitate this by incorporating hypothesis-driven mechanistic research into the testing program.

(B) A sustained level of testing is important. We are concerned that the number of carcinogen bioassays might be decreasing below a critical mass.

(C) There should be a mechanism through the NIH RO1 program for initiatives by individual investigators to perform hypothesis-driven research designed to provide the mechanistic insight required for both methods development and the realistic interpretation of bioassay results.

(D) When possible, the program-project type approach towards research should be employed in the intramural research program. The ability of NTP investigators to share animals treated in the same fashion would permit a more complete evaluation of different endpoints in the same group of animals and should tend to maximize the quality of the information obtained. In addition this will result in a decrease in the number of animals used.

(E) Short-term alternative animal tests are not adequate for use as primary test for carcinogens. They should be investigated in a research mode and reported in the peer reviewed literature. These "tests" should not detract from the need to place an emphasis on research oriented towards discerning the mechanism of action of the chemicals of interest.

(F) Provision should be made for the use of flexible protocols so that, for example, the bioassay of genotoxic compounds need not have to be performed in exactly the same manner as non-genotoxic compounds.

(G) Improved interpretation of testing results is where the NTP should place its emphasis. Indeed, NTP should strive to be a world class center in this regard. This involves the need to strive for excellence in research areas which

include toxicokinetics, cell replication and a focus upon defining genotoxic v. non-genotoxic mechanisms that may play a role in carcinogenesis.

The integration of a testing program with hypothesis-driven mechanistic research designed to support both the development of improved tests and the capacity to interpret bioassay data in a more realistic fashion provides the NTP and the NIEHS with a unique role that is totally compatible with their mission to assess possible adverse human health consequences following exposure to chemicals in the environment, including the work place, food and drugs.

Overall Statement—Mechanisms

There is an opportunity here to transform the National Toxicology Program, which indeed is a good program, into a truly great program. In this context, let us keep in mind the fact that the NTP is an integral component of the NIEHS and in many quarters the NIEHS and the NTP are so closely associated that they are considered as one. Therefore, what is good for the NTP is good for the NIEHS and vice versa.

A considerable amount of high quality basic research is being conducted within NIEHS and the NTP. Although, one can make the point that much of the basic research performed at NIEHS could be carried on at other institutes within the NIH. However, the NIEHS has the ability to integrate basic research into the portion of its human health oriented mission concerning the assessment of the toxicity that chemicals might pose. This would lead to a focus upon the crucial issues regarding the development of the scientific basis required in order to evaluate critically the possible hazards which chemicals in the environment might pose. Indeed, this pivotal role is what makes the NIEHS unique among the various institutes which comprise the NIH and accepting this as a major goal can make the NIEHS the flagship of the NIH in regard to environmental toxicology.

The overall objective of the NTP is both to conduct high quality toxicity testing and to develop valid testing procedures. This includes providing the means for a realistic interpretation of the results obtained. We want to attain the ability to make valid predictions from the results of laboratory tests to address the question as to what hazard a chemical might reasonably be expected to pose towards people. It is not appropriate to simply try to develop tests that yield a "yes" or "no" result. Furthermore, any attempt to place an emphasis on sensitivity over specificity presents an impediment to real progress. One of the most important goals is to achieve the ability to prioritize concerns regarding various chemicals so that we may separate the "mountains" from the "mole hills" from the "ant hills" from the "no hills".

There are four principal points that should be considered when asking what potential toxicity (including, for example, carcinogenicity) a given chemical might pose. These are (1) distinguishing an effect from an adverse (i.e., toxic) effect; (2) defining the dose response relationship (including the criteria for selection of the high dose, the shape of the dose response curve at low doses, and the possibility of the existence of a threshold); (3) species to species extrapolation; and (4) interaction of chemicals (e.g., short-term studies designed to discern mechanisms). These should be thought of as "tools" which can be employed to characterize the chemical under investigation within a context that facilitates the placement of a realistic perspective on the test results.

A rational approach towards assessing the risk that a chemical might pose requires mechanism-of-action-oriented research keyed to one or more of the four principal points noted above. For example, let us look at the maximum tolerated dose (MTD). In this context it should be noted that approximately two-thirds of the NTP carcinogens would not be positive, i.e., not be considered as carcinogens, if the MTD was not used. The implicit assumptions underlying extrapolation from the MTD are: (a) Pharmacokinetics are not dose dependent; (b) dose-response is linear; (c) DNA repair is not dependent upon dose; (d) the response is not age-dependent; and (e) a test dose need not bear a relationship to human exposure. These assumptions do not appear to be valid. Therefore, both the criteria for selection of the high dose used and the default criteria that are employed or extrapolation from high-dose to low-dose must be re-evaluated in a critical manner.

The principal points, noted above, should be viewed as specific aims towards which the research component of the testing program should be addressed, in a context that includes a consideration of:

- Pharmacokinetics/Metabolism (including the concept of target site dosimetry); and
- Genotoxic vs Non-genotoxic mechanisms; and
- Toxicity; and
- Cell proliferation; and
- Unique susceptibility.

The NTP should be conducted as a program project involving both testing and research components. In addition to increasing the quality of the science, the program project approach involving sharing of animals treated in the same manner should result in a decrease in the number of animals used. In this regard, for example, the Background Working Paper prepared by Dr. M. Cunningham ("Chemical-induced cell proliferation and carcinogenesis.") provides an excellent example of a high quality research project that could be expanded into a program project that includes the research described in the Background Working Papers provided by Drs. Mauldin & Caspary, Caspary et al, Zeiger & Tennant, and Tennant.

Most research projects should include a section indicating the potential significance of the work with regard to its ability to shed light upon one or more of the principal points (i.e., specific aims) noted above. This would facilitate the development and maintenance of a synergistic relationship between the testing and research components. Furthermore, test results should be reported along with a discussion of the manner in which the data may be used, in a realistic fashion, to assess the conditions of exposure under which a chemical (or agent, e.g., electromagnetic fields) might cause toxicity.

Summary Statement—Alternate Assays to Replace or Complement Mammalian Studies

The current two-year studies have defined the toxic and carcinogenic potency of a wide variety of chemicals. In addition, the past studies provide a valuable data base that can guide the planning of future studies and aid in their interpretation. This data base should now permit us to lower the number of animals used for some studies. Moreover, the promulgation of compounds to be tested should permit the sharing of tissues from animals and, given the archival retrieval power of the polymerase chain reaction, it should be possible to address mechanistic questions using stored tissue and/or DNA from tumors.

1. We are heavily reliant on the use of current protocols and inbred rodent strains for bioassays. This should not be viewed as a limitation but as an important standard for comparison that should now allow us to restrict the use of animals in future studies.

2. Mechanism studies and pharmacokinetic/metabolism studies conducted prior to chronic testing should be encouraged. It might be possible to reduce greatly the number of animals used for each study by using either two species/one sex or one species/both sexes. Moreover,

pharmacokinetic studies should be an important parameter in setting dose range. In the case of selected genotoxic compounds for which a positive bioassay is anticipated with confidence, consideration should be given to using one species/one sex over a wide dose range.

3. NIEHS should continue the exploration and validation of alternative systems including non-mammalian species. In particular, investigation of their use in assaying non-genotoxic compounds and mixtures should be extended.

4. The development of transgenic animals containing mutated positive oncogenes, deleted tumor suppressor genes and human oncogens should be encouraged. This may provide new sensitive systems that will reduce the number of animals in each test or may allow extensive studies of more compounds. The long range goal should be to narrow the number of candidate transgenic strains to a few on which extensive background validation data is collected, thus, enabling their use in mechanistic studies and bioassays.

5. The NIEHS should announce compounds to be tested and immediately organize and support small meetings of active investigators who have worked with these compounds as well as members of regulatory agencies. This may permit the design of protocols to utilize the tissue resources that are obtained from the large scale bioassays more efficiently for multiple purposes as well as to initiate mechanistic studies that parallel these bioassays.

Summary Statement—Nomination (Carcinogenesis)

This section is organized to respond to questions presented to the NTP Board of Scientific Counselors by the Program in a synopsis:

(a) Question

How to better define the criteria for nomination, selection and prioritization of chemicals. Are new principles for federally funded studies needed?

Response

The criteria for nomination: (1) Suspicion of carcinogenicity or other toxicity; (2) significant potential for human exposure; and (3) the need to develop data for gaps in knowledge are all valid criteria. Highest priority should be given to chemicals for which there is significant potential for human exposure as defined by high numbers of people exposed, high tonnage exposure or high environmental persistence, and where the chemical is readily absorbed by at least one common route of exposure. Suspicion of carcinogenicity/toxicity based on *in vitro* and structure/activity information is also important, as long as adequate information about carcinogenicity/toxicity is not available for other chemicals in the same class. (See b).

(b) Question

How can chemical nominations be performed in a more systematic manner? Are studies of chemical classes—use classes, structural classes, or mechanism classes—the best way to identify nomination? Are there other means of systematically identifying chemical nominations?

Response

The NTP should encourage nominations from a wider constituency than currently submits them. Some portion of NTP funds should be committed to soliciting nominations from trade associations, consumer groups and other special interest groups, and to educating the public about its ability to nominate chemicals.

Studies of chemical classes are not the best way to identify chemicals to be nominated. Instead, the NTP should consider developing a priority scale like the one below into which all nominated chemicals will be placed.

1. Top Priority. Chemicals to which large numbers of people will be exposed (or to which fewer people will be exposed to very high doses) and for which some suspicion of carcinogenicity and/or high tendency to cause toxicity exists. If more chemicals in this group are proposed than can be tested, the selection will depend on the degree of human exposure, including the potential for bioaccumulation.

2. Very High Priority. Chemicals which, because of unique structure or biologic activity, provide unique opportunities to advance the program's knowledge of carcinogenic/toxicologic mechanism.

3. High Priority. Chemicals belonging to a class for which there is insufficient carcinogenicity/toxicity data, but for which some suspicion of carcinogenicity and/or high tendency to cause toxicity exists.

4. Medium Priority. Chemicals which are strongly considered to be carcinogenic/toxic based on *in vitro* tests and the carcinogenicity/toxicity of other chemicals in the same class, but which may currently be regulated to the point of minimal human exposure or environmental contamination or the use of which can easily be eliminated.

5. Low Priority. Chemicals for which sufficient data are present from *in vitro* tests and studies of other chemicals in the same class so that they might be expected to be non-carcinogenic and/or relatively non-toxic.

6. Lowest Priority. Chemicals with essentially no human or environmental exposure.

(c) Question

How do we identify chemicals of greatest potential public health importance for testing or research efforts?

Response

Redundant. See (a) and (b).

(d) Question

If we want to test concepts rather than chemicals, how do we prioritize ideas on the basis of relevance to the field of toxicology?

Response

We do not want to test concepts rather than chemicals. Priorities should be based on the classification system outlined under (b). We want to test hypotheses in addition to chemicals to help us interpret the bioassay data we obtain, but mechanistic considerations should be considered secondary to the public health importance of the chemical. If two chemicals are considered to have similar public health importance, first priority should be given to members of poorly categorized classes that have produced some evidence of genotoxicity or other toxicity; second priority should be given to members of classes where some other members have been shown in bioassays to be carcinogenic/toxic, but where the member to be tested has a sufficiently different structure from the well-characterized members that predictions about its carcinogenicity/toxicity are doubtful.

(e) Question

How do we match the best ideas about mechanisms of toxicity with the most relevant chemicals (on the basis exposure and toxicity) to test those hypotheses?

Response

Priority chemicals, as outlined under b) should be tested, and any hypotheses about mechanisms for each such chemical should be examined.

(f) Question

NTP efforts can impact regulatory and public health decisions on the basis of short-term goals (testing individual chemicals) and long-term goals (testing ideas and hypotheses). What is a proper balance of these two goals to have the

greatest impact on public health and science?

Response

NTP priorities should be for testing individual chemicals of public health importance, as outlined under b), and tests of hypotheses about mechanisms should be incorporated in the bioassays to help interpret the results.

(g) Question

How do we raise the level of awareness for the need to nominate chemicals for endpoints of toxicity other than carcinogenesis? What is the proper allocation of resources between various areas of toxicology?

Response

NTP should make a greater effort to educate nominating agencies, and their subsidiaries, trade unions, consumer protection groups and other special groups of its interest in studying chemicals for toxic endpoints other than carcinogenicity.

Allocation of resources should be based on the level of human exposure and the degree of suspicion that the chemical causes cancer or other non-reversible toxic effects, rather than by a fixed percentage allowed to each category of suspected toxic outcome.

(h) Question

How do we better anticipate the development of new industries which introduce new chemicals into the environment?

Response

The NTP should employ chemists/chemical engineers whose primary responsibility is to review the literature and attend meetings to learn the state of the art for new technologies. These individuals should periodically review the registry of newly synthesized chemicals and keep in frequent contact with representatives from industry and trade unions, as well as regulatory agencies to monitor the production and use of new chemicals.

(i) Question

Production volume has been used as a surrogate for estimating human exposure in the past (one criterion for nominations). What other information could we use or develop to better define human exposure to chemicals?

Response

NTP should make a greater effort to obtain accurate exposure data. OSHA, NIOSH, trade unions and industry should be actively consulted for data on occupational exposure. EPA and state and local agencies should be consulted about the level of environmental exposure. FDA (for drugs) and industry should be consulted about production and sales volume, and any surveillance data. The European community should be contacted for the amounts of the chemical sold by European firms to U.S. subsidiaries. Where possible, exposure information should include the route of human exposures and the degree of bioaccumulation in the food chain and in humans as well as data on the stability of the chemical and its likelihood of biotransformation.

(j) Question

What emphasis should be placed on the study of the toxicity of natural substances, including constituents of food?

Response

Emphasis equal to that of any industrially produced chemical with equivalent potential for human exposure and equivalent suspicion of carcinogenicity/toxicity should be given to natural substances.

Report of the Reproductive, Developmental and Heritable Effects Working Group

Reviewers: Drs. James Allen, Elaine Faustman, Claude Hughes, Robert Kavlock, Arthur Levin, Donald R. Mattison, Richard Miller (Chair), Sally Perreault, Louise Ryan, Barbara Sanborn, Mary Jo Vodicnik, and Frank Welsch

Introduction

This report is organized to provide recommendations to the Director of NTP concerning three specific issues of the operation and function of NTP as follows:

A. Quality of Chemical Nominations and Selection for Testing/Research.
B. Emphasis on Mechanistic Work.
C. Development of Alternate Assays to Replace or Complement Mammalian Studies.

The Reproductive, Developmental and Heritable Effects (RDHE) Program at the National Toxicology Program is a unique international Toxicological testing and research activity. The issues of birth defects, pregnancy loss, infant mortality and altered fertility for both male and female are national public and medical concerns. The leading cause of infant mortality in the US is birth defects which now accounts for 21 percent of the total. These NTP RDHE testing and research programs within the context of the developing national strategy for Public Health Protection play a critical role in addressing specific reproductive issues which are separate and distinct from carcinogenesis and are at least of equal importance. It has become apparent that within the field of toxicology there needs to be greater emphasis on endpoints other than carcinogenesis. It has been apparent to this Review Committee that RDHE programs have provided not only national but also international leadership in the development of new testing protocols, the conduct of quality, state of the art testing and the performance of important mechanistic investigations to understand how reproductive and developmental toxicants are producing their actions. Such a national resource requires continued encouragement and financial resource investment to extend the frontiers in testing, development of testing protocols and mechanistic research for the immediate future as well as into the 21st Century.

A. Quality of Chemical Nominations and Selection for Testing/Research

The Review Committee was concerned about the quality of the chemical nominations and noted the desirability of having greater diversity of institutions and individuals providing such nominations. It was apparent to the committee that announcing the chemical nomination process more widely at scientific meetings, in appropriate journals and to appropriate groups, e.g., physicians, public organizations, trade unions, will increase the diversity of nominating organizations and individuals, and in addition, increase the visibility of the National Toxicology Program to the public at large.

The nomination process for chemicals should utilize a selection system to conserve the limited resources available for conducting such investigations. In particular, the Review Committee recognizes that some chemicals may require a detailed and complete examination based upon the volume of production, actual and potential human exposure and possible adverse reproductive and developmental effects based upon SAR and other information; however, there are many agents which may not have such justification based upon the above criteria. It may be appropriate to consider the different screening tests for these compounds to provide initial information for a larger number of compounds with the implicit understanding that some of the agents will require additional detailed evaluations.

The Reproductive, Developmental and Heritable Effects evaluations performed currently by the NTP have been

internationally recognized for current hazard identification in these fields of Toxicology; however, due to the limited resources available for testing it continues to be critical to evolve the evaluation process to include (1) individual chemicals, which meet selected criteria (as defined below) and (2) concept evaluations for mechanisms of toxic action for classes of chemicals. This evaluation should utilize current state of the art standardized testing with inherent flexibility to pursue additional evaluations to answer mechanistic and other critical issues, which arise during the testing process.

For individual agent evaluation, the criteria for the selection should continue to include human exposure information, pharmacokientics (ADME) in animals and humans (if available), structural alerts, screening information, mechanistic information and epidemiology. The development of a sufficient database to define the potential magnitude of human exposure or risk before initiating extensive animal evaluations is encouraged.

It is essential to formalize these Reproductive, Developmental and Heritable Effects evaluations to raise national visibility and to focus attention on this process to make it an issue that defines not only chemical data deficiencies, but also concept gaps, i.e., information on potential mechanisms or associations with developmental, reproductive and heritable effects. To achieve these goals it would be especially useful to perform a historical evaluation of the chemicals nominated within the program and the outcomes and implications of performing or not performing testing.

B. Emphasis on Mechanistic Work

It is recognized by the Review Committee that the definition of mechanistic work may not be equally appreciated by all scientists or laypersons. Thus, the Committee has used the following definition to focus the discussions:

Mechanism Research is the conduct of investigations to understand how a chemical produces its effects from its metabolism and distribution to its cellular and molecular interactions.

Such a definition requires an armamentarium of special technical protocols and personnel to answer specific inquiries in addition to the general testing protocols.

Within this mechanistic framework, the RDHE programs have functioned especially well in providing the nation not only the best specific testing information but also additional research which addresses the mechanism by which selected chemicals may be toxic to reproduction and development. The mechanistic data will provide a basis obtaining an understanding of the risks posed by the identified reproductive and genetic toxicants. As the RDHE programs have evolved it has become apparent that professional time has been better allocated to allow for the NTP to respond to issues of mechanisms, which allows for the considerations of species to species extrapolation, classes of chemicals and sites of toxic insult.

The NTP is encouraged to maintain each professional's balance between testing and/or contract supervision and the effort expended for mechanism/new protocol development. It would be hoped that the individual professional commitment to research activities would be no less than 50 percent. Such a distribution is likened to the academic environment, where research is conducted within the framework of teaching, clinical care and administrative obligations. With the merging of all professionals into one intramural program at NIEHS, it is a major concern of this Review Committee that this balance may be upset. This balance brought the NTP to its outstanding level of international recognition and should be maintained.

The Review Committee most strongly supports the continued emphasis on mechanistic investigations and recognized the utility of having testing and mechanistic work performed in tandem by these investigators. The mechanistic work is helping to answer today's questions and may aid in future toxicologic evaluations as well. The Committee is impressed that the RDHE programs provide in many instances the first evidence of reproductive, developmental and heritable effects for individual chemicals or classes of compounds upon which basic/mechanistic investigations must be performed. It was apparent to the Committee that continuing collaborations between NIEH/NTP and the NIOSH and NCTR are exemplary in the fields of reproductive and Developmental Toxicology; however, collaborations between the intramural scientists at NIEHS and within the NTP have not been optimized. With the restructuring of the NIEHS, it is anticipated by this Committee that the ability of the NTP to identify important chemicals with human health risk will lead to the continued investigation of mechanistic action for these agents by the NTP personnel. Further, as additional issues and investigations demand additional mechanistic investigations, the researchers within the Intramural Program should be encouraged to embrace collaborative investigations to provide not only specific expertise but also to establish important collaborative linkages for future questions raised by the activities of the NTP. Utilization of extramural resources within academia and the private sector has proven essential in the conduct of many testing protocols, validation of procedures and development of new methods. Such extramural activities obviously must be continued to provide the optimal use of NTP professional time. The concept of routine testing being conducted by contract and the mechanistic investigations/methods development being conducted by the NTP/NIEHS personnel is strongly supported by the Review Committee.

C. Development of Alternate Assays to Replace or Complement Mammalian Studies

It is recognized by the Review Committee that the development of alternate assays to replace or complement mammalian studies is of both scientific and social importance. It is also apparent that some fields are already utilizing such protocols, while other fields utilize such protocols for essential mechanistic investigations but have not determined a single or a battery of such assays that will replace the current mammalian tests.

Reproduction/Developmental Effects. Regarding alternate testing for reproductive and developmental toxicity, the 28 day screen (developed recently at the NTP) is an example of how these national concerns have been addressed by the NTP. This modified testing scheme will be used following final validation with the Organization of Economic Cooperation and Development (OECD) in the testing process to increase the efficiency of compound testing to derive at least a modest amount of data about a large number of chemicals before undertaking extensive testing. The developmental toxicity study is one such assay that could be retrospectively examined for application to this purpose.

Of central importance to this alternative testing process is the development of a categorization of chemicals concerning their potential for developmental toxicity in the human (Smith List) and also such a list concerning male and female reproductive toxicants and their potential sites of action. It is acknowledged that a revision of the list for developmental toxicity in the human is currently under consideration by the

NTP; however, the Committee encourages the development of lists for Reproductive Toxicity, which could be used as a standard for alternate test development.

Alternative tests that do not involve treatment of the whole animal have potential utility:

1. For defining mechanism of toxicant action including extrapolation between animals and humans, and

2. For preliminary screening of chemicals once categories of toxicant actions have been elucidated. Such apical testing must be compared to established tests by blinded trials of accepted positive and negative compounds so that test performance characteristics can be determined.

Presently, the technologies available do not allow for the use of in vitro screens for the individual problems for male and female endocrine and fertility regulation, male and female germ cell development, and developmental toxicity/teratogenicity. Research on test development and mechanisms of toxicity in these areas needs to be encouraged by approaches including the extramural granting process (RFA and RFP). Use of the latter mechanisms could take advantage of any newly available funding for these problems to explore the potential for developing useful new testing methods while bypassing limitations of time available among the intramural professional staff.

Heritable Effects. The Heritable Effects program is on a course of increasing vitality and productivity (regarding chemical test data and mechanisms research important to risk assessment) with decreasing use of laboratory animals. There are several pre-screens that are already in place which effectively serve to reduce the numbers of animals that are used for germ-cell/heritable effects testing. For example, there is initial testing, which does involve the use of animals, to determine if the test agent is mutagenic. If positive results are obtained, this is followed by relatively small scale screening to determine if it is mutagenic in vivo. Positive results again would lead to testing for effects in germ cells using a progression of assays which are triggered by specific test results.

There is currently research emphasis given to the development of new methods for germ cell testing, e.g., transgenic systems, and the improvement of existing tests, e.g., use of chromosome-painting probes. These efforts should result in test methodologies with improved effectiveness and further reductions in the use of experimental animals. The Committee believes that this development of improved methods as well as the existing test capabilities should continue to be supported.

The Committee observes a need to support research to increase the power (efficiency) of existing reproductive, developmental and heritable effects studies. As the number of endpoints is increased (e.g., number of specific loci examined, use of cataract test to capture more than one mutation at a time or 28 day screen with its increasing number of reproductive endpoints), statistical models should be developed for utilizing the additional information—such as the best way to combine endpoints. Such statistical evaluations should enable the NTP to increase the power of a particular study design and thereby justify reducing the number of animals required in a given study. Furthermore, analyses that investigate relationships between multiple outcomes may improve the mechanism of action studies. Current efforts to establish multiple endpoint assays, e.g., work with the electrophoretic specific locus test and the morphological specific locus test, are commendable and should continue to be supported. These tests provide important data for mutagenesis risk assessment (performed by various agencies), while minimizing the use of laboratory animals for the information gained.

Summary of Part (C)

It is recommended that the development and implementation of in vitro methods and alternate test systems should be explored to answer issues of mechanisms of action in order to better understand the toxicities involved. In reproductive and developmental toxicity testing, there continue to be reservations concerning the use of in vitro tests as pre-screens for definitive screening of agents. It is strongly recommended that the NTP should provide the standard for evaluation, coordinate validation of such tests and foster the involvement of the broader scientific community in the process.

Report of the Other Toxicities/ Disposition Working Group

Reviewers: Drs. Paul Bailey, John Barnett, Linda Birnbaum, Harold Davis, Curtis Klaassen (Chairman), Fumio Matsumura, Joe Mauderly, Ellen Silbergeld, Roberts Taylor, Matthew Van Zwieten, Anthony Verity, and Lauren Zeise.

Introduction: National toxicology Strategy

The nation needs a national toxicology strategy, just as it needs a health care strategy, energy strategy, etc. If this is to become a reality, some organization should have a mandate to develop and champion that strategy. There is a critical need for national oversight and coordination of toxicology research. Thus, as a long term goal NTP could become the nation's principal coordinating center for toxicologic issues, with in-house expertise in certain key areas. The development of the strategy requires the input from both the regulatory and research community. Serving this coordinating and leadership function, the NTP could support the development of needed research at "centers of excellence" which could be established in other federal and academic institutions, and the NTP could further encourage, influence and coordinate research and routine testing in industry and academia. The adoption of this recommendation would require a major organizational change.

Emphasis on Mechanistic Work (Subgroup Report)

1. *Balancing Descriptive and Mechanistic Work:* Mechanistic studies should be tightly integrated into the testing program, having both an impact on and being responsive to the testing program. The subcommittee discussed their critical role in selecting chemicals for in-depth testing, interpreting test results, selecting appropriate animal models, developing alternative test systems and implementing screening activities. The strength of the NTP has been the tight connection between NTP testing and mechanistic activities. The subcommittee encouraged continued involvement of individual research staff (e.g. toxicologists, biostatisticians, pathologists) in both activities. Expansion of mechanistic studies would benefit from involvement of the intramural scientists at NIEHS. In addition, a vast amount of mechanisms expertise could be obtained through a "granting process"which does not presently exist in the NTP. The need for testing and mechanistic studies to be an iterative process cannot be over emphasized. The need and design of mechanistic studies should be considered on a case by case basis.

2. *Non-Cancer Endpoints:* The subcommittee recognized the greater need for routine testing and mechanistic research on non-cancer endpoints. The subcommittee recognizes the interdependence and similarities in underlying mechanisms of multiple toxic endpoints, including cancer. Some important toxicities are almost entirely ignored by the scientific and testing community (e.g., cardiotoxicity). The subcommittee found the specific areas

of toxicologic investigation recently added to the NTP to be important, and encourages continued research in these areas. However, the NTP should be mindful in developing these and others areas of the importance of creating a critical mass in-house. The subcommittee recognized that at present, a critical mass does not exist in some areas (e.g., developmental neurotoxicology), and supported the continued development of these areas within the NTP/NIEHS complex, but only with the provision of additional resources.

3. *Pharmacokinetics and Disposition:* In order for test results to be predictive, not only must mechanisms be understood, but dose-response relationships must be elucidated. In addition, pharmacokinetics should be considered in selecting dose levels for in-depth bioassys. Studies of disposition and metabolism both experimental and mathematical modeling, should be undertaken for each chemical. Resources for these activities should be increased. The specific protocols should be tailored to the chemical and question being addressed. The issues concerning variability, both within human and animal populations require greater attention. The issue of sensitive human population, either due to exposure or inherent susceptibility, should be considered.

4. *Model Development:* The development and evaluation of animal and other models for toxicologic determinations is inherent to the mission of NTP. Selection of an appropriate model is a normal step in resolving a particular toxicologic issue. NTP's overall efforts in model development should be opportunistic and issue driven. Thus, 1) NTP should look for appropriate models and not just employ models of past use; these models can be of three types: *in vivo, in vitro,* and mathematical. *In vivo* models should not be limited to mammalian models; 2) NTP should look for opportunities for model validation by testing responses against known human responses; 3) NTP should take the initiative to insure that, if there is the potential for model validation with human data, it should be done.

5. *Screening Versus In-Depth Bioassays:* NTP should not abdicate its responsibility for broad screening of chemicals and identifying potential hazards to the public. Development of mechanistic data will enhance the predictive use of hazard identification data. This has the potential to decrease the requirement for extensive screening through the 2-year bioassay, reserving in-depth efforts for only a select group of materials. The development and implementation of screening alternatives to the long-term bioassay is required. Every agent giving positive results in a screening assay need not necessarily be evaluate using the full range of assays. Hazard identification on the basis of screening and other ancillary data may be sufficient. By incorporating information on toxicokinetics and mechanisms, there should be opportunities to extend the assessment of hazards and perhaps even dos-response relationships across members of families of closely-related agents for which in-depth information is available for some members. For example, appropriate attention to disposition and mechanisms may allow conclusions to be drawn about the chronic toxicity of some agents without having to conduct chronic 2-year bioassays.

Alternate Assays (Subgroup Report)

The subgroup's discussion was based on two general assumptions: first, one of the critical strengths of the NTP is the interactive integration of activities related to testing and those related to mechanistic (hypothesis driven) research; and second, the central criterion for evaluating this topic—and others—is that of good science.

Alternate assays are defined as the broad set of testing and research methods *other than* the defined acute, subchronic, chronic, and two year bioassays in rodents and tests currently used by NTP. Alternates to these tests include other whole animal tests; in vitro tests; and nonbiological methods such as mathematical and molecular modeling (including SAR). The WG unanimously concludes that no single alternate exists that fully substitutes for all of the standard NTP tests listed above. Moreover, alternates cannot be reliably used by themselves to screen chemicals for selection into these standard tests. In some cases, information on disposition, metabolism, or mechanism (derived from alternate tests) can guide decisions as to the necessity for the two year bioassay. The subgroup supports continued research to identify increased opportunities for using alternate tests for hazard identification.

At present, the most valuable use of alternate tests is to study mechanisms. Human tissues, defined culture systems, and transgenic mice are examples of alternate tests that can be very useful in mechanistic studies. Mathematical models are useful to develop hypotheses and on which to base extrapolations. Scientific criteria should determine the selection and use of these methods to answer specific questions.

The WG considered how the NTP could be involved in several ways with alternate tests: NTP could develop and/or sponsor research to develop test methods; NTP could validate tests for their predictability and utility; NTP could be a clearinghouse for information on alternate tests. The WG concluded that NTP should not be the national center for alternate test development, validation, or application. NTP should coordinate its activities in this area with existing centers, such as the Center for Alternatives to Animal Testing (CAAT) at Johns Hopkins. However, NTP should continue to be involved in the validation of promising new methods, including alternate tests. The WG noted that another limit on the use of alternate methods is uncertainty as to their acceptability by regulatory agencies. The subgroup suggests that an interagency coordinating group on alternate test methods could facilitate communication on both development and use, which would increase confidence as to the acceptability of alternate test results by agencies such as EPA, FDA, and CPSC.

Some of the questions directed to the WG relate to the development of alternate tests to replace or complement the 2-year carcinogenesis bioassay. The subgroup concludes that at present there is no substitute for the carcinogenesis bioassay, but that in other areas of toxicology there are urgent needs to develop and validate test methods. Neurotoxicity is in great need of methods development for both hazard identification and mechanistic research, including mathematical modelling. Noting the almost total lack of toxicology research and testing relating to cardiovascular endpoints, the subgroup notes the availability of well-studied in vitro systems for studying aspects of cardiac function. As an example, these tests could be applied to increase our knowledge of mechanisms or dose:response of the observed associations in humans between lead and hypertension. The use of structure-activity-relationships (SAR) for predicting toxic effects should also be encouraged.

Nominations (Subgroup Report)

Nomination, prioritization and selection processes clearly play the key role in deciding the overall direction and the nature of research activities of NTP. Since each full fledged carcinogenicity test costs so much, under the current systems as much as 75 percent of the entire budget of NTP goes to in vivo

carcinogenicity tests on those selected substances. Because of fiscal constraints, the number of nominated as well as selected chemicals has been steadily declining in recent years. Despite the fact that NTP's mission is not totally limited to carcinogenicity testing, the nomination process in the past clearly has favored this particular aspect of NTP. One of the reasons appears to be the high number of nominations NCI traditionally generates, as compared to other agencies, and the "quality" of their nominations (i.e., well prepared and well documented background information on each compound). The prospect of a low selection probability also must have discouraged other agencies and the public to nominate chemicals of their choice, even if they are meant for noncarcinogenic toxicity testing. While such an emphasis on in vivo carcinogenicity testing was necessary at the beginning, some change from these past practices appears to be wise at this stage of the NTP program. Noncarcinogenic toxicity studies as well as short term in vitro testing ("prechronic") are far less costly per chemical. Furthermore, the public would like to know more about the meaning of positive results in rodent tests to human health, as well as effects of chemicals on other toxic endpoints that are affecting many individuals (e.g., heart disease, Alzheimers disease, developmental, immunotoxicological effects, etc.).

Therefore, to achieve the goal of NTP to satisfy the national needs with respect to providing vital information to important human health issues or problems, the nomination and selection processes must be improved to accommodate a higher number of nominations by including noncarcinogenic studies and "prechronic" studies, and making a wider choice of study approaches (e.g. mechanistic models) available to the public. Such a change may be made possible by reducing the number of full fledged carcinogenicity tests and/or increasing funding to other studies.

To improve the "quality" of chemicals nominated and selected for testing, we recommend the following:

1. Modification of current nomination and selection processes to emphasize options for testing of various non-cancer endpoints (e.g. mechanistic studies). The current system favors long-term expensive in vivo testing.

2. Establishment of an independent committee to judge priorities and selection process of nominated chemicals. In addition, this committee should be responsible for recommending the testing program. Current practice involves selection of chemicals not on scientific merit, but of interest to a particular agency or individual(s).

3. Some nominations should be to improve scientific understanding of structure-activity relationships in the absence of evidence of substantial human exposure, and thereby assist in defining the toxicity groups or classes of particular chemicals.

4. Chemical nominations should be accompanied by some sort of justification or reason for testing (e.g., mechanistic issues, chemical class issues, and political issues). Nomination of chemicals solely on production volume and potential for human exposure may not be the best criteria (e.g. drugs).

5. There is a need to define clearly the nomination and selection process for noncarcinogenic types of toxicity testing.

6. There should be a greater focus on the performance of multiple short-term tests versus long term-testing.

7. Improve the public awareness of the nomination and selection process. People do not feel that they have access to the NTP.

National Toxicology Program

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Dr. Linda J. Birnbaum, Director, Environmental Toxicology Division, U.S. EPA, Highway 54 & Alexander Drive, MD–66, Research Triangle Park, NC 27711, 919/541–2655.

Dr. Joseph D. Brain, Department of Environmental Health, Harvard University School of Public Health, 665 Huntington Avenue, Boston, MA 02115, 617/432–1272.

Dr. Arnold L. Brown, University of Wisconsin Medical School, Room 1217, 1300 University Avenue, Madison, WI 53706, 608/265–2408.

Dr. Elaine Faustman, Department of Environmental Health, University of Washington, F561, 1705 N.E. Pacific, Seattle, WA 98105, 206/685–2269.

Dr. John C. Harshbarger, Registry of Tumors in Lower Animals, NMNH, Rm. W–216A:MRC163, Smithsonian Institution, 10th Street & Constitution Avenue, N.W., Washington, DC 20560, 202/357–2647.

Dr. Donald R. Mattison, Graduate School of Public Health, University of Pittsburgh, Room 111, Parran Hall, 130 DeSoto Street, Pittsburgh, PA 15261, 412/624–3000.

Dr. Joe Mauderly, Inhalation Toxicology Research Institute, Building 9200, Area Y, Kirtland AFB—East, Albuquerque, NM 87116, 505/845–1124.

Dr. Sally Perreault, U.S. EPA, MD–72, Highway 54 & Alexander Drive, Research Triangle Park, NC 27711, 919/541–3826.

Dr. Louise Ryan, Division of Biostatistics, Dana-Farber Cancer Institute, 44 Binnery Street, Boston, MA 02115, 617/732–3601.

Dr. James Swenberg, Dept. of Environmental Science & Engineering, University of North Carolina, Room 357 Rosenau Hall, South Columbia Street, Chapel Hill, NC 27599, 919/966–6139 or 6142.

Dr. Robert E. Taylor, Department of Pharmacology, Howard University College of Medicine, Room 3412, 520 W Street, N.W., Washington, DC 20059, 202/806–6311.

Dr. Anthony Verity, Department of Pathology, University of California Medical Center, CHS 18–170, 10833 LeConte Avenue, Los Angeles, CA 90024–1732, 213/825–7230.

Dr. Jerrold Ward, National Cancer Institute, Frederick Cancer Research, Development Center, Fort Detrick Post, Building 538, Frederick, MD, 21702–1201, 301/846–1239.

Dr. James L. Whittenberger, 1312 Dover Drive, Newport Beach CA 92660, 714/856–7240 (B) 714/645–8972 (H).

[FR Doc. 92–16904 Filed 7–16–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1971; FR–2934–N–87]

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: July 17, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD 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: July 10, 1992.

Randall H. Erben,

Acting Assistant Secretary.

[FR Doc. 92–16650 Filed 7–16–92; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3449; FR–3283–N–02]

NOFA for Lead-Based Paint (LBP) Risk Assessments; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Correction.

SUMMARY: In the notice of funding availability FR document 92–15046 beginning on page 28910 in the issue of Monday, June 29, 1992, make the following correction:

On page 28925, in the second column, footnote 1 below the table in paragraph A(3) of Section I, is corrected to read as follows:

"[1] Per 500 units, plus 1 for each additional increment of 50 units."

Dated: July 14, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92–16969 Filed 7–16–92; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–4410–08]

Draft Stateline Resource Management Plan and Environmental Impact Statement; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing and extension of public comment period for the Draft Stateline Resource Management Plan (RMP) and Environmental Impact Statement (EIS).

SUMMARY: Due to requests by the public, a public hearing has been scheduled and the public comment period extended 15 days for the Draft Stateline RMP and EIS.

DATES: A public hearing will be held on Wednesday, August 5, 1992 from 7 to 10 p.m. at the Cashman Field Center in Las Vegas, Nevada. The public comment period has been extended from September 15, 1992 to September 30, 1992. All written comments for this Draft document must be postmarked no later than this extended date.

ADDRESSES: The public hearing will be held at the Cashman Field Center, 850 North Las Vegas Blvd., Las Vegas, Nevada. Written comments should be addressed to: Stateline Area Manager, Attn: RMP Team Leader, Bureau of Land Management, 4765 Las Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

FOR FURTHER INFORMATION CONTACT: Jerry Wickstrom, RMP Team Leader, at the above Bureau of Land Management (BLM) address or telephone (702) 647–5000.

SUPPLEMENTARY INFORMATION: As requested by members of the public at meetings held during early July 1992, the Las Vegas District of the BLM has scheduled a public hearing to receive comments concerning the Draft Stateline RMP and EIS. This meeting will be structured to allow members of the public to present oral comments during a three hour period. Depending on the number who may wish to present comments, a time limit may need to be imposed on each presentation. The public is encouraged to address their comments to only those items discussed in the Draft RMP.

Due to the scheduling of this public hearing, the comment period has been extended 15 days to allow the public additional time to submit their written comments for this Draft planning document.

Dated: July 13, 1992.

Daniel C. B. Rathbun,

Acting State Director, Nevada.

[FR Doc. 92-16866 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-HC-M

[OR-943-4212-13; GP2-309; OR-39411]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 198.76 acres of public land out of Federal ownership. This action will also open 201.24 acres of reconveyed lands to surface entry and 152.85 acres to mining and mineral leasing. The minerals in the 48.39-acre balance are not in Federal ownership.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 198.76 acres in Lane County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 15 S., r. 6 W.,
Sec. 33, SW¼NW¼.

T. 16 S., R. 7 W.,
Sec. 20, beginning at a point on the north line of the SW¼SW¼ that is 430 feet east of the west line of said Sec. 20; Thence south on a line parallel to and 430 feet distance from the west line of Sec. 20 a distance of 470 feet to the true point of beginning of the tract of land herein to be described; Thence continue south on a line parallel to and 430 feet distance from the west line of Sec. 20 to a point of the south line of Sec. 20; Thence west along the south line of Sec. 20 to the southwest corner thereof; Thence north along the west line of Sec. 20 to a point that is westerly along a line parallel to and 470 feet south of the north line of the SW¼SW¼ of said Sec. 20 from the true point of beginning; Thence easterly along a line parallel to and 470 feet south of the north line of the SW¼SW¼ of said Sec. 20 a distance of 430 feet to the true point of beginning;
Sec. 30, NE¼NE¼ and that portion of the NW¼NE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

T. 16 S., R. 8 W.,

Sec. 28, S½SE¼.

The areas described aggregate 201.24 acres in Lane County.

3. The minerals in Sec. 33, T. 15 S., R. 6 W., and Sec. 20, T. 16 S., R. 7 W., are not in Federal ownership and will not be open to mining and mineral leasing.

4. At 8:30 a.m., on August 20, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 20, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on August 20, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on August 20, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to applications and offers under the mineral leasing laws.

Dated: July 6, 1992.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-16873 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-43-7122 08 1016; CACA 28549]

Realty Action, California Desert District, Exchange of Public and Private Lands in San Bernardino and Los Angeles Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action CACA 28549, exchange of public and private lands, San Bernardino and Los Angeles Counties, California.

SUMMARY: BLM proposes to exchange public and private land in order to achieve more efficient management of the public land through consolidation of ownership. The following described public lands, located in San Bernardino and Los Angeles Counties, have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1716):

San Bernardino Meridian, California

T.9 N., R. 1 W.,
Sec. 10, SE¼SW¼;
Sec. 15, W½NE¼NW¼, W½NW¼, SE¼NW¼, and N½N½SW¼;
T. 4 N., R. 8 W.,
Sec. 10, E½NE¼NW¼, E½W½N E¼NW¼, N½NE¼SW¼NW¼, and SE¼NW¼;

Comprising 295.00 acres, more or less.

In exchange for these lands the United States will acquire from New Owl Rock Products of Arcadia, California, the following offered private lands located within the Western Mojave Land Tenure Adjustment Consolidation Area:

Mount Diablo Meridian, California

T.32 S., R. 45 E.,
Sec. 9, All;
Sec. 15, All;
Sec. 17, All;

The offered non-Federal lands are comprised of 1,920.00 acres, more or less; and will be acquired by the United States in fee simple, surface and all minerals.

The purpose of this exchange is to acquire non-Federal lands within the Western Mojave Land Tenure Adjustment Project Area Consolidation Zone. Acquisition of the offered parcels is specified in an adopted plan for this area as prescribed in the California Desert Conservation Area Plan, as amended.

Disposal of the isolated and fragmented selected land parcels is consistent with the land tenure adjustment objectives of the Western Mojave Land Tenure Adjustment Project and the California Desert Conservation Area Plan, as amended. The exchange would benefit the general public and the private sector. The public interest would be well served by the completion of the proposed exchange.

The lands to be transferred from the United States will be subject to the following terms and conditions.

A. Reservations to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for public highway purposes granted to the State of California, Division of Highways, by right-of-way Serial No. CARI–01241, pursuant to the Act of August 27, 1958 (23 U.S.C. 317), as to the N½SE¼, sec. 10 T. 9 N., R. 1 W., SBM.

3. A right-of-way for public highway purposes granted to the State of California Division of Highways, by right-of-way Serial No. CARI–01727, pursuant to the Act of November 9, 1921 (23 U.S.C. 18) as to the N½SE¼SW¼, sec. 10 T. 9 N., R. 1 W., SBM.

There will be no mineral reservation to the United States. The mineral estate to be conveyed has no known value with the exception of sand and gravel. Portions of the selected public lands have potential for sand and gravel, the value of which will be included in the appraised fair market value of the land. All minerals will be conveyed in the exchange patent.

B. Third Party Rights

The public lands would be patented subject to:

1. Those rights for the construction, operation and maintenance of an electrical transmission line granted to the Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CARI–414, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961), as to the N½SE¼ of sec. 10. T. 9 N., R. 1 W., SBM.

2. Those rights for the construction, operation and maintenance of a buried natural gas pipeline granted to the Southern Gas Corporation, its successors or assigns, right-of-way Serial No. CALA–090439, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 185) as to the N½SE¼, sec. 10, T. 9 N., R. 1 W., SBM.

3. Those rights for the construction, operation and maintenance of a buried telephone line to Continental Telephone Company, its successors or assigns, by right-of-way Serial No. CARI–02816, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961) as to the N½NW¼, sec. 15, T. 9 N., R. 1 W., SBM.

4. Those rights for the construction, operation and maintenance of a buried telephone line to Continental Telephone Company, its successors or assigns, by right-of-way Serial No. CACA–21474, pursuant to the Act of October 21, 1976, as amended (43 U.S.C. 1761), as to the N½SE¼, sec. 10, T. 9 N., R. 1 W., SBM.

On June 6, 1991 all of the selected public land described above within section 10, T. 4 N., R. 8 W., SBM was segregated from appropriation under the public land laws and the mining laws, but not the mineral leasing laws, by publication of the exchange base segregation notice for the Western Mojave Land Tenure Adjustment Project (56 FR 109, pp. 26137–26139). The period of segregation is for a two year period ending June 5, 1993.

As provided in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** shall segregate, subject to existing valid rights, the selected public lands described above within section 10 and 15, T. 9 N., R. 1 W., SBM from all other forms of appropriation under the public land laws including the mining laws but not the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document(s), upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

The exchange will be on an equal value basis. The exchange will be equalized by acreage adjustment, by cash payment from New Owl Rock Products in an amount not to exceed 25 percent of the fair market value of the selected public lands to be patented, or by waiver of excess value owed by the United States.

SUPPLEMENTARY INFORMATION: Additional information about this exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619) 256–3591 and the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California District, California Desert District, at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 30, 1992

Richard E. Crowe,

Acting, District Manager.

[FR Doc. 92–16874 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–40–M

Office of Environmental Affairs

[CO–030–91–5101–09–YCKD; FES 92–14]

Availability of the Final Environmental Impact Statement for the TransColorado Gas Transmission Project

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Montrose District, has prepared the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission Project in accordance with the National Environmental Policy Act of 1969, and 40 CFR part 1500. This document is now available to the public.

SUMMARY: The proposed TransColorado Gas Transmission Project would involve the construction and operation of a new natural gas pipeline system in western Colorado and Northwestern New Mexico. At the Blanco gas treatment plant near Bloomfield, New Mexico gas would be commingled with that from other sources, and then distributed to Southern California and Midwest markets via existing interstate natural gas pipelines.

Major project actions and components consist of construction and operation of a 306-mile pipeline and appurtenant facilities. Approximately 264 miles of pipe would be 22-inch diameter, and approximately 42 miles would be 24-inch diameter. The project is designed to transport 300 million cubic feet of natural gas per day. Six new compressor stations, and expansion of one existing station would be required. The pipeline would be constructed within a 75-foot wide construction right-of-way (ROW). The permanent ROW would be 50 feet.

The applicants have applied to the U.S. Department of the Interior, Bureau of Land Management (BLM), for ROW grants and permits to cross federal land managed by the BLM and Forest Service. The BLM has been delegated the administrative lead for preparation of the FEIS. The Office of Environmental Affairs is responsible for filing the FEIS with the Environmental Protection Agency.

In addition to the Proposed Action, the Agency Preferred Alternative and the No Action Alternative have been evaluated. Pipeline route segment variations that may be substituted for portions of the Proposed Action were also analyzed.

DATES: There will be a 30-day waiting period as required by Council on Environmental Quality (40 CFR 1506.10) before a Record of Decision (ROD) can be issued by the Authorized Officer. The ROD will select one of the alternatives, or a combination thereof, that have been analyzed in the FEIS.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the FEIS by writing to Chuck Finch, Project Manager, Bureau of Land Management, 2465 South Townsend

Avenue, Montrose, Colorado 81401, or by calling Mr. Finch at 303–249–7791.

Dated: June 19, 1992.

Alan L. Kesterke,

District Manager.

Approved:

Willie R. Taylor,

Acting Director, Office of Environmental Affairs.

[FR Doc. 92–16540 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Concho Water Snake for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Concho water snake (*Nerodia harteri paucimaculata*). This nonpoisonous snake was listed as threatened on September 3, 1986 (51 FR 31422). It is restricted to the Concho and Colorado Rivers and certain tributaries in central Texas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 31, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 East 6th Street, room 407, Austin, Texas 78701, (512) 482–5436.

Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish and Wildlife Biologist, telephone (512) 482–5436, (see address above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened plants and animals to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take all comments into account in the course of implementing approved recovery plans.

The Concho water snake is currently listed as threatened. Presently, the Concho water snake occupies about 172 river-miles of the Concho and Colorado Rivers in central Texas. Additionally, it occurs in Elm and Bluff Creeks and Ballinger Municipal Lake in Runnels County, E.V. Spence Reservoir in Coke County, and O.H. Ivie Reservoir in Coleman and Concho Counties. The primary threat to the Concho water snake is loss of suitable habitat.

The objective of this recovery plan is to set forth actions that will provide for the long-term survival of the Concho water snake. Criteria are provided in the plan to delineate the standards by which progress to recovery will be judged. Actions outlined in the draft plan include habitat protection, monitoring, reintroduction, and study of existing populations and habitat throughout its range.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

Joseph P. Mazzoni,

Acting Regional Director.

[FR Doc. 92–16906 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the Golden-Cheeked Warbler for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Golden-cheeked Warbler (*Dendroica chrysoparia*). The golden-cheeked warbler is a neotropical migratory bird. This endangered species' breeding range is restricted to parts of the Edwards Plateau, Lampasas Cut-Plain, and Llano Uplift regions in central Texas. Currently, it breeds in 31 counties. This species' winter range includes southern Mexico (Chiapas), Guatemala, Honduras, and Nicaragua. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 3, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Ecological Services, Austin Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; (512) 482–5436. Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carol Beardmore, Wildlife Biologist, telephone (512) 482–5436 (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened plants and animals to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is endeavoring to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting them,

and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires the public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The golden-cheeked warbler was listed as endangered on December 27, 1990 (55 FR 53153). This small, insectivorous bird nests exclusively in mixed oak-juniper woodlands or forests in central Texas. The golden-cheeked warbler is threatened by habitat loss and fragmentation, which result from urban encroachment, water development projects, and some agricultural practices. The results from two studies indicate a 35 percent loss of habitat since 1962. Nest parasitism by the brown-headed cowbird (*Molothrus ater*) is also a threat, which probably increases in magnitude as the habitat becomes more fragmented.

The objective of the Draft Golden-Cheeked Warbler Recovery Plan is delisting. Downlisting to threatened and delisting criteria are given in the plan. Recovery efforts outlined in the draft recovery plan focus on different means of habitat protection, habitat management, and public education and information. Other recovery efforts outlined include conducting research on the biological and ecological requirements of the species, creating a recovery team, and enforcing the provisions of the Endangered Species Act.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

Joseph P. Mazzoni,

Acting Regional Director.

[FR Doc. 92-16907 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

Availability of the Draft Recovery Plans for the Large-Fruited Sand-Verbena and Hinckley's Oak for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service, (Service) announces the availability for public review of draft recovery plans for the large-fruited sand-verbena (*Abronia macrocarpa*) and Hinckley's oak (*Quercus hinckleyi*). The large-fruited sand-verbena occurs on deep sandy soils in Freestone, Leon, and Robertson Counties of eastern Texas. Hinckley's oak occurs on arid limestone slopes in Presidio County of western Texas. The Service solicits review and comment from the public on these draft plans.

DATES: Comments on the draft recovery plans must be received on or before August 31, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plans may obtain copies by contacting the U.S. Fish and Wildlife Service, Ecological Services, Austin Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; (512) 482-5436. Written comments and materials regarding the plans should be addressed to the State Administrator at the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kathryn Kennedy, Botanist; telephone (512) 482-5436 (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species.

Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The large-fruited sand-verbena was listed as endangered on September 28, 1988 (53 FR 37978). This herbaceous perennial plant occurs in unstable openings in the Post Oak Savannah on deep sandy soils in a relatively restricted area of eastern Texas. All known locations occur on private land. This species faces threats from residential development, recreation, removal for commercial use or sale, and modification of habitat through soil stabilization, and fire suppression.

Hinckley's oak was listed as threatened on August 26, 1988 (53 FR 32827). Currently only 10 populations are known, nine of these occur on Big Bend Ranch State Natural Area. This species is threatened by possible hybridization with other oaks, roadway construction and maintenance, taking by plant collectors, and wildlife and insect damage.

The objective of the draft recovery plans is to recover the species to the point where they can be delisted. Preliminary criteria for downlisting to threatened and delisting are given in the plans. Recovery efforts outlined in the draft plans focus on maintaining the current populations and their habitats, conducting inventories of suitable habitat for additional populations, studying life history and habitat requirements, and locating sites for potential introduction and establishment of new populations

Public Comments Solicited

The Service solicits written comments on the draft recovery plans described. All comments received by the date specified above will be considered prior to approval of the plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

Joseph P. Mazzoni,

Acting Regional Director.

[FR Doc. 92-16905 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

Availability of Draft Recovery Plan for Mount Graham Red Squirrel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Mount Graham Red Squirrel (*Tamiasciurus hudsonicus grahamensis*). This squirrel, which the Service listed as an endangered species on June 3, 1987 (52 FR 20999), occurs in the Pinaleno Mountains of Graham County, Arizona. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 15, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 W. Thomas Road, suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lesley Fitzpatrick, Fish and Wildlife Service Biologist; Telephone (602) 379-4720 (See **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote conservation of a particular species. Section 4(f) of the Act, amended in 1988, requires that public notice and an opportunity of public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Mount Graham red squirrel is an endangered species with one existing population. This squirrel inhabits mixed conifer and spruce-fir forests in the Pinaleno Mountains of Graham County in southeastern Arizona. Major threats to the habitat include logging and opening of the forest for roads, recreation uses, and astrophysical facilities. Introduction of non-native squirrels has also affected the Mount Graham red squirrel.

Currently, the Mount Graham red squirrel population barely meets the viability level; the chances of long-term persistence of the species is classified as moderate to low.

The Mount Graham red squirrel recovery plan has been extensively reviewed. The plan will be issued as final following incorporation of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 13, 1992.

Joseph P. Mazzoni,

Acting Regional Director.

[FR Doc. 92-16908 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-769794

Applicant: National Zoological Park, Washington, DC.

The applicant requests a permit to import one captive-born male leopard cat (*Felis b. bengalensis*) from the Royal Melbourne Zoo, Victoria, Australia, for reproductive research and artificial breeding techniques.

PRT-769782

Applicant: New York Zoological Society, Bronx, New York.

The applicant requests a permit to import blood samples collected from 9 wild born Sumatran rhinoceros (*Dicerorhinus sumatrensis*) being held in captivity at the Melaka Zoo, Malaysia, for DNA studies.

PRT-769842

Applicant: Woodland Park Zoological Garden, Seattle, WA 98103.

The applicant requests a permit to import a pair of captive-hatched red-crowned cranes (*Grus japonensis*) from the Japan & Oji Zoo, Kobe, Japan for captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: July 10, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 92-16838 Filed 7-16-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Availability of Final Environmental Impact Statement, Roanoke River Parkway, Bedford, Franklin, and Roanoke Counties, Virginia

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Congress authorized funding for a 10-mile extension of the Blue Ridge Parkway as a demonstration project under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17). The action was further defined in a memorandum of agreement among the National Park Service, the Federal Highway Administration and the Virginia Department of Transportation. In that memorandum, the extension was referred to as the Roanoke River Parkway, extending from the Roanoke/Vinton city limits near Tinker Creek to the Hardy Ford area of Bedford and Franklin Counties.

The Draft Environmental Impact Statement (DEIS) described the potential impacts of three alternatives for a Roanoke River Parkway. The park road was to be a limited-access road, with connections at the two termini, the Blue Ridge Parkway and the Explore Park (a 1,700-acre State project proposed to be developed east of the Blue Ridge Parkway). Three alternative alignment corridors were analyzed with alignment 2 as the proposed action. Five alternative sites were also analyzed for a visitor center to orient visitors on the Blue Ridge and Roanoke River Parkways to the Roanoke Valley. Site 3 was the proposed action.

In response to public comments, the range of alternatives was expanded in the FEIS to include a minimum action alternative to construct a 1.5-mile spur road from the Blue Ridge Parkway to the proposed Virginia's Explore Park. The minimum action alternative (alternative 4) is the preferred alternative. The proposed spur road alignment will cross an existing regional landfill but will not cross the Roanoke River. The visitor center will be on the north side of the Roanoke River as was proposed in the DEIS (Site 3), and access will be provided from the Blue Ridge Parkway; no connection between the visitor center and the spur road is proposed:

DATES: Due to the change in the proposed action from the Draft Environmental Impact Statement (EIS) to the Final EIS, the required 30-day no-action period that follows the Environmental Protection Agency's notice of availability of the Final EIS is being extended. The Record of Decision will be prepared on September 30.

FOR FURTHER INFORMATION CONTACT:

Superintendent, Blue Ridge Parkway, c/o Roanoke River Parkway Project Office, Post Office Box 949, Vinton, Virginia 24179, (703) 345–3959.

Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, (404) 331–5835.

A limited number of individual copies of the Final EIS may be obtained from the Superintendent at the above address. Copies are available for inspection at local libraries in the Roanoke area and also at the above locations.

Dated: July 7, 1992.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 92–16707 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–70–M

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, July 30, 1992, at Building 201, Fort Mason, San Francisco, California. The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

The main agenda item at this public meeting will be a public hearing on the Sutro Comprehensive Design Plan and an accompanying Historic Landscape Evaluation and Environmental Assessment for the Cliff House, Sutro Baths, and Sutro Heights areas of the Golden Gate National Recreation Area.

This public meeting is opened to all environmental, neighborhood, and community groups and others interested in being involved in the planning process for these GGNRA areas.

On February 27, 1992, an initial public meeting was held to provide guidance to the GGNRA planning team and to the design firm of EDAW, Inc., consultants contracted by the National Park Service to prepare design plans for these areas of the park.

A second agenda item will be reports from the Marin Committee of the Advisory Commission on Phase II of the Bay Area Discovery Museum project at East Fort Baker and on a temporary structure to be erected for lifeguards and support staff at Stinson Beach.

A seven-point resolution approving the first phase of the Bay Area Discovery Museum project was passed on December 7, 1989 by the GGNRA Advisory Commission. The Advisory Commission requested that the Phase II plans be presented at a separate public meeting.

A new structure at Stinson Beach will be reviewed by the Commission. A new structure is needed in order to better manage this area and to better accommodate employees at Stinson Beach. It is proposed as a temporary structure and will be erected near the present ranger station. It will contain 1,500 square feet of space. An Environmental Assessment has been released to the public. Plans call for the structure to be installed in July or August 1992.

The meeting will also contain a Superintendent's Report.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after August 21, 1992. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: July 2, 1992.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 92–16847 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 4, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the

National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 3, 1992.

Beth L. Savage,

Acting Chief of Registration, Notional Register.

ARKANSAS

Benton County

Bello Visto Woter Tonk (Benton County MRA), Jct. of Suits Us Dr. and Pumpkin Hollow Rd., Bella Vista vicinity, 92000985

Sunset Hotel (Benton County MRA), W of US 71, Bella Vista, 92000986

CALIFORNIA

Amador County

Chichizolo Fomily Store Complex, 1316–1330 Jackson Gate Rd., Jackson vicinity, 92000979

San Benito County

Downtown Hollister Historic District, Roughly bounded by Fourth, East, South and Monterey Sts., Hollister, 92000974

NEW JERSEY

Burlington County

Bishop—Irick Formstead, 17 Pemberton Rd., Southampton Township, Vincentown vicinity, 92000975

Cropwell Friends Meeting House (Eveshom Township MPS), 810 Cropwell Rd., Evesham Township, Cropwell, 92000976

Evons, Williom ond Suson, House (Eveshom Township MPS), 2 Bill's Ln., Evesham Township, Marlton vicinity, 92000978

Hollinshead, Thomos, House (Eveshom Township MPS), 18 W. Stow Rd., Evesham Township, Marlton vicinity, 92000977

TEXAS

De Witt County

Wofford—Finney House (Cuero MRA), 202 E. Prairie St., Cuerro, 92000984

Potter County

Curtis, Alice Ghormley, House, 1626 S. Washington St., Amarillo, 92000980

Jons—Gilvin House, 1500 S. Buchanan St., Amarillo, 92000983

Kouns—Jackson House, 1118 S. Harrison St., Amarillo, 92000981

Sanborn, Henry B. ond Ellen M. House, 1311 S. Madison St., Amarillo, 92000982

[FR Doc. 92–16774 Filed 7–16–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations; Notice

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: International Multifoods Corporation, 33 South Sixth Street, P.O. Box 2942, Minneapolis, MN 55402–0942.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

i. Cream of the Valley, Inc., a California Corporation.

ii. Fantasia Confections, Inc., a California Corporation.

iii. International Multifoods Foodservice Corp., a Delaware Corporation.

iv. JAC Creative Foods, Inc., a California Corporation.

v. Multifoods Bakery Distributors, Inc., a Delaware Corporation.

vi. Multifoods Transportation, Inc., a Delaware Corporation.

vii. Prepared Foods, Inc., a Delaware Corporation.

viii. Prepared Foods, Inc., a Texas Corporation.

ix. VSA, Inc., a Colorado Corporation.

x. Vendors Supply of America Corporation, a Delaware Corporation.

Sidney L. Strickland, Jr.,

Secretory.

[FR Doc. 92–16888 Filed 7–16–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-No. 1100X)]

Consolidated Rail Corporation—Abandonment Exemption—In Alliance, Ohio; Notice

Applicant has filed notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 1.28-mile of line of railroad, the Benton Industrial Track, between the bridge over the Mahoning River at milepost 24.18± and the termination point at milepost 22.90±, in Alliance, OH.

Applicant 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; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to the use of this exemption, any employee 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. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 17, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 27, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 6, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Six Penn Center Plaza, room 1138, Philadelphia, PA 19103–2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 22, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raisa by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the affectiva date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concarns is encouragad to file its request as soon as possibla in order to permit this Commission to review and act of tha request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Asist.,* 4 I.C.C. 2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

imposed, where appropriated, in a subsequent decision.

Decided: July 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-16889 Filed 7-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 1101X)]

Consolidated Rail Corporation—Abandonment Exemption—Crawford Industrial Track in Orange County, NY; Notice

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 2.9 miles of line in Orange County, NY. The segment to be abandoned, the Crawford Industrial Branch, extends from a point south of the undergrade bridge over Conrail's Southern Tier Line near Middletown (Washington Heights), NY, at approximately milepost 2.0, to the end of the branch at approximately milepost 4.9, in Fair Oaks, NY.

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local government agency acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or any U.S.District Court or has been decided in favor of the complainant within the 2-year period. Conrail also has certified that it has complied with the notice requirements at 49 CFR 1105.12 and 49 CFR 11521.50(d)(1).

As a condition to use of 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. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 17, 1992, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 27, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 6, 1992 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to Conrail's representative: Robert S. Natalini, Consolidated Rail Corporation, room 1138, Six Penn Center Plaza, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by July 24, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, historic preservation, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 10, 1992.

By the Commission, Richard B. Felder, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-16890 Filed 7-16-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 91-35]

John S. Major, D.M.D.; Suspension of Registration

On July 31, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued on Order to Show Cause to John S. Major, D.M.D. (Respondent) of 1344 S. Chambers Road, Aurora, Colorado 80017, proposing to revoke his DEA Certificate of Registration, BM1293682, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The Order to Show Cause also alleged that Respondent had been convicted of a felony relating to controlled substances, as that term is used in 21 U.S.C. 824(a)(2), in Arapahoe County District Court, State of Colorado, on November 17, 1989.

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held on January 8 and 9, 1992, in Denver, Colorado.

On April 10, 1992, Judge Tenney issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration be suspended for Schedule II controlled substances only, except in the case of a valid medical emergency and that such suspension should terminate upon the Respondent's successful completion of his probation term pursuant to his criminal conviction in the State of Colorado. Subsequently, pursuant to 21 CFR 1316.66, Government counsel filed exceptions to the administrative law judge's opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent's counsel did not file any response to the Government's exceptions.

On May 15, 1992, Judge Tenney transmitted the record of the proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and adopts, in part, the findings of fact and conclusions of law recommended by the administrative law judge, and makes independent findings and conclusions of his own. The Administrator also rejects the recommended ruling of the administrative law judge. Pursuant to 21 CFR 1316.67, the Administrator issues his final order in the matter based upon findings of fact and conclusions of law as set forth below.

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[1] A stay will be routinely issued by the Commission in those instances where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made prior to the effective date of the notice of the exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay based on environmental concerns is encouraged to file promptly so that the Commission may act on its request before the effective date.

[2] See *Exempt of Rail Abondonment—Offers of Finon. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests as long as it retains jurisdiction to do so.

The Administrator finds that Respondent became a close friend of Gary Ungerman in or about 1979 while the two were enrolled at pharmacy school at the University of Colorado in Boulder, Colorado. The friendship continued when the two returned to Denver, Colorado. On December 11, 1988, Mr. Ungerman was arrested on a charge of driving under the influence of alcohol. Respondent was a passenger in the car at the time of Mr. Ungerman's arrest and Respondent was questioned by the police concerning 117 various controlled substances found in Mr. Ungerman's possession at the time of his arrest.

On March 7, 1989, Respondent was arrested after he presented a forged prescription to a pharmacy. At that point he was charged with unlawful possession of and conspiracy to unlawfully possess Percocet, a Schedule II controlled substance.

On January 23, 1990, Respondent pled guilty to one felony count of conspiracy to possess a Schedule II controlled substance in the State of Colorado based upon his arrest and the ensuring charges. He was sentenced to four years probation with conditions including therapy for drug counseling. Based upon this conviction, the Colorado Dental Board and the Colorado Pharmacy Board ordered that Respondent's license to practice dentistry and license to practice pharmacy be suspended for a period of 30 days and each Board imposed probation terms that were simultaneous to the probation terms of the State criminal conviction probation.

In addition to the forgery which led to the criminal conviction, there were approximately 43 other instances where Respondent either forged prescriptions to obtain controlled substances for his own addiction or provided Gary Ungerman with blank prescription pads. Mr. Ungerman then forged prescriptions to obtain controlled substances for himself and his friends, some of whom used the controlled substances to "come down" from a cocaine "high". This scheme continued from 1984 until Respondent's arrest on March 7, 1989. During this period, Respondent experimented with controlled substances such as cocaine and Dexedrine and was addicted to Percocet. During this time, Respondent was a licensed pharmacist and a licensed dentist in the State of Colorado.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(a) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 88–69, 53 FR 5326 (1988).

The administrative law judge found there could be a basis for revocation of Respondent's DEA Certificate of Registration under 21 U.S.C. 824(a)(4) based upon the recommendation of the Colorado Dental and Pharmacy Boards, his controlled substance prescribing practices which had been poor and his controlled substance felony conviction in the State of Colorado. But, the administrative law judge found that Respondent was presently in full compliance with respect to prescribing controlled substances and had made a genuine and substantial effort towards rehabilitation. Moreover, the administrative law judge found Repondent's past conduct to be the result of youthful indiscretion. The administrative law judge therefore found that Respondent's continued registration would not be inconsistent with the public interest. In view of Respondent's serious violations, however, the administrative law judge recommended that Respondent's Certificate of Registration be suspended for Schedule II controlled substances only, except in the case of a valid medical emergency, while Respondent remained on probation for the criminal conviction in the State of Colorado.

The Administrator has carefully reviewed the entire record and finds that all five public interest factors apply. Respondent's experience in dispensing controlled substances is egregious based upon his history of forging prescriptions and diverting controlled substances not only to support his own addiction and experimental use, but to supply other drug abusers as well. This conduct was anything but an isolated event, inasmuch as it occurred over a five year period. The Administrator also finds that Respondent was convicted in the State of Colorado for the offense of conspiring to obtain a Schedule II controlled substance and that the State Boards suspended Respondent's professional licenses for thirty (30) days. The Administrator gives limited weight to the Boards' orders, however, since they were based solely on Respondent's sole criminal conviction and not on the ongoing scheme to fraudulently obtain controlled substances for himself and others.

The Administrator disagrees that Respondents has made genuine and substantial efforts towards rehabilitation. Initially, Respondent was compelled to enter a plea to the state felony charge and comply with court-ordered drug therapy as part of the probation sentence or else face trial on numerous charges and potential incarceration. Moreover, during the probation term, Respondent missed appointments with his probation officer and his therapist. Also of significance is the fact that the probation officer testified that she would not recommend Respondent for early release from probation even though he was eligible and that his therapist believed, at the time of the hearing, that therapy needed to continue for another three months.

The Administrator also disagrees with the Administrative law judge's characterization of Respondent's behavior as youthful indiscretion. Not only did Respondent possess two professional state licenses during the five year period when he was engaged in the forged prescription scheme, he also held a DEA Certificate of Registration. The fact that Respondent was in his late twenties at the time of these events is hardly a mitigating circumstance in light of the fact that he sought and had been entrusted with the grave responsibility of handling controlled substances by Federal and State authorities. Nor was this forged prescription scheme an isolated event; as noted previously the conspiracy continued for above five years.

Based upon these circumstances the Administrator cannot agree with the administrative law judge's recommendation entirely. Respondent's past negative experience with controlled substances, along with his problems with rehabilitation, leads to the conclusion that Respondent cannot be entrusted with the responsibilities of a

DEA registration and that his continued possession of a registration would be contrary to the public interest. Therefore, the Administrator concludes that the Respondent's registration must be suspended for the duration of his original probation term as ordered by the District Court, Arapahoe County, State of Colorado, on January 23, 1990. The suspension will remain in effect until January 22, 1994, unless Respondent's probation is extended, in which case the suspension will terminate when Respondent has successfully completed the extended probation term. Respondent also must notify the DEA of successful completion of probation before the suspension is terminated.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BM 1293682, previously issued to John S. Major, D.M.D., be, and it hereby is, suspended until January 22, 1994, or until John S. Major, D.M.D., has successfully completed probation under the probation order of the District Court, Arapahoe County, State of Colorado, Case number 89 CR1244, Division 6, whichever is later. The Administrator also orders that John S. Major, D.M.D., must notify the Drug Enforcement Administration of successful completion of probation before such suspension is terminated. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 17, 1992.

Dated: July 9, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-16845 Filed 7-16-92; 8:45 am]

BILLING CODE 4410-09-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 supersedeas 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.

Modifications to General Wage Determination Decisions

The numbers of the 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, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL91-32 (Feb. 22, 1991)..... p. 61.
Connecticut:
CT91-1 (Feb. 22, 1991)..... p. 63, p. 65.
CT91-3 (Feb. 22, 1991)..... p. 78a, p. 78b.
CT91-4 (Feb. 22, 1991)..... p. 78g, p. 78h.
Florida:
FL91-15 (Feb. 22, 1991)..... p. 135, p. 136.
Massachusetts:
MA91-1 (Feb. 22, 1991)..... p. 421, pp. 422, 426-427.
New Jersey:
NJ91-2 (Feb. 22, 1991)..... p. 701, p. 707.
NJ91-3 (Feb. 22, 1991)..... p. 721, pp. 726-727.
New York:
NY91-2 (Feb. 22, 1991)..... p. 777, p. 783.
NY91-5 (Feb. 22, 1991)..... p. 817, p. 821.
NY91-8 (Feb. 22, 1991)..... p. 857, p. 863.
NY91-12 (Feb. 22, 1991)..... p. 893, pp. 894-897.
NY91-18 (Feb. 22, 1991)..... p. 931, pp. 932-942.
NY91-19 (Feb. 22, 1991)..... p. 943, pp. 945, 948.
NY91-20 (Feb. 22, 1991)..... p. 949, pp. 950-952.
Virginia:
VA91-20 (Feb. 22, 1991)..... p. All.
VA91-65 (Feb. 22, 1991)..... p. All.
West Virginia:
WV91-2 (Feb. 22, 1991)..... p. 1421, pp. 1423, 1442, 1426.

Volume II

Alaska:
AK91-1 (Feb. 22, 1991)..... p. All.
Arkansas:
AR91-8 (Feb. 22, 1991)..... p. All.
AR91-8 (Feb. 22, 1991)..... p. All.

Illinois:
IL91-8 (Feb. 22, 1991)..... p. 145, pp. 147, 149.
IL91-9 (Feb. 22, 1991)..... p. 153, pp. 154, 157.
IL91-11 (Feb. 22, 1991)..... p. 163 pp. 164, 170.
IL91-12 (Feb. 22, 1991)..... p. 171, p. 173.
IL91-13 (Feb. 22, 1991)..... p. 183, pp. 184, 190.
Kansas:
KS91-9 (Feb. 22, 1991)..... p. All.
KS91-10 (Feb. 22, 1991)..... p. All.
KS91-11 (Feb. 22, 1991)..... p. All.
KS91-12 (Feb. 22, 1991)..... p. All.
Ohio:
OH91-2 (Feb. 22, 1991)..... p. 821, pp. 822, 826, 835-836.

Volume III

None.

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. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of July 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-16649 Filed 7-16-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-27,257]

Fair Shake Co., Inc., Forks, Washington; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 18, 1992, in response to a worker petition which was filed on May 18, 1992, on behalf of workers at Fair Shake Co., Inc., Forks, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of July, 1992,

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-16981 Filed 7-16-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,999]

Upjohn Company, North Haven, CT; Negative Determination Regarding Application for Reconsideration

By applications dated June 26, 1992, the company and the Communications Workers Union (CWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 15, 1992 and was published in the **Federal Register** on May 28, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company states that the workers should be re-certified because the conditions are the same as those which justified the earlier certification, TA-W-24,041 and there is not sufficient work remaining to sustain the facility.

Investigation findings show that the workers were certified on April 11, 1990 under petition TA-W-24,041. That certification was based on the fact that Upjohn's major customers were increasing their import purchases of industrial chemicals while decreasing their purchases from Upjohn. Upjohn ceased production of industrial chemicals in 1990 when the Fine Chemical Division ceased to exist at North Haven. Worker separations resulting from this cessation of production were covered under certification TA-W-24,041.

The subject petition was filed on behalf of workers producing intermediate pharmaceuticals at North Haven. These products are integrated into the production at other domestic facilities of the Upjohn Company. Consequently, workers at North Haven may be certified for TAA only if their separations were caused importantly by a reduced demand for their production from a corporately-affiliated manufacturing facility whose workers independently meet the statutory criteria for certification. These conditions have not been met for workers producing intermediate pharmaceutical products at North Haven.

The only other activity at North Haven is the decommissioning of the facility. This activity would not form a basis for a worker group certification. Also, the fact that there is not sufficient work remaining at the facility to warrant its remaining in operation would not form a basis for a certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92-16892 Filed 7-16-92; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

National Film Preservation Board; Nominations for At-Large Members to the National Film Preservation Board and Film Selections for 1992

AGENCY: Library of Congress, National Film Preservation Board.

ACTION: Notice of inquiry.

SUMMARY: This notice of inquiry is issued to inform the public that the Librarian of Congress pursuant to Public Law 102–307, The National Film Preservation Act of 1992, 106 Stat. 264, is soliciting public nominations for:

(A) Up to two at-large members for the newly created National Film Preservation Board; and

(B) Films eligible for inclusion in the National Film Registry for 1992.

DATES: Comments should be received on or before August 14, 1992.

ADDRESSES: Copies of written comments with regard to this notice of inquiry should be addressed to: Dr. James H. Billington, The National Film Registry, The Library of Congress, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707–8350.

SUPPLEMENTARY INFORMATION: On June 26, 1992, President Bush signed into law Public Law 102–307, The National Film Preservation Act of 1992. This Act reauthorizes The National Film Preservation Act of 1988 (Public Law 100–446) which expired on September 27, 1991. The 1992 reauthorization will continue the activities of a newly created Board for four years from the date of enactment. The main focus of the new National Film Preservation Act will shift to the development of a comprehensive national film preservation program.

The Librarian, after consultation with the Board, must complete a major study for Congress on the current state of film preservation activities nationwide, in conjunction with the nation's other film archives. The Librarian, in consultation with the new Board, will then assist in the coordination of national film preservation efforts—assuring that public and private sector activities are complementary and generating public awareness of and support for these activities. The Act establishes a new Board consisting of the organizations represented on the original thirteen member Board with new additions: a cinematographer, a representative of the theater owners, a film archivist, and up to two at-large members—bringing the total Board to eighteen members.

The Board will continue to select up to twenty-five films a year (for four more years—a total of 100, plus the 75 selected in the first three years under the 1988 Act). One copy of each film selected will be collected "in archival quality" by the Library of Congress for the National Film Registry Collection.

1. Nominations for At-Large Members to the Board

The 1992 reauthorization requires the Librarian to reconstitute a new National Film Preservation Board consisting of 18 members—sixteen from designated organizations and up to two at-large members. In accordance with section 204 of the Act, The Librarian of Congress, Dr. James H. Billington, is directed to appoint up to 2 members at large. The Librarian shall select the at-large members from names submitted by organizations in the film industry, creative artists, producers, film critics, film preservation organizations, academic institutions with film study programs, and others with knowledge of copyright law and of the importance, use, and dissemination of films. The Librarian shall, in selecting 1 such member-at-large, give preference to individuals who are responsible for commercial film libraries. The Librarian shall also select from the names submitted under this paragraph an alternate for each member at-large, who may attend those meetings to which the member at-large cannot attend.

The public is encouraged to submit the names of individuals or organizations meeting these criteria to facilitate the selection by the Librarian of the two at-large members. All nominations should be submitted in writing, by mail, to the Librarian of Congress no later than August 14, 1992. All nominations should be mailed to: Dr. James H. Billington, The National Film Registry, The Library of Congress, Washington, DC 20540.

2. Nominations for Films for 1992

The 1988 Act resulted in the selection of seventy-five films into the National Film Registry in the Library of Congress. Archival copies of each of the films have been or are being collected by the Library for this special collection in the Library of Congress. The 1992 Act continues the selection process of up to twenty-five films a year.

The Librarian is soliciting public nominations of films so that after consultation with the Board, he can select twenty-five films for inclusion in the Registry in 1992. All public nominations received after August 14, 1992 will be considered during the selection process in 1993.

There are changes from the 1988 selection process. The 1992 Act kept the requirement that the film be at least 10 years old (from its first publication), but dropped the requirement that the film be feature-length and that it have had a theatrical release in order to be included. This will allow for a broader selection of films beginning in 1992.

All films nominated must reflect the congressional mandate for the selection process, which reads in relevant part in section 202 of the Act, that the National Film Registry maintain and preserve films that are "culturally, historically, or aesthetically significant." These criteria are intended to be read broadly so that as many films are possible will be eligible for inclusion in the Registry.

All nominations for inclusion of films into the National Film Registry for 1992 must be submitted in writing, by mail, to the Librarian of Congress no later than August 14, 1992. All nominations should be mailed to: Dr. James H. Billington, The National Film Registry, The Library of Congress, Washington, DC 20540.

Dated: July 10, 1992.

James H. Billington,

The Librarian of Congress.

[FR Doc. 92–16862 Filed 7–16–92; 8:45 am]

BILLING CODE 1410–16–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Cooperative Agreement for the Administration of Site Visits

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified organization or individual to assist the Endowment's Locals Program in the administration of on-site evaluations of local arts agencies applying for funding under the Locals Program, Local Government Incentive Category of support. Duties include: Advising Evaluators on the payment reimbursement process and restrictions on travel and expenses; receive and review Travel Expenditure reports; disbursement of funds; maintaining records; and submitting reports. Those interested in receiving the Solicitation package should reference the Program Solicitation PS 92–09 in their written request and include two (2) self-addressed mailing labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92–09 is scheduled for release approximately August 3, 1992 with proposals due on September 3, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to

National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Anna Mott or William T. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202 682–5482).

Anna L. Mott,
Contract Specialist.

[FR Doc. 92–16741 Filed 7–16–92; 8:45 am]
BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 31, 1992 from 8:30 a.m.–5:15 p.m. and on August 1 from 9 a.m.–4:30 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include opening remarks, Legislative update, FY 94 Budget, Reauthorization, cultural diversity, and Program Review and/or Guidelines and/or Application Review for the Arts in Education, Challenge/Advancement, Dance, Design Arts, Expansion Arts, Folk Arts, International, Literature, Locals, Media Arts, Museum, Music, Policy, Planning and Research, Presenting & Commissioning, State & Regional, Theater, and Visual Arts Programs.

If in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the Council will go into closed session for that limited purpose only pursuant to subsection (c)(4 of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of March 6, 1991.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 13, 1992.

Yvonne M. Sabine,
Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–16846 Filed 7–16–92; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL SPACE COUNCIL

Meeting of the Industrial Base Review Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting.

SUMMARY: The Industrial Base Review Task Group of the Vice President's Space Policy Advisory Board will meet August 6 and 7, 1992.

DATES: August 6 and 7, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, suite 800, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Eva Czajkowski, (703) 685–3568, or Courtney Stadd, National Space Council, Executive Office of the President, Washington, DC, (202) 395–6175.

SUPPLEMENTARY INFORMATION: The Industrial Base Review Task Group of the Vice President's Space Policy Advisory Board will meet between 8:30 a.m. and 5 p.m. on August 6 and 7, 1992, at the ANSER Corporation, suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. Persons interested in attending should contact Eva Czajkowski, ANSER, (703) 685–3568.

Courtney Stadd,
Committee Action Officer.

[FR Doc. 92–16884 Filed 7–16–92; 8:45 am]
BILLING CODE 3128–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Company; Palisades Plant; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Consumers Power Company (the licensee), to withdraw its November 13, 1989, application for an amendment to Facility Operating License No. DPR–20, issued to the licensee for operation of the Palisades Nuclear Plant, located in Van Buren County, Michigan. Notice of Consideration of Issuance of this amendment was published in the Federal Register on March 21, 1990 (55 FR 10531).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to incorporate new requirements into section 3.7, Electrical Systems.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 13, 1989, and additional information provided in a letter dated April 27, 1989, and (2) the staff's letters dated June 26, 1992 and July 10, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, 10th day of July 1992.

For the Nuclear Regulatory Commission.

Armando Masciantonio,
Project Manager, Project Directorate III–1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–16894 Filed 7–16–92; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensee) for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would delete Facility Operating License Condition 2.B.7(a), which has been satisfied. This amendment would also

revise License Section 2.A by deleting the words "740-acre" from the general site description.

The proposed action is in accordance with the licensee's application for amendment dated April 3, 1992, as supplemented on May 18, 1992.

The Need for the Proposed Action

1. License Condition 2.B.7(a)

License Condition 2.B.7(a) was placed on Maine Yankee's full power operating license "* * * for the protection of the environment: * * *" at its issuance on June 29, 1973. License Condition 2.B.7(a) states, "The licensee will develop and implement as soon as practicable a plan of action for removal of Cowseagan Causeway and replacement with an appropriate bridge."

The Cowseagan Causeway was removed in 1974, and was replaced by the present overwater bridge to Westport Island.

2. License Section 2.A

Section 2.A of the Facility Operating License states, "This amended license applies to the Maine Yankee Atomic Power Station, a pressurized, light water moderated and cooled reactor, and associated electric generating equipment (the facility), owned by the Maine Yankee Atomic Power Company. The facility is located on the licensee's 740-acre site on the west shore of the Back River, in Lincoln County, Maine, approximately 3.9 miles south of Wiscasset, Maine, and is described in the Final Safety Analysis Report as supplemented and amended (Amendments 14 through 36) and the Environemantal Report as supplemented and amended (supplements 1 through 3)."

The "740-acre" specific site descriptor is removed from License Section 2.A, because this site detail is not part of the Technical Specifications and is beyond the requirements of 10 CFR part 100.

Technical Specification 1.2 describes the site, in terms of the significant aspects that cannot be altered without prior (Nuclear Regulatory Commission) approval, as follows:

"The station shall be located on property owned by Maine Yankee Atomic Power Company on and surrounding Bailey Point in the Town of Wiscasset, Lincoln County, Maine. The minimum distance to the boundary of the exclusion area, as defined in 10 CFR 100.3, shall be 2000 feet."

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the Facility Operating License. The proposed revisions do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the Technical Specifications involves systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 13, 1992 (57 FR 20513). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or grater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station, dated July 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment, dated April 3, 1992, as supplemented on May 18, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 10th day of July 1992.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Director, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-16892 Filed 7-16-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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 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) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports 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 of the Manchester Airport at the following address: Manchester Airport, Ammon Terminal, Manchester, New Hampshire 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Manchester

Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 273–7054. 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 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) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 7, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Manchester Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The Faa will approve or disapprove the application, in whole or in part, no later than October 9, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: November 1, 1992.
Proposed charge expiration date: December 31, 1996.
Total estimated PFC revenue: $5,587,000.

Brief description of proposed projects:

Impose and Use Projects

Construct Apron, Taxiway G and Connectors (Terminal Area)
Runway 6–24 Grooving
Purchase Snow Removal Equipment (2)
Purchase Aircraft Rescue and Fire Fighting Vehicle

Impose Only Projects

Runway 6–24 Upgrades
Reconstruct Taxiways A, B, C and F
Extend Taxiway D
Aviation Easements for Runway 17 Instrument Landing System
Noise Mitigation Program (Soundproofing/Acquisition)
Drainage Replacement
Construct Aircraft Rescue and Fire Fighting Station

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport.

Issued in Burlington, Massachusetts on July 7, 1992.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 92–16841 Filed 7–16–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the fortieth meeting of Special Committee 147 to be held August 10–12, 1992, in the RTCA conference room; 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of minutes of the thirty-ninth meeting held on April 1 and 2, 1992, RTCA paper No. 403–92/SC147–514; (4) Reports of working group activities; (a) Pilot Working Group; (b) Separation Assurance Task Force; (c) Requirements Working Group; (d) TCAS I Working Group; (5) Report on FAA TCAS program activities; (a) TCAS I; (b) TCAS II; (c) TCAS III; (6) Discussion and review of change 6.04; (7) Review and update of verification and validation process; (8) Discussion of TCAS I MOPS; (9) Review of action items from last meeting; (10) Other business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 9, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–16840 Filed 7–16–92; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Vehicle Occupant Protection Systems Research

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

ACTION: Announcement of Discretionary Cooperative Agreement to Support Vehicle Occupant Protection Systems Research.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to support research studies to evaluate potential improvements in occupant protection during motor vehicle crashes and solicits applications for projects under this program.

DATES: Applications must be received no later than August 31, 1992.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attn: S. Peter Shultz, 400 Seventh Street, SW., room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–92–Y–07336, and identify the program area for which the application is submitted. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to S. Peter Shultz, Office of Contracts and Procurement, at (202) 366–9561. Programmatic questions relating to this cooperative agreement program should be directed to Jerome M. Kossar, Safety Systems Engineering & Analysis Division (NRD–11), 400 Seventh Street, SW., room 6226, Washington, DC 20590 (202/366–4722).

SUPPLEMENTARY INFORMATION:

Background and Objectives

The National Highway Traffic Safety Administration is mandated with the responsibility for devising strategies to save lives and reduce injuries from motor vehicle crashes. The purpose of this cooperative agreement program is to promote the improvement of traffic safety for the public through research studies designed to evaluate potential improvements in occupant protection during vehicle crashes as a means of expanding the base of scientific knowledge in this field and to provide

for the coordinated exchange of scientific information collected as a result of the studies conducted.

Occupant protection research employs the principles of mechanics to discover the means of reducing impact severity to the human body during various vehicle crash scenarios. Generally, the teams doing the research are comprised of individuals from different disciplines: engineering, physiology, restraints design, electronics, materials development, pyrotechnics and others. The team studies existing state-of-the-art occupant protection systems, primarily inflatable occupant restraints, seats and/or occupant compartment interior surface padding systems, focusing on one or more. Applications of occupant protection technologies to reduce struck pedestrian injuries may also be considered. Team size and range of disciplines available within the team should be established based on the requirements of the proposed efforts. The studies shall encompass either or both the evaluation of available crash and injury statistics and mathematical modelling of the crash victim. The studies must lead to identification of circumstances which result in opportunities for improved protection for the occupant or pedestrian and guidance as to potential improvement methods. Prototype development and testing of improved occupant or pedestrian protection systems along with incremental cost estimates in projected production quantities would be then accomplished by the team.

The focus of this cooperative research effort is the study of current occupant protection systems employed in vehicles, identification of areas which are amenable to improvement and the conception/development of prototype systems demonstrating the occupant or struck pedestrian protection improvements achieved and providing reliable basis for production cost to achieve the improvements.

Proposers should identify the program area(s) which the proposed cooperative agreement would address. Program areas of current interest include but are not limited to the following:

(a) Techniques to improve accommodation of various size and age occupants in contact with or close to deploying air bags.

(b) Techniques to improve gases and/or respirable particulate discharge from air bags.

(c) Techniques to automatically modify or control air bag deployment based on feed back and information of occupant size and/or occupant precrash position relative to the air bag.

(d) Techniques to advantageously alter deployment path or bag array during air bag unfurling during early phases of deployment.

(e) Techniques to enhance occupant protection with air bags/inflatables at higher crash speeds.

(f) Techniques to couple inflatables and energy management foams, stationary or pre-crash deployable structures, re-inflatables, etc., to attain improved protection for the occupant from impact on hard or intruding surfaces within the passenger compartment during car crash.

(g) Techniques to sense and delineate crash intensity/threat to occupant to allow timely adjustment to air bag deployment initiation timing and/or air bag fill rates to achieve minimum bag deployment aggressiveness consistent with the required occupant crash protection.

(h) Techniques to achieve precrash anticipatory crash sensing and methods of implementing such achievement to provide improved occupant protection in frontal, side impact occupant, and rollover protection.

(i) Techniques to design improved seating and/or vehicle control concepts to provide more efficient occupant restraints (inflatables and/or belts) which provide more accommodation of full range of occupant sizes and provide more riding comfort for the belted occupant.

(j) Inflatable manual or automatic belt systems.

(k) Application of air bags to other than frontal crashes.

(l) Application of air bags for rear seat occupants.

(m) Application of air bags in motorcycles, heavy duty, and other motor vehicles.

(n) Application of exterior air bags or movable structures for pedestrian protection, intrusion protection, crash sensors, etc.

The above list of potential program areas constitutes only a sampling and applicants are encouraged to suggest from these and others those which are believed by the applicant to provide the potential for practical improvement of current occupant crash protection and are most amenable to the special skills and experience of the applicant.

It is envisioned that three broad phases may be applicable to these programs: (1) Preliminary studies identifying the system performance improvement desired, an estimate of additional production costs related to the improvement, the benefits to be appreciated from such improvement, and the approximate magnitude of national injuries and fatalities now occurring due to the absence of the improvement. (2) Prototype development and establishment of reliable production costs. (3) Prototype demonstration. The duration of each phase will vary according to current state-of-the-art and in some instances may be overlapped.

NHTSA Involvement

The NHTSA, Safety Systems & Analysis Division, will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the cooperative agreement participant organization and the NHTSA.

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

3. Provide liaison with other government agencies and organizations as appropriate.

4. Stimulate the exchange of ideas, problems, and solutions among cooperative agreement recipients who agree to such sharing, and, if appropriate, NHTSA contractors and other interested parties; and

5. Share nonproprietary information developed at Government expense with the scientific and industrial community.

Period of Support

The research and development effort described in this notice may be supported through the award of a cooperative agreement. The NHTSA reserves the right to make multiple cooperative agreement awards for the effort described in this notice depending upon the relative merit of the applications received and the Federal resources and amount of Federal funding available.

Contingent upon the availability of funds and satisfactory performance, a cooperative agreement(s) will be awarded to an eligible organization(s) for project periods of up to five years. It is currently intended that no cooperative agreement awarded as a result of this notice shall exceed $30,000 per year.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a for-profit business organization (small or large), a non-profit organization, or an educational institution. Consortiums of organizations

may apply and/or NHTSA may assist in the formation of consortiums among agreeing applicants if feasible and desirable. Regardless of the type of organization applying for Federal funding assistance, no fee or profit will be allowed.

Application Procedure

Each applicant must submit one original and two copies of their application package to: Office of Contracts and Procurement (NAD–30), NHTSA, 400 Seventh Street, SW., room 5301, Washington, DC 20590. Applications are due no later than 45 days after the appearance of this announcement in the **Federal Register**. Only complete application packages received by the due date shall be considered. Submission of three additional copies will expedite processing; but is not required. The applicant shall specifically identify any information in the application which is to be treated as proprietary, in accordance with the procedures of 49 CFR part 512, Confidential Business Information.

Application Contents

The application package must be submitted with a Standard Form 424 (rev. 4–88), Application for Federal Assistance, which shall include the certified assurances, and provide a program narrative statement which addresses the following:

1. A description of the research to be pursued which addresses:

a. The objectives, goals, and anticipated outcomes of the proposed research effort;

b. The method or methods that will be used;

c. The source of crash and injury statistics to be used;

d. The primary occupant protection system (e.g., inflatable or padded interior) which will be most probably benefitted;

2. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of their qualifications and their respective organizational responsibilities.

3. A description of the vehicle occupant population and crash modes to be addressed, test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research and development effort.

4. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

5. A detailed schedule and budget for the proposed research effort, including any cost-sharing contribution proposed by the applicant as well as any additional financial commitments made by other sources.

6. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed program.

Review Process and Criteria

Initially, all applicants will be reviewed to confirm that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated and ranked using the following criteria:

1. The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed research and development effort. Specific attention shall be placed upon the applicant's stated proposed development and demonstration effort.

2. The potential of the proposed research effort accomplishments to make a timely and an innovative and/or significant contribution to occupant protection technology knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes.

3. The technical and financial merit of the proposed research effort, including the feasibility of the approach, practicality, planned methodology, and anticipated results. Financial merit will be estimated by the cost of the cooperative agreement to be borne by NHTSA compared to the anticipated benefits to vehicle crash occupants or struck pedestrians.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research effort.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

Terms and Conditions of the Award

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in NHTSA Orders 700–1 and 700–3. Any recipient must satisfy the requirements and guidelines of the NHTSA Orders 700 series prior to award of the cooperative agreement. A copy of the NHTSA Orders 700 series may be obtained from the information contact designated in this notice.

2. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug Free Workplace (Grants).

3. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR part 29. Each agreement with a non-profit organization or an educational institution shall also be subject to the general administrative requirements of OMB Circular A–110.

4. Cooperative agreement(s) awarded as a result of this notice will include the provisions of Federal Acquisition Regulation (FAR) Part 52 contract clauses under 52.227–11 Patent Rights Retention by the Contractor (Short Form) as applicable to and agreed to by the contractor.

Reporting Requirements

a. Written Research Reports

The recipient shall submit bimonthly research reports suitable for public dissemination which shall be due 15 days after the reporting period, and a final research report within 45 days after the completion of the research effort. An original and three copies of each of these research reports shall be submitted to the COTR.

b. Oral Briefings

The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Crashworthiness Research, Washington, DC. An original and three copies of briefing materials shall be submitted to the COTR.

c. Data Reports

The dynamic and other data measured in research, development, and prototype evaluation and demonstration tests will be provided by the recipient(s) within three (3) weeks after the test is run in the format of a data package as described below. The recipient may be relieved of the data package report

requirement for certain of tests by agreement from the COTR.

A data package consists of high speed film, paper test report, and magnetic tape complying with NHTSA Data Tape Reference Guide, Volume III: Component Data Base. The NHTSA Safety Systems Engineering & Analysis Division, maintains a Vehicle Crash Test and a Component Data Base which provide information, upon request, to the public, including educational institutions and other research organizations.

To facilitate the input of data as well as the exchange of information, any recipient of a cooperative agreement awarded as a result of this notice must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide." A copy of this document may be obtained from the programmatic information contact designated in this notice.

Issued on: July 10, 1992.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 92-16836 Filed 7-15-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-34; No. 1]

Mack Trucks, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Mack Trucks, Inc. (Mack) of Allentown, Pennsylvania, has determined that some of its vehicles fail to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment" Federal Motor Vehicle Safety Standard No. 108, and has filed an appropriate report pursuant to 49 CFR part 573. Mack has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.* on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the period of December 1, 1991 through March 26, 1992, Mack installed front-mounted turn signal lamps on approximately 1,000 RB, RD, RM, DM, and DMM model trucks. The turn signal lamps on these vehicles do not comply with the photometric requirements of Standard No. 108.

Effective December 1, 1991, section 5.1.1 of Standard No. 108 was amended to incorporate by reference Society of Automotive Engineers Standard J1395 April 1985. Paragraph 5.3.2. of J1395 states that the functional lighted lens area of a single lamp, each compartment of a multiple compartment, and each lamp of a multiple lamp arrangement shall be at least 75 cm^2 (11.625 in^2). The subject lamps have an effective projected luminous lighted area of 72 cm^2 (11.18 in^2).

Mack supports its petition for inconsequential noncompliance with the following:

Mack Trucks, Inc. has utilized the lamps in question . . . since approximately 1979 without problem.

Each lamp provides 11.18 square inches (slightly more than 72 square centimeters) of functional lighted lens area compared to the required 75 square centimeters (equivalent to 11.625 square inches), a difference of less than 3 square centimeters (0.445 square inch).

Mack Trucks, Inc. believes that, based on the subject lamps' minimal difference (less than 4%) from the required functional lighted lens area and our use of these same lamps for more than ten (10) years on the same vehicle models without problem, the noncompliance . . . does not affect the safety of our vehicles and is, therefore, inconsequential.

Interested persons are invited to submit written data, views, and arguments on the petition of Mack, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: August 17, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 13, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-16875 Filed 7-16-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 22-92]

Treasury Notes, Series G-1999

Washington, July 9, 1992.

The Secretary announced on July 8, 1992, that the interest rate on the notes designated Series G-1999, described in Department Circular—Public Debt Series—No. 22-92 dated July 1, 1992, will be 6⅞ percent. Interest on the notes will be payable at the rate of 6⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-16897 Filed 7-16-92; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 10, 1992.

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 1980, Public Law 96-511. 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0242
Form Number: IRS Form 6197
Type of Review: Extension
Title: Gas Guzzler Tax
Description: Form 6197 is used to compute the gas guzzler tax on automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is reported quarterly on Form 720. Form 6197 is filed each quarter with Form 720 for manufacturers. Individuals can make a one-time filing if they import a gas guzzler auto for personal use. The IRS uses the information to verify computation of the tax and compliance with the law.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 485

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hours, 18 minutes
Learning about the law or the form—12 minutes
Preparing, and sending the form to the IRS—17 minutes
Frequency of Response: Quarterly
Estimated Total Reporting/Recordkeeping Burden: 2,892 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–16859 Filed 7–16–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 10, 1992.

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 1980, Public Law 96–511. 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW. Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Survey—New Business Newsletter
Description: Information gathered will be considered in determining the value of "Tax Tips", a tax newsletter for new businesses, in assisting business taxpayers to meet their tax obligations.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,160
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Other (one-time survey)
Estimated Total Reporting Burden: 290 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–16860 Filed 7–16–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 10, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0782
Regulation ID Number: LR–7 Final (T.D. 6629)
Type of Review: Extension
Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands
Description: The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d) (1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayers' compliance with the reporting requirement of section 934(d). The changes imposed by the Tax Reform Act of 1986 should reduce the number of responses to approximately 500.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Respondent: 12 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 184 hours
OMB Number: 1545–1016
Form Number: IRS Form 8613
Type of Review: Extension
Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies
Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/Recordkeepers: 1,500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 6 hours, 13 minutes
Learning about the law or the form: 1 hour, 59 minutes
Preparing and sending the form to the IRS: 2 hours, 10 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 15,570 hours
OMB Number: 1545–1190
Form Number: IRS Form 8824
Type of Review: Revision
Title: Like-Kind Exchanges
Description: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under section 1031. It is also used to report the deferral of gain under section 1043 by members of the executive branch of the Federal government
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents/Recordkeepers: 200,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 26 minutes
Learning about the law or the form: 28 minutes
Preparing the form: 1 hour, 2 minutes
Copying, assembling, and sending the form to the IRS: 27 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 353,884 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and

Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-16861 Filed 7-16-92; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: 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, "Treasures of the Vatican Library" (see list [1]), 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 temporary exhibition or display of the listed exhibit objects at the Library of Congress, Washington, DC from on or about January 6, 1993, to on or about April 30, 1993 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 14, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-16910 Filed 7-16-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 17, 1992.

Dated: July 10, 1992.

By direction of the Secretary.

Frank E. Lalley,

Association Deputy Assistant Secretary for Information Resources Policies and Oversight.

Revision

1. Eligibility Verification Reports (EVR)
   a. EVR Instructions, VA Form 21-0510
   b. Old Law EVR (Surviving Spouse), VA Form 21-0511S
   c. Old Law EVR (Surviving Spouse), VA Form 21-0511S-1
   d. Old Law EVR (Veteran), VA Form 21-0511V
   e. Old Law EVR (Veteran), VA Form 21-0511V-1
   f. Section 306 EVR (Surviving Spouse), VA Form 21-0512S
   g. Section 306 EVR (Surviving Spouse), VA Form 21-0512S-1
   h. Section 306 EVR (Veteran), VA Form 21-0512V
   i. Section 306 EVR (Veteran), VA Form 21-0512V-1
   j. Old Law and Section 306 EVR (Children Only), VA Form 21-0513
   k. Old Law and Section 306 EVR (Children Only), VA Form 21-0513-1
   l. DIC Parent's EVR, VA Form 21-0514
   m. DIC Parent's EVR, VA Form 21-0514-1
   n. Improved Pension EVR (Veteran with no Dependents), VA Form 21-0515
   o. Improved Pension EVR (Veteran with no Dependents), VA Form 21-0515-1
   p. Improved Pension EVR (Veteran with Spouse), VA Form 21-0516
   q. Improved Pension EVR (Veteran with Spouse), VA Form 21-0516-1
   r. Improved Pension EVR (Veteran with Children), VA Form 21-0517
   s. Improved Pension EVR (Veteran with Children), VA Form 21-0517-1
   t. Improved Pension EVR (Surviving Spouse with no Children), VA Form 21-0518
   u. Improved Pension EVR (Surviving Spouse with no Children), VA Form 21-0518-1
   v. Improved Pension EVR (Surviving Spouse and/or Children), VA Form 21-0519
   w. Improved Pension EVR (Surviving Spouse and/or Children), VA Form 21-0519-1

2. These forms are used by VA regional offices to verify continued eligibility for pension and parents' Dependency and Indemnity Compensation (DIC) and to determine whether adjustments in the rate of payment are necessary. These forms are also used for developing supplemental income and estate information from claimants who have previously filed a formal application for pension or DIC.

3. Individuals or households.

4. 766,800 hours.

5. 30 minutes per form.

6. On occasion and Annually.

7. 1,022,400 respondents.

[FR Doc. 92-16867 Filed 7-16-92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

[1] A copy of this list may be obtained by contacting Ms Luisa Alvarez of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547

ADDRESSES: Copies of the propósed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by August 17, 1992.

Dated: July 10, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Infarmatian Resaurces Palicies and Oversight.

Revision

1. Offer to Rent on Month-to-Month Basis and Credit Statement of Prospective Tenant, VA Form 26–6725.
2. The form is completed by prospective tenants of properties owned by VA and serves as the rental offer and credit statement. The information collected provides the basis for acceptable or rejection of offers to rent.
3. Individuals or households; Businesses or other for-profit.
4. 33 hours.
5. 20 minutes.
6. On occasion.
7. 100 respondents.

[FR Doc. 92–16869 Filed 7–16–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by August 17, 1992.

Dated: July 10, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Report and Certification of Loan Disbursement, VA Form 26–1820.
2. This form is completed by lenders closing VA loans under the automatic or prior approval procedure subsequent to issuance of guaranty.
3. Individuals or households.
4. 125,000 hours.
5. 30 minutes.
6. On occasion.
7. 250,000 respondents.

[FR Doc. 92–16871 Filed 7–16–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by August 17, 1992.

Dated: July 10, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Request for Details of Expenses, VA Form 21–8049.
2. This form is used to obtain the necessary information to determine the amount of any deductible expenses paid by the claimant and/or commercial life insurance received to calculate the current rate of pension payable.
3. Individuals or households.
4. 5,700 hours.
5. 15 minutes per form.
6. On occasion.
7. 22,800 respondents.

[FR Doc. 92–16868 Filed 7–16–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 8:30 a.m., Wednesday, July 29, 1992.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes, May 21, 1992, Annual Meeting
III. Budget Committee Report:
  a. Proposed FY '92 Revisions
  b. Proposed FY '93 Request
  c. Proposed FY '94 OMB Submission
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 92–17004 Filed 7–15–92; 11:02 am]

BILLING CODE 7570–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

12 noon to 3 p.m., July 23, 1992
6:30 a.m. to 3:00 p.m., July 24, 1992
6:30 a.m. to 2:00 p.m., July 25, 1992

PLACE: Embassy Suites Resort, 104 Kaanapali Shores Place, Lahaina, Maui, HI.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: Meeting with the Conference of Chief Justices and Conference of State Court Administrators; discussion of FY 1992 grant applications and FY 1993 Grant Guideline.

PORTIONS CLOSED TO THE PUBLIC: Discussion of internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 92–16972 Filed 7–15–92; 11:00 am]

BILLING CODE 6820–SC–M

Corrections

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Fiscal Year 1992 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; and Request for Public Comment on the Proposed Developmental Disabilities Priorities for Projects of National Significance for Fiscal Year 1993

Correction

In notice document 92-13356 beginning on page 24850 in the issue of Thursday, June 11, 1992, on page 24867, in the second column, under *Federal Share of Project Costs*, in the third line, "22 month" should read "12 month".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 821

[Docket No. 91N-0296]

Medical Devices; Device Tracking

Correction

In proposed rule document 92-12622 beginning on page 22971 in the issue of Friday, May 29, 1992, make the following corrections:

§ 821.3 [Corrected]

1. On page 22978, in the third column, in § 821.3(f), in the last line, "explanation" should read "explantation".

§ 821.25 [Corrected]

2. On page 22979, in the third column, in § 821.25(a)(2), in the sixth line, "implant" should read "implants".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25 and 202

[Docket No. R-92-1499; FR-2801-F-03]

RIN 2501-AB01

Mortgagee Review Board

Correction

In rule document 92-16200 beginning on page 31048 in the issue of Monday, July 13, 1992, in the first column, the **EFFECTIVE DATE** "August 1, 1992" should read "August 12, 1992".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 492]

Montana Rail Link, Inc. and Wisconsin Central Ltd., Joint Petition for Rulemaking

Correction

In rule document 92-14358 beginning on page 27184 in the issue of Thursday, June 18, 1992, make the following correction:

Subpart A—[Corrected]

1. On page 27185, in the second column, in Subpart A, under General Instructions, in the second paragraph, in the second line, "or $250 million" should read "of $250 million".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Two-Year Trial Program for Conducting Open Enforcement Conferences; Policy Statement

Correction

In notice document 92-16233 beginning on page 30762 in the issue of Friday, July, 10, 1992, on page 30762, in the second column, under **DATES**, beginning in the fifth line, "July 11, 1992" should read "July 11, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-50-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

Correction

In proposed rule document 92-14066 beginning on page 26798 in the issue of Tuesday, June 16, 1992, make the following correction:

§ 39.13 [Corrected]

1. On page 26799, in the third column, in § 39.13(a), in the second line, "MCM00716B" should read "HCM00716B".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

[T.D. 92-69]

Disposition of Low Value Seized Property

Correction

In rule document 92-16155 beginning on page 30639 in the issue of Friday, July 10, 1992, on page 30640, in the second column, in the signature line, insert "Carol Hallett, *Commissioner of Customs.*" before "Peter Nunez, *Assistant Secretary of the Treasury.*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8420]

RIN 1545-A090

Low-Income Housing Credit

Correction

In rule document 92-13683 beginning

on page 24749 in the issue of Thursday, June 11, 1992, under **Explanation of Provisions**, in the 2d column, in the 11th line "section 813" should read "section 183".

BILLING CODE 1505-01-D

federal register

Friday
July 17, 1992

Part II

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4145-7]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of sixth update of the Federal Agency Hazardous Waste Compliance Docket pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket that contains certain information regarding Federal facilities that manage hazardous waste or from which hazardous substances may be or have been released. (As defined by CERCLA 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every 6 months as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the sixth update of the docket (that is, facilities not previously listed on the docket and reported to EPA since the last update to the docket, 56 FR 64898, December 12, 1991, which was current as of June 1, 1991). EPA policy specifies that for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI), within 18 months of publication of this notice. Such remedial site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the docket additions list, this notice includes a section comprising revisions (that is, corrections and deletions) to the previous docket list and a new list of the facilities on the docket that have been evaluated and determined not to be appropriate for NPL listing at this time (the No Further Response Action Planned [NRFAP] list). At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1,709.

DATES: This list is current as of March 1, 1992.

FOR FURTHER INFORMATION CONTACT: Federal Facilities Docket Hotline, Telephone: (800) 548-1016 toll free, or (703) 883-8577.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Federal Agency Hazardous Waste Compliance Docket ("docket") was required to be established under section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by SARA. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters, and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal Agencies own or operate. CERCLA section 103(a) requires notification to the National Response Center (NRC) of a release; CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated or disposed and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves, among others, three major purposes: (1) To identify the universe of Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the NPL; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make this information available to the public.

The initial list of Federal facilities to be included in the docket was published on February 12, 1988 (53 FR 4280). Updates to the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); and December 12, 1991 (56 FR 64898). This notice constitutes the sixth update of the docket.

Today's notice is divided into four major sections: (1) Corrections, (2) deletions, (3) additions, and (4) the NFRAP list. The docket corrections section lists changes to information on facilities already listed on the docket. The deletions section lists facilities that EPA is deleting from the docket. The additions section lists newly identified facilities that have been reported to EPA since the last update and are now being included on the docket. The NFRAP list is the list of all docket facilities to which EPA has assigned a status of No Further Response Action Planned.

The information submitted to EPA on each Federal facility is contained in the docket repository located in the EPA Regional office of the Region where the facility is found. (See 53 FR 4280 (February 12, 1988) for a description of the information required under these provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. A complete national index of the information found in the Regional docket repositories is maintained at EPA Headquarters in Washington, D.C., and made available to the public. The index for each Region is available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline (808-548-1016) for information on repository locations and arrangements for reviewing and copying specific documents.

II. Revisions to the Previous Docket

1. Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. These changes vary from simple address and spelling changes to facility name and ownership corrections. In addition, some facility name changes were made to make the nomenclature consistent on the docket. Many are simply typographical errors. For each facility with a correction, the original entry as it appeared in the February 12, 1988, notice, or subsequent updates, is shown directly above the corrected entry for easy comparison.

2. Deletions

Today, 10 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous

waste activity, change in Federal ownership, and exemption as a small quantity generator (SQG) under RCRA (40 CFR 262.44). Facilities being deleted will no longer be subject to the requirements of CERCLA section 120(d).

3. Additions

Today, 66 facilities are being added to the docket primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). For all facilities being added in this section, it is EPA's policy that the responsible agency must complete the required PA, and, if warranted, an SI, within 18 months from the date of this publication.

Of the 66 facilities being added to the docket, 6 are facilities that have reported the release of a reportable quantity (RQ) of a hazardous substance to the NRC. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Release reports received by the NRC, the U.S. Coast Guard, and EPA are electronically transmitted to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket that have an ERNS report have the notation of "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are SQGs and have never generated more than 1,000 kg of hazardous waste in any month. If a facility has ever generated more than 1,000 kg of hazardous waste in any month, (that is, is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs but have reported releases under CERCLA section 103, or hazardous waste activities pursuant to another reporting mechanism, will be listed on the docket, and will undergo remedial site evaluation activities, such as a PA and, where appropriate, an SI. All such facilities will be listed on the docket regardless of whether they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is today adding to the docket are SQGs that had not been previously listed on the docket but have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted a PA report, an SI report, a Department of Defense Installation Restoration Program report, or another Federal agency environmental restoration program report, but had not submitted a CERCLA section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under section 103 in the docket. In general, section 103 requires certain persons to provide notice of certain releases of hazardous substances. The aforementioned Federal agency environmental restoration program reports contain information similar to information provided pursuant to CERCLA section 103 and are considered equivalent forms of notification for purposes of the docket. Thus, the Agency believes that facilities that have provided information equivalent to a CERCLA section 103 notification, such as a Federal agency environmental restoration program report, should be included on the docket regardless of the absence of formal section 103 notification. Therefore, some of the facilities that EPA is adding today are being placed on the docket because of the above-mentioned reports.

In addition, EPA has decided to include privately owned, government-operated (POGOs) facilities on the docket at this update. These facilities had previously been excluded from docket listing. Therefore, some of the facilities that EPA is adding to the docket are POGO facilities that had been previously removed from the docket but are now being restored because of the new policy outlined above.

III. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, Hazardous Waste Data Management System (HWDMS), Resource Conservation and Recovery Information System (RCRIS), and Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS)—that contain Federal facility information submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the above databases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, it is possible that State-owned or privately owned facilities, that are not operated by the Federal government, may have been included. These problems are the result of historical procedures used to report and track Federal facility data; the Agency is working to resolve them. Federal agencies are requested to write to EPA's Docket Coordinator at the following address if revisions to this update information are necessary: Federal Facilities Docket Coordinator, Office of Federal Facilities Enforcement (OE–2261), U.S. EPA, 401 M Street SW., Washington, DC 20460.

IV. Facilities Not Included

As explained in the original docket preamble (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, where appropriate, be listed on the NPL):

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket, with responsibility for conducting PAs and SIs resting with the current owner.
2. SQGs that have never produced more than 1,000 kg in any month and have not reported releases under CERCLA section 103 or other hazardous waste activities under RCRA section 3016.
3. Facilities that are solely transporters as reported under RCRA section 3010.

V. Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities being deleted from the docket. The third section comprises corrections to the docket. Each facility listed as part of the update has been assigned a code that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this sixth docket update must submit a PA, and, if warranted, an SI, to EPA within 18 months of the date of this publication. A PA must include existing information about a site and its surrounding environment, including a thorough examination of the human, food-chain, and environmental targets, the potential waste sources, and migration pathways.

Based upon information in the PA, or other information coming to EPA's attention, EPA will determine whether a followup SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that is used to determine if further action or investigation is appropriate. This policy includes any facility changing responsible agencies. These reports should be submitted to the Federal Facilities Coordinator in the appropriate EPA Regional Office.

The facilities listed in each section are organized by State and then grouped alphabetically within each State by the Federal agency responsible for the facility. Under each State heading is listed the facility name and address, the statutory provision(s) under which the facility was reported to EPA, the EPA Region where the facility is located, and the correction codes.

The statutory provision(s) under which a facility reported are listed in a column titled "Reporting Mechanisms." Each facility has its applicable mechanisms listed, separated by a comma; for example: 3010,3016,103(c).

The complete list of Federal facilities that now makes up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline (800–548–1016 or 703–883–8577). As of today, the total number of Federal facilities that appear on the docket is 1,709.

VI. Facility Status Reporting

In response to numerous Federal agency requests, EPA has expanded the docket database to include information on the status of docket facilities. A prevalent concern has been the inability to identify facilities that, after submitting all necessary site assessment information, were found to warrant no further EPA involvement at this time. Accordingly, EPA has expanded the docket database to include a column indicating the facility's status.

The status codes are as follows:

U=Undetermined
N=No Further Response Action Planned (NFRAP)
P=Currently Proposed for the NPL
F=Currently Final on the NPL
R=Removed from the Proposed NPL and No Longer Considered for the Final NPL
D=Deleted from the Final NPL

NFRAP is a term used in the Superfund site assessment program to identify facilities where EPA has found that, based on currently available information, listing on the NPL is not likely and further assessment is not appropriate at this time. NFRAP status does not represent an EPA determination that there are no environmental threats present at the facility or that no further environmental response action of any kind is necessary. As stated, NFRAP status is intended to mean only that the facility does not appear to warrant NPL listing based on the information available to EPA at this time, and that therefore no further involvement by EPA in site assessment or cleanup at the facility is anticipated. However, additional CERCLA response actions by the agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility with NFRAP status. The status information contained in the docket is the result of regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel with site, program, and project management. It contains the official inventory of all CERCLA [NPL and non-NPL] sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal, and enforcement programs). The status information was taken from CERCLIS and sent to the Regional Docket Coordinators for review. The results of their reviews were incorporated into the status field in the docket. Subsequently, a list of all facilities with a NFRAP status (containing an "N" in the status field) was generated; this list is being published today.

Important limitations apply to this NFRAP status list. First, the information is accurate only as of March 1, 1992. Second, a facility's status may be subject to change at any time due to any number of factors, including new site information or changing EPA policies. Finally, the NFRAP status list is based on regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the agency responsible for the facility or EPA.

The status information in the docket will be reviewed and a new list of NFRAP facilities will be published at each docket update.

Dated: June 9, 1992.

Tad McCall,

Acting Assistant Administrator for Enforcement.

I. Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Facility Deletion *

(1) Small Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition (All Are Vessels)
(9) No Hazardous Waste (Responsible Agency Changed)
(10) Small Quantity Generator (Responsible Agency Changed)
(11) No Hazardous Waste (Temporary Storage Only)
(12) Not Federally Owned (Small Quantity Generator)
(13) Redundant Listing/Site on Facility (Agencies Will Coordinate)
(14) Small Quantity Generator (Never Actually Built)

Categories for Facility Addition

(15) Small Quantity Generator with Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split into Two/Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should be Included
(18) Facility Was a Site on a Facility That Was Disbanded, Now a Separate Facility
(19) Sites Were Combined into One Facility
(19A) New Facility

* Further information on category definitions can be obtained by calling the Docket Hotline.

Categories for Corrections to Facility Information

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Agencies (New Responsible Agency Has 18 Months to Submit PA)
(22) Changing Responsible Agencies and Title (New Responsible Agency Has 18 Months to Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to be Not Applicable after Regional File Review

FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
Chelsea Postal Service Incoming Mail Cente.	307 Becham St	Chelsea	MA		Postal Service	103c	19A
Lowell Postal Service	Post Office Square	Lowell	MA		Postal Service	103c	15
South Boston Naval Annex	Marine Industrial Park Drydock Ave.	Boston	MA		Navy	103c	19A
Fort Monmouth Evans Area #1	Marconi Road	Wall Township	NJ	07719	Army	3010 3016 103c	19A
Jamaica Vehicle Maintenance Facility	180–66 Liberty Avenue	Jamaica	NY	11433	Postal Service	3010	19A
New York Postal MGMF	W 29th St & 9th Ave	New York	NY	10001	Postal Service	3010	19A
Rochester Naval Industrial Reserve Ordinance Plant.	121 Lincoln Avenue	Rochester	NY	14653	Navy	103c	19A
National Arboretum	3501 New York Avenue NE.	Washington	DC	20002	Agriculture	103c	19A
FWS-Bombay Hook National Wildlife Refuge.	Marshtown Road	Little Creek	DE	19977	Interior	103c	19A
National Marine Fisheries Service	South Morris Street Ext	Oxford	MD	21654	Commerce	103c, 3010	19A
Patuxent Wildlife Research Center	Rt 197 and Powdermill Rd.	Laurel	MD	20708	Agriculture	103c, 3010	19A
Schlegel Maryland, Inc	Bldg 115 Lynchburg Dr	Chestertown	MD	21620	Interior	3010	19A
Butler Medical Center	325 New Castle	Butler	PA	16001	Veterans Administration	103a, 3010	19A
Fypon, Inc	22 W Pennsylvania Ave	Stewartstown	PA	17363		3010	19A
Internal Revenue Service Center	11601 Roosevelt Blvd	Philadelphia	PA	19255	Treasury	3010	19A
Arlington Service Center	South Courthouse Road	Arlington	VA	22204	Navy	103c, 3010	19A
Chesapeake Naval Security Group Activity.	Northwest	Chesapeake	VA		Navy	103c	19A
Herndon	925 Springvale Road	Herndon	VA	22070	Defense Mapping Agency.	103c	19A
Iaeger PCB Site	Near Lick Branch	Iaeger	WV			103c	19A
Martinsburg Hospital	Route 9	Martinsburg	WV	25401	Veterans Administration	103c	19A
Windfield Locks & Dams	RFD #1 Box 530	Red House	WV	25168	Corps of Engineers, Civil.	103c 3010	15
ORP, EERF	1890 Federal Drive	Montgomery	AL	36109	EPA	103c	19A
Orlando Naval Training Center	Main Base Bennett & Maquire.	Orlando	FL	32813	Navy	3010	19A
Garden City Air National Guard Training Site.	Savannah International Airport.	Garden City	GA	31408	Army	3010	19A
Fairground Street Fuel Depot		Vicksburg	MS		Justice	103c	19A
North Charleston Post Office	0.7 Mile North of Aviation.	North Charleston	SC	29410	Postal Service	103c	19A
AMSA 48 G	3523 W Farmington Rd	Peoria	IL	61604	Army	3010	19A
Lawrenceville COE-Chicago District	Rte 4 P O Box 195	Lawrenceville	IL	62439	Army	3010	19A
Engineering District Lou Monroe	1620 E Monroe Dam Ct	Bloomington	IN	47401	Army	3010	19A
Camp Grayling	I–75	Grayling	MI		Army	103c	19A
Keweenaw Field Station	Keweenaw Field	Keweenaw Bay	MI		Army	103c	19A
Pontiac Storage Facility	Address Unreported	Pontiac	MI		Army	103c	19A
Saginaw Post Office	1233 S Washington	Saginaw	MI	48605	Postal Service	3010	19A
Troy Postal Service	2844 Livernois	Troy	MI	48099	Postal Service	3010	19A
Rickenbacker Air National Guard Base	Rickenbacker ANGB	Rickenbacker ANGB	OH		Army	103c	19A
Mike Monroney Aeronautical Center	6500 South Macarthur	Oklahoma City	OK	73179	Transportation	3010 3016	15
AMSA #4	6903 Perimeter Park	Houston	TX	77041	Army	3010	19A
DEA-Austin	4310 Far W Blvd #220	Austin	TX	78731	Justice	3010	19A
DEA-Dallas	1880 Regal Row	Dallas	TX	75235	Justice	3010	19A
NPS-Padre Island	9405 S Padre Island Dr	Corpus Christi	TX	78418	Interior	3010	19A
Atkins Farm	1.5 Mi W on Hwy 16 then S ¾ Mi.	Canton	MO		Agriculture	103c	19A
BR-Collbran Project	RR #1	Collbran	CO	80631	Interior	103a	19A
Jr Applications	Building 1439	Great Falls	MT	59402	Air Force	3010	19A
BLM-Glendale Landfill	Glendale Ave & 115th Ave B.	Glendale	AZ	85307	Interior	103c	19A
DEA-Phoenix	3010 N 2nd Street	Phoenix	AZ	85002	Justice	103a	19A
WAPA-Parker Dam	Lat-340942/Long 1141636.	Parker	AZ	85344	Energy	103a 3010	19A
BLM-Adin Transfer Station	1 Mi SE of Adin T.39N, R9E, Sec 27.	Adin	CA		Interior	103c	19A
GLM-Aurora Canyon Millsite	Nearest City Bridgeport	Bridgeport	CA		Interior	103c	19A
BLM-Blackrock Mine	Nearest City Bishop	Bishop	CA		Interior	103c	19A
BLM-Bodie Mine	Nearest City Bridgeport	Bridgeport	CA		Interior	103c	19A
BLM-Horse Corrals	Hwy 395 @ Viewland, 6 Mi NW of Wendel.	Wendel	CA	96136	Interior	103c	19A
BLM-Kern Valley Sanitary Landfill	T25S, R33E, N ½ SW ¼ SEC 35, MDM.	Kernville	CA		Interior	103c	19A
BLM-Salambo Mine	Nearest City Coulterville	Coulterville	CA		Interior	103c	19A

FEDERAL FACILITIES DOCKET—DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip Code	Agency	Reporting mechanism	Correction code
BLM-Swansea Site	T 16S, R. 37E., Sec 24, SE SW, Mt Diablo M.	Keeler	CA		Interior	103c	19A
Chocolate Mountain Seal Camp Area.	Niland Nearest Town	Imperial County	CA		Navy	103c	16
Fresno Post Office	1900 E Street	Fresno	CA	93706	Postal Service	3010	19A
Los Padres National Forest (Black Bob Mine Tail.).	Aprx 5 Mi. SW of Lebec, Sec 10T. 9N-R.20W.	Lebec	CA		Agriculture	103c	19A
Los Padres National Forest (Gibraltar Mining Co.).	6144 Calle Real	Goleta	CA		Agriculture	103c	19A
Maritime Administration Suisun Bay Res Flt.	Lake Herman Rd Foot/ Suison B.	Benicia	CA	94510	Transportation	3010	19A
Narcotics Task Force Laboratory	2461 Impala	Carlsbad	CA	92008	Justice	103a	19A
BLM-Closed Caliente Landfill	T3S, R67E, Sec 28	Lincoln County	NV	89008	Interior	103c	19A
Las Vegas Vehicle Maintenance Facility	1001 E. Sunset Road	Las Vegas	NV	89199	Postal Service	103a	19A
FAA-Farewell Facilities	Farewell Airport Area	Farewell	AK	99695	Transportation	3010	19A
FAA-Moses Point Facility	Moses Point Airfield Nav Aids.	Moses Point	AK	99825	Transportation	3010, 3016	19A
BLM-Boise District-Reeder Airstrip	T8S R13E Sec6 NESW	Hagerman	ID	83332	Interior	3010	19A
Lynnwood Vehicle Maintenance Facility	6817 208th St SW	Lynnwood	WA	98036	Postal Service	3010	19A
Spokane Army Reserve Center	N 3800 Sullivan Rd	Spokane	WA	99216	Army	3010	19A

FEDERAL FACILITIES DOCKET—DOCKET DELETIONS

Facility name	Facility address	City	State	Code	Agency	Reporting mechanism	Correction code
FWS-Sachuset Point Dump	Sachuset Point Road	Middletown	RI	02840	Interior	103c	6
Dunkirk Light Coast Guard	235 North Point Rd	Dunkirk	NY	14048	Transportation	3010	4
Sodus Point Coast Guard Station.	Foot of Wickam Blvd Box 126.	Sodus Point	NY	14555	Transportation	3010	4
Anguilla Landfill	Anguilla Landfill	Fredericksted	VI		EPA	103a	2
DEA-Atlanta	75 Spring St Suite 740	Atlanta	GA	30303	Justice	3010	1
Lexington Medical Center	Cooper Drive Division	Lexington	KY	40511	Veterans Administration	3010	1
BP-Unicor Fed Prison Ind Inc	4002 Arkona	Milan	MI	48197	Justice	3010 103a	1
Mission	681 County Road	Mission	TX	77553	Corps of Engineers, Civil.	103a	3
Farewell Air Navigation Site	Farewell Air Field	Farewell	AK	99695	Transportation	3016 103c	6
Lake Washington Ship Canal	3015 NW 54th St	Seattle	WA	98107	Corps of Engineers, Civil.	3010 103c	6

Federal Facilities Docket—Docket Corrections

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C Fort Devens	Buena Vista St	Ayer	MA	01432	Army	3005 3010 3016 103c 103a	23
O Fort Devens	Buena Vista St	Ayer	MA	01432	Army	3005 3010 3016 103c	
C Fort Monmouth	Tinton & Pinebrook	Tinton Falls	NJ	07724	Army	3010 3016 103c	20A
O Fort Monmouth	Marconi Road	Fort Monmouth	NJ	07724–5000	Army	3010 3016 103c	
C Picatinny Arsenal	Off Route 15	Dover	NJ	07801	Army	3005 3010 3016 103c	20A
O Picatinny Arsenal	Off Route 15	Dover	NJ	07801–5000	Army	3005 3010 3016 103c	
C Fort Drum #8	Btwn Rts 3 & 11	Watertown	NY	13601	Army	3005 3010 3016 103c 103a	23
O Fort Drum #8	Btwn Rts 3 & 11	Watertown	NY	13601	Army	3005 3010 3016 103c	
C Youngstown Test Annex	Balmer Rd	Porter Center	NY	14131	Air Force	103c	20A
O Youngstown Tenn Ann	Balmer Rd	Porter Center	NY	14131	Air Force	103c	
C Bureau of Engraving & Printing.	14th & C Sts SW	Washington	DC	20228	Treasury	3005 3010 103c 103a	23
O Bureau Of Engraving & Printing.	14th & C Sts SW	Washington	DC	20228	Treasury	3005 3010 103c	
C Food & Drug Administration FB 8.	200 C St SW HFF–14 Rm 6025.	Washington	DC	20204	Health and Human Services.	3010 103c	21
O Food & Drug Administration FB 8.	200 C St SW HFF–14 Rm 6025.	Washington	DC	20204	General Services Admin.	3010 103c	
C Washington Naval Research Laboratory.	4555 Overlook Ave	Washington	DC	20375	Navy	3005 3010 3016 103c 103a	23

Federal Facilities Docket—Docket Corrections—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
O Washington Naval Research Laboratory	4555 Overlook Ave	Washington	DC	20375	Navy	3005 3010 3016 103c	
C Annapolis Naval Station	Naval Station Complex Annapolis.	Annapolis	MD	21402	Navy	3010 103c	20A
O Annapolis Naval Station	Naval Station Complex	Annapolis	MD	21402	Navy	3010 103c	
C David Taylor Research Center.	Carderock Laboratory	Bethesda	MD	20084	Navy	3010 103c	20A
O David W. Taylor Naval Ship RPD Center.	Carderock Laboratory	Bethesda	MD	20084	Navy	3010 103c	
C Letterkenny Army Depot	N Franklin St Ext	Chambersburg	PA	17201	Army	3005 3010 3016 103c 103a	23
O Letterkenny Army Depot	N Franklin St Ext	Chambersburg	PA	17201	Army	3005 3010 3016 103c	
C Fort Pickett	Fort Pickett	Blackstone	VA	23824	Army	3010 103c 103a	23
O Fort Pickett	Fort Pickett	Blackstone	VA	23824	Army	3010 103c	
C GS-Reston	12201 Sunrise Valley Dr.	Reston	VA	22092	Interior	3010	21
O GS-Reston	12201 Sunrise Valley Dr.	Reston	VA	22092	General Services Admin.	3010	
C John H. Kerr Reservoir	Route 1, Box 76ERVOIR.	Boydton	VA	23917-9801	Corps of Engineers, Civil.	3010 103c	20A
O US Army Engineer District—Wilmington.	John H. Kerr Reservoir	Boydton	VA	23917-9801	Corps of Engineers, Civil.	3010 103c	
C Langley Air Force Base	1 CSG/DE	Langley AFB	VA	23665	Air Force	3005 3010 3016 103c 103a	23
O Langley Air Force Base	1 CSG/DE	Langley AFB	VA	23665	Air Force	3005 3010 3016 103c	
C Oceana Naval Air Station	Public Works Department.	Virginia Beach	VA	23460	Navy	3005 3010 3016 103c 103a	23
O Oceana Naval Air Station	Public Works Department.	Virginia Beach	VA	23460	Navy	3005 3010 3016 103c	
C Woodbridge Research Facility.	Dawson Beach Rd	Woodbridge	VA	22191	Army	3016 103c	20A
O Harry Diamond Laboratories—Woodbridge.	Dawson Beach Rd	Woodbridge	VA	22191	Army	3016 103c	
C BLM-Phoenix Construction Services, Inc.	Natchez Trace Parkway Rte. 2.	Florence	AL	35633	Interior	3010	21
O BLM-Phoenix Construction Services, Inc.	Natchez Trace Parkway Rte. 2.	Florence	AL	35633	Transportation	3010	
C Jacksonville Naval Air Station.	Code 184 Public Wks Dept Box 5.	Jacksonville	FL	32212	Navy	3005 3010 3016 103c 103a	23
O Jacksonville Naval Air Station.	Code 184 Public Wks Dept Box 5.	Jacksonville	FL	32212	Navy	3005 3010 3016 103c	
C Jacksonville Navy Fuel Depot.	Somers Road	Jacksonville	FL	32208	Navy	103c 3005	23
O Jacksonville Navy Fuel Depot.	Somers Road	Jacksonville	FL	32208	Navy	103c	
C Patrick Air Force Base	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a	23
O Patrick Air Force Base	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c	
C Pensacola Naval Air Station	US Naval Air Station	Pensacola	FL	32508	Navy	3005 3010 3016 103c 103a	23
O Pensacola Naval Air Station	US Naval Air Station	Pensacola	FL	32508	Navy	3005 3010 3016 103c	
C Saufley Field NETPSA			FL		Navy	103c 3010	23
O Saufley Field NETPSA			FL		Navy	103c	
C Albany Marine Corps Logistics Base.	Fleming Rd	Albany	GA	31704	Navy	3005 3010 3016 103c 103a	23
O Albany Marine Corps Logistics Base.	Fleming Rd	Albany	GA	31704	Navy	3005 3010 3016 103c	
C Centers for Disease Control	4770 Buford Hiway	Chamblee	GA		Health and Human Services.	103c	20A
O Centers for Disease Control	4470 Buford Hiway	Chamblee	GA		Health and Human Services.	103c	
C Kings Bay Naval Submarine Base.	GA State Hwy Spur	Kings Bay	GA	31547	Navy	3005 3010 3016 103c 103a	23
O Kings Bay Naval Submarine Base.	GA State Hwy Spur	Kings Bay	GA	31547	Navy	3005 3010 3016 103c	
C Fort Bragg	AFZA-DE-D	Fort Bragg	NC	28307	Army	3010 3016 103c 103a	23
O Fort Bragg	AFZA-DE-D	Fort Bragg	NC	28307	Army	3010 3016 103c	
C 928th Tactical Unit	Chicago O'Hare Airport	Chicago	IL	60666	Air Force	3010 3016 103a	23
O 928th Tactical Unit	Chicago O'Hare Airport	Chicago	IL	60666	Air Force	3010 3016	
C Crane Naval Weapons Support Center.	Bldg 2516 Code 092V Martin County.	Crane	IN	47522	Navy	3005 3010 3016 103c 103a	23
O Crane Naval Weapons Support Center.	Bldg 2516 Code 092V Martin County.	Crane	IN	47522	Navy	3005 3010 3016 103c	

Federal Facilities Docket—Docket Corrections—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C Grissom Air Force Base	305th CSG/DE	Grissom AFB	IN	46971	Air Force	3005 3010 3016 103c 103a	23
O Grissom Air Force Base	305th CSG/DE	Grissom AFB	IN	46971	Air Force	3005 3010 3016 103c	
C Plum Brook	Taylor & Columbus Rd Erie County.	Sandusky	OH	44870	NASA	3010 3016 103c 103a	23
O Plum Brook	Taylor & Columbus Rd Erie County.	Sandusky	OH	44870	NASA	3010 3016 103c	
C Portsmouth Gaseous Diffusion Plant.	US Rte 23S Pike County.	Piketon	OH	45661	Energy	3005 3010 3016 103c 103a	20A
O Portsmouth Gaseous Diffusion Plant.	US Rte 235 Pike County.	Piketon	OH	45661	Energy	3005 3010 3016 103c 103a	
C Badger Army Ammunition Plant.	US Hwy 12 S Sauk County.	Baraboo	WI	53913	Army	3005 3010 3016 103c 103a	23
O Badger Army Ammunition Plant.	US Hwy 12 S Sauk County.	Baraboo	WI	53913	Army	3005 3010 3016 103c	
C New Orleans Naval Air Station.	32 Belle Chase Hwy	Belle Chasse	LA	70037	Navy	3010 103c 103a	23
O New Orleans Naval Air Station.	32 Belle Chase Hwy	Belle Chasse	LA	70037	Navy	3010 103c	
C BLM-Hatch Landfill	T14SR3WSEC4LOT1	Hatch	NM	87937	Interior	103c	20A
O BLM-Hatch Landfill	T14SR3WSEC4LOT1		NM		Interior	103c	
C BLM-Loco Hills Landfill	T17SR30ESEC22—Eddy County.	Loco Hills	NM	88255	Interior	103c 3016	20A
O BLM-Loco Hills Landfill	T17SR30ESEC22—Eddy County.		NM		Interior	103c 3016	
C BLM-Mesilla Landfill	T24WR1ESec14	Mesilla	NM	88046	Interior	103c 3016	20A
O BLM-Mesilla Landfill	T24WR1ESec14		NM		Interior	103c 3016	
C Longhorn Army Ammunition Plant.	Highway 419 East	Karnack	TX	75661	Army	3005 3010 3016 103c 103a	23
O Longhorn Army Ammunition Plant.	Highway 419 East	Karnack	TX	75661	Army	3005 3010 3016 103c	
C Fort Riley 1st Infantry Div (M).	Bldg 330	Fort Riley	KS	66442	Army	3005 3010 3016 103c 103a	23
O Fort Riley 1st Infantry Div (M).	Bldg 330	Fort Riley	KS	66442	Army	3005 3010 3016 103c	
C Kansas Army Ammunition Plant.	3 miles east of town	Parsons	KS	66757	Army	3005 3010 3016 103c 103a	23
O Kansas Army Ammunition Plant.	3 miles east of town	Parsons	KS	66757	Army	3005 3010 3016 103c	
C Leavenworth Penitentiary	1300 Metropolitan Avenue.	Leavenworth	KS	66048	Justice	3016 103c 3010 103a	23,20A
O Leavenworth Penitentiary	USP—Leavenworth	Leavenworth	KS	66048	Justice	3016 103c 3010	
C Sunflower Army Ammunition Plant.	33425 W. 103 rd Street	Desoto	KS	66018	Army	3005 3010 3016 103c 103a	23
O Sunflower Army Ammunition Plant.	33425 W. 103 rd Street	Desoto	KS	66018	Army	3005 3010 3016 103c	
C Lake City Army Ammunition Plant.	JCT MO Hwy 7 & Hwy 78.	Independence	MO	64051-0330	Army	3005 3010 3016 103c 103a	23
O Lake City Army Ammunition Plant.	JCT MO Hwy 7 & Hwy 78.	Independence	MO	64051-0330	Army	3005 3010 3016 103c	
C Malmstrom Air Force Base	Facility 1501 Perimeter Rd.	Great Falls	MT	59402	Air Force	3005 3010 3016 103c 103a	23
O Malmstrom Air Force Base	Facility 1501 Perimeter Rd.	Great Falls	MT	59402	Air Force	3005 3010 3016 103c	
C Ellsworth Air Force Base	44 CSG/CC	Ellsworth AFB	SD	57706	Air Force	3005 3010 3016 103c 103a	23
O Ellsworth Air Force Base	44 CSG/CC	Ellsworth AFB	SD	57706	Air Force	3005 3010 3016 103c	
C Arizona Air National Guard 162 Tactical FTR Group.	1500 E. Valencia Road	Tucson	AZ	85706	Air Force	3010 103c 3016 3005	23
O Arizona Air National Guard 162 Tactical FTR Group.	1500 E. Valencia Road	Tucson	AZ	85706	Air Force	3010 103c 3016	
C BIA-Wide Ruins Dip Vat	35 25' 03" : 109 29' 32".	Wide Ruins	AZ	86502	Interior	103c	20A
O BIA-Wide Ruins Dip Vat	35 25' 03" : 109 29' 32".	Wide Ruins	AZ		Interior	103c	
C BLM-Golden Valley Landfill	Hwy 68 1 Mi. W. of Hwy 93 Jct.	Kingman	AZ	86401	Interior	103c	20A
O BLM-Golden Valley Landfill	T21NR17WSEC17	Kingman	AZ	86401	Interior	103c	
C Angeles National Forest	Los Pinetos Storage Rt 1.	Saugus	CA	91350	Agriculture	103c 3010	20A
O Angeles National Forest	Los Pinetos Storage Rt 1.	Saugus	CA		Agriculture	103c 3010	
C BLM-Newberry Dump	Hwy 66 & Mt View	Newberry Springs	CA	92365	Interior	103c	20A
O BLM-Newberry Dump	N½, NW¼, NW¼ Sec 15, T8N, R3E.	Newberry Springs	CA		Interior	103c	
C BLM-Osage Industries	60th West	Rosamond	CA	93560	Interior	103c	20A
O BLM-Osage Industries	60th West	Rosamond	CA		Interior	103c	

Federal Facilities Docket—Docket Corrections—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C Chico Municipal Airport	Cohassett Hwy, T23NR1E S33,34,4, 3 North of Chico.	Chico	CA	95926	Air Force	103c	20A
O Chico Arpt	Cohassett Hwy	Chico	CA		Air Force	103c	
C Cleveland National Forest	12500 Pomerado Rd	San Diego	CA	92131	Agriculture	103c 3010	20A
O Cleveland National Forest	12500 Pomerado Rd	San Diego	CA		Agriculture	103c 3010	
C March Air Force Base	22CSG/CC	March AFB	CA	92518	Air Force	3005 3010 3016 103c 103a	23
O March Air Force Base	22CSG/CC	March AFB	CA	92518	Air Force	3005 3010 3016 103c	
C McClellan Air Force Base	SM-ALC/EM	Sacramento	CA	95652	Air Force	3005 3010 3016 103c 103a	23
O McClellan Air Force Base	SM-ALC/EM	Sacramento	CA	95652	Air Force	3005 3010 3016 103c	
C NPS-El Portal Barium Tailings.	Int of Forest & Barium Mine Rd.	El Portal	CA	95318	Interior	103c	20A
O NPS-El Portal Barium Tailings.	Int of Forest & Barium Mine Rd.	El Portal	CA		Interior	103c	
C Plant #42 (Rockwell International).	20th St. & E Ave. O&M	Palmdale	CA	93550-0678	Air Force	3005 3010 3016 103c	20A
O Plant #42 (Rockwell International).	20th & E Street Aves D & M.	Palmdale	CA	93550-0678	Air Force	3005 3010 3016 103c	
C San Diego Naval Station	Bldg 3275 P.O. Box 113, Camp Elliot 92106.	San Diego	CA	92136	Navy	3005 3010 3016 103c 103a	23
O San Diego Naval Station	Bldg 3275 P.O. Box 113, Camp Elliot 92106.	San Diego	CA	92136	Navy	3005 3010 3016 103c	
C San Diego Naval Submarine Base.	140 Sylvester Rd, Naval Station Building 545.	San Diego	CA	92106	Navy	3010 3016 103c	23
O San Diego Naval Submarine Base.	140 Sylvester Rd, Naval Station Building 545.	San Diego	CA	92106	Navy	3010 3016	
C Stanford Linear Accelerator Center.	2575 Sandhill Rd	Menlo Park	CA	94305	Energy	3010 3016 103c 103a	23
O Stanford Linear Accelerator Center.	2575 Sandhill Rd	Menlo Park	CA	94305	Energy	3010 3016 103c	
C Treasure Island Naval Station Hunters Point Annex.	Shipyard	San Francisco	CA	94130	Navy	3010 3016 103c 103a	23
O Treasure Island Naval Station Hunters Point Annex.	Shipyard	San Francisco	CA	94130	Navy	3010 3016 103c	
C Tustin Marine Corps Air Station.	MCAS Tustin	Tustin	CA	92719	Navy	3005 3016 103a	23
O Tustin Marine Corps Air Station.	MCAS Tustin	Tustin	CA	92719	Navy	3005 3016	
C Hilo Army Aviation Support Facility #2.	General Lyman Field Bldg 619.	Hilo	HI	96720	Army	103c	20A
O Hilo Army Aviation Support Facility #2.	General Lyman Field Bldg 619.	Hilo	HI		Army	103c	
C Makua Military Reservation Ordinance Disposal Area.	Makua Military Reservation.	Waianae	HI	96792	Army	3016	20A
O Makua Military Reservation Ordinance Disposal Area.		Waianae	HI	96792	Army	3016	
C BLM-Argentum Mill	T3NR36ESEC17	Esmerelda County	NV	89010	Interior	103c	20A
O BLM-Argentum Mill	T3NR36ESEC17		NV		Interior	103c	
C BLM-BAR Resources Inc. Buckhorn Mine.	T26NR49ESEC30	Carlin	NV	89822	Interior	103c	20A
O BLM-BAR Resources Inc. Buckhorn Mine.	T26NR49ESEC30		NV		Interior	103c	
C BLM-Bunker Hill Company	T1NR67ESEC29	Lincoln	NV	89043	Interior	103c 3016	20A
O BLM-Bunker Hill Company	T1NR67ESEC29	Lincoln	NV		Interior	103c 3016	
C BLM-Candelaria Partners OMC.	T34NR35ESEC2233435	Mina	NV	89422	Interior	3010 103c	20A
O BLM-Candelaria Partners OMC.	T34NR35ESEC2233435		NV		Interior	3010 103c	
C BLM-Carlin Gold Mine	T35NR50ESEC14	Carlin	NV	89822	Interior	103c	20A
O BLM-Carlin Gold Mine	T35NR50ESEC14	Eureka	NV		Interior	103c	
C BLM-Chromalloy Mining & Milling.	T42NR63ESEC11	Elko	NV	89801	Interior	103c	20A
O BLM-Chromalloy Mining & Milling.	T42NR63ESEC11	Elko	NV		Interior	103c	
C BLM-Cortez Joint Venture	T27NR47ESEC13	Beowawe	NV	89821	Interior	3010 103c	20A
O BLM-Cortez Joint Venture	T27NR47ESEC13		NV		Interior	3010 103c	
C BLM-Crescent Mining Ltd (Rest Mine).	T28SR1ESEC31	Searchlight	NV	89046	Interior	103c	20A
O BLM-Crescent Mining Ltd (Rest Mine).	T28SR1ESEC31	Lander	NV		Interior	103c	
C BLM-Crescent Valley Mill	T29NR48ESEC24	Crescent Valley	NV	89821	Interior	103c	20A

Federal Facilities Docket—Docket Corrections—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
O BLM-Crescent Valley Mill	T29NR48ESEC24	Eureka	NV		Interior	103c	
C BLM-D&Z Exploration Company.	T28NR34ESEC32	Lovelock	NV	89419	Interior	103c	20A
O BLM-D&Z Exploration Company.	T28NR34ESEC32	Pershing	NV		Interior	103c	
C BLM-DEE Gold Mining Company.	T37NR50ESEC6	Elko	NV	89801	Interior	103c	20A
O BLM-DEE Gold Mining Company.	T37NR50ESEC6	Elko County	NV		Interior	103c	
C BLM-Double Eagle Inc., Lower Rochester.	T28NR34ESEC18	Lovelock	NV	89419	Interior	103c	20A
O BLM-Double Eagle Inc., Lower Rochester.	T28NR34ESEC18	Pershing	NV	89419	Interior	103c	
C BLM-Douglas County Landfill	T12NR21ESEC18	Gardnerville	NV	89410	Interior	103c	20A
O BLM-Douglas County Landfill	T12NR21ESEC18	Douglas	NV	89410	Interior	103c	
C BLM-Dresser Minerals, Greyston Mine.	T28NR46ESEC16	Battle Mountain	NV	89820	Interior	103c	20A
O BLM-Dresser Minerals, Greyston Mine.	T28NR46ESEC18	Lander	NV	89820	Interior	103c	
C BLM-Duval Corp. Mine Site	T31NR43ESEC23,24,25	Battle Mountain	NV	89820	Interior	103c	20A
O BLM-Duval Corp. Mine Site	T31NR43ESEC23,24,25	Lander	NV		Interior	103c	
C BLM-Eisman Chemical Company.	T34NR62ESEC32	Carlin	NV	89822	Interior	103c	20A
O BLM-Eisman Chemical Company.	T34NR82ESEC32	Eureka	NV		Interior	103c	
C BLM-Ely Crude Oil Company	T9NR57ESEC35	Ely	NV	89301	Interior	103c	20A
O BLM-Ely Crude Oil Company	T9NR57ESEC35	Nye	NV	89301	Interior	103c	
C BLM-Gold Strike Mine	T36NR50ESEC29,30	Eureka	NV	89318	Interior	103c	20A
O BLM-Gold Strike Mine	T36NR50ESEC29,30	Eureka	NV		Interior	103c	
C BLM-Imco Services Inc	T28NR44ESEC4 and T28NR46ESEC32.	Battle Mountain	NV	89820	Interior	103c	20A
O BLM-Imco Services Inc	T28NR44ESEC4 and T28NR46ESEC32.		NV	89820	Interior	103c	
C BLM-Intermountain Exploration.	T26SR64ESEC9	Boulder City	NV	89005	Interior	103c	20A
O BLM-Intermountain Exploration.	T26SR64ESEC9	Clark	NV	89005	Interior	103c	
C BLM-Jupiter Gold Company	T33NR37ESEC1	Winnemucca	NV	89445	Interior	103c	20A
O BLM-Jupiter Gold Company	T33NR37ESEC1	Pershing	NV	89445	Interior	103c	
C BLM-Kemco Buster Mine	T5SR39ESEC25,26	Goldfield	NV	89013	Interior	103c	20A
O BLM-Kemco Buster Mine	T5SR39ESEC25,26	Esmerelda	NV	89301	Interior	103c	
C BLM-McDermitt Mine	T47NR37ESEC20212729	McDermitt	NV	89421	Interior	103c 3010	20A
O BLM-McDermitt Mine	T47NR37ESEC20212729	Humboldt	NV		Interior	103c 3010	
C BLM-Minerals Management, Inc.-Argentum Mill.	T3NR365SSEC65–Between Hwy 8 & 95.	Columbus Marsh	NV	89010	Interior	103c	20A
O BLM-Minerals Management, Inc.-Argentum Mill.	T3NR365SSEC65–Between Hwy 6 & 95.	Esmerelda	NV	89049	Interior	103c	
C BLM-Montello Shellite	T40NR69ESEC34	Montello	NV	89830	Interior	103c	20A
O BLM-Montello Shellite	T40NR69ESEC34	Montello	NV		Interior	103c	
C BLM-Mt. Hope Mine	T22NR51ESEC12	Ely	NV	89301	Interior	103c	20A
O BLM-Mt.-Hope Mine	T22NR51ESEC12	White Pine	NV	89301	Interior	103c	
C BLM-Multi-Metallics Inc	T37NR1ESEC25	Winnemucca	NV	89445	Interior	103c	20A
O BLM-Multi-Metallics Inc	T37NR1ESEC25	Humboldt	NV	89445	Interior	103c	
C BLM-Nevada Barth Corporation.	T31NR51ESEC7,8	Palisade	NV	89822	Interior	103c	20A
O BLM-Nevada Barth Corporation.	T31NR51ESEC7,8	Eureka	NV	89822	Interior	103c	
C BLM-New Pass Resources Inc.	T20NR40ESEC10	Austin	NV	89310	Interior	103c	20A
O BLM-New Pass Resources Inc.	T20NR40ESEC10	Lander	NV	89310	Interior	103c	
C BLM-Ormsby Landfill	T15NR20–21ESEC1,12, 7700 Hwy 50E.	Carson City	NV	89701	Interior	103c	20A
O BLM-Ormsby Landfill	T15NR20–21ESEC1,12	Ormsby	NV	89701	Interior	103c	
C BLM-Quinn River Valley	T43NR36ESEC18	Humboldt County	NV	89445	Interior	103c 3016	20A
O BLM-Quinn River Valley	T43NR36ESEC18	Humboldt	NV	89445	Interior	103c 3018 3018	
C BLM-Rio Tinto Copper Mine	SEC 10 & 11 T45N R53E MDM.	Mountain City	NV	89831	Interior	103c	20A
O BLM-Rio Tinto Copper Mine	SEC 10 & 11 T45N R53E MDM.	Mountain City	NV		Interior	103c	
C BLM-Smokey Valley Mining Company.	T10NR44ESEC18–20,29.	Round Mountain	NV	89045	Interior	103c	20A
O BLM-Smoking Valley Mining Company.	T10NR44ESEC18–20,29.	Nye	NV	89045	Interior	103c	
C BLM-Standard Gold Mine	T30NR33ESEC1	Imlay	NV	89418	Interior	103c	20A
O BLM-Standard Gold Mine	T30NR33ESEC1	Pershing	NV		Interior	103c	
C BLM-Universal Gas Inc.	R35NR50ESEC10	Eureka	NV	89318	Interior	103c	20A
O BLM-Universal Gas Inc.	R35NR50ESEC10	Eureka	NV		Interior	103c	

Federal Facilities Docket—Docket Corrections—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C BLM-Utah International Inc.	T34NR34ESEC35,36	Imlay	NV	89418	Interior	103c	20A
O BLM-Utah International Inc.	T34NR34ESEC35,36	Pershing	NV		Interior	103c	
C BLM-Veta Grande Mining Company.	T11NR21ESEC3,4,9, Hwy 395S.	Gardnerville	NV	89410	Interior	103c	20A
O BLM-Veta Grande Mining Company.	T11NR21ESEC3,4,9, Hwy 395S.	Douglas	NV		Interior	103c	
C BLM-West Coast Oil & Gas Corp.	T19NR22ESEC26,36, 20 Mi E Of Reno off HWY 80.	Storey County	NV	89400	Interior	3010 103c	20A
O BLM-West Coast Oil & Gas Corp.	T19NR22ESEC26,36	Storey	NV		Interior	3010 103c	
C Las Vegas Postal Service Main Office.	1001 Circus Dr	Las Vegas	NV	89114	Postal Service	3010	20A
O Las Vegas Postal Service Main Office.	1001 Circus Dr	Las Vegas	NV	89114	Postal Service	3010	
C Tonopah Test Range (Sandia National Laboratory).	PO Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c 103a	23
O Tonopah Test Range (Sandia National Laboratory.	PO Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c	
C DNA Johnston Atoll	Johnston Atoll Pacific Ocean.	Lat 16 44 N Lon 169 31 W.	TT	96305	Air Force	3005 3010 103a	23
O DNA Johnston Atoll	Johnston Atoll Pacific Ocean.	Lat 16 44 N Long 169 31 W.	TT	96305	Air Force	3005 3010	
C BLM-Farewell Air Navigation Site.	Farewell Lake	Farewell	AK	99695	Interior	103c 3016	23
O BLM-Farewell Air Navigation Site.	Farewell Lake	Farewell	AK	99695	Interior	103c	
C Cape Lisburne Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	23
O Cape Lisburne Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c	
C Kodiak Coast Guard Support Center.	Womans Bay Kodiak Isl.	Kodiak	AK	99619	Transportation	3010 103c 3016	23
O Kodiak Coast Guard Support Center.	Womans Bay Kodiak Isl.	Kodiak	AK	99619	Transportation	3010 103c	
C Kotzebue White Alice Site	NW Corner of Baldwin Peninsula.	Kotzebue	AK	99752	Air Force	103c 3016 3010	23
O Kotzebue White Alice Site	NW Corner of Baldwin Peninsula.	Kotzebue	AK	99752	Air Force	103c 3016	
C Fremont National Forest	524 North G Street	Lakeview	OR		Agriculture	103c 3016	23
O Fremont National Forest	524 North G Street	Lakeview	OR		Agriculture	103c	
C Willamette	West Linn	West Linn	OR	97068	Corps of Engineers, Civil.	103c 3016	23
O Willamette	West Linn	West Linn	OR	97068	Corps of Engineers, Civil.	103c	
C BLM-Oroville Landfill	T40NR27ESEC18	Oroville	WA	98844	Interior	103c 3016	23
C BLM-Oroville Landfill	T40NR27ESEC18	Oroville	WA	98844	Interior	103c	
C BPA-Ross Complex	5411 NE Hwy 99	Vancouver	WA	98663	Energy	3010 3016 103c 103a	23
O BPA-Ross Complex	5411 NE Hwy 99	Vancouver	WA	98663	Energy	3010 3016 103c	
C BR-Fort Simcoe Job Corps Center.	W end of Hwy 220 T10N R16E S21.	White Swan	WA	98952	Interior	3010	22,20A
O BR-Fort Simcoe Job Corps Center.	W end of Hwy 220 T10N R16E S21.	White Swan	WA	98952	Labor	3010	

Federal Facilities Docket—NFRAP Status Facilities

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station	East Lyme	CT	06357	Navy	3010
Knolls Atomic Power Laboratory-Windsor Site.	Prospect Hill Road	Windsor	CT	06095	Energy	3005 3010 3016 103c
New London Naval Underwater Systems Center.	New London Laboratory	New London	CT	06320	Navy	3010 103c
Stratford Engine Plant	550 South Main Street	Stratford	CT	06497	Army	3005 3010 3016
Bedford Hospital Wells 76 & 77	Westview Street	Lexington	MA	02173	Veterans Administration	3010 103c
Boston Postal Service	135 A Street	Boston	MA	02210	Postal Service	3010
Woods Hole Coast Guard Base	Little Harbor Road	Falmouth	MA	02543	Transportation	3010
Casco Bay Defense Fuel Support Point.	Rt 123	South Harpswell Neck	ME	04079	Defense Logistics Agency.	3010 3016 103c
Gouldsboro Naval Security Group Activity.	Bldg 41 (Operations Site)	Gouldsboro	ME	04624	Navy	103c
Seal Island	C/O Seal Island National Wildlife Refuge.	Milbridge	ME	04658	Defense	103c

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Searsport Defense Fuel Support Point.	Trundy Road Box 112	Searsport	ME	04974	Defense Logistics Agency.	3010 3016 103c
Winterharbor Naval Security Group Activity.	Route 186	Winterharbor	ME	04693	Navy	3010 103c
Newington Defense Fuel Support Point.	Patterson Lane	Newington	NH	03801	Defense Logistics Agency.	3010 3016 103c
Beavertail Point Radar Station	Off Beavertail Road	Jamestown	RI	02835	Defense	3016
Bayonne Military Ocean Terminal.	Foot of 32nd Street	Bayonne	NJ	07002	Army	3005 3010 3016 103c 103a
East Orange Medical Center	Tremont Ave.	East Orange	NJ	07019	Veterans Administration	3010
Fort Monmouth	Tinton & Pinebrook	Tinton Falls	NJ	07724	Army	3010 3016 103c
FWS-Great Swamp National Wildlife Refuge.	RD 1, Box 152	Basking Ridge	NJ	07920	Interior	3016 103c
Hillsborough Supply Depot	Route 206	Hillsborough Twp	NJ	08853	Veterans Administration	103c
Lyons Medical Center	Knollcraft Road	Lyons	NJ	07939	Veterans Administration	3010 103c
NOAA/NMFS/NEFC	Sandy Hook Laboratory	Highlands	NJ	07732	Commerce	3005 3010
NPS-Gateway National Recreational Area.	Fort Hancock	Sandy Hook—Brooklyn	NJ	07732	Interior	3010 3016 103c
SFC NV Brittan Army Reserve Center.	39th and Federal Street	Camden	NJ	08105	Army	3010
Somerville Depot	Route 206	Somerville	NJ	08876	General Services Admin.	103c
Storck Army Reserve Center	Shore Road	Northfield	NJ	08225	Army	3010
Stryker Reserve Center	2150 Nottingham Way	Trenton	NJ	08619	Army	3010
Aids to Navigation Team	7063 Lighthouse Drive	Saugerties	NY	12477	Transportation	3010
Bellmore Maintenance Facility	2755 Maple Ave	Bellmore	NY	11710	Army	3010
BLM-Pennsylvania Ave/Fountain Ave Landfills.	Pennsylvania Ave, Shore Pkwy	Brooklyn	NY	11207	Interior	3010
Brooklyn Information Agency	29th & 3rd Ave, Door 15	Brooklyn	NY	11232	General Services Admin.	3010
Brooklyn Naval and Marine Corps Reserve Center.	Floyd Bennett Field	Brooklyn	NY	11234	Navy	103c
Colonie Interim Storage Site	1130 Central Ave	Colonie	NY	12205	Energy	3005 3010 3016
Emmanuel Cellard Federal Bldg. 225CA.	225 Cadman Plaza	Brooklyn	NY	11201	General Services Admin.	3010
Federal Building	252 7th Ave	New York	NY	10001	General Services Admin.	3010
Fort Hamilton	Ft Hamilton	Brooklyn	NY	11252	Army	3010 103c
Fort Totten	Bayside	Queens	NY	11359	Army	3010 103c
FWS-Iroquois National Wildlife Refuge.	Casey Rd	Alabama	NY	14003	Interior	3016 103c
FWS-Montezuma National Wildlife Refuge.	3395 Route 5 & 20 East	Seneca Falls	NY	13148	Interior	3010 3016 103c
Hancock Field	Taft and Thompson Roads	North Syracuse	NY	13212	Air Force	3010 3016 103c
Merchandise Control Sales Section.	6 World Trade Center	New York	NY	10048	General Services Admin.	3010
Mitchel Field Housing Facility	NAVSTA New York Housing Office, Bldg. 19, West Road, Mitchel Field.	Garden City	NY	11530	Navy	103c
Mitchel Manor Housing Facility	NAVSTA New York Housing Office, 85 A Mitchel Avenue.	East Meadow	NY	11554	Navy	103c
New York	201 Varick St	New York	NY	10014	General Services Admin.	3010
New York Naval Station	207 Flushing Avenue	Brooklyn	NY	11251	Navy	3010 103c
Niagara Falls Air Force Reserve Facility.	914 TAG/DE PO Box F La-Salle Station.	Niagara Falls, IAP	NY	14304	Air Force	3005 3010 3016 103c
NPS-Gateway National Recreational Area.	Floyd Bennett Field	Brooklyn	NY	11234	Interior	103c
Plant #38	Porter & Balmer Rds	Porter Twp	NY	14131	Air Force	3005 3010 3016 103c
Plum Island Animal Disease Center.	Plum Island	Orient Point	NY	11957	Agriculture	3016 103c
Roosevelt Army Reserve Center	101 Oak St.	Hempstead	NY	11550	Army	3010
Support Center Governor's Island.	C/O US Coast Guard Group	Governor's Island	NY	10004	Transportation	3010 103c
Verona Defense Fuel Support Point.	Main St.	Verona	NY	13478	Defense Logistics Agency.	3010 3016 103c
Watervliet Arsenal	Broadway	Watervliet	NY	12189	Army	3005 3010 3016
West Point Military Academy	Stewart Army Subpost	West Point	NY	10996	Army	3016
West Point Military Academy	Rt 9W-Bldg 733	West Point	NY	10996	Army	3005 3010 3016 103c
Borinquen Coast Guard Air Station.	Ramey Air Force Base	Aquadilla	PR	00604	Transportation	3010 103c
Camp Garcia #1	Vieques	Vieques	PR	00765	Navy	103c
Ceiba Naval Station	Roosevelt Roads	Ceiba	PR	00635	Navy	3005 3010 3016 103c
Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c
Roosevelt Roads Naval Station	Villa Verde Street Drydock & Repair Facility.	Miramar	PR	00903	Navy	3005 3010 3016
Bureau of Engraving & Printing	14th & C Sts SW	Washington	DC	20228	Treasury	3005 3010 103c 103a
Customs Field Office	1200 Pennsylvania Avenue	Washington	DC	20004	General Services Admin.	3010
Fort McNair	350 P Street, S.W.	Washington	DC	20319	Army	3010 103c

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Soldiers and Airmens Home	Michigan Ave. N.E.	Washington	DC	20317	Defense	3010 3016
Washington Naval Research Laboratory.	4555 Overlook Ave.	Washington	DC	20375	Navy	3005 3010 3016 103c 103a
Canal Site	Main St, North St Georges	Newcastle	DE	19733	Corps of Engineers, Civil	3016 103c
Annapolis Naval Academy	Annapolis Naval Complex	Annapolis	MD	21402	Navy	3005 3010 3016 103c
Curtis Bay Depot	710 Ordnance Road	Baltimore	MD	21226	General Services Admin.	3005 3010 3016
Goddard Space Flight Center	Greenbelt Road	Greenbelt	MD	20771	NASA	3010
Harry Diamond Laboratories-Adelphi.	2800 Powder Mill Rd	Adelphi	MD	20783	Army	3005 3010 3016 103c
National Bureau of Standards	Quince Orchard Rd	Gaithersburg	MD	20760	Commerce	3005 3010 103c
National Naval Medical Center	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016
NIH-Bethesda	9000 Rockville Pike	Bethesda	MD	20892	Health and Human Services.	3005 3010 3016 103c
Bettis Atomic Power Laboratory	PO Box 109 Bettis Rd	West Mifflin Borough	PA	15122-0109	Energy	3005 3010 3016
Chas Kelly Support Center	US Army	Oakdale	PA	15071	Army	3010 103c
Greater Pittsburgh International Airport.	911 TAG/DE	Pittsburgh	PA	15231	Air Force	3016 103c
NPS-Gettysburg National Military Park.	RD 1	Gettysburg	PA	17325	Interior	103c
NPS-Valley Forge National Historic Park.	Rte 23	Valley Forge	PA	19481	Interior	103c 3010
Philadelphia Defense Personnel Support Center.	2800 S 20th St	Philadelphia	PA	19101	Army	3005 3010 3016
Arlington Hall Station	U.S. Army	Warrenton	VA	22186	Army	3010 103c
Arlington Marine Corps Battalion Headquarters Arl.	Henderson Hall	Arlington	VA	22214	Navy	103c
Oyster Point Development Corp	610 Thimble Shoals Blvd	Newport News	VA	23601	Air Force	103c
Roanoke Navy and Marine Corps Reserve.	5301 Barnes Ave	Roanoke	VA	24019	Navy	3010 103c
Aviation Center and Fort Rucker	Bldg 1404	Fort Rucker #36362-5000	AL	36362	Army	3005 3010 3016 103c
Bellefonte Nuclear Plant	Off US Hwy 72	Hollywood	AL	36401	Tennessee Valley Authority.	3005 3010 103c
Browns Ferry Nuclear Plant	US Hwy 72	Athens	AL	35611	Tennessee Valley Authority.	3010
Guntersville Hydropower Plant	Off US Hwy 431,11 Mi. NW of Guntersville.	Guntersville	AL	35976	Tennessee Valley Authority.	3010
Muscle Shoals Power Stores	AL Hwy 133	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103a
Widows Creek Fossil Plant	Off US Hwy 72 W	Stevenson	AL	35772	Tennessee Valley Authority.	3005 3010 103c
Wilson Hydropower Plant	AL Hwy 133	Florence	AL	35660	Tennessee Valley Authority.	3010
AFA 49-A Orlando	8601 Ave B McCoy NTC Annex.	Orlando	FL	32812	Army	3005 3010
BLM-Olustee Dump	Hwy 90 & Olustee Battlefield R.	Olustee	FL		Interior	103c
Colonel Frank M. Williams Army Reserve Center.	11700 NW 27th Ave	Miami	FL	33167	Army	3005 3010
Fort Lauderdale Naval Underwater Systems Center.	1650 Southwest 39th Street	Fort Lauderdale	FL	33315	Navy	3010
Gulf Breeze Environmental Research Laboratory.	Sabine Island	Gulf Breeze	FL	32561	EPA	3010 3016
Hurlburt Field	834 CSG/CC	Hurlburt Field	FL	32544	Air Force	3005 3010 103c
Kennedy Space Center	NASA Mail Code DF-EMS	Kennedy Space Center	FL	32899	NASA	3005 3010 3016 103c 103a
Key West Coast Guard Station		Key West	FL	33040	Transportation	3010
Lynn Haven Defense Fuel Support Point.	W end of 10th Street	Lynn Haven	FL	32444	Defense Logistics Agency.	3010 3016 103c
Mayport Coast Guard Base	PO Box 385	Mayport	FL	32267	Transportation	3010 103c
Mayport Naval Air Station	PO Box 265 Naval Station	Mayport	FL	32228	Navy	3005 3010 3016 103c 103a
Miami Beach Coast Guard Base	100 MacArthur Cswy	Miami Beach	FL	33139	Transportation	3005 3010
NPS-Everglades National Park	Route 9336	Homestead	FL	33030	Interior	3010
Osceola National Forest	National Forests of Florida	Unincorporated Lake City	FL	32055	Agriculture	3016
Palatka Army Maintenance Support Activity-55M.	4300 St Johns Ave	Palatka	FL	32077	Army	3010
Pinellas Plant	7887 Bryan Dairy Rd	Largo	FL	34649-2900	Energy	3005 3010 3016
St. Petersburg Coast Guard Station.	600 8th Ave SE	St. Petersburg	FL	33701	Transportation	3010
Tampa Defense Fuel Support Point.	Box 13736	Tampa	FL	33611	Defense Logistics Agency.	3010 3016 103c
W. Palm Beach Naval Underwater Systems Center.	801 Clematis Street	W Palm Beach	FL	33402	Navy	3010
Wildlife Research Field Station	2820 E University Ave	Gainesville	FL	32601	Agriculture	103c
Atlanta Medical Center	1670 Clairmont Road	Decatur	GA	30033	Veterans Administration	3005 3010 3016

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Augusta Army Maintenance Support Activity-54G.	3311 Wrightsboro Rd	Augusta	GA	30904	Army	3010
Centers for Disease Control	4770 Buford Hiway	Chamblee	GA		Health and Human Services.	103c
Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069	Air Force	3016 103c
Fort Gillem	Attn AFZK-EH-C	Forest Park	GA	30330	Army	3005 3010 3016 103c
Fort Campbell	AFZB-FE-ECE	Fort Campbell	KY	42223	Army	3005 3010 3016 103c
Lexington Blue Grass Depot Activity.	US Hwy 421	Richmond	KY	40475	Army	3005 103c
Lexington-Bluegrass Army Depot.	Haley Rd	Lexington	KY	40511	Army	3005 3010 3016 103c 103a
Paducah Gaseous Diffusion Plant.	PO Box 1410 Hobbs Road	Paducah	KY	42001	Energy	3005 3010 3016 103a
John C. Stennis Space Center	SSC Bldg 1100	Stennis Space Center	MS	39529	NASA	3005 3010 3016 103c
Cherry Point Marine Corps Air Station.	NC Hwy 101	Cherry Point	NC	28533	Navy	3005 3010 3016 103c
Nantahala National Forest Landfill.	Post & Otis Streets, Box 2750	Asheville	NC	28802	Agriculture	103c
National Institute of Environmental Health Scienc.	S on Alexander Dr	Research Triangle Park	NC	27709	Health and Human Services.	3005 3010 103c
National Marine Fisheries Service.	Pivers Island Off US Hwy 70 West.	Beaufort	NC	28512	Commerce	3010 3016
Pope Air Force Base	317 CSG/CC	Pope AFB	NC	28308	Air Force	3005 3010 103c 3016
Seymour Johnson Air Force Base.	4 CSG/DE	Seymour Johnson AFB	NC	27531	Air Force	3005 3010 3016 103c
Technology Center	Hwy 54 & Alexander Drive	Research Triangle Park	NC	27711	EPA	3005 3010
Beaufort Marine Corps Air Station.	Lafrene Road	Beaufort	SC	29904	Navy	3005 3010 3016 103c
Beaufort Naval Hospital	SC Highway 280	Beaufort	SC	29902	Navy	3010
Charleston Naval Shipyard	Viaduct Road	Charleston	SC	29408	Navy	3005 3010 3016
Charleston Air Force Base	437 ABG/CC	Charleston AFB	SC	29404	Air Force	3005 3010 3016 103c
Charleston Defense Fuel Supply Point.	N Rhett Ave	Hanahan	SC	29406	Defense Logistics Agency.	3010 3016
Myrtle Beach Air Force Base	354 CSG/DE	Myrtle Beach	SC	29577	Air Force	3005 3010 3016
Parris Island Marine Corps Recruit Depot.	Marine Corps Recruit Depot	Parris Island	SC	29905	Navy	3005 3010 3016
Shaw Air Force Base	363 CSG/DE	Shaw AFB	SC	29152	Air Force	3005 3010 3016 103c
Training Center and Fort Jackson.	Jackson Blvd.	Fort Jackson	SC	29207	Army	3005 3010 3016
Arnold Engineering Development Center.	TN Hwy 127	Arnold Air Force Base	TN	37389	Air Force	3005 3010 3016 103c 103a
Bull Run Fossil Plant	Edgemoor Rd., 6 Mi SE of Oak Ridge.	Oak Ridge	TN	37930	Tennessee Valley Authority.	3010
Cumberland Fossil Plant	TN Highway 149 South	Cumberland City	TN	37050	Tennessee Valley Authority.	3010
Holston Army Ammunition Plant	West Stone Drive	Kingsport	TN	37660	Army	3005 3010 3016 103c
Danville Medical Center Hospital	1900 E Main St	Danville	IL		Veterans Administration	103c
Fermi National Accelerator Laboratory.	Route 16 & 59 Kane County	Batavia	IL	60510	Energy	3005 3010 3016 103c
Former Jeffersonville Quartermaster Depot.	Located on Segrams Property Clark County.	Jeffersonville	IN	47130	Army	3016 103c
New Haven Defense Logistics Agency Depot.	State Rt. 14	New Haven	IN	46774	Defense Logistics Agency.	3010
Ann Arbor Motor Vehicle Emission Laboratory.	2565 Plymouth Road	Ann Arbor	MI	48105	EPA	3010
Harrisville Defense Fuel Support Point.	US Hwy 23	Harrisville	MI	48740	Defense	103c
Tank Automotive Command	6501 E. 11 Mile Rd. Macomb County.	Warren	MI	48090	Army	3005 3010 3016 103c
Minneapolis St. Paul Bulk Mail Center.	3165 S. Lexington Ave	St. Paul	MN	55121	Postal Service	3010
Andrew W. Breidenbach Environmental Research Ctr.	26 W. St. Clair Street	Cincinnati	OH	45268	EPA	3005 3010 3016
Center Hill Hazardous Waste Engrg Research Lab.	5595 Center Hill Road	Cincinnati	OH	45268	EPA	3005 3010 3016
Cincinnati Defense Fuel Support Plant.	4820 River Rd. Hamilton County.	Cincinnati	OH	45233	Defense Logistics Agency.	3010 3016 103c
Columbus Defense Construction Supply Center.	3990 E. Broad St. Franklin County.	Columbus	OH	43215	Army	3005 3010 3016 103c
Electronic Supply Center	1507 Wilmington Pike Montgomery County.	Dayton	OH	45444	Defense	3010 3016 103c

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Lima Defense Plant Representative Office.	Defense Logistics Agency, DPRO General Dynamics—Lima, 1155 Buckeye Rd.	Lima	OH	45804-1898	Army	3010 3016 103c
Testing and Evaluation Facility	1600 Gest Street	Cincinnati	OH	45203	EPA	3005 3010 3016
FS-Forest Production Laboratory	502 Walnut Street	Madison	WI	53705	Agriculture	3005 3010
Combustion Research Facility	NCTR Bldg. 45	Jefferson #72070	AR	72079	EPA	3005 3010 3016
Eaker Air Force Base	97 CSG/DEEV	Eaker AFB	AR	72315-5000	Air Force	3005 3010 3016 103c
Fort Chaffee	Building 239	Fort Chaffee	AR	72905	Army	3005 3010 3016 103c
FWS-Hope Wildlife Area	4 Miles North off Hwy 32	Hope	AR		Interior	103c
Millwood Reservation	Route 1	Ashdown	AR		Corps of Engineers, Civil	103c
FWS-Lacassine National Wildlife Refuge.	Route 1	Lake Arthur	LA	70549	Interior	103c
Martin Marietta Aerospace	13800 Old Gentilly Road	New Orleans	LA	70129	NASA	3005 3010 3016 103c
New Orleans Naval Air Station	32 Belle Chase Hwy	Belle Chasse	LA	70037	Navy	3010 103c 103a
SPR-Weeks Island	2 Mi NW of Cypremont	Cypremont	LA	70560	Energy	103c
SPR-West Hackberry Site	3.8 Mi W of Hackberry, Hwy 390.	Hackberry	LA		Energy	103c
BLM-Flora Vista Landfill	T30NR12WSEC3	Flora Vista	NH	87415	Interior	3016 103c
BLM-Hyde Mine	35/32/46 & 108/41/26	Gallup	NM	87301	Interior	103c
BLM-South Farmington Sanitary Landfill.	T29NR13WSEC20	Farmington	NM	87401	Interior	3016 103c
BLM-Standard Transpipe Corp	T17SR9ESEC18, 19	Alamogardo	NM	88310	Interior	103c
BLM-Waterflow Landfill	T30 NR 16W SEC35	Waterflow	NM	87421	Interior	103c
Cibola National Forest	Cibola National Forest	Magdalena	NM	87825	Agriculture	103c
Fort Wingate Depot Activity	10 Miles East of Gallup on I-10.	Gallup	NM	87310	Army	3005 3010 3016 103c
Gasbuggy	T29N, R4W S36; 55 M E. of Farmington.	Dulce (Near)	NM		Energy	103c
La Bajada Mine	1.25 Mi Upstream From La Bajada.	La Bajada	NM		Agriculture	103c
Lovelace Inhalation Toxicology Research Institute.	Bldg. 9200, Kirtland AFB East	Albuquerque	NM	87185	Energy	103c 3016
BIA-Caddo County Landfill #1	SE/4 SEC7 T5N R11W SW/4 SEC8.	Apache	OK		Interior	103c
Air Defense Center & Fort Bliss	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c 103a
Canyon Lake Recreation Area	North Side of Canyon Lake (By Dam).	San Antonio	TX	78234	Army	103c
Corpus Christi Army Maintenance Support Activity.	2022 Saratoga	Corpus Christi	TX	78415	Army	3005 3010 103c
Dyess Air Force Base	96 CSG/CC	Abilene	TX	79607	Air Force	3005 3010 3016 103c
Galveston Coast Guard Base	Ferry Road	Galveston	TX	77550	Transportation	3010
Houston Laboratory	6608 Hornwood Dr	Houston	TX	77074	EPA	3010 103c
L.B. Johnson Space Center	2101 NASA Road	Houston	TX	77058	NASA	3005 3010 3016 103a
NPS-Padre Island National Seashore Bone Yard.	Park Road 22	Corpus Christi	TX	78418	Interior	3010 3016 103c
Unidentified Site	US Forest Service Property	Huntsville	TX		Agriculture	103c
WAPA-Hinton	PO Box 1012	Hinton	IA	51024	Energy	3005 3010 3016
Atchison Defense Industrial Plant Equipment Facil.	Old Rte 1	Atchison	KS	66002	Army	103c
Region 7, Environmental Services Division Lab.	25 Funston Road	Kansas City	KS	66115	EPA	3005 3010 3016 103c
BM-Rolla Research Center	1300 Bishop Ave	Rolla	MO	65401	Interior	103c
Defense Mapping Agency-FEE	3200 S. Second Street	St. Louis	MO	63118	Defense Mapping Agency.	3010
Defense Mapping Agency-FEE	8900 S. Broadway	St. Louis	MO	63118	Defense Mapping Agency.	3010
MO-AVCRAD	2501 Lester Jones Ave	Springfield	MO		Army	103c
Mobile Incinerator	SE ¼ NW¼ NW¼ SEC 20	McDowell	MO	85769	EPA	3010 103c
Schuster Farm	SEC58 S17 T55N R33W	Gower	MO		Agriculture	103c
St. Louis	1222 Spruce	St. Louis	MO	63103	General Services Admin	3005 3010
Lincoln Naval Reserve Center	1625 N 10th St	Lincoln	NE	68508	Navy	103c
Omaha Naval and Marine Corps Reserve Center.	Fort Omaha	Omaha	NE	68102	Navy	103c
Section 5 Impoundment	SW¼ NW¼ SE¼ of SEC 5	Glenvil Township	NE		Agriculture	103c
BLM-Fremont	T48NR12SEC19	Cata Paxi	CO		Interior	103c
BLM-Montrose County Dump	T48NR19WSEC22	Montrose	CO		Interior	103c
BLM-Placerville Tram Site	T44NR11WSEC35 Hwy 62	Placerville	CO	81430	Interior	103c
BLM-San Miguel Landfill #1	T44NR15WSEC26	Nataurita	CO		Interior	103c
BLM-San Miguel Landfill #2	T44NR17WSEC18	Slick Rock	CO		Interior	103c
BLM-Sawpit Tram Site (Ore Storage).	T43NR10WSEC18	Saw Pit	CO	81435	Interior	103c
BLM-Town of Mesa Landfill	T19SR96WSEC22	Molina	CO		Interior	103c
BR-Loveland	910 Van Buren	Loveland	CO	80537	Interior	3010 103c

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Central Direct Fed. Divsion Materials-FHWA.	6th St., Bldg. 52, DFC	Denver	CO	80225	Transportation	3005 3010 103c
Colorado Springs Academy	AFA/DE	Colorado Springs	CO	80840	Air Force	3010 103c
Denver Bulk Mail Center	7755 E. 56th Ave.	Denver	CO	80238	Postal Service	3016 103c
Fort Carson	DFAE Bldg. 304, AFZC-FE-EQ.	Ft. Carson	CO	80913	Army	3005 3010 3016 103c
Grand Junction Projects Office	3597 B-¾ RD PO2567	Grand Junction	CO	81502-5504	Energy	3016 103c
GS-Denver, NWQL	5293 Ward Rd.	Denver	CO	80225	Interior	3010
National Enforcement Investigation Center.	DFC	Denver	CO	80225	EPA	3010
NPS-Denver Service Center	755 Parfet St., Box 25287	Denver	CO	80225	Interior	3016 103c
Peterson Air Force Base	1003 SSG/CC	Peterson AFB	CO	80914	Air Force	3005 3010 103c
Solar Energy Research Institute	1617 Cole Blvd.	Golden	CO	80401	Energy	3005 3010 3016 103c
Transportation Test Center	21 Miles NE Pueblo Mem Airport.	DOT Test Track Rd	CO	81001	Transportation	3005 3010 3016
WAPA-Power Operations	1800 S. Rio Grande Ave.	Montrose	CO	81401	Energy	103c
BLM-Jet Fuel Refinery Site	T14NR31E 4Mi E of Mosby	Mosby	MT		Interior	103c
BLM-Roundup Landfill	1.5 Miles Northwest of Roundup.	Roundup	MT		Interior	103c
BLM-Sluice Gulch Leaking Adit	T6SR15WSEC5		MT		Interior	103c
BLM-Thorium City Waste Dump	T105R15WSEC21,22,27,28	Grant	MT	59734-3016	Interior	3016 103c
BLM-Tungsten Mill Tailings	T45W9WSEC4,5,9	Glen	MT	59732	Interior	103c
FWS-Charles M. Russell Refuge	T21N, R2E, Sec.15	Turkey Joe Landing	MT	59457	Interior	3010 103c
Malmstrom Air Force Base	Facility 1501 Perimeter Rd.	Great Falls	MT	59402	Air Force	3005 3010 3016 103c 103a
Concrete Missile Early Warning Station.	Det 1 57 AD/DE	Concrete	ND	58221	Army	103c 3010 3005
Grand Forks Defense Fuel Support Point.	Grand Forks AFB 42nd Street	Grand Forks	ND	58201	Defense Logistics Agency.	3010 3016 103c
Minot Air Force Base	41 CSG/CC	Minot AFB	ND	58705	Air Force	3005 3010 3106 103c
North Dakota Agricultural Experiment Station.	1605 W. College St	Fargo	ND	58105	Agriculture	3010 3016 103c
Silver King Mines, Inc	US Hwy. 18	Edgemont	SD	57735	Tennessee Valley Authority.	3010 103c
BLM-Chevron Red Wash Unit	T7SR7ESEC22	Vernal	UT	84078	Interior	3016 103c
BLM-Desert Mound Mine	T35NR13WSEC35	Cedar City	UT	84720	Interior	3016 103c
BLM-Frye Canyon Tailing	T36SR16ESEC34	Hite	UT	84511	Interior	3016 103c
BLM-Ore Buying Station-Moab	T26SR22ESEC6PARCLABC	Moab	UT	84532	Interior	3016 103c
WAPA-Casper Field Br	W of Mt View on Spider Rd	Mills	WY	82644	Energy	103c
Guam Naval Magazine	Apra Hbr Hts Area by Fena Resv.	Apra Harbor	AQ	96910	Navy	103c
Fort Huachuca	RCRA Units	Fort Huachuca	AZ	85613	Army	3010 3016 103c 103a
Sky Harbor International Airport	2001 S. 32nd St	Phoenix	AZ	85034	Air Force	3010
Civil Engineering Laboratory	NCBC	Port Hueneme	CA	93043	Navy	3010 103a
Crows Landing Naval Air Logistics Force.	NALF Crows Landing	Crows Landing	CA	95313	Navy	3010 3016
Fallbrook Naval Weapons Station Annex.	Seal Beach	Fallbrook	CA	92028	Navy	103c
Imperial Beach Naval Communications Station.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beach	CA	92032	Navy	3005 3010 103c 103a
Lawrence Berkeley Laboratory	1 Cyclotron Rd.	Berkeley	CA	94720	Energy	3005 3010 3016
Norwalk Defense Fuel Supply Center.	15306 Norwalk Blvd.	Norwalk	CA	90650	Defense Logistics Agency.	3010 3016 103c
Oakland Naval Regional Medical Center.	8750 Mountain Blvd	Oakland	CA	94627	Navy	3010 103c
Plant #19	4297 Pacific Coast Hwy	San Diego	CA	92101-5001	Air Force	103c 3016 3010
Point Sur Naval Facility	Naval Facility Point Sur	Big Sur	CA	93920	Navy	3010
San Diego Naval Facilities Engineering Command.	Western Division	San Diego	CA	92136	Navy	103c
Sierra National Forest	1130 O St. Room 3017	Fresno	CA	93721	Agriculture	103c 3016
Skaggs Island Naval Security Group Activity.	Skaggs Island	Sonoma	CA	95476	Navy	3010 3016
Stanford Linear Accelerator Center.	2527 Sandhill Rd.	Menlo Park	CA	94305	Energy	3010 3016 103c 103a
Guam Naval Hospital	Naval Hosp Guam	Naval Hosp Guam	GU	96638	Navy	103c
Pearl Harbor Naval Submarine Base.		Pearl Harbor	HI	96860	Navy	3010 103a
Pearl Harbor Naval Supply Center.	Naval Base	Pearl Harbor	HI	96860	Navy	3005 3010 103c 3016
Pearl Harbor Navy Public Works Center.	Naval Station Area	Pearl Harbor	HI	96860	Navy	3005 3010 3016 103c
BLM-Henderson Landfill	T21S R63E Section 28, 29	Henderson	NV		Interior	103c

FEDERAL FACILITIES DOCKET—NFRAP STATUS FACILITIES—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM-Rio Tinto Copper Mine	SEC 10 & 11 T45N R53E MDM.	Mountain City	NV	89831	Interior	103c
Tonopah Test Range (Sandia National Laboratory).	PO Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c 103a
BLM-Red Devil Mine Waste Ponds.	L61-10-12 L149-56-48		AK		Interior	3016 103c
BLM-Sagwon Airstrip	T5R4ESEC10-11	Sagwon	AK	99513	Interior	3016 103c
Dewline Site Bar-Main	Barter Isl., ½ Mi E of NE Shr	Kaktovik	AK	99747	Air Force	103c
Dewline Site L1Z-3	Kuk River & Chukchi Sea	Wainwright	AK	99782	Air Force	3010 103c
Dewline Site LIZ-2	Kasegalik Lagoon-Chukchi Sea	Point Lay	AK	99766	Air Force	3010 103c
Dewline Site POW-1	Lonely, Pitt Point, E of Smith Bay.	Lonely	AK	99999	Air Force	3010 103c
Dewline Site POW-2	Simpson Lagoon-Beaufort Bay	Oliktok	AK	99599	Air Force	3010 103c
Dewline Site POW-Main	Point Barrow Between N Salt Lagoon & Imikpuk.	Point Barrow Station	AK	99723	Air Force	3010 103c
BLM-Blue Dome Unauthorized Dump.	T10NR30ESEC30	Blue Dome	ID	83464	Interior	103c
BLM-Central Cove Landfill	T3NR4WSEC8,9	Caldwell	ID		Interior	3016 103c
BLM-Champaigne Creek Mine	T3N R24E SEC15	Grouse	ID	83242	Interior	3016 103c
BLM-Delamar Silver Mine	T.15.S.R.35.E	Owyhee	ID		Interior	103c
BLM-Elk City	T29NR8ESEC23	Elk City	ID	83525	Interior	3016 103c
BLM-Howe Dumpsite	T6NR29ESEC31	Howe	ID	83244	Interior	103c
BLM-Menan Unauthorized Dump.	T6NR38ESEC26&27	Madison	ID		Interior	103c
BLM-Morgan's Pasture	T1N R35E SEC 33 & 34	Shelly	ID	83274	Interior	3010 103c
BLM-Owyhee Co. Grandview Landfill.	T6SR4ESEC14	Bruneau	ID	83604	Interior	103c
BLM-Owyhee Co. Marshing/Homedale Landfill.	Johnson Rd. T4N R5W S32 SW ¼.	Marsing-Homedale	ID	83639	Interior	103c
BLM-Owyhee Co. Wilson Creek Landfill.	T1SR34ESEC13	Marsing	ID	83639	Interior	103c
BLM-Pestcide Dump Site, Reynolds.	T2SR3W SEC31	Reynolds	ID	83650	Interior	103c
BLM-Pesticide Dumpsite Sec. 5	Boise Dist Sec. 5	Murphy	ID	83650	Interior	103c
BLM-Pullman Mine	T29N R4W S14	Cottonwood	ID	83522	Interior	103c
BLM-Springfield Dumpsite	T3SR32ESEC12	Springfield	ID	83277	Interior	103c
BLM-Springfield Unauthorized Dumpsite.	T35NR32ESEC15	Springfield	ID	83277	Interior	103c
BLM-Minexco Millsite	T9SR42ESEC8	Baker	OR	97814	Interior	3016 103c
BLM-Slides Dump Site	T15SR46ESEC35, Lots 1,2	Ontario	OR	97914	Interior	3016 103c
Willamette	West Linn	West Linn	OR	97068	Corps of Engineers, Civil	103c 3016
BLM-Enlo Powerhouse AKA Similkameen.	T40NR27ESEC13	Oroville	WA	98844	Interior	103c

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federal register

Friday
July 17, 1992

Part III

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations; Synthetic Organic Chemicals and Inorganic Chemicals; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-4137-3]

Drinking Water; National Primary Drinking Water Regulations—Synthetic Organic Chemicals and Inorganic Chemicals; National Primary Drinking Water Regulations Implementation

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this document, EPA is promulgating maximum contaminant level goals (MCLGs) and National Primary Drinking Water Regulations (NPDWRs) for 18 synthetic organic chemicals (SOCs) and 5 inorganic chemicals (IOCs). The NPDWRs consist of maximum contaminant levels (MCLs) for the SOCs and IOCs. The NPDWRs also include monitoring, reporting, and public notification requirements for these chemicals. Regulation of sulfate, one of the contaminants in the proposed rule, has been deferred. This document includes the best available technology (BAT) upon which the MCLs are based and the BAT for the purpose of issuing variances.

DATES: The effective date for revisions and additions to §§ 141.32, 141.40, 141.50 (except 141.50(b)(26)), 141.51 141.61 (except 141.61(c)(26)), 141.62, 142.16, and 142.62 is January 17, 1994. The effective date for revisions and additions to §§ 141.2, 141.6, 141.12, 141.23, 141.24, 141.50(b)(26), 141.60, 141.61(c)(26), and 141.89 is August 17, 1992. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purposes of judicial review at 1 p.m., Eastern time on July 31, 1992.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this notice) are available for review at the U.S. Environmental Protection Agency (EPA), Drinking Water Docket, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call 202–260–3027 between 9 a.m. and 3:30 p.m. Any document referenced by an MRID number is available by contacting Susan Lawrence, Freedom of Information Office, Office of Pesticide Programs, at 703–557–4454.

Copies of health criteria, analytical methods, and economic impact analysis documents are available for a fee from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–336–4700, local: 703–487–4650. Additionally, they can be reviewed at the EPA regional offices listed below.

FOR FURTHER INFORMATION CONTACT: Gregory Helms, Regulation Management Branch, Drinking Water Standards Division, Office of Ground Water and Drinking Water (WH–550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202–260–8049, or one of the EPA Regional Office contacts listed below. General information may also be obtained from the EPA Drinking Water Hotline. Callers within the United States may reach the Safe Drinking Water Hotline at 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4 p.m. Eastern Time.

EPA Regional Offices

I. JFK Federal Bldg., Room 2203, One Congress Street, 11th floor, Boston, MA 02203, Phone: (617) 565–3610, Jerry Healey
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597–9800, Dale Long
IV. 345 Courtland Street, N.E., Atlanta, GA 30365, Phone: (404) 347–3633, Wayne Aronson
V. 77 West Jackson Boulevard, Chicago, IL 60604, Phone: (312) 353–2000, Ed Watters
VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655–7155, Tom Love
VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 276–7032, Ralph Langemeier
VIII. One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202–2466, Phone: (303) 293–1413, Patrick Crotty
IX. 75 Hawthorne Street, San Francisco, CA 94105, Phone: (415) 744–1855, Steve Pardieck
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 553–1225, Jan Hastings

SUPPLEMENTARY INFORMATION:

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Abbreviations Used in this Rule List of Tables

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Abbreviations Used in This Rule

AA: Direct Aspiration Atomic Absorption Spectroscopy
ACS: American Chemical Society
ADI: Acceptable Daily Intake
ASDWA: Association of State Drinking Water Administrators
ASTM: American Society for Testing Materials
BAT: Best Available Technology
BTGA: Best Technology Generally Available
CRAVE: Cancer Risk Assessment Verification Enterprise
CAA: Clean Air Act
CAG: Cancer Assessment Group
CUR: Carbon Usage Rate
CWS: Community Water System
DWEL: Drinking Water Equivalent Level
EBCT: Empty Bed Contact Time
EIA: Economic Impact Analysis
EMSL: Environmental Monitoring Systems Laboratory (Cincinnati)
EPA: Environmental Protection Agency
FDA: Food and Drug Administration
FR: Federal Register
GAC: Granular Activated Carbon
GFAA: Graphite Furnance Atomic Absorption Spectroscopy
HPLC: High Pressure Liquid Chromatography
HSDB: Hazardous Substances Data Base
ICP-AES: Inductively Coupled Plasma-Atomic Emission Spectroscopy
IE: Ion Exchange
IMDL: Inter-Laboratory Method Detection Limit
IOC: Inorganic Chemical
IRIS: Integrated Risk Information System
LOAEL: Lowest-Observed-Adverse-Effect Level
LOQ: Limit of Quantitation
MCAWW: Methods for Chemical Analysis of Water and Wastes
MCL: Maximum Contaminant Level (expressed as mg/l)[1]
MCLG: Maximum Contaminant Level Goal
MDL: Method Detection Limit
MF: Modifying Factor
MGD: Million Gallons per Day
NAS: National Academy of Sciences
NCWS: Non-Community Water System
NIPDWR: National Interim Primary Drinking Water Regulation
NOA: Notice of Availability
NOAEL: No-Observed-Adverse-Effect Level
NOEL: No-Observed-Effect Level
NPDES: National Pollution Discharge Elimination System
NPDWR: National Primary Drinking Water Regulation
NTIS: National Technical Information Service
NTNCWS: Non-Transient Non-Community Water System
O&M: Operations & Maintenance
OPP: Office of Pesticide Programs
ORD: Office of Research and Development
OW: Office of Water
OX: Oxidation (Chlorine or Ozone)
PAC: Powdered Activated Carbon
PAHs: Polynuclear Aromatic Hydrocarbons
Pathco: Pathology Working Group
PE: Performance Evaluation
POE: Point-of-Entry Technologies
POU: Point-of-Use Technologies
PQL: Practical Quantitation Level
PTA: Packed Tower Aeration
PWS: Public Water System
RCRA: Resource Conservation Recovery Act
RfC: Reference Concentration
RfD: Reference Dose (formerly termed Acceptable Daily Intake (ADI))
RIA: Regulatory Impact Analysis
RMCL: Recommended Maximum Contaminant Level
RO: Reverse Osmosis
RSC: Relative Source Contribution
SDWA: Safe Drinking Water Act, or the "Act," as amended in 1986
SMCL: Secondary Maximum Contaminant Level
SMF: Standardized Monitoring Framework
SOC: Synthetic Organic Chemical
T&C: Technology & Costs
TEF: Toxic Equivalency Factors
TEM: Transmission Electron Microscopy
TWS: Transient Non-Community Water System
UF: Uncertainty Factor
UIC: Underground Injection Control
USDA: U.S. Department of Agriculture
VOC: Volatile Organic Chemcial
WHP: Wellhead Protection
WHPA: Wellhead Protection Area
WS: Water Supply

[1] 1,000 micrograms (μg) = 1 milligram (mg).

List of Tables

Table 25—Increased Cost of Compliance in Selected System Size Categories

I. Summary of Today's Action

TABLE 1.—MCLGS AND MCLS FOR INORGANIC CONTAMINANTS

Chemical	Proposed MCLGs (mg/l)	Final MCLGs (mg/l)	Proposed MCLs (mg/l)	Final MCLs (mg/l)
(1) Antimony	0.003	0.006	[1]0.01/0.005	0.006
(2) Beryllium	Zero	0.004	0.001	0.004
(3) Cyanide	0.2	0.2	0.2	0.2
(4) Nickel	0.1	0.1	0.1	0.1
(5) Sulfate	[1]400/500	Deferred	400/500 [1]	Deferred
(6) Thallium	0.0005	0.0005	[1]0.002/0.001	0.002

[1] Alternative MCLG/MCL options were proposed in the July 25, 1990 notice.

TABLE 2.—MCLGS AND MCLS FOR ORGANIC CONTAMINANTS

Chemical	Proposed MCLGs (mg/l)	Final MCLGs (mg/l)	Proposed MCLs (mg/l)	Final MCLs (mg/l)
VOCs:				
Dichloromethane	Zero	Zero	0.005	0.005
1,2,4-Trichlorobenzene	0.009	0.07	0.009	0.07
1,1,2-Trichloroethane	0.003	0.003	0.005	0.005
Pesticides:				
Dalapon	0.2	0.2	0.2	0.2
Dinoseb	0.007	0.007	0.007	0.007
Diquat	0.02	0.02	0.02	0.02
Endothall	0.1	0.1	0.1	0.1
Endrin	0.002	0.002	0.002	0.002
Glyphosate	0.7	0.7	0.7	0.7
Oxamyl (Vydate)	0.2	0.2	0.2	0.2
Picloram	0.5	0.5	0.5	0.5
Simazine	0.001	0.004	0.001	0.004
Other organic contaminants:				
Benzo(a)pyrene	Zero	Zero	0.0002	0.0002
Di(2-ethylhexyl)adipate	0.5	0.4	0.5	0.4
Di(2-ethylhexyl)phthalate	Zero	Zero	0.004	0.006
Hexachlorobenzene	Zero	Zero	0.001	0.001
Hexachlorocyclopentadiene	0.05	0.05	0.05	0.05
2,3,7,8-TCDD (Dioxin)	Zero	Zero	5×10^{-8}	3×10^{-8}

TABLE 3—BEST AVAILABLE TECHNOLOGIES TO REMOVE INORGANIC CONTAMINANTS

Inorganic contaminant	Best available technologies						
	Activated alumina	Coagulation/filtration	Lime softening [1]	Ion exchange	Reverse osmosis	Chlorine oxidation	Electrodialysis
Antimony		X			X		
Beryllium	X	X	X	X	X		
Cyanide				X	X	X	
Nickel			X	X	X		
Thallium	X			X			

[1] Not 1415 BAT for small systems for variances unless treatment is currently in place.

TABLE 4—BEST AVAILABLE TECHNOLOGIES TO REMOVE SYNTHETIC ORGANIC CONTAMINANTS

Chemical	GAC [1]	PTA [2]	OX [3]
VOCs:			
Dichloromethane		X	
1,2,4-Trichlorobenzene	X	X	
1,1,2-Trichloroethane	X	X	
Pesticides:			
Dalapon	X		
Dinoseb	X		
Diquat	X		
Endothall	X		
Endrin	X		
Glyphosate			X
Oxamyl (Vydate)	X		
Picloram	X		

TABLE 4—BEST AVAILABLE TECHNOLOGIES TO REMOVE SYNTHETIC ORGANIC CONTAMINANTS—Continued

Chemical	GAC [1]	PTA [2]	OX [3]
Simazine	X		
Other Organic Contaminants:			
Benzo(a)pyrene	X		
Di(2-ethylhexyl)adipate	X	X	
Di(2-ethylhexyl)phthalate	X		
Hexachlorobenzene	X		
Hexachlorocyclopentadiene	X	X	
2,3,7,8-TCDD (Dioxin)	X		

[1] GAC = Granular activated carbon.
[2] PTA = Packed tower aeration.
[3] OX = Oxidation (Chlorine or Ozone).

TABLE 5.—COMPLIANCE MONITORING REQUIREMENTS [1]

Contaminant	Base requirement		Trigger that increases monitoring	Waivers [2]
	Ground water	Surface water		
4 Inorganics	1 Sample/3 years	Annual sample	MCL	Yes, based on analytical results of 3 rounds.
	1 Sample/9 years after 3 samples <MCL			
Cyanide	1 Sample/3 years	Annual sample	>MCL	Yes, based on vulnerability assessment.
	1 Sample/9 years after 3 samples <MCL			
3 VOCs	([3])	([3])	<0.0005 mg/1	Yes, based on vulnerability assessment.
15 Pesticides/SOCs	([4])	([4])	Detection (as specified in the rule).	Yes, based on vulnerability assessment.

[1] The compliance monitoring requirements apply to community water systems and non-transient non-community water systems.
[2] Two types of waivers are available: waivers by rule and vulnerability waivers. Waivers by rule are based on prior monitoring results. They reduce but do not eliminate monitoring. Vulnerability waivers eliminate monitoring for pesticides and will reduce monitoring requirements for volatile organic contaminants, but must be renewed, usually every three years (see Section III.C for additional information).
[3] Quarterly/year; annual after one year of no detect; every 3 years after 3 rounds
[4] 4 quarterly samples every 3 years; after 1 round of no detect: systems 3,300 reduce to 2 samples/year every 3 years, systems <3,300 reduce to 1 sample every 3 years

TABLE 6.—ANALYTICAL METHODS FOR INORGANIC CHEMICALS

Contaminant	Methodology [1]
Antimony	Atomic absorption; furnace inductively-coupled plasma-mass spectrometry, hydride-atomic absorption.
Beryllium	Atomic absorption; furnace inductively-coupled plasma, inductively coupled plasma-mass spectrometry.
Cyanide [3]	Distillation, spectrophotometric [2] distillation, automated, spectrophotometric [2], distillation, selective electrode [2], distillation, amenable, spectrophotometric [4].
Nickel	Atomic absorption; furnace inductively-coupled plasma, inductively-coupled plasma-mass spectrometry.
Thallium	Atomic absorption; furnace inductively-coupled plasma-mass spectrometry.

[1] See rule for specific references.
[2] Screening method for total cyanides.
[3] MCLG/MCL applies to "free" cyanides.
[4] Measures amenable or "free" cyanides.

TABLE 7.—ANALYTICAL METHODS FOR VOLATILE ORGANIC CHEMICALS

Contaminant	EPA methods
Dichloromethane	502.1, 502.2, 524.1, 524.2.
1,2,4-Trichlorobenzene	502.2, 503.1, 524.2.

TABLE 7.—ANALYTICAL METHODS FOR VOLATILE ORGANIC CHEMICALS—Continued

Contaminant	EPA methods
1,1,2-Trichloroethane	502.1, 502.2, 524.1, 524.2.

TABLE 8.—ANALYTICAL METHODS FOR PESTICIDES/SOCs

EPA methods	Contaminants
505	Endrin. Hexachlorobenzene. Hexachlorocyclopentadiene. Simazine.
506	Di (2-ethylhexyl) adipate. Di (2-ethylhexyl) phthalate.
507	Simazine.
508	Endrin. Hexachlorobenzene.
515.1	Dalapon. Dinoseb. Picloram.
531.1	Oxamyl (Vydate).
1613	2,3,7,8-TCDD (Dioxin).
547	Glyphosate.
548	Endothall.
549	Diquat.
550/550.1	Benzo (a) pyrene.

TABLE 8.—ANALYTICAL METHODS FOR PESTICIDES/SOCs—Continued

EPA methods	Contaminants
[1]525.1	Benzo (a) pyrene. Di (2-ethylhexyl) adipate. Di (2-ethylhexyl) phthalate. Endrin. Hexachlorobenzene. Hexachlorocyclopentadiene. Simazine.

[1] Method 525.1 may be used if adequate sensitivity is demonstrated. See Section IIIB for additional information.

TABLE 9.—LABORATORY CERTIFICATION CRITERIA

IOCs:	
Antimony	±30% at ≧ 0.006 mg/l.
Beryllium	±15% at ≧ 0.001 mg/l.
Cyanide	±25% at ≧ 0.1 mg/l.
Nickel	±15% at ≧ 0.01 mg/l.
Thallium	±30% at ≧ 0.002 mg/l.
VOCs:	
	±20% at ≧ 0.01 mg/l.
	±40% at < 0.01 mg/l.
SOCs:	
Endrin	±30%.
All other SOCs	2 standard deviations based on study statistics.

II. Background

A. Statutory Authority

These regulations are among a continuing series of rules mandated by the 1986 Amendments to the Safe Drinking Water Act. As this final rule demonstrates, EPA is committed to effective implementation of the laws established by Congress. It should be noted that EPA's development and promulgation of these rules is now being coordinated with a number of other EPA activities intended to ensure protection of public health while responsibly addressing the economic challenge of the ever-growing list of regulatory requirements on States and water systems. To the extent that the results of this coordination call for change in the law, we will make that known to the Congress. It is a commitment of EPA, however, to understand where legitimate local implementation concerns exist.

EPA is working with a recently convened Governors' Forum on Environmental Management that is reviewing means to ensure health protection while balancing the need for State regulatory flexibility to address the States' highest priorities with available resources. EPA's Environmental Financial Advisory Board is developing alternative financing mechanisms with particular attention on small community concerns. In addition, EPA is in the third year of an initiative to identify and promote low-cost solutions to drinking water protection. These include consolidation of water systems to spread costs over a larger consumer base; pooling of several systems' water samples to reduce monitoring cost; and low-cost treatment technologies that can cut water bills in very small water systems to as much as one-half what might arise with traditional engineering solutions.

In addition, EPA is considering greater reliance on risk-based priority-setting within State compliance programs. That approach would focus limited State and Federal resources on those elements of the public water supply supervision program having the greatest potential for reducing risk and promoting public health protection. Again, EPA would only take action in this area to the extent consistent with law.

The Safe Drinking Water Act (SDWA or "the Act"), as amended in 1986 (Pub. L. 99–339, 100 Stat. 642), requires EPA to publish "maximum contaminant level goals" (MCLGs) for contaminants which, in the judgment of the Administrator, "may have any adverse effect on the health of persons and which [are] known or anticipated to occur in public water systems" (section 1412(b)(3)(A)). MCLGs are to be set at a level at which "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety" (section 1412(b)(4)).

At the same time EPA publishes an MCLG, which is a non-enforceable health goal, it must also promulgate a National Primary Drinking Water Regulation (NPDWR) which includes either (1) a maximum contaminant level (MCL), or (2) a required treatment technique (section 1401(1), 1412(a)(3), and 1412(b)(7)(A)). A treatment technique may be set only if it is not "economically or technologically feasible" to ascertain the level of a contaminant (Sections 1401(1) and 1412(b)(7)(A)). An MCL must be set as close to the MCLG as feasible (section 1412(b)(4)). Under the Act, "feasible" means "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions (taking cost into consideration)" (section 1412(b)(5)). In setting MCLs, EPA considers the cost of treatment technology to large public water systems with relatively clean source water supplies [132 *Cong. Rec.* S6287 (daily ed., May 21, 1986)].[1] Each NPDWR that establishes an MCL must list the best available technology, treatment techniques, and other means that are feasible for meeting the MCL (BAT) (section 1412(b)(6)). NPDWRs include monitoring, analytical and quality assurance requirements, specifically, "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels * * *" (section 1401(1)(D)). Section 1445 also authorizes EPA to promulgate monitoring requirements.

Section 1414(c) requires each owner or operator of a public water system to give notice to persons served by it of (1) any failure to comply with a maximum contaminant level, treatment technique, or testing procedure required by a NPDWR; (2) any failure to comply with any monitoring required pursuant to section 1445 of the Act; (3) the existence of a variance or exemption; and (4) any failure to comply with the requirements of any schedule prescribed pursuant to a variance or exemption.

Under the 1986 Amendments to the SDWA, EPA was to complete the promulgation of NPDWRs for 83 listed contaminants, in three phases, by June 19, 1989. After 1989, an additional 25 contaminants must be regulated every three years (section 1412(b)).

In the 1986 Amendments to the SDWA, Congress required that MCLGs and MCLs be proposed and promulgated simultaneously (section 1412(a)(3)). This change streamlined development of drinking water standards by combining two steps in the regulation development process. Section 1412(a)(2) renamed recommended maximum contaminant levels (RMCLs) as maximum contaminant level goals (MCLGs).

B. Regulatory History

On June 25, 1990, EPA entered into a consent order with the Bull Run Coalition in response to a citizen suit. This consent order requires proposal for contaminants in today's notice by June 29, 1990 and promulgation by February 29, 1992. The promulgation date was extended to May 18, 1992. The promulgation of today's regulations partially fulfills the terms of the consent decree between EPA and the Bull Run Coalition.

On July 25, 1990, EPA proposed MCLGs and MCLs for 24 inorganic and organic chemical contaminants. Today's notice takes final action on 23 of those proposed regulations (excluding sulfate). Where today's rule promulgates MCLGs, MCLs, analytical methods, best available technology, monitoring requirements, and State implementation requirements that differ from the proposal, the changes result from public comments and/or additional data that were submitted during the comment period or which the preamble indicated were under development or analysis. The technical and/or policy basis for these changes are explained in this notice.

Section 1412(b)(1) of the SDWA directed EPA to publish MCLGs and promulgate NPDWRs for nine contaminants by June 19, 1987, for 40 additional contaminants by June 19, 1988, and for the rest of the 83 contaminants by June 19, 1989. The Agency has previously published MCLGs and promulgated NPDWRs for eight VOCs and fluoride by June 19, 1987 [see 52 FR 25690, 51 FR 11396, and 50 FR 47142]. On June 29, 1989, EPA finalized regulations for coliform and other microbiological contaminants [54 FR 27544 and 54 FR 27468]. Regulations for 38 inorganic and organic contaminants from the List of 83 were promulgated on January 30, 1991 [56 FR 3526], and on July 1, 1991 [56 FR 30266], and on June 7, 1991 [56 FR 26460] for lead and copper. The Agency also proposed regulations for radionuclides on July 18, 1991 [56 FR 33050]. Development of drinking water

[1] EPA also evaluates the costs to smaller systems in its analysis of economic impacts.

standards is specifically required under the SDWA for 22 of the 23 contaminants in today's rule [see SDWA section 1412(b)(1), 42 U.S.C. 300g–1(b)(1)]. Hexachlorobenzene, although not on the statutory list of contaminants to be regulated, is being regulated because it has been found in drinking water and may cause adverse human health effects.

C. Applicability

The MCLs promulgated by today's rule apply to all community and non-transient non-community PWS.

D. Public Comments on the Proposal

EPA requested comments on all aspects of the July 25, 1990 proposal. A summary of the major comments and the Agency's response to the issues raised are presented in the following section. The Agency's detailed response to the comments received are presented in the document "Response to Comments Received on the Proposed Requirements for 24 Contaminants of July 25, 1990 and Notice of Availability of November 29, 1991," which is in the public docket for this rule.

EPA received approximately 138 comments on the proposed MCLGs and MCLs in the July 1990 proposal. These comments represented the views of 66 industrial/commercial groups, 25 State governments, 36 local governments and public water systems, 2 public interest groups, 3 Federal agencies, as well as comments from individual citizens and academic interests.

EPA held a public hearing on the proposed rule September 25, 1990 in Washington, DC. Six individuals representing three organizations made oral presentations at the public hearing. A transcript of the hearing is available in the docket [USEPA, 1990j].

EPA published a Notice of Availability (NOA) on November 29, 1991 for public review and comment on new information received by the Agency and analyses of the information, which was being considered in establishing final regulations for these contaminants.

EPA received approximately 34 comments on the NOA. These comments represented the views of 14 industrial/commercial groups, 10 State governments, and 10 local governments and public water systems.

III. Explanation of Today's Action

A. Establishment of MCLGs

Most of the MCLGs promulgated today are at the same level as proposed in July 1990. However, the MCLGs for antimony, beryllium, simazine, di(2-ethylhexyl)adipate and 1,2,4-trichlorobenzene are different from those proposed in that notice. Changes result from public comments and/or new information received by the Agency. The change in the MCLG for antimony is due to a reevaluation of the relative source contribution based on public comments. The change in the MCLG for beryllium is due to a reevaluation of its categorization for setting the MCLG (i.e., EPA revised its classification from Category I to Category II based on public comments and reevaluation of the data). The MCLGs for simazine, di(2-ethylhexyl)adipate and 1,2,4-trichlorobenzene changed because new health information became available for these three compounds since the July 1990 proposal. The new health data and other information pertinent to this rule was made available to the public for review and comment in the November 1991 NOA [56 FR 60949]. A full explanation of these changes is included below in the sections for each specific contaminant. The draft health criteria documents prepared in support of the proposed rules have all been finalized and placed in the public docket and through NTIS, with the exception of documents for dioxin and sulfate. Dioxin is being regulated based on the information in the draft criteria document, pending Agency review of dioxin health effects. Regulation of sulfate has been deferred.

Most of the MCLs promulgated today are at the same level as proposed in July, 1990. The MCL for thallium, for which options of 0.002 mg/l and 0.001 mg/l were proposed, is being finalized as 0.002 mg/l. Based on additional analytic chemistry data presented in the NOA, the proposed dioxin MCL of 5×10^{-8} mg/l is being reduced to 3×10^{-8} mg/l in this final rule. The MCLG and MCL for sulfate are being deferred pending further study. The justification for this action is discussed in section III.B.5 of this notice. Sulfate will be addressed in a future action.

In today's rule, EPA is responding to the major issues raised by the public in reference to the July 1990 proposal [55 FR 30370] and the November 1991 NOA [56 FR 60949]. For EPA's complete response to all issues raised in comments on both the July 1990 and November 1991 notices, EPA refers the reader to the Comment/Response Document found in the Phase V docket [USEPA, 1992a].

1. How MCLGs Are Developed

MCLGs are set at concentration levels at which no known or anticipated adverse health effects occur, allowing for an adequate margin of safety. Establishment of an MCLG for each specific contaminant depends on the evidence of carcinogenicity from drinking water exposure or the Agency's reference dose (RfD) based on noncarcinogenic data.

The cancer classification for a specific chemical and the reference dose are adopted by two different Agency groups. Decisions on cancer classifications are made by the Cancer Risk Assessment Verification Endeavor (CRAVE) Work Group, which is composed of representatives of various EPA program offices. Decisions on EPA RfDs (using non-cancer endpoints only) are made through the Agency RfD/RfC work group, also composed of representatives of various EPA program offices. Decisions by CRAVE and the RfD/RfC groups represent consensus on risk assessments for the Agency and can be used by the respective regulatory programs as the basis for regulatory decisions. Summaries of the decisions by these two groups are published in the Agency's Integrated Risk Information System (IRIS). This system can be accessed by the public by contacting Mike McLaughlin of DIALCOM, Inc. at 202–488–0550.

The RfD (expressed in mg/kg/day) is an estimate, with uncertainty spanning perhaps an order of magnitude, of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious health effects during a lifetime. The RfD is derived from a no- or lowest-observed-adverse-effect level (called a NOAEL or LOAEL, respectively) that has been identified from a subchronic or chronic scientific study of humans or animals. The NOAEL or LOAEL is then divided by uncertainty factor(s) to derive the RfD.

Uncertainty factors are used in order to estimate the comparable "no-effect" level for a larger heterogeneous human population. The use of uncertainty factors accounts for intra- and inter-species variability, the small number of animals tested compared to the size of the population, sensitive subpopulations and the possibility of synergistic action between chemicals (see 52 FR 25690 for further discussion on the use of uncertainty factors).

The use of an uncertainty factor (UF) is important in the derivation of the RfD. EPA has established certain guidelines (shown below) to determine how to apply uncertainty factors when establishing an RfD [USEPA, 1986].

Uncertainty Factors (UFs)

- Use a 1- to 10-fold factor when extrapolating from valid experimental results from studies using prolonged

exposure to average healthy humans. This factor is intended to account for the variation in sensitivity among the members of the human population.

- Use an additional 10-fold factor 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 in extrapolating animal data to the case of humans.
- Use an additional 10-fold factor when extrapolating from less than chronic results on experimental animals where there are no useful long-term human data. This factor is intended to account for the uncertainty in extrapolating from less than chronic NOAELs to chronic NOAELs.
- Use an additional 10-fold factor when deriving a RfD from a LOAEL instead of a NOAEL. This factor is intended to account for the uncertainty in extrapolating from LOAELs to NOAELs.

An additional uncertainty factor may be used according to scientific judgment when justified.

- Use professional judgment to determine another uncertainty factor (also called a modifying factor, MF) 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 completeness of the overall data base and the number of species tested. The default value for the MF is 1.

From the RfD, a drinking water equivalent level (DWEL) is calculated. The DWEL represents the drinking water lifetime exposure at which adverse health effects are not expected to occur over a lifetime. The DWEL is calculated by multiplying the RfD by an assumed adult body weight (generally 70 kg) and then dividing by an average daily water consumption of 2 liters per day [NAS, 1977]. The DWEL assumes the total daily exposure to a substance is from drinking water exposure. The MCLG is determined by multiplying the DWEL by the percentage of the total daily exposure expected to be contributed by drinking water, called the relative source contribution. Generally, EPA assumes that the relative source contribution form drinking water is 20 percent of the total exposure, unless other exposure data for the chemical are available [see 54 FR 22069 and 56 FR 3535]. The relative source contribution may be as high as 80 percent. The calculation below expresses the derivation of the MCLG:

$$\text{RfD} = \frac{\text{NOAEL or LOAEL}}{\text{uncertainty factor(s)}} = \text{mg/kg body weight/day} \quad (1)$$

$$\text{DWEL} = \frac{\text{RfD x body weight}}{\text{daily water consumption in l/day}} = \text{mg/l} \quad (2)$$

$$\text{MCLG} = \text{DWEL x drinking water contribution} = \text{mg/l} \quad (3)$$
(rounded to one significant figure)

For chemicals suspected to be carcinogenic to humans, the assessment for non-threshold toxicants consists of the weight of evidence of carcinogenicity in humans, using bioassays in animals and human epidemiological studies as well as information that provides indirect evidence (i.e., mutagenicity and other short-term test results). The objectives of the assessment are (1) to determine the level or strength of evidence that the substance is a human or animal carcinogen and (2) to provide an upperbound estimate of the possible risk of human exposure to the substance in drinking water. A summary of EPA's general carcinogen classification scheme is [USEPA, 1986]:

Group A—Human carcinogen based on sufficient evidence from epidemiological studies.

Group B1—Probable human carcinogen based on limited evidence of carcinogenicity in humans.

Group B2—Probable human carcinogen based on a combination of sufficient evidence in animals and inadequate data in humans.

Group C—Possible human carcinogen based on limited evidence of carcinogenicity in animals in the absence of human data.

Group D—Not classifiable based on lack of data or inadequate evidence of carcinogenicity from animal data.

Group E—No evidence of carcinogenicity for humans (no evidence for carcinogenicity in at least two adequate animal tests in different species or in both epidemiological and animal studies).

EPA follows a three-category approach in developing MCLGs for drinking water contaminants (Table 10).

TABLE 10.—EPA'S THREE-CATEGORY APPROACH FOR ESTABLISHING MCLGS

Category	Evidence of carcinogenicity via drinking water	MCLG approach
I	Strong evidence considering weight of evidence, pharmacokinetics, potency and exposure.	Zero.
II	Limited evidence considering weight of evidence, pharmacokinetics, potency and exposure.	RfD approach with added safety margin of 1 to 10 or 10^{-5} to 10^{-6} cancer risk range.
III	Inadequate or no animal evidence.	RfD approach.

Each chemical is evaluated for evidence of carcinogenicity via ingestion. For volatile contaminants, inhalation data should also be considered. EPA takes into consideration the overall weight of evidence for carcinogenicity,

pharmacokinetics, potency and exposure.

EPA's policy is to set MCLGs for Category I chemicals at zero. The MCLG for Category II contaminants is calculated by using the RfD approach with an added margin of safety to account for possible cancer effects. If adequate data are not available to calculate an RfD, the MCLG is based on a cancer risk range of 10^{-5} to 10^{-6}. MCLGs for Category III contaminants are calculated using the RfD/DWEL approach.

The MCLG for Category I contaminants is set at zero because it is assumed, in the absence of other data, that there is no known threshold for carcinogenicity. Category I contaminants are those for which EPA has determined that there is strong evidence of carcinogenicity from drinking water. In the absence of other data (e.g., oral) on the potential cancer risk from drinking water ingestion, chemicals classified as Group A or B carcinogens are generally placed in Category I.

Category II contaminants include those contaminants which EPA has determined that there is limited evidence of carcinogenicity from drinking water considering weight of evidence, pharmacokinetics, potency and exposure. In the absence of ingestion data, chemicals classified by the Agency as Group C chemicals are generally placed in Category II. For Category II contaminants, two approaches are used to set the MCLG: Either (1) setting the MCLG based upon noncarcinogenic endpoints of toxicity (the RfD) then applying an additional safety factor of 1 to 10, or (2) setting the MCLG based upon a theoretical lifetime excess cancer risk range of 10^{-5} to 10^{-6} using a conservative mathematical extrapolation model. EPA generally uses the first approach; however, the second approach is used when valid noncarcinogenic data are not available to calculate an RfD and adequate experimental data are available to quantify the cancer risk.

EPA requested comment on the appropriateness of these approaches for establishing MCLGs in the July 25, 1990 proposal (see 55 FR 30404–05). Two comments were received on this issue. One commenter stated that the MCLGs and the MCLs should be set at levels able to protect against carcinogenic risk. The other commenter stated that Group C contaminants are not suitable for evaluation by EPA's cancer risk assessment process, and supported EPA's use of non-carcinogenic data for establishing the MCLG for these chemicals. EPA believes that the present approach for Category II contaminants is protective of non-cancer effects as well as potential carcinogenic risk. Therefore, because adequate non-carcinogenic data are available, the MCLGs promulgated today for Category II contaminants (beryllium, di(2-ethylhexyl)adipate, simazine and 1,1,2-trichloroethane) use the first option, i.e., they are based on the RfD with an application of an additional safety factor.

Category III contaminants include those contaminants for which there is inadequate evidence of carcinogenicity from drinking water. If there is no additional information to consider, contaminants classified as Group D or E chemicals are generally placed in Category III. For these contaminants, the MCLG is established using the RfD approach.

2. Occurrence and Relative Source Contribution

Most of the comments received on occurrence/exposure and relative source contribution (RSC) were related to current EPA policy. The Agency has addressed many of the questions raised by these commenters in the Comment Response Document for this rule. Below is a summary of the major issues raised and EPA's response.

EPA received some comments questioning the need to regulate a chemical if there are little occurrence data available, if the chemical occurs infrequently or at low levels, or if the RSC is below 20 percent. The Agency has the statutory mandate, under Section 1412 of the SDWA, to regulate contaminants "which are known or anticipated to occur in public water systems." The Agency believes that the contaminants in today's rulemaking have either been found or potentially may occur in public water supplies and that they may pose a health risk to consumers. Also, development of drinking water standards is specifically required under the Safe Drinking Water Act (SDWA) for 22 of the 23 contaminants in today's rule (see SDWA Section 1412(b)(1), 42 U.S.C. 300g–1(b)(1)).

Several commenters questioned why EPA was regulating hexachlorobenzene, since it is not on the list of 83 contaminants nor on the Drinking Water Priority List (DWPL). Hexachlorobenzene, although neither on the statutory list of contaminants to be regulated nor on the DWPL, is being regulated because it has been found in drinking water and may cause adverse human health effects.

As described in the background occurrence document for hexachlorobenzene [USEPA, 1989b], it has been widely detected in water, albeit at low levels. Of 1,053 observations of ground water in STORET, 1,026 samples had detectible (although not quantifiable) levels of hexachlorobenzene. In surface water STORET samples, 48 of 54 samples had detectible (although not quantifiable) levels of hexachlorobenzene. The potential for hexachlorobenzene occurrence in public water supplies is corroborated by more recent information reported in EPA's "National Survey of Pesticides in Drinking Water Wells" [USEPA, 1990i], which detected hexachlorobenzene in several samples and projected that 470 PWS wells (range 61–1, 630 wells) may have detectible levels (the minimum reporting limit for the NPS was 0.060 μg/l). EPA therefore believes that although levels may be low, there is ample evidence to conclude that hexachlorobenzene is known or anticipated to occur in public water systems as required by the SDWA.

Several comments were received on the current policy related to the use of a 20 percent floor and 80 percent ceiling for the RSC in setting the MCLG. Some commenters objected to using a 20 percent floor and 80 percent ceiling for the RSC when actual data are available and suggested percent contributions above or below these levels. Others suggested using an RSC of less than 20 percent if available data indicate a drinking water contribution below this percentage, assuming 100 percent contribution from drinking water in the absence of data, and assuming 50 percent contribution from inorganics and some pesticides in the absence of data.

The Agency continues to believe the 20 percent floor and 80 percent ceiling are prudent and protective of public health. The 20 percent floor represents a level below which additional incremental protection is negligible. In addition, below 20 percent RSC from water is a clear indication that control of other more contaminated media will result in a significantly greater reduction in exposure. EPA believes the 80 percent ceiling is required because it ensures that the MCLG will be low enough to provide adequate protection for those individuals whose total exposure to a contaminant is higher than indicated by available data. This approach, in effect, results in a slightly lower MCLG and increases the margin of safety. EPA utilizes the actual percentage when adequate exposure data exist and indicate an RSC between 20 and 80 percent, but when data are not adequate, 20 percent is generally used

as a default value that is protective of public health. In addition, the Agency does not believe that assuming a 50 percent RSC is appropriate for inorganics or pesticides in the absence of data, as suggested by a commenter. In fact, there have been numerous inorganics (such as lead or mercury) and pesticides regulated by EPA in public drinking water supples for which the available data from all sources indicate that drinking water likely contributes less than 50 percent to total exposure and, in some cases, less than 20 percent. Therefore, there is no basis for automatically assuming 50 percent from drinking water when data are not available.

There were three chemical-specific issues regarding setting the RSC. One RSC issue concerned cyanide. Several commenters suggested the use of an 80 to 100 percent RSC because they felt that drinking water represents essentially all exposure. The Agency has decided to use a 20 percent RSC for this contaminant because the available data on dietary exposure are inadequate, and the Agency therefore could not adequately characterize overall exposure to cyanide.

Another commenter claimed that the Agency misinterpreted a USDA study [Miller-Ihli and Wolf, 1986] on the dietary intake, and that EPA should have used more appropriate data regarding intake of nickel from food and air to calculate the MCLG. The Agency agrees that the study relied upon in the proposed rule was inappropriate for calculating dietary exposure for nickel because that study analyzed foods that were freeze-dried, which resulted in elevated nickel concentrations (higher than one would determine in fresh foods). The Agency has recalculated the dietary contribution using an FDA diet study by Pennington and Jones (1987). Unlike the Miller-Ihli and Wolf study, which involved an analysis of freeze-dried foods, the Pennington Diet Study program [Pennington and Jones, 1987] is appropriate for estimating overall exposure. The revised calculation indicates again that drinking water contributes less than 20 percent of the daily intake. Therefore, the Agency is using 20 percent as the RSC in the calculation of the final MCLG for nickel following present policy of a 20 percent floor. Two commenters on the NOA urged EPA to revise the RSC for nickel and base a new RSC on analysis of actual data, as was done for antimony. As discussed above, EPA has done this and believes the available data, in conjunction with EPA's policy on RSC, supports the use of the 20 percent value.

The third issue is related to EPA's proposal to use a 20 percent RSC for antimony as a default value. The Agency agrees with the commenter that there is information available on which the RSC can appropriately be based. The Agency has decided to use an occurrence study by Greathouse and Craun (1978) and has estimated typical levels of 2 μg/l antimony in drinking water. This study was chosen due to its large sampling base and representativeness of antimony levels nationwide. The Agency has also recalculated the dietary intake of antimony using a different food study by Cunningham and Stroube (1987). The dietary contribution of 4.7 μg/day of antimony calculated from this study is lower than previously estimation. The Cunningham and Stroube report was judged adequate for determining the overall exposure estimation. This study, conducted by the FDA, uses the methodology of their Total Diet Study program [Cunningham and Stroube, 1987]. By using an inhalation contribution of 0.7 μg/day and the 4.7 μg/day from the diet, along with a mean drinking water contribution of 2 μg/l (or 4 μg/day), the resulting RSC is 40 percent (rounded from 42.6 percent). The NOA requested comment on revision of the antimony RSC, and several commenters supported the proposed revision. The final MCLG for antimony reflects this change in the RSC.

The Agency refers readers to the Comment Response Document [USEPA, 1992a] for additional detailed information on the issues discussed above, and for a discussion of other exposure/RSC related comments raised during the public comment period.

3. Inorganic MCLGs

a. *Antimony.* EPA proposed an MCLG of 0.003 mg/l for antimony in the July 25, 1990 proposal [55 FR 30377]. Antimony has been classified in Group D (inadequate evidence of carcinogenicity in humans) by EPA guidelines. The proposed MCLG was derived from a DWEL of 0.015 mg/l, applying a 20 percent contribution from drinking water. The MCLG was based upon a LOAEL of 0.43 mg/kg/day for noncarcinogenic effects in a lifetime drinking water study in rats [Schroeder et al., 1970]. An uncertainty factor of 1,000 was applied to the LOAEL derived from a lifetime animal study (which is in accordance with NAS/EPA guidelines).

No new toxicological data that would change the conclusions presented in the July 25, 1990 proposal have become available since its publication. However, the Agency has revised its calculation of the relative source contribution for antimony after reconsidering the occurrence/exposure data, as discussed in the "Relative Source Contribution" section above. Based on this reassessment of the available occurrence/exposure data, the final RSC for antimony has been set at 40 percent. This change in the RSC results in a doubling of the final MCLG from 0.003 to 0.006 mg/l for antimony.

Public Comments: In response to the July 25, 1990 notice, one individual or organization commented on the MCLG proposal for antimony. The commenter indicated that an online computer search of the Hazardous Substances Data Base (HSDB) showed that antimony causes marked weight loss, hair loss, dry scaly skin, eosinophilia, myocardial failure, vomiting, diarrhea and stomatitis in animals orally exposed.

EPA Response: EPA agrees with the commenter that antimony causes the above mentioned effects when used in high doses in animal tests. These effects were discussed in the Health Criteria Document for antimony supporting the July 1990 proposal [USEPA, 1990d, finalized as USEPA, 1992b]. However, the effects reported in the July 1990 notice are effects associated with the critical endpoint of toxicity used to establish the lowest-observed-adverse-effect level (LOAEL) for antimony. The effects described by the commenter are acute effects noted at much higher dose levels than the dose causing the critical effects described in the July 1990 notice. Since the critical effects are the basis of the DWEL and MCLG calculations for antimony, only these effects were discussed in the July 1990 proposal. Detailed descriptions of antimony toxicity at different dose levels and in different animal species are documented in the Antimony Health Criteria Document prepared in support of the July 1990 notice [USEPA, 1990d, finalized in USEPA, 1992f]. This document is available in the EPA Public Docket, Office of Water. Based on the available toxicological information and on the relative source contribution reassessment, the Agency is promulgating today an MCLG of 0.006 mg/l for antimony.

b. *Beryllium.* EPA followed a Category I approach for beryllium and proposed an MCLG of zero for beryllium in drinking water [55 FR 30378] based on the evidence of carcinogenic potential from drinking water. The Agency requested comment on setting the MCLG at zero for beryllium given that the oral exposure bioassays are not adequate to conclusively demonstrate a dose-response relationship. Beryllium is

classified in Group B2, probable human carcinogen, based on the positive carcinogenic findings in several animal species exposed to beryllium by inhalation and injection. In addition, available data indicate tumor induction by several beryllium compounds and genotoxic activity in animal studies. Since the dose-response evidence of carcinogenicity specifically by ingestion is limited, the Agency requested public comments on setting the MCLG of beryllium at zero.

Public Comments: Eleven commenters responded to the beryllium proposal. One significant area of comment in response to the proposal deals with the carcinogenicity of beryllium via the oral route of exposure. The commenters disagreed with the Agency on the classification of beryllium in Group B2. The commenters stated that cancer studies performed with beryllium sulfate in drinking water [Schroeder et al., 1970] or in feed [Morgareidge, 1977] are inadequate because the tumors observed in these studies were statistically not significant when compared with those in controls. One commenter suggested that since statistical significance was not observed in these studies, beryllium should be classified as a Group C carcinogen and the MCLG should be recalculated using the options for Group C compounds. The commenter stated that the Agency has been inconsistent in its proposed regulation for beryllium in drinking water because MCLGs have been set at non-zero levels for nickel, chromium, cadmium, antimony and asbestos, which are classified by the Agency in Group A or B, via inhalation but in Group C or D by the oral route.

In addition, one commenter sent two additional studies of beryllium toxicity to EPA during the comment period for the November 29, 1991 NOA.

EPA Response: EPA establishes MCLGs for drinking water contaminants by placing them in three categories, as discussed above. With regard to the oral carcinogenicity of beryllium, EPA has reconsidered the data and agrees with the comments regarding the oral beryllium studies in that the induction of tumors was statistically not significant when compared with the controls. However, the Agency believes that these studies show a suggestive tumorigenic response which are consistent with the hazard seen in other portions of the beryllium data base. In the July 1990 proposal, the Agency indicated that these studies were limited in their usefulness to evaluate carcinogenic potential in animals because the Schroeder et al. study (1970) used only one dose, and the Morgareidge study did not reflect a traditional dose-response relationship. In the Morgareidge study, there was an increase in reticulocyte tumors in rats at 5 and 50 ppm but not at 500 ppm. Taken together, the available studies show a limited carcinogenic potential from drinking water ingestion. This may relate in part to poor absorption of beryllium from ingestion. It has been postulated that ingested beryllium is precipitated in the gastrointestinal tract as beryllium phosphate, making it inaccessible for absorption.

In general, the mechanisms of absorption of metallic ions are not well understood and do not follow a dose-response relationship. On the other hand, there is clear evidence of carcinogenicity of beryllium via inhalation or injection in monkeys, rats and rabbits. Studies in animal species exposed to beryllium by inhalation or injection showed tumors at sites different from the route of exposure [IRIS, 1989]. Because beryllim produces tumors in several species (rats, monkeys, and rabbits) via inhalation or injection, the Agency has concluded that the overall weight of evidence provides sufficient evidence of carcinogenicity; therefore beryllium is classified by the Agency in Group B2 as discussed in the proposal. However, EPA has also placed beryllium in drinking water Category II (rather than Category I, as proposed) for regulation.

In response to public comments, EPA reevaluated the categorization of beryllium by reconsidering its potency, exposure, and pharmacokinetics. EPA changed its categorization of beryllium from Category I to Category II based on several factors. This contaminant is poorly absorbed from the gastrointestinal tract, and the majority of the ingested beryllium passes through the gut unabsorbed with less than one percent being absorbed. Also it is noted that, while the carcinogenic potential for beryllium is viewed as Group B2 based on the overall weight of evidence of the inhalation and ingestion data, the dose-response analysis for ingestion exposure does not provide adequate evidence of carcinogenicity from a drinking water source, as is true with many of the other B2 contaminants. Therefore, in setting an MCLG for beryllium in drinking water, EPA believes that a Category II approach (which includes a safety factor for possible carcinogenic potential) is appropriate based on the weight of evidence for carcinogenicity via ingestion, and also based on the potency, exposure and pharmacokinetics of this chemical. EPA believes that these factors justify changing the categorization of beryllium from Category I to Category II.

For Category II contaminants, EPA generally sets the MCLG based upon noncarcinogenic endpoints (using the RfD approach) with a safety factor ranging from 1 to 10 applied to account for possible carcinogenicity. As stated in the July 1990 notice (55 FR 30378), EPA selected a lifetime oral study in rats (Schroeder et al., 1970) to derive the RfD and the DWEL for beryllium. An RfD of 0.005 mg/kg/day was derived from this study using an uncertainty factor of 100 (per NAS/EPA guidelines for use with a chronic study). This results in a DWEL of 0.2 mg/l and an MCLG of 0.004 mg/l. The derivation of the beryllium MCLG is given below:

$$\text{DWEL} = \frac{0.5\ \text{mg/kg/day} \times 70\ \text{kg}}{100 \times 2\ \text{liters/day}} = 0.2\ \text{mg/l}$$

$$\text{MCLG} = \frac{0.2\ \text{mg/l}}{10} \times 0.2 = 0.004\ \text{mg/l}$$

The DWEL is based on a 70-kg adult consuming 2 liters of drinking water per day. The MCLG includes an additional safety factor of 10 to account for possible carcinogenic potential of this contaminant via ingestion and assumes a drinking water contribution to total intake of 20 percent.

The Agency disagrees with the comment alleging inconsistencies with other drinking water regulations. To set regulations (including those for nickel, cadmium, chromium, antimony, and asbestos, as well as the MCLG for beryllium), each contaminant was evaluated independently to assess the available health effects data for drinking water. EPA considered the overall weight of evidence to determine carcinogenic potential. The factors considered included carcinogenic potential by ingestion in addition to other factors, e.g., cancer potency, pharmacokinetics, and exposure. The above inorganic contaminants are all classified in Group A or B according to the Agency's classification scheme, but were placed into different drinking water categories from those that would typically apply to the particular classifications. The commenter is mistaken that EPA classified these contaminants as Group C or D carcinogens by the oral route of exposure. Asbestos (cancer classification A) was placed in drinking water Category II due to limited evidence of carcinogenicity from drinking water; cadmium (cancer classification B1) was assigned to

drinking water Category III due to lack of evidence of carcinogenicity from drinking water (56 FR 3536). MCLGs for chromium (as chromium VI) (56 FR 3537) and nickel (as refinery dust) (55 FR 30382) (proposed), both belonging to cancer classification A based on the inhalation route of exposure, were set following a Category III approach since data by the oral route show no evidence of carcinogenicity. In short, a case-by-case decision on the categorization of a contaminant with respect to its carcinogenicity from drinking water ingestion is made based on the strength and overall weight of evidence.

EPA also received two health effects studies on beryllium submitted during the December 1991 NOA comment period. The comment period for beryllium closed in October 1990. No additional comments were solicited on beryllium during the NOA period. In addition, both studies do not appear to be peer-reviewed as published. Results of a preliminary review of these studies do not indicate they would lead to a change in the RfD or MCLG for beryllium.

One of the studies, by Morgareidge (1976), reported that in dogs, a maximum tolerated dose was likely just above 1 mg/kg/day, a level higher than the 0.54 mg/kg/day NOAEL from the Schroeder et al. (1970) study above. The other study, by Ward et al. (undated), is an epidemiology study of beryllium workers which presents no dose response information.

Consequently, after review of the timely public comments and a reassessment of the information on cancer and other toxicity concerns, EPA is placing beryllium in Category II for the reasons stated above, and promulgating an MCLG of 0.004 mg/l.

c. *Cyanide.* EPA followed a Category III approach and proposed an MCLG of 0.2 mg CN^-/1 for cyanide in the July 25, 1990 proposal [55 FR 30379]. The Agency has classified cyanide in Group D since there are insufficient human and animal studies for an assessment of its carcineogenicity. A DWEL of 0.76 mg CN^-/1 was derived using a NOAEL value of 10.8 mg CN^-/kg/day from a two-year dietary study in which rats were administered diets containing hydrogen cyanide [Howard and Hanzal, 1955]. In calculating the DWEL, an uncertainty factor of 100 was applied (in accordance with NAS/EPA guidelines for a lifetime animal study). An additional modifying factor of 5 was used to account for the possibility that cyanide would be absorbed more readily from drinking water than from food. The 0.2 mg CN^-/1 proposed MCLG is a rounded value (from 0.15 mg CN^-/1) derived from the DWEL and assuming a relative source contribution of 20% due to exposure from drinking water.

Public Comments: A total of eight individuals or organizations provided comments in response to the MCLG proposal regarding cyanide. Six commenters raised the issue of cyanide speciation. These commenters stated that while the proposed MCLG is based on "free cyanides," the proposed analytical methods imply that "total cyanides" will be regulated. While "free cyanides" are readily bioavailable and extremely toxic, "total cyanides" contain all cyanides, including those low-toxicity, inert species that are undissociable (to CN^-) and not absorbable (see the Analytical Methods Section for additional information).

Two commenters questioned the appropriateness of the NOAEL (10.8 mg CN^-/kg/day) that was selected for the MCLG calculation. One commenter suggested that the study by Howard and Hanzal (1955) is not preferable since no effects were observed in rats at the highest test dose level of 10.8 mg CN^-/kg/day, and studies should be designed to show an effect at the highest dose tested. Thus, this commenter claims that no NOAEL was identified. The other commenter stated that the rat LD_{50} (reported range of 1–4 mg CN^-/kg) is lower than the NOAEL(10.8 mg CN^-/kg/day) used in the MCLG calculation. The commenter questioned whether the proposed MCLG will pose an acute hazard if a large amount of water was ingested at one time. Also, two commenters questioned the necessity of using a modifying factor of 5 in the derivation of the MCLG since the actual bioavailability of cyanide was not measured upon oral exposure through diet or drinking water.

EPA Response: In response to the comments concerning cyanide speciation, EPA is promulgating today an MCLG and MCL for cyanide that apply only to free cyanide. The Agency agrees with the commenters that only free cyanides should be regulated because these are the species of health concern due to their bioavailability and toxicity. The analytical methods issue is fully addressed in the Analytical Methods section of this rule. In summary, EPA is specifying the use of the "cyanide amendable to chlorination" test for determining the "free cyanide" concentrations, while the "total cyanide" analytical technique is being allowed to screen samples. If the "total cyanide" results are greater than the MCL, then the analysis for free cyanide would be required to determine whether there is an exceedance of the MCL.

EPA considers the NOAEL selected to be appropriate and to be protective against adverse health effects over a lifetime of exposure. The selection of a NOAEL of 10.8 mg CN^-/kg/day is based on sensitive endpoint of toxicity and is consistent with a study that found a NOAEL of 30 mg/kg CN^- per day for weight loss, thyroid effects, and myelin degeneration in rats reported in a 11.5-month dietary study using KCN [Philbrick et al., 1979]. The commenter noted that the reported low LD_{50} in rats, was lower than the selected NOAEL. However, the rat lethal dose of cyanide was an acute effect obtained by administering cyanide in bolus form by gavage. The NOAEL chosen is from a two-year chronic dietary study. Studies have shown that rats (and humans) can tolerate higher doses of cyanide (80 mg CN^-/kg/day) when mixed in the diet [Kreutler et al., 1978] than when administered in bolus form by gavage in aqueous solution (LD_{50}=4 mg CN^-/kg/day) [Ferguson, 1962]. Rats also tolerated a higher oral dose of cyanide (12 mg CN^-/kg/day for 21 days that was administered in drinking water; Palmer and Olson, 1979). The intermittent ingestion of low doses over a day would allow for sufficient detoxification.

Using the NOAEL chosen, an uncertainty factor of 500 was used in the calculation of the DWEL. This includes an uncertainty factor of 100 (for use of a NOAEL derived from a Chronic Study) and a 5-fold modifying factor to account for the fact that the NOAEL is from a dietary study.

The fatal oral dose of cyanide in humans reported by several investigators ranged from 0.5 to 3.5 mg/kg CN^-. The LD^{50} values and LOAELs for various acute (1–14 days) and subacute (90 days) effects in tested animals were reported in the same range as the human lethal levels or higher [USEPA, 1988b, finalized as USEPA, 1992h]. Assuming an average human body weight of 70 kg, the approximate fatal dose of CN^- would be no less than 35 mg (0.5 mg/kg×70 kg). At the final MCL of 0.2 mg/l promulgated today, a person would need to ingest 175 liters of water (35 mg÷0.2 mg/l) in one short time interval to obtain an acutely toxic dose, an unrealistic volume to consume. Therefore, EPA believes the derived MCLG is protective of both acute and chronic toxic effects of cyanide in drinking water.

After review of the comments, the Agency believes that the proposed MCLG is supported by the available health data and is promulgating today an MCLG of 0.2 mg/l for free cyanide.

d. *Nickel.* On July 25, 1990, EPA proposed an MCLG of 0.1 mg/l for nickel [55 FR 30381]. The MCLG was based on the Ambrose et al. 1976 study where rats were fed nickel sulfate hexahydrate in their diet for 2 years. Effects noted in the animals included decreased body weight in male and female rats, as well as increased relative heart weight and decreased relative liver weight in female rats. Other studies reported decreased body weight gains and organ weight effects. A NOAEL of 5 mg Ni/kg body weight was identified in the Ambrose study. This NOAEL is supported by a short term gavage study [American Biogenics, 1986].

Nickel refinery dust and nickel subsulfide are classified in Group A: Human carcinogen based on human epidemiolcgic data from occupational exposure via inhalation. Nickel was not demonstrated to be carcinogenic by the oral route of exposure in several animal studies. The soluble nickel salts that may be found in drinking water have not been classified as to their carcinogenic potential. Nickel ls considered to be an essential trace element for some animal species, although it has not been shown to be essential for humans. It is found as a normal constituent in the human diet, with average intakes of 100 to 500 μg/day. EPA proposed an MCLG for nickel following a Category III approach considering the lack of evidence of carcinogenicity by ingestion.

Public Comments: Comments are requested on the MCLG for nickel and the carcinogenicity potential for nickel in drinking water. Fourteen comments were received. Comments were received on the derivation of the MCLG which discussed the choice of study and toxic endpoint as the basis for the MCLG, use of uncertainty factors, assumed volume of water consumed daily, exposure from water and carcinogenic potential for ingested nickel.

One commenter stated that the dose of 5 mg/kg/day should be considered a no-observed-effect level (NOEL) instead of a no-observed-adverse-effect level (NOAEL) since no effects, adverse or otherwise, were noted. They also noted that the next highest dose (50 mg/kg/d) could arguably be called a NOAEL instead of a LOAEL since the effect of decreased body weight could be the result of decreased food consumption possibly due to taste aversion.

A few comments were received on the use of a 3-fold modifying factor in the RfD calculation. These commenters said that EPA should not use the additional factor of 3 to account for deficiencies in the data base for reproductive effects because the factor of 100 is already conservative and the available reproductive data demonstrated a NOAEL comparable to the Ambrose study. It was suggested that EPA defer establishing an MCLG for nickel until all reviews of reproductive studies are completed, which would eliminate the need for a modifying factor of 3.

Comments were received which discussed consideration of reproductive or dermatitis studies related to nickel in drinking water as the basis for the MCLG. These studies suggest that reproductive or dermatological endpoints may be more sensitive than the Ambrose feeding study. The commenters agreed with EPA's position that the reproductive and dermatitis studies were not appropriate to serve as the sole basis for the RfD due to problems with the study design. The commenters stated further that EPA has been more than conservative in using the NOAEL from the Ambrose feeding study, that there may be a potential for differential absorption from food versus water, and that the reproductive and dermatological studies in fact support the current RfD estimated from the Ambrose feeding study. Another commenter indicated that ingested nickel exerts its toxicity through irritation to the gastrointestinal tract and not inherent toxicity due to low intestinal absorption.

One commenter lndicated that the DWEL should not be adjusted by a relative source contribution from water in that the DWEL is already conservative and that actual exposure data should be used. Because actual data show less exposure than EPA's default relative source contribution, the MCLG should be 5 to 6 times higher than it is. They further stated that the volume of 2 liters of water per day was an overestimate and that a value of 1.4 liters/day taken from the recommendations of the EPA Exposure Assessment Group should be used.

Several commenters supported EPA's position not to treat nickel as a carcinogen in drinking water.

EPA Response: EPA maintains that the 5 mg/kg/day dose level in the Ambrose feeding study is appropriately considered a NOAEL and that the higher dose of 50 mg/kg/day is a LOAEL. In females given the dose of 50 mg/kg/day, decreased body weight, increased relative heart weight and decreased relative liver weight were all statistically significant. Therefore, based on scientific judgment and statistical significance (concurred in by SAB), 50 mg/kg/day is considered the LOAEL. All of the above effects were also observed at the lower dose level of 5 mg/kg/day but were not statistically significant. Thus, the 5 mg/kg/day level is a NOAEL.

EPA agrees that nickel may be irritating to the gastrointestinal tract; however, there is evldence to indicate systemic effects following chronic low dose exposure. Therefore, EPA disagrees that nickel lacks inherent toxicity.

EPA disagrees that the modifying factor of 3 is not justified. While the existing reproductive studies are not adequate for use as the sole basis for the RfD and DWEL, they do indicate a potentlal reproductive hazard that may result from oral exposure to nickel. A modifying factor of 3 accounts for the uncertainties for the equivocal nature of the dose-response data from the existing reproductive studies.

EPA agrees with the comments that the dermatological studies should not be the basis for the NOAEL in that oral nickel challenge studies ideally should be conducted in a double blind manner. The commentators and EPA agree, however, that the dermatological and reproductive studies support the RfD and DWEL in a weight-of-evidence approach.

The Agency disagrees with the commenter who stated that the DWEL should not be adjusted by a relative source contribution but that actual exposure data showing lower exposure should be used. EPA agrees that available data indicate that drinking water contributes less than 20 percent of the daily intake, but EPA uses 20 percent as a minimum percentage in these cases (see "Relative Source Contribution" section above).

In response to the commenter's suggestion to use 1.4 liters/day as the assumed water consumption instead of 2 liters/day, EPA continues to believe that the use of 2 liters/day is appropriate in setting the MCLGs, as recommended by NAS (1977). The Agency has consistently used 2 liters/day as an assumed consumption in past drinking water regulations. The NAS estimate was based on a survey of nine different literature sources which gave an overall average per capita water (liquid) consumption per day of 1.63 liters. It also concluded that the volume of 2 liters/day represented the intake of the majority of water consumers. In order to be conservative and allow for an adequate margin of safety, EPA uses the 2 l/day value. Further, the use of 1.4 l/day in the EPA Exposure Assessment Group handbook is not inconsistent with EPA's approach of using 2 l/day in this and other drinking water rules. The 1.4 l value is an overall average of a number of studies, some of which did not

necessarily consider indirect water consumption (such as use in cooking). Therefore, to best account for all exposures related to the occurrence of contaminants in drinking water, EPA believes use of 2 liters daily water intake is conservative and appropriate. The Exposure Assessment Group Handbook also notes that 2 liters intake is a reasonable worst case estimate.

With respect to a factor to account for potential differences in absorption of nickel from food and water, EPA acknowledges that data are available which suggest a potential for differential absorption. However, these differences are not clearly reflected in the dose-response relationships from the toxicity studies. In particular, the gavage study [American Biogenics, 1986] exposed rats to nickel chloride dissolved in water. This study identified the same NOAEL (5 mg Ni/kg/day) as the dietary study [Ambrose et al., 1976] which serves as the basis for the RfD. Thus, application of a modifying factor to account for differential absorption is not considered to be justified by the existing data.

After review of the public comments, EPA is promulgating the MCLG for nickel at 0.1 mg/l, as proposed.

e. *Sulfate.* In the July 25, 1990 notice, EPA proposed two alternative MCLGs of 400 and 500 mg/l for sulfate. People who continually ingest high levels of sulfate in their drinking water generally acclimate to the sulfate and are resistant to its laxative properties. Even though promulgation of the MCLG is being deferred, for reasons discussed in Section III.B.5 of this notice, a discussion of comments received and EPA's response follows below.

Public Comments: There were 15 separate comments concerning sulfate. Several commenters believed that EPA should not regulate sulfate due to a lack of adequate health data, lack of chronic effects and because of acclimatization (refractoriness to the laxative effects) to sulfate. Eleven commenters stated that the sulfate regulation should be higher than 500 mg/l (between 600 and 1,000 mg/l). Six commenters stated that 500 mg/l was protective, while three others believed that the 400 mg/l option would be better. One commenter stated that the usual approach for deriving the MCLG—an RfD and DWEL calculation—should be used for sulfate. Another commenter cited a 1989 letter dated July 17, 1989 from the Metals Subcommittee of the Science Advisory Board's Environmental Health Committee to the Administrator stating that the Subcommittee could not support the setting of an acute DWEL. Other commenters urged no regulation of sulfate, stating that: a secondary MCL is sufficient for sulfate, infants as well as adults acclimate to sulfate, sulfate is present in food, and the WHO guidelines are based on taste and not on health effects.

EPA Response: As noted above, EPA is deferring action on the sulfate MCLG and MCL. Some commenters noted that no chronic health effects have been associated with long-term exposure to high levels of sulfate. However, sulfate can have acute adverse effects on non-acclimated persons. The critical health effect that results from exposure to sulfate in drinking water is diarrhea. Diarrhea has been reported at a level as low as 630 mg/l. The population most likely to experience this effect consists of travelers and infants not accustomed to high sulfate levels. This laxative effect eases and disappears (i.e., the person acclimatizes to the effects of sulfate) with continued exposure to high levels of sulfate in water. Little or no information is available on how quickly people, particularly infants, acclimate to the effects of sulfate.

Due to the acute nature of the critical effect, an RfD and chronic DWEL were not determined. Available data indicate that infants may be the most sensitive subpopulation since they may be at risk of becoming dehydrated (which may be serious if not properly treated) as a result of prolonged diarrhea [Chien et al., 1968].

The Metals Subcommittee of the Science Advisory Board's Environmental Health Committee recommended additional study before regulation but noted that, if regulated, an MCLG of 400 mg/l [Loehr, 1989] was more appropriate than the 200 mg/l recommended at the time by the Agency. The basis for the SAB recommendation was that (1) the mode of action of sulfate is fairly well known, and (2) some human data are available which indicate that ill effects occur only at concentrations above 600 mg/l.

At the time EPA proposes a decision on sulfate, it will present a discussion of its science assessment, including any new information which may become available.

f. *Thallium.* EPA proposed an MCLG of 0.0005 mg/1 for thallium in the July 1990 proposal [55 FR 30383]. The MCLG was derived using a NOAEL of 0.2 mg thallium/kg/day from a 13-week dietary study in rats [Stoltz et al., 1986]. Based on this NOAEL, a DWEL of 0.0023 mg/l was calculated. An uncertainty factor of 1,000 was applied (in accordance with NAS/EPA guidelines for a subchronic study). An additional uncertainty factor of 3 was used to account for the lack of adequate reproductive data. EPA has classified thallium in Group D since there is inadequate evidence of carcinogenicity. No new data that would change the conclusions presented in the July 1990 notice have become available since its publication.

Public Comments: In response to the July 1990 notice, three individuals or organizations commented on the proposed MCLG for thallium. The most significant area of comment was the claim that the uncertainty factor of 3,000 used to establish the MCLG for thallium is overly conservative given the nature of the health effects data involved, and that an uncertainty factor of 1,000 should be sufficient. The commenter did not believe that an extra uncertainty factor of 3 was warranted for protection from potential reproductive effects.

EPA Response: EPA disagrees that the uncertainty factor of 3,000 is overly conservative. The only data available are from subchronic exposure of rodents. A factor of 1,000 is generally used with a NOAEL derived from an animal study of less-than-lifetime duration (the 1986 Stoltz et al. study was 13 weeks in length). The additional uncertainty factor of 3 was applied in the risk assessment to compensate for the lack of adequate reproductive data. In light of the results from Formigli et al. (1986) in which thallium induced testicular toxicity in rats at 0.74 mg thallium/kg/day administered in the drinking water for 8 weeks, EPA believes it is appropriate to use an additional uncertainty factor of 3 since the possibility that this effect may occur at doses at or below the selected NOAEL of 0.2 mg thallium/kg/day cannot be ruled out. Detailed descriptions of thallium toxicity at different dose levels and in different animal species are documented in the thallium Health Criteria Document prepared in support of this regulation [USEPA, 1990g, finalized in USEPA, 1992c]. Accordingly, based on the available information, the Agency is promulgating today an MCLG of 0.0005 mg/l for thallium.

4. Organic MCLGs

a. *Benzo(a)Pyrene and other PAHs.* In the July 1990 notice, EPA discussed the available information on the health effects, occurrence and human exposure for 15 Polynuclear Aromatic Hydrocarbons (PAHs) [55 FR 30396]. Of the 15 PAHs, seven were presented in greater detail because of their carcinogenic potential (all classified as Group B2, probable human carcinogen), and were proposed for regulatory consideration. These included: Benz[a]anthracene (BaA), benzo[a]pyrene (BaP),

benzo[b]fluoranthene (BbF), benzo[k]fluoranthene (BkF), chrysene (CHY), dibenz[a,h]anthracene (DBA), and indeno[1,2,3-c,d]pyrene (IPy). In the proposal, EPA presented alternative approaches for controlling exposures: (1) Setting MCLG of zero for BaP alone, based on its carcinogenic potential, and (2) setting an MCLG of zero for each of the seven carcinogenic PAHs. Only for BaP are sufficient data available to make a quantitative estimate of cancer potency. In a study wherein mice were fed BaP in the diet, treatment-related gastric tumors developed, another dietary study in rats produced similar results. Data from these studies form the basis for the quantitative estimate of cancer potency [Neal and Rigdon, 1967]. BaP is mutagenic in *vitro* mutagenicity tests, and has been found to produce reproductive effects in animals. Skin painting studies in animals indicate that the effectiveness of inducing skin cancer of the other six PAHs are equal to or less than that of BaP (see studies cited in Criteria Document [USEPA, 1988c, finalized as USEPA, 1991f]). The **Federal Register** notice solicited public comments on: The Agency's two alternative options; regulation of other PAHs; and alternative approaches for evaluating the carcinogenic potency for BaP. The major comments are discussed below.

Public Comments: There were 17 comments submitted to the Agency concerning health-based issues on the proposal to regulate PAHs. Eight of the comments stated that the Agency should limit the regulation to BaP only. Three of the comments suggested regulating all seven of the Group B2 PAHs using a comparative potency approach, with comparison to BaP. One comment indicated that individual MCLGs should be established after the comparative potencies are validated. The validation method was not specified. There were several comments which suggested that the Agency should not regulate PAHs. The basis claimed for this recommendation was either that data to determine health effects were not sufficient, or that exposure to PAHs in drinking water was negligible when compared to other sources. There also were comments that did not agree with the Agency's approach of selecting Category I and setting a zero MCLG for contaminants that show evidence of carcinogenicity via ingestion. Some commenters described the Agency's approach as being overly conservative; overestimating risk; and not accounting for a threshold of carcinogenicity. Specific suggestions were: (1) To set MCLGs/MCLs at a *de minimus* level (e.g., 10^{-4}) or at background levels; (2) use a biologically based (e.g., two-stage or fitted multistage) model to estimate cancer risk, instead of the linearized multistage model; and (3) use body weight scaling, instead of surface area, to extrapolate animal data to human exposures for estimating cancer risk.

EPA Response: EPA has decided to establish an MCLG (and MCL) for BaP only. There are extensive and sufficient data to support regulating BaP. It has been shown to be carcinogenic in animals by many routes, including by ingestion, and has been classified by the Agency as a Group B2, probable human carcinogen. Even though less than one percent of PAH exposure may come from drinking water, PAHs have been found in some drinking water sources.

The Group B2 classifications and frequency of association of the other six PAHs with BaP as a mixture in drinking water suggest that it may be appropriate to regulate these others also. The Agency is considering regulating BaA, BbF, BkF, CHY, DBA, and IPy using a comparative cancer potency approach; the individual potencies would be compared to that of BaP. Such regulation may be proposed at a future date when EPA has established a policy for how such a comparative approach would be conducted, or when other appropriate data become available for any or all of the six PAHs.

The EPA approach to estimating cancer risk for drinking water contaminants (i.e., weight-of-evidence determination and non-threshold low-dose extrapolation) is considered to be the most prudent approach that is protective of human health. The Agency considers and evaluates alternative methods for assessing human health risks to chemicals. Risk estimates using a variety of models (including two-stage, linearized multistage, and Weibull methods) have been applied to the BaP data. In the interest of using more of the available data, the slope factor of 5.76 $(mg/kg/day)^{-1}$ was derived. This slope factor is the geometric mean of all the models used. While data on the potential mechanism of action of an agent are considered in the weight-of-evidence judgment, evidence of a nongenotoxic mechanism, while pertinent, would not always exclude classification of a chemical as a probable human carcinogen. The appropriate scaling factors for interspecies extrapolation are being reviewed currently by the EPA and other Federal agencies. However, the Agency will continue to use surface area scaling to estimate cancer risks until there is sufficient evidence to support a change and until another approach is fully approved and adopted.

Based on the above discussion, which considers the toxicity, carcinogenicity, occurrence, and exposure of BaP, BaA, BbF, BkF, CHY, DBA, and IPy, EPA has concluded that only BaP should be regulated at this time. In most cases, the Agency places Group B2 contaminants into EPA Category I when there is strong evidence of carcinogenicity via ingestion. EPA's policy is to set MCLGs for Category I chemicals at zero. Based on the weight-of-evidence for carcinogenicity, the Agency places BaP in Category I and is promulgating today an MCLG of zero for this contaminant.

b. *Dalapon.* In the July, 1990 proposal [55 FR 30385], EPA proposed an MCLG of 0.2 mg/l for dalapon based on a two-year feeding study in rats [Paynter et al., 1960]. A NOAEL of 8 mg/kg/day was identified from this study. From the NOAEL, a DWEL of 0.93 mg/l was derived. An uncertainty factor of 100 was applied to the NOAEL following NAS/EPA guidelines for a lifetime study. An additional uncertainty factor of 3 was used to account for possible inadequacy of the available animal data.

Public Comments: Three comments were received on the health effects of dalapon that were editorial in nature. There was no major disagreement between any of the commenters and EPA. One commenter misread the uncertainty factor of 300 as 800. The second commenter agreed on the value but suggested the use of the term "uncertainty factor" be used consistently to account for inadequacy of toxicological data instead of the term "modifying factor." The third commenter needed clarification on the title of a reference.

EPA Response: EPA agrees with the commenter that suggested that "3" is an uncertainty factor (which is synonymous with "modifying factor") to account for the inadequacy of the data base. Because none of the comments affect the proposed MCLG, based on the available information, the Agency is promulgating today an MCLG of 0.2 mg/l for dalapon.

c. *Dichloromethane (Methylene chloride).* In the July 1990 notice [55 FR 30386], EPA proposed an MCLG of zero for dichloromethane. This MCLG was based on the classification of this contaminant as a Group B2 carcinogen. EPA requested comments on whether the available carcinogenicity data by ingestion are adequate to classify dichloromethane in Group B2, and on the proposed MCLG.

Public Comments: Eleven comments were received in response to the

proposed regulation of dichloromethane. The majority of the commenters questioned the classification of dichloromethane in Group B2—probable human carcinogen. One commenter suggested that EPA should not regulate dichloromethane as a known human carcinogen since no human data are available. Several commenters argued for the classification in Group C while others favored a classification in Group D. These commenters stated that there are limited or inadequate data to classify dichloromethane as a Group B2 carcinogen. One commenter agreed with the EPA cancer classification in Group B2 for dichloromethane.

EPA Response: EPA disagrees with the comment that the Agency is regulating dichloromethane (DCM) as a known human carcinogen (i.e., Group A carcinogen). The Agency has classified dichloromethane in the cancer classification of Group B2, probable human carcinogen. EPA has placed dichloromethane in Category I to set the MCLG because there is sufficient evidence of carcinogenicity in animals from drinking water exposure.

EPA disagrees with the commenters supporting classification of dichloromethane in Group C (possible human carcinogen) or Group D (inadequate evidence for classification). EPA believes that there is sufficient evidence that dichloromethane induces tumors in animals. In drinking water studies [Serota et al., 1986a,b], a statistically significant increase in the incidence of combined hepatocellular carcinoma and neoplastic nodules when compared with matched controls was observed (female rats). Male mice had an increased incidence of combined neoplastic modules and hepatocellular carcinoma. In an inhalation experiment [IRIS, 1991a], statistically increased incidences of mammary adenomas and fibroadenomas were observed in male and female rats. Mice also showed increased incidence of hepatocellular adenomas and carcinomas. These data support the classification of dichloromethane in Group B2 and provide specific evidence for ingestion exposure hazard.

Consequently, based on the information available to the Agency and the public comments received, EPA has concluded that dichloromethane should be placed in Category I, and that an MCLG of zero, as proposed, is appropriate.

d. *Di(2-ethylhexyl) adipate.* In the July 1990 proposal [55 FR 30384], EPA proposed an MCLG of 0.5 mg/l for di(2-ethylhexyl) adipate (DEHA). This MCLG was derived from an NTP 2-year dietary study in rats and mice which resulted in a NOAEL of 700 mg/kg/day [NTP, 1982a]. An uncertainty factor of 100, and an extra uncertainty factor of 10 for lack of adequate reproductive effects data, were applied to the NOAEL to derive a DWEL of 25 mg/l. The MCLG of 0.5 mg/l was calculated for DEHA from this DWEL, by applying an additional safety factor of 10 in accordance with OW policy for Group C carcinogens, and by assuming a 20 percent contribution from drinking water to total exposure.

Based on new health information (see discussion below), EPA has recalculated the proposed MCLG for DEHA. A full discussion on the basis for the revised MCLG for DEHA was given in the November 19, 1991 Notice of Availability [56 FR 60953].

Public Comments: Two commenters responded to the July 1990 proposal. Both commenters questioned the use of an extra uncertainty factor of 10 in the calculation of the DWEL to account for the lack of data on reproductive effects. One commenter claimed that the extra uncertainty factor of 10 should not be used because there are the 1988 ICI teratology and reproductive studies available for this chemical [ICI, 1988a,b].

One commenter on the NOA asserted that the 3-fold additional uncertainty factor should not be justified in part by the observation of dilated ureters in fetuses in the ICI study [ICI, 1988a], because the noted effect was not statistically significant. If these data were used to justify use of an uncertainty factor, a value less than 3 should be used, according to the commenter.

EPA Response: As discussed in the November 29, 1991 Notice of Availability, EPA has reviewed the 1988 ICI teratology and reproductive studies and considers them adequate, and suitable to serve as the basis for the MCLG for DEHA.

In the teratogenicity study, Wistar-derived pregnant rats (24/group) were fed diets containing DEHA to 0, 300, 1,800 or 12,000 ppm corresponding to dosages of 0, 28, 170 or 1,080 mg/kg/day on gestational days 1–22 [ICI, 1988a]. At the high dose, slight reductions in maternal body weight gain and food consumption were observed, and reduced ossification and kinked or dilated ureters were found in the fetuses. Slightly dilated ureters were also seen in a few fetuses at 170 mg/kg/day but the incidence did not reach statistical significance. The LOAEL and the NOAEL for this study were 1,080 mg/kg/day, and 170 mg/kg/day, respectively.

In a companion one-generation reproductive study [ICI, 1988b], groups of Wistar-derived rats (15 males/dose; 30 females/dose) were administered DEHA in their diets at the same levels (0, 28, 170 or 1,080 mg/kg/day). After 10 weeks on the diet, the animals were mated to produce one generation of offspring that was reared to day 36 post partum. Test diets were fed continuously throughout the study (approximately 18–19 weeks of exposure). No effects were seen on male or female fertility. However, at the highest dosage level, there was a reduction in the body weight gain of the dams during gestation; an increase in liver weight in both male and female parents; and reductions in offspring weight gain, total litter weight and litter size. The NOAEL for this study was also 170 mg/kg/day.

Based on the NOAEL of 170 mg/kg/day, an RfD of 0.6 mg/kg/day and a DWEL of 20 mg/l is calculated for a 70-kg adult consuming 2 liters of water per day using an overall uncertainty factor of 300.

$$RfD = \frac{170\ mg/kg/day}{3 \times 100} = 0.56\ mg/kg/day \quad (rounded\ to\ 0.6\ mg/kg/day)$$

$$DWEL = \frac{0.6\ mg/kg/day \times 70\ kg}{2\ l/day} = 21\ mg/l$$

where:

70 kg is the assumed body weight of an adult person

100 is the uncertainty factor following EPA guidelines for a NOAEL obtained in a study using laboratory animals

3 is the additional uncertainty factor used because of data base deficiencies including lack of a multi-generation reproductive study.

In the November 29, 1991 Federal Register Notice, EPA presented this recalculated DWEL and the proposed MCLG for DEHA based on the DWEL of 21 mg/1, an additional safety factor of 10 in accordance with EPA policy for Category II contaminants, and an assumed drinking water contribution of 20% to total exposure.

$$MCLG = \frac{21\ mg/l}{10} \times 0.2 = 0.4\ mg/l$$

EPA agrees that because the effect on fetal ureters in the ICI study [ICI, 1988a] was not statistically significant, this effect should not be used in justifying the additional 3-fold uncertainty factor. However, EPA believes the data gap cited (lack of a multi-generation study) does warrant use of the additional 3-fold uncertainty factor.

Therefore, based on the new toxicity data, EPA is placing DEHA in Category II (Group C) and promulgating an MCLG of 0.4 mg/1 in today's notice. This MCLG of 0.4 mg/1 corresponds to a theoretical cancer risk level of 1.3×10^{-5}.

e. *Di(2-ethylhexyl)phthalate.* In the July 1990 notice [55 FR 30398], EPA discussed the available information on the health effects, occurrence and human exposure for four phthalates: di(2-ethylhexyl)phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diethylphthalate (DEP). In that notice, EPA proposed to set an MCLG of zero for DEHP based on its classification as a Group B2 carcinogen. The Agency based on the cancer classification on a weight-of-evidence approach for sufficient evidence of carcinogenicity in animals. DEHP caused hepatocellular adenomas and carcinomas in both sexes of rats and mice fed DEHP in the diet. The Agency discussed three regulatory options which included: regulating only DEHP based on its carcinogenicity; regulating DEHP and BBP, the latter based on a systemic toxic endpoint; and regulating all four phthalates separately, based on systemic endpoints for all except DEHP. Based on toxicity, occurrence, and exposure considerations, the Agency proposed that only DEHP should be regulated. The available occurrence data indicate that DEHP has been found most often in drinking water while the three other phthalates have rarely been found, and the reported levels of the others are below levels of health concern. Also, drinking water is a minor route of exposure to phthalates in general, further adding to the likelihood of low risk. The **Federal Register** notice solicited public comments on the Agency's proposal to regulate only DEHP and also on the other options. The major comments are discussed below.

Public Comments: There were five comments submitted to the Agency concerning health-based issues on the proposal to regulate DEHP and other options. There were no comments addressing the third option, i.e., regulating all four phthalates separately. One commenter agreed with the EPA proposal to regulate DEHP only. Another commenter suggested that the MCLG for DEHP should be based on the DWEL rather than on its carcinogenicity because the evidence for carcinogenicity is insufficient. In support of this position, the commenter stated that: (1) DEHP's classification as a Group B2 carcinogen has been considered but never finalized by the Agency; (2) based on scientific uncertainty (e.g., with mechanism of action, structure activity relationships, potency, genotoxicity, species differences, etc.) a B2 classification is inappropriate; and, (3) the European community has concluded that DEHP is not a human carcinogen.

The other three comments were about BBP. The comments on BBP were: (1) That the MCL should be set only for DEHP until sufficient data exists to set MCLs for BBP and other phthalates; (2) that the classification of BBP in Group C (possible human carcinogen) is not sufficient to warrant its regulation; and (3) that the NOAEL to calculate the DWEL and MCL is quantitatively incorrect and should be increased by a factor of 3 because no dose/response relationship was found.

EPA Response: EPA does not agree with the position that there is a lack of evidence for classifying DEHP as a probable human carcinogen. According to the Agency's Guidelines for Carcinogen Risk Assessment [USEPA, 1986], the overall weight-of-evidence provides sufficient evidence in animals to classify DEHP as a Group B2 (probable human) carcinogen. EPA's CRAVE verified the Group B2 classification for DEHP on November 7, 1987. The classification was based upon the NTP study [NTP, 1982b], which resulted in a statistically significant increased incidence of hepatocellular carcinomas and adenomas in female rats and both sexes of mice. Additionally, there was a statistically significant increase in the combined incidence of neoplastic nodules and hepatocellular carcinomas in high dose male rats. The 13 factors presented in the comment, to support the view that DEHP does not have an appreciable cancer risk, do not conclusively support an absence of cancer risk to humans (see comment response document for detailed discussion). The EPA approach, i.e., weight-of-evidence consideration and non-threshold low-dose extrapolation, is considered protective of human health and EPA has concluded that the weight of evidence for DEHP warrants classification in Group B2, according to the EPA Guidelines for Carcinogen Risk Assessment. In most cases, the Agency places Group B2 contaminants into EPA Category I and sets MCLGs at zero when there is strong evidence of carcinogenicity from drinking water. EPA's policy is to set MCLGs for Category I chemicals at zero. The fact that the European communities have concluded that DEHP is not a human carcinogen is noted, but it does not necessitate that EPA adopt such a position, especially in the context of setting drinking water regulations according to the strict standard in the SDWA ("no known or anticipated" human health effects with an "adequate margin of safety"). After reviewing the public comments, EPA has concluded that an MCLG of zero, as proposed, based on the available evidence of carcinogenicity in animals, is appropriate for DEHP.

With regard to the comments on BBP, EPA believes that to set an MCL for BBP alone would incorrectly suggest (as discussed above) that the available data are not adequate to regulate DEHP as a carcinogen. A DWEL for BBP was determined based upon systemic toxic effects to the liver, kidney, and testes. When selecting a NOAEL, EPA does not necessarily rely upon the conclusions published with the study. The NOAEL for BBP was based upon liver weight change and the value selected was corroborated by evidence from other studies. The rationale for selecting the NOAEL can be reviewed in the health criteria document for phthalates [USEPA, 1991g]. An additional uncertainty factor for limited cancer evidence was incorporated to develop the proposed MCLG for BBP; however, the Agency is not finalizing the MCLG at this time.

Considering the toxicity, occurrence, and exposure of DEHP and BBP, EPA has decided to regulate DEHP only because it appears more likely to occur in drinking water and is more toxic. Based on the weight-of-evidence on

carcinogenicity, the Agency is promulgating today an MCLG of zero for DEHP, as proposed.

f. *Dinoseb.* In the July 1990 proposal [55 FR 30387], EPA proposed an MCLG of 0.007 mg/l for dinoseb based on a two-year study in rats [Hazleton, 1977]. A LOAEL of 1 mg/kg/day was identified from this study. An uncertainty factor of 1,000 (as per NAS/EPA guidelines for a LOAEL) was used in the derivation of the DWEL of 0.035 mg/l. This LOAEL of 1 mg/kg/day was also supported by a 100-week mouse study [Brown, 1981] and a 3-generation reproductive study in rats [Irvine, 1981]. The proposed MCLG was based upon this DWEL and an assumed drinking water contribution of 20 percent of the total intake. Dinoseb was placed in Category III (Group D) based on the lack of evidence of carcinogenicity.

Public Comments: One comment was received on the health effects of dinoseb. The commenter agreed with EPA that dinoseb should be placed in Group D (inadequate evidence of carcinogenicity). However, this commenter questioned the rationale for using 1,000 instead of 100 as the uncertainty factor in the calculation of the DWEL.

EPA Response: The Agency used an uncertainty factor of 1,000 in the calculation of the DWEL in accordance with the NAS/EPA guidelines for use of a LOAEL, in the absence of a NOAEL, from an animal study. Therefore, based on the available toxicological data for dinoseb, EPA is promulgating today an MCLG of 0.007 mg/l for dinoseb, as proposed.

g. *Diquat.* EPA proposed an MCLG of 0.02 mg/l for diquat in the July 1990 proposal [55 FR 30389] following a Category III approach. The MCLG of 0.02 mg/l was derived from a chronic feeding study in rats [Colley et al., 1985]. A NOAEL of 0.22 mg/kg/day was identified from this study. A DWEL of 0.08 mg/l was calculated by applying an uncertainty factor of 100. The MCLG of 0.02 mg/l assumes a drinking water contribution of 20 percent of the total intake. EPA has placed this contaminant in Category III based on the lack of information on its carcinogenicity. No new data that would change the conclusions presented in this notice have become available since its publication.

Public Comments: EPA received one comment on the proposed MCLG for diquat. The commenter indicated that an online computer search of the Hazardous Substances Data Base (HSDB) showed that diquat causes nausea, vomiting, diarrhea, possible liver and kidney damage, dyspnea, and pulmonary edema. The commenter also noted that diquat appears to affect epithelial tissues primarily and may attack those of the kidney or lens of the eye preferentially.

EPA Response: EPA agrees with the commenter that diquat causes the above mentioned effects when used at high doses in animal tests. These effects were discussed in the Health Criteria Document for diquat prepared in support of the July 1990 proposal [USEPA, 1990e; finalized as USEPA, 1992g]. However, the effects reported in the Federal Register notice are effects associated with the critical endpoint of toxicity used to establish the no-observed-adverse-effect level (NOAEL) for diquat. The effects described by the commenter are acute effects noted only at much higher dose levels than the dose causing the critical effects described in the notice. Therefore, based on the available health information, the Agency is promulgating today an MCLG of 0.02 mg/l for diquat, as proposed.

h. *Endothall:* EPA proposed an MCLG of 0.1 mg/l for endothall in the July 1990 proposal [55 FR 30390]. The MCLG was derived from a 24-month feeding study in beagle dogs [Keller, 1965]. This study identifies a NOAEL of 2 mg/kg/day. A DWEL of 0.7 mg/l was derived for the 70-kg adult by applying an uncertainty factor of 100 (in accordance with NAS/EPA guidelines). The MCLG for endothall was then calculated at 0.1 mg/l by applying a 20 percent contribution from drinking water. EPA has placed this contaminant in Category III (Group D) based on the lack of adequate data on its carcinogenic potential. No new data that change the conclusions presented in this notice have become available since its publication.

Public Comments: EPA received one comment on the proposed MCLG for endothall. This commenter indicated that there is a one-year dog study [Greenough et al., 1987] with a higher NOAEL of 6 mg/kg/day that the commenter believes would be more suitable for the calculation of the reference dose than the 2 mg/kg/day NOAEL from the two-year dog study by Keller (1965) used by the Agency. He further indicated that the effects noted by the Agency in the Keller study (increased organ weight and organ-to-body weight ratios) are not, in his opinion, "clearcut adverse effects" because no effects on body weight gain or food consumption were seen at any dose level.

EPA Response: The Agency agrees with this commenter that the additional one-year dog study on endothall [Greenough et al., 1987; MRID #407452-02], which was not available at the time the MCLG was proposed, should be considered. The data from this study are summarized below.

In a 12-month dietary study in dogs, disodium endothall was fed to groups of four male and four female beagle dogs at levels of 0, 150, 450, or 1,350 ppm [Greenough et al., 1987]. After 6 weeks of dosing, the dietary level at the highest dose was reduced to 1,000 ppm because of anorexia, decreased food consumption and body weight loss. Compound intake in the low-, mid- and high-dose groups was approximately 6, 18 and 35.8 mg/kg/day endothall disodium. After the highest dose had been reduced to 1,000 ppm, a partial recovery of the weight loss was observed, but the overall weight gain remained lower than in controls. No effects on weight gain were observed at 150 or 450 ppm. However, based on the histologic changes in the liver and reactive hyperplastic response in the gastric mucosa, the LOAEL is 450 ppm (14.4 mg/kg/day endothall ion), and considering the marginal effects on the stomach at the lowest level, the NOAEL is probably slightly lower than 6 mg/kg/day endothall disodium (equivalent to 4.8 mg/kg/day endothall ion).

The Agency notes that the lowest dose tested in the Greenough et al. dog study of 4.8 mg/kg/day endothall ion (150 ppm) provides supportive evidence that the noted low grade epithelial irritation may contribute to more remarkable effects when the animals are exposed to endothall for a longer period of time as noted in the two-year dog feeding study by Keller (1965). Although no effects were observed on body weight gains or on food consumption in the two-year dog feeding study [Greenough et al., 1987], the increased weights and organ-to-body weight ratios for the stomach and intestine in this study were dose-dependent and must be considered in the risk assessment of this chemical, considering that it is an irritant.

The dog appears to be more sensitive to adverse effects from endothall than the other animal species tested (as discussed in the proposal). EPA has concluded that the Keller (1965) study is the most appropriate study based on the effects noted above. Accordingly, the Agency is promulgating today an MCLG of 0.1 mg/1 for endothall, as proposed.

i. *Glyphosate.* EPA proposed an MCLG of 0.7 mg/1 for glyphosate in the July 1990 proposal [55 FR 30392]. The MCLG of 0.7 mg/1 was derived from a three-generation rat study [Biodynamics, 1981a]. This study showed a statistically significant increase in kidney lesions. The NOAEL was identified at 10 mg/kg/

day. A DWEL of 3.5 mg/l was derived by applying an uncertainty factor of 100, which is in accordance with NAS/EPA guidelines. The MCLG of 0.7 mg/l for glyphosate was calculated by applying a 20 percent contribution from drinking water.

Several additional toxicity studies on glyphosate submitted to the Agency since publication of the July 1990 notice have been evaluated. However, these studies do not provide new information that would change the MCLG proposed in that notice. The proposal noted that EPA has classified glyphosate as a Category III (Group D) chemical. In today's notice, the Agency still places glyphosate in Category III (Group D) for establishing the MCLG.

Public Comments: In response to the July 1990 notice, two individuals or organizations commented on the MCLG proposal for glyphosate. One commenter noted that over-exposure to glyphosate may result in mucous membrane irritation, abdominal pain, vomiting, hypertension, oliguria, and anuria. The other commenter claimed that the July 1990 notice did not document adequately the results of some of the toxicological studies with glyphosate and did not include the most recent data on this chemical, such as a new two-generation rat reproduction study [Reyna, 1990], which concerned much higher doses than the 1981 three-generation rat study by Biodynamics that was used in establishing the proposed MCLG. This commenter also claimed that the oral LD_{50} in mice is 10 g/kg and that information on the toxicokinetics of glyphosate is not "very limited" as stated in the July 1990 notice. The commenter requested that the discussion of the chronic rat study of 1981b by Biodynamics be revised as follows:

> Because of the absence of a dose-dependent effect, the lack of preneoplastic changes, the wide variability in the spontaneous incidence of this tumor, the similarity in incidence between the high dose group and historical controls, the lack of any evidence of genotoxicity, it was concluded that the observed incidence *did not demonstrate an oncogenic response* (emphasis added).

and that the statement on the three generation rat study of 1981a by Biodynamics also be corrected to:

> In the three-generation rat reproduction study and addendum, the most significant finding was focal, unilateral, renal tubular dilation in the kidneys of male pups for the F_{3b} generation of high-dose dams (30 mg/kg/day). The NOEL for this effect was 10 mg/kg/day. No effects on fertility or *reproductive* parameters were noted" (emphasis added).

EPA Response: In response to the first commenter, the Agency notes that acute effects are already discussed in the Health Criteria Document for glyphosate [USEPA, 1990f]. The preamble to the proposal generally discussed only effects noted at the lowest effect level and not the acute toxicity effects that may occur at much higher dose levels.

In response to the second commenter, the Agency agrees to include the revised language quoted above in the Public Comment Response Document [USEPA, 1992a] with respect to both the three-generation rat reproduction study [Biodynamics, 1981a] and the chronic rat study [Biodynamics, 1981b]. The Agency believes that this revised language is appropriate. It does not change the bases for the MCLG. The criteria document [USEPA, 1992b] discusses these issues in detail.

On reconsideration, the Agency agrees with this commenter that the data on the toxicokinetics of glyphosate is not "very limited". The available information as documented in the updated Health Criteria Document for glyphosate (1991) indicate the 97.5 percent of the absorbed dose by rats is eliminated in urine and feces. The alpha half-lives ranged from 2.11 to 7.52 hours for males and 5 to 6.44 hours in females while the beta half-lives ranged from 69 to 181 hours and 80 to 337 hours for males and females, respectively.

In response to the commenter's statement that the LD_{50} in mice is 10 g/kg, a lower LD_{50} in mice of 1.6 g/kg was reported by Bababunmi et al. (1978), as noted in the proposal.

The Agency also notes that a new lifetime rat feeding study [Stout and Ruecker, 1990, MRID #416438-01, volumes 1-6] was recently submitted to the Agency and is being reviewed. As per the commenter's recommendation to use the new two-generation rat study [Reyna, M.S., 1990, MRID #416215-01], for the MCLG calculations, this study was submitted to the Agency only recently and is fully described in the updated Health Criteria Document [USEPA, 1992b] prepared in support of today's rule. This new study is still under evaluation by the Agency. It is unlikely that this study will be considered an appropriate basis for the NOAEL and MCLG because the NOAEL in this study is 500 mg/kg/day, whereas adverse effects were noted at a much lower dose level (30 mg/kg/day) in the three-generation reproduction study in rats [Biodynamics, 1981a].

Therefore, EPA has concluded that the three-generation study in rats [Biodynamics, 1981a] is appropriate for the derivation of the MCLG for glyphosate, and is promulgating today an MCLG of 0.7 mg/l for this contaminant, as proposed.

j. *Hexachlorocyclopentadiene (HEX).* EPA proposed an MCLG of 0.05 mg/l for hexachlorocyclopentadiene in the July 1990 proposal [55 FR 30394]. The MCLG of 0.05 mg/l was derived from a 13-week oral toxicity study in rats [SRI, 1981]. The only effect reported was slight depression of body weight. A NOAEL of 10 mg/kg/day was identified from this study. A DWEL of 0.25 mg/l was calculated by applying an uncertainty factor of 1,000, which is appropriate for use with a NOAEL derived from animal study data that are significantly less-than-lifetime in duration. The MCLG of 0.05 mg/l was calculated from the DWEL of 0.025 mg/l by applying 20 percent contribution from drinking water. No new data that would change the conclusions presented in this notice have become available since its publication.

Public Comments: EPA received one comment on the proposed MCLG for hexachlorocyclopentadiene in the July 1990 notice. The commenter indicated that the toxicity data in the SRI study are inadequate to justify setting an MCLG and suggested that EPA postpone regulation of hexachlorocyclopentadiene until adequate toxicity studies are available.

EPA Response: Although EPA realizes that the toxicity data base is not as extensive as for some contaminants, EPA believes that there are sufficient toxicity data to regulate hexachlorocyclopentadiene. The SRI data were reviewed by the Agency's Reference Dose (RfD) Workgroup, which verified the Reference Dose using these data. In addition, EPA is required by the 1986 amendments to the SDWA to regulate hexachlorocyclopentadiene. Therefore, based on the available data, the Agency is promulgating today an MCLG of 0.05 mg/l for hexachlorocyclopentadiene, as proposed.

k. *Simazine.* EPA proposed an MCLG of 0.001 mg/l for simazine in the July 1990 proposal [55 FR 30402]. The MCLG was derived from a DWEL of 0.058 mg/l (rounded to 0.06 mg/l), applying a 20 percent contribution from drinking water and an additional 10-fold safety factor by considering the classification of simazine in Category II (limited evidence of carcinogenicity from drinking water). The MCLG was based upon a NOAEL of 0.5 mg/kg/day for non-carcinogenic effects in a 2-year rat chronic feeding/oncogenic study [McCormick et al., 1988, MRID #406144-05] and was supported by a NOAEL of 0.7 mg/kg/day in a 1-year dog feeding

study [McCormick and Green, 1988, MRID #406144–02].

Several uncertainty factors were applied to this NOAEL: 10-fold to account for interspecies extrapolation and another 10-fold to account for intraspecies variability, plus an additional 3-fold factor to account for the absence of an adequate study (data gap) to assess the potential toxic effects of simazine on reproduction. The proposal also indicated that if the data gap for reproduction is filled before finalizing the simazine MCLG and if the data from this study would not raise any specific toxicological concerns at the dose used in the calculation of the MCLG, 0.5 mg/kg/day, the 3-fold uncertainty factor may be dropped and the DWEL would then be 0.2 mg/1 and the MCLG would be 0.004 mg/l [55 FR 30404, footnote]. This MCLG lies in the range of 10^{-5} cancer risk estimates.

As noted in the November 29, 1991 Notice of Availability, subsequent to the July 1990 proposal, the data gap concerning reproduction effects has been filled. The Agency recently received a two-generation rat reproduction study [Epstein, 1991, MRID #418036–01] where simazine was tested at 10, 100 and 500 ppm (these doses are equivalent to 0.5, 5 and 25 mg/kg/day using Lehman (1959) conversion from ppm to mg/kg/day) assuming rats consume 5 percent of their body weight daily. No effects were noted in this reproduction study at the dose level (0.5 mg/kg/day) used to calculate the MCLG. In light of these data, EPA indicated in the Notice of Availability of November 29, 1991 that it was considering dropping the 3-fold uncertainty factor from the calculation of the DWEL and the MCLG for simazine as EPA had indicated it would do in the proposal [55 FR 30404, Footnote]. EPA has now decided in today's final rule to drop the 3-fold uncertainty factor. Accordingly, the proposed DWEL and MCLG of 0.06 and 0.001 mg/l, respectively, are modified and finalized (after rounding) at 0.2 and 0.004 mg/l, respectively.

Public Comments: Two individuals or organizations commented on the MCLG for simazine. One commenter questioned the reliability of the current animal studies for simazine if the Agency has to use an additional 3-fold uncertainty factor in the calculation of the DWEL. This commenter was also concerned that the chemical may have been placed in Group C (possible human carcinogen) based on the similarity between simazine and atrazine or propazine. He claims that the justification for the cancer classification of simazine being placed in Group C should be made solely on the basis of animal data.

The second commenter agreed that EPA should use the non-carcinogenic data for establishing the MCLG for Group C chemicals. This commenter added that Group C contaminants are not suitable for the quantitative cancer risk assessment process.

Several comments on the NOA were received which discussed this issue. All of the commenters on the NOA supported use of the Epstein study [Epstein et al., 1991] and dropping the additional 3-fold uncertainty factor.

EPA Response: In response to the first commenter, EPA believes that the animal studies used in the calculation of the DWEL for simazine are adequate studies and provide reliable information to calculate the DWEL. The additional 3-fold uncertainty factor was originally applied to account for the absence of an adequate reproduction study. As discussed above, the 3-fold uncertainty factor is not being used in the final DWEL or MCLG calculation in today's notice.

As to this commenter's concern that simazine should be placed in Group C based only on animal data and not on the similarity with atrazine or propazine, the Agency notes that simazine has been placed in Category II based on the weight-of-evidence approach and not only because of the structure-activity relationship with atrazine and propazine. Simazine has been found to cause mammary gland tumors in Sprague-Dawley rats. This effect was also noted with other analogues: atrazine, propazine, and recently with cyanazine. This fact adds to the weight-of-evidence of the carcinogenicity of simazine in this animal species and supports EPA's classification of simazine in Group C.

In response to the second commenter's contention that all Group C contaminants are unsuitable for quantitative cancer risk assessment, the Agency disagrees. In some cases, adequate dose-response data from a single study may be available, even though the weight of evidence is inadequate for a Group B classification.

In the July 1990 proposal the Agency described two options for the calculation of the MCLG for Category II (i.e., Group C) contaminants such as simazine, one using the RfD approach, with an additional safety factor, and another using the cancer quantification approach.

Many drinking water contaminants placed in Category II have been classified as Group C, possible human carcinogen, due to the limited nature of the weight of evidence for carcinogenicity. For Group C, the existing cancer risk assessment guidelines [USEPA, 1986] allow some flexibility as to whether to quantify the risk. Quantification should be carried out on a case-by-case basis, depending on various factors, including the adequacy of the data.

For Group C contaminants, the MCLG is usually based on the RfD approach when sufficient non-carcinogenic data are available. An additional 1- to 10-fold safety factor is used to account for the possible carcinogenicity. The resulting MCLG can then be compared to the cancer risk if the data are quantifiable. If adequate data are not available to determine an RfD, then the MCLG is set at the 10^{-5} to 10^{-6} excess cancer risk level where such quantification is appropriate.

EPA under FIFRA examines the risk for Group C contaminants like simazine using both an RfD approach and quantification of cancer risk using the cancer potency. Either method may be an appropriate method for risk management decisions.

As noted in the July 1990 proposal, carcinogenic potency for simazine at 1.2×10^{-1} mg/kg/day^{-1} was determined from the incidence of mammary gland tumors in female Sprague-Dawley rats [McCormick et al., 1988; MRID #406144–05]. Based on this carcinogenic potency, simazine concentrations of 0.003 and 0.0003 mg/l were associated with theoretical cancer risk levels of 10^{-5} and 10^{-6}, respectively.

The Agency also has sufficient non-carcinogenic data to determine an RfD. Using the RfD and a 10-fold safety factor, EPA calculated an MCLG of 0.004 mg/l. This MCLG corresponds to a theoretical cancer risk level of 1×10^{-5}. The 10-fold safety factor used by EPA to calculate this MCLG is justified based on the possible cancer risk associated with this chemical as expressed in the rat chronic/oncogenic study [McCormick et al., 1988; MRID #406144–05]. This study was used for both the calculation of the cancer potency based on mammary gland tumors and the derivation of the RfD based on a NOAEL of 0.5 mg/kg/day for other systemic toxicity, like the noted reduction in the female body weight gain and the significant changes in the hematology parameters. This RfD is also supported with the NOAEL of 0.7 mg/kg/day from a one-year dietary exposure study in the dog [McCormick and Green, 1988; MRID #406144–02].

Using the RfD approach with an additional safety factor, the Agency is promulgating today an MCLG of 0.004

mg/l for simazine assuming a daily consumption of 2 liters of water by a 70 kilogram adult and applying a 20 percent relative source contribution from drinking water. This MCLG of 0.004 mg/l corresponds to the theoretical cancer risk level of 1×10^{-6}.

l. *1,2,4-Trichlorobenzene.* EPA proposed an MCLG of 0.009 mg/l for 1,2,4-trichlorobenzene (TCB) in the July 1990 proposal [55 FR 30405]. The MCLG of 0.009 mg/l was derived from a subchronic inhalation study in rats [Watanabe et al., 1978]. A NOAEL of 1.31 mg/kg/day and a DWEL of 0.046 mg/l were identified, resulting in an MCLG of 0.009 mg/l when applying a 20 percent contribution from drinking water.

Public Comments: In response to the July 1990 notice, three individuals or organizations commented on the MCLG proposed for 1,2,4-trichlorobenzene. Each commenter criticized EPA's use of an inhalation study to derive a health assessment value and regulatory standard for drinking water ingestion.

EPA Response: In response to the public comments received for the July 1990 proposal, EPA has reexamined the database for trichlorobenzene. The Agency agrees with the public comments stating that in the case of 1,2,4-trichlorobenzene the oral RfD should not be based upon the Watanabe inhalation study [Watanabe et al., 1978]. Upon reexamination of the oral studies, EPA determined that the Robinson et al. (1981) study provides the best scientific basis for determination of an RfD for 1,2,4-trichlorobenzene, as discussed in the November 1991 Notice of Availability [56 FR 60953]. This study was a multi-generation reproductive study in rats that were dosed with 0, 25, 100 and 400 ppm 1,2,4-trichlorobenzene added to the drinking water for 95 days per generation for two generations and examination of the offspring of the F_1 rats. The only compound-related changes seen in the dams or offspring were significant increases in adrenal gland weights of the P_0 and F_1 generations.

To more specifically characterize the changes noted in this study, an in-house EPA study was performed. It was found that the increased adrenal weights were associated with the histopathologic lesion, vacuolization of the zona fasciculata of the cortex. The Robinson study determined a NOAEL at the 100 ppm dose (14.8 mg/kg/day). Based on this study and applying an uncertainty factor of 1,000 to account for sensitive human subpopulations, extrapolation from an animal study, and for use of a study which was less than lifetime, the RfD is 0.01 mg/kg/day and the DWEL is 0.35 mg/l (verified by the RfD/RfC Workgroup [USEPA, 1991b]). Applying a relative source contribution of 20 percent, EPA is today promulgating an MCLG of 0.07 mg/l based upon the Robinson study, as proposed in the Notice of Availability.

EPA received two comments on the NOA, both of which supported EPA's use of the Robinson study [Robinson et al., 1981] as the basis for the 1,2,4-trichlorobenzene RfD and MCLG.

m. *1,1,2-Trichloroethane.* EPA proposed an MCLG of 0.003 mg/l for 1,1,2-trichloroethane in the July 1990 proposal [55 FR 30406]. The MCLG of 0.003 mg/l was derived from two 90-day drinking water studies in mice [Sanders et al., 1985; White et al., 1985]. A NOAEL value of 3.9 mg/kg/day was used to calculate a DWEL of 0.14 mg/l, by applying an uncertainty factor of 1,000 (per NAS/EPA guidelines for a NOAEL derived from a less-than-lifetime study). The proposed MCLG of 0.003 mg/l was calculated from the DWEL by applying an additional safety factor of 10 because of the classification of 1,1,2-trichloroethane in Group C (limited evidence of carcinogenicity as evidenced by the presence of hepatocellular carcinomas and adrenal pheochromocytomas in mice but not rats) and by applying 20 percent contribution from drinking water.

Public Comments: In response to the July 1990 notice, two individuals commented that the use of an uncertainty factor of 1,000 indicated that reliable data do not exist for the development of a DWEL. Another commenter was confused about the use of an extra 10-fold safety factor for a chemical classified as a Group C chemical and asked for clarification about the use of an extra safety factor and the rationale for its use.

EPA Response: In response to the comments about the use of a 1,000 uncertainty factor, EPA prefers to use data from lifetime studies to set DWELs and MCLGs. However, EPA often regulates chemicals that do not have a complete data base; for example, there may be no lifetime studies in animal species. In such cases, an additional 10-fold uncertainty factor is applied to account for the "data gap," per NAS/EPA guidelines.

As described previously in today's notice, EPA has developed a three-category approach for setting MCLGs for chemicals in drinking water. For chemicals in Category II (compounds having limited evidence or carcinogenicity via drinking water), the MCLG is usually based on the use of the RfD approach with an additional safety factor of 1 to 10 to account for possible carcinogenicity. If the data are not sufficient to calculate an RfD, then the MCLG is set in the 10^{-5} to 10^{-6} lifetime cancer risk range. Since the Agency has verified an RfD for 1,1,2-trichloroethane (verification date 8/01/90) [IRIS, 1991h], EPA has used the RfD approach with an additional safety factor of 10 (to account for possible carcinogenic effects) to derive the MCLG for 1,1,2-trichloroethane. Based on this approach and after consideration of public comment, EPA is promulgating today an MCLG of 0.003 mg/l for 1,1,2-trichloroethane, as proposed. This MCLG of 0.003 mg/l corresponds to the theoretical cancer risk of 10^{-5}.

n. *2,3,7,8-Tetrachlorodibenzo-p-dioxin.* EPA proposed an MCLG of zero for 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD; dioxin) in the July 1990 proposal (55 FR 30384). This proposal MCLG was based on the classification of 2,3,7,8-TCDD in Group B2; probable human carcinogen. New data [i.e., Fingerhut et al., 1991 and other studies] have become available to EPA since the publication of the July 1990 notice. Critical reviews of much of these data, including reassessments of critical cancer studies and new epidemiology studies are under way but have not been completed by the Agency to date. The Agency is undertaking a complete reassessment of the risks from dioxin which includes a review of the entire health effects data set for 2,3,7,8-TCDD as well as additional laboratory studies. The Agency expects to complete its reassessment including a full peer review by 1993.

Until that time, the Agency believes it is appropriate to proceed to regulate 2,3,7,8-TCDD in drinking water using the existing health data and the current peer-reviewed risk assessment. Consequently, the Agency is regulating 2,3,7,8-TCDD based on the risk assessment presented in the July 1990 proposal. Once EPA has completed its critical review of the new health information, the Agency will initiate a process to determine whether the MCLG for 2,3,7,8-TCD should be revised.

Public Comments: In response to the notice of July 1990, 12 individuals or organizations commented on the MCLG proposal for 2,3,7,8-TCDD. Several commenters believed EPA's proposed MCLG was too stringent and several believed the MCLG was appropriate, but that the MCL was too lenient.

Four commenters believe that the cancer potency of 2,3,7,8-TCDD has been overstated by the Agency and cited the re-review of the Kociba cancer slides by the EPA Pathology Working Group (PATHCO) as evidence [Kociba

et al., 1978]. The PATHCO's panel of experts found two-thirds fewer tumors than the original Kociba study, and concluded that those found were correlated with toxicity, suggesting a threshold mechanism. These commenters also indicated that the PATHCO findings have already been recognized by EPA as scientifically defensible since the Agency approved the Maryland Water Quality Standard, which relied on these findings.

One commenter stated that there is a large body of epidemiological evidence on 2,3,7,8-TCDD which has found no association between dioxin and human cancer, and that the Agency is therefore not justified in basing all its mathematical extrapolations on cancer data from rat studies. This commenter also stated that the linear multistage model used to qualify cancer risk for 2,3,7,8-TCDD was the incorrect model since the reexamination of the Kociba et al. (1978) data indicates no linear dose response and evidence of a threshold cancer response.

The same commenter urged EPA to revise the cancer potency factor based on the most recent reexamination of the Kociba et al. (1978) data done by the PATHCO.

Two commenters criticized the fact that the MCLG/MCL applies only to 2,3,7,8-TCDD, even though the Agency acknowledges that other isomers of polychlorinarted dibenzo-p-dioxin (PCDD) and polychlorinated dibenzofurans (PCDF) have similar toxic properties as estimated by the 2,3,7,8-TCDD toxic equivalency factor (TEF) methodology. The commenter claims that the MCLG/MCL should be based on the TEF approach.

One commenter believes that EPA's proposal of a zero MCLG for 2,3,7,8-TCDD is inappropriate since data indicate that the chemical promotes cancer through a receptor mediated mechanism, thus indicating it is a threshold carcinogen. The commenter indicated that 2,3,7,8-TCDD is not a tumor initiator but is more likely a tumor promoter.

One commenter stated that the average dioxin exposure among the general population exceeds EPA's calculated reference dose (RfD) and that it is unacceptable for EPA to allow any further dioxin exposure. The commenter also stated that the Agency failed to consider more recent data showing adverse reproductive effects for 2,3,7,8-TCDD at doses lower than those cited in the July 1990 proposal. The commenter claims that an up-to-date RfD would be 10 times more stringent than the RfD cited in the July 1990 proposal.

EPA Response: EPA disagrees with the commenters who stated that the MCLG for 2,3,7,8-TCDD is too stringent. The Agency has placed this compound in Category I and is setting the MCLG at zero based on its carcinogenic potential.

EPA disagrees with the commenters who alleged that EPA has already approved the Kociba et al. (1978) re-read as part of its approval of the Maryland water quality standard for 2,3,7,8-TCDD. Maryland did not incorporate a re-read of the Kociba study in developing their water quality standard for 2,3,7,8-TCDD. Instead, Maryland used the FDA cancer potency estimate for this contaminant.

In response to the concerns raised about the cancer potency, EPA is presently reviewing the cancer potency of 2,3,7,8-TCDD as part of its complete reassessment of dioxin. The Agency is also investigating the mechanism of carcinogenicity, including assessing the likelihood of a potential threshold mechanism and appropriateness of the current extrapolation model. However, at this time, the Agency has not completed its risk assessment or subjected it to peer review and therefore has made no decisions to change its assessment of the cancer potency or the possible threshold mechanism for dioxin. As stated above, the Agency expects to complete its reassessment in 1993. Given this time frame and the legal mandate to regulate 2,3,7,8-TCDD in drinking water, the Agency has relied on the data available at the time of the July 1990 proposal.

EPA does not agree with the commenter who stated that there is a large body of epidemiology data on 2,3,7,8-TCDD which has found no association between dioxin and human cancer. EPA stated in the July 1990 proposal that taken together, the epidemiology studies based on exposure to 2,3,7,8-TCDD by themselves are inadequate to establish a relationship between 2,3,7,8,-TCDD and the development of tumors in humans. More recent data, however (including Fingerhut 1991 and studies from Germany and Italy), are being evaluated together with the previous epidemiology studies as part of the overall reassessment of dioxin, and EPA expects to reach its conclusions within the timeframe noted above.

EPA is considering revising the cancer potency based on the re-read of the Kociba et al. (1978) data and other data such as body weight/surface area corrections. In addition, EPA will assess the entire data base, including the issue of threshold carcinogenicity, and possible immunotoxicity and reproductive toxicity at low levels, before embarking on a change in the cancer risk characterization. Because dioxin is currently considered a B2 carcinogen by the Agency, the MCLG is being set at zero.

EPA agrees that new data published since development of the proposed criteria document might support a different RfD. As part of an overall reassessment of dioxin toxicity, EPA is reviewing studies on immunotoxicity and reproductive effects in addition to the cancer data. The RfD and DWEL would become relevant to setting the MCLG for dioxin only if it were determined that this compound is in fact a threshold carcinogen with a potency so low that other non-cancer effects become the most sensitive endpoints of toxicity. This point will be considered in the re-evaluation of the risk assessment of 2,3,7,8-TCDD.

In response to the commenter who stated that EPA should regulate all isomers of polychlorinated dibenzo-p-dioxin (PCDD) and polychlorinated dibenzofurans (PCDF) using the toxic equivalency factors (TEF) approach, EPA is not considering the regulation of other related compounds at this time. The Agency has no indication that these compounds are found in public water supplies. The Agency is regulating 2,3,7,8-TCDD in today's rule because it is the most potent isomer and it is included in the list of 83 contaminants to be regulated under the SDWA.

In response to the claim that EPA should not propose an MCLG of zero for 2,3,7,8-TCDD because it is a threshold carcinogen, the Agency's reassessment, again, is reviewing all the health effects data on 2,3,7,8-TCDD in an effort to update the cancer risk characterization of 2,3,7,8-TCDD. However, until the Agency has completed its reassessment, the Agency will continue to consider 2,3,7,8-TCDD to be a non-threshold contaminant and, thus, maintain an MCLG of zero for 2,3,7,8-TCDD. Because the analytic limitation for drinking water compliance monitoring for dioxin is at 30 ppq, a significant change in the risk assessment, and consequently the MCLG, would be needed before an increase in the final MCL would result.

Detailed descriptions of 2,3,7,8-TCDD toxicity at different dose levels and in different animal species are documented in the 2,3,7,8-TCDD Health Criteria Document prepared in support of this regulation [USEPA, 1988d]. This document is available in the Drinking Water Public Docket.

Based on the available information, EPA is promulgating today an MCLG of zero for 2,3,7,8-TCDD.

o. *Endrin, hexachlorobenzene, oxamyl, picloram.* For four

contaminants, no significant issues were raised and no new health effects information was obtained by the Agency that would cause it to change the MCLGs from the level proposed in July 1990. Therefore, for these contaminants (endrin, hexachlorobenzene, oxamyl and picloram), final MCLGs are promulgated in today's notice as proposed, as presented in Table 2.

B. Establishment of MCLs

1. Methodology for Determination of MCLs

The SDWA directs EPA to set the MCL "as close to" the MCLG "as is feasible." The term "feasible" means "feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking costs into consideration)." (SDWA section 1412(b)(5)). Each National Primary Drinking Water Regulation that establishes an MCL lists the technology, treatment techniques, and other means which the Administrator finds to be feasible for meeting the MCL (SDWA section 1412(b)(6)).

The present statutory standard for "best available technology" (BAT) under 1412(b)(5) represents a change from the provision prior to 1986, which required EPA to judge feasibility on the basis of "best technologies generally available" (BTGA). The 1986 Amendments to the SDWA changed BTGA to BAT and added the requirement that BAT must be tested for efficacy under field conditions, not just under laboratory conditions. The legislative history explains that Congress removed the term "generally" to assure that MCLs "reflect the full extent of current technology capability" [S. Rep. No. 56, 99th Cong., 1st Sess. at 6 (1985)]. Read together with the legislative history, EPA has concluded that the statutory term "best available technology" is a broader standard than "best technology generally available," and that this standard allows EPA to select a technology that is not necessarily in widespread use, as long as its performance has been validated in a reliable manner. In addition, EPA believes that the technology selected need not necessarily have been field tested for each specific contaminant but, rather, that the operating conditions may be projected for a specific contaminant using a field tested technology from laboratory or pilot systems data.

Based on the statutory directive for setting the MCLs, EPA derives the MCLs based on an evaluation of (1) the availability and performance of various technologies for removing the contaminant, and (2) the costs of applying those technologies. Other technology factors that are considered in determining the MCL include the ability of laboratories to measure accurately and consistently the level of the contaminant with available analytical methods. For Category I contaminants, the Agency also evaluates the health risks that are associated with various levels of contaminants, with the goal of ensuring that the maximum risk at the MCL falls within the 10^{-4} to 10^{-6} risk range that the Agency considers protective of public health, therefore achieving the overall purpose of the SDWA.

EPA's initial step in deriving the MCL is to make an engineering assessment of technologies that are capable of removing a contaminant from drinking water. This assessment determines which of those technologies are "best." EPA reviews the available data to determine technologies that have the highest removal efficiencies, are compatible with other water treatment processes, and are not limited to a particular geographic region.

Based on the removal capabilities of the various technologies, EPA calculates the level of each contaminant that is achievable by their application to large systems with relative clean raw water sources. [See H.R. Rep. 1185, 93rd Cong., 2nd Sess. at 13 (1974); 132 Cong. Rec. S6287, May 21, 1986, statement of Sen. Durenberger.]

When considering costs to control the contaminants in this rule, EPA analyzed whether the technology is reasonably affordable by regional and large metropolitan public water systems [*See* H.R. Rep. No. 93–1185 at 18 (1974) and 132 Cong. Rec. S6287 (May 21, 1986) (statement of Sen. Durenberger)]. EPA also evaluated the total national compliance costs for each contaminant considering the number of systems that will have to install treatment in order to comply with the MCL. The resulting total national costs vary depending upon the concentration level chosen as the MCL. The more stringent the MCL, the greater the number of systems that may have to install BAT in order to achieve compliance and the higher the national cost. In today's rule, EPA has determined that costs for large systems and total national compliance costs at the final MCLs are reasonable, affordable and, therefore, feasible.

One commenter urged EPA to apply cost-effectiveness analysis in selecting the MCLs for the contaminants in this rule. EPA did consider the relative cost-effectiveness of regulatory alternatives in selecting the proposed MCLs for radionuclides in a recent notice (July 18, 1991 [56 FR 33050]). In the radionuclides proposal, EPA collectively analyzed the regulated contaminants based on the fact that all cause cancer by delivering ionizing radiation to body tissue. Ionizing radiation is itself classified as a group A carcinogen. Comparing the relative cost effectiveness of controlling different sources of ionizing radiation dose formed the basis for choosing the most cost-effective alternative for proposal in the radionuclides rule. While EPA sought public comment on broader use of cost-effectiveness analysis, the Agency did not suggest that it would be applying a similar analysis to all other drinking water regulations, and EPA does not believe that cost-effectiveness analysis should be applied to the MCL selections in today's rule since the factors that made this analysis appropriate in the radionuclide proposal radionuclides notice are not present here.

The feasibility of setting the MCL at a precise level is also influenced by laboratory ability to measure the contaminant reliably. EPA derives practical quantitation levels (PQLs) which reflect the level that can be measured by good laboratories under normal operating conditions with specified limits of precision and accuracy. Because compliance with the MCL is determined by analysis with approved analytical techniques, the ability to analyze consistently and accurately for a contaminant at the MCL is important to enforce a regulatory standard. Thus, the feasibility of meeting a particular level is affected by the ability of analytical methods to determine with sufficient precision and accuracy whether such a level is actually being achieved. This factor is critically important in determining the MCL for contaminants for which EPA sets the MCLG at zero, a number of which by definition can be neither measured nor attained. Limits of analytical detection require that MCL be set at some level greater than the MCLG for these contaminants. In these cases, EPA examined the treatment capability of BAT and the accuracy of analytical techniques as reflected in the PQL to establish the appropriate MCL level.

EPA also evaluates the health risks that are associated with various contaminant levels in order to ensure that the MCL adequately protects the

public health. For drinking water contaminants, EPA sets a maximum reference risk range of 10^{-4} to 10^{-6} excess individual risk from a carcinogen over a lifetime. This policy is consistent with other EPA regulatory programs that generally target this range using conservative models that are not likely to underestimate the risk. Since the underlying goal of the Safe Drinking Water Act is to protect the public from adverse effects due to drinking water contaminants, EPA seeks to ensure that the health risks associated with MCLs for carcinogenic contaminants are not significant.

Below is a discussion of how today's MCLs were determined, including the Agency's response to comments on the proposed rule.

2. Inorganic Analytical Methods

In the July 1990 notice, the Agency proposed a list of analytical methods for measuring the five inorganic chemicals (IOCs) in today's rule. These analytical methods are considered to be economically and technologically feasible for compliance monitoring. In the November 29, 1991 notice of availability (NOA), new information received by the Agency on these methods was made available for public comment. The NOA included new and updated versions for analytical methods, performance data on the proposed methods and corrections to some of the information included in the proposal related to the method detection limits. The NOA also addressed several issues that were raised during the public comment period for the July 1990 proposal. EPA has analyzed the available information and has considered the public comments on the proposal and the NOA in arriving at the final selection of the inorganic methods and their associated MDLs and PQLs.

The analytical methods being promulgated today are in some respects revised from those proposed, as indicated in the NOA, and as discussed below. These methods were selected based on the following factors: (1) Reliability (i.e., precision/accuracy) of the analytical results; (2) specificity in the presence of interferences; (3) availability of enough equipment and trained personnel to implement a national monitoring program (i.e., laboratory availability); (4) rapidity of analysis to permit routine use; and (5) cost of analysis to water supply systems.

Table 11 lists the analytical methods that EPA is approving today for use to comply with the monitoring requirements in this rule. EPA has updated the references to the most recent editions of the relevant manuals, including the atomic absorption, emission, and mass spectrometric methods for metals, the spectrometric and electrode methods for cyanide. These newer editions are generally very similar, and in some cases identical, to the methods proposed in the July 1990 notice.

TABLE 11.—APPROVED METHODOLOGY FOR INORGANIC CONTAMINANTS AND METHOD DETECTION LIMITS (MDLS)

Contaminant	Method	MDL (mg/l)
Antimony	Atomic absorption, Furnace	0.003
	Atomic Absorption, Platform	[4] 0.0008
	ICP-Mass Spectrometry	0.0004
	Hydride-Atomic Absorption	0.001
Beryllium	Atomic Absorption, Furnace	0.0002
	Atomic Absorption, Platform	[4] 0.00002
	Inductively Coupled Plasma [1]	0.0003
	ICP-Mass Spectrometry	0.0003
Nickel	Atomic Absorption, Furnace	0.001
	Atomic Absorption, Platform	[4] 0.0006
	Inductively Coupled Plasma [1]	0.005
	ICP-Mass Spectrometry	0.0005
Thallium	Atomic Absorption, Furnace	0.001
	Atomic Absorption, Platform	[4] 0.0007
	ICP-Mass Spectrometry	0.0003
Cyanide	Distillation, Spectrophotometric [2]	0.02
	Distillation, Automated, Spectrophotometric [2]	0.005
	Selective Electrode [2]	0.05
	Distillation, Amenable, Spectrophotometric [3]	0.02

[1] Using a 2X preconcentration step as noted in Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.
[2] Screening method for total cyanides.
[3] Measures "free" cyanides.
[4] Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

The reliability of analytical methods used for compliance monitoring is critical at the MCL. Therefore, EPA evaluates the analytical methods with respect to accuracy and recovery (lack of bias) and precision (good reproducibility) at the MCL level.

When NPDWRs are revised or new regulations are proposed, the Agency examines available methods and only those methods which meet all the necessary criteria are proposed. Public comments on the applicability of these methods are taken into consideration when the rule is finalized.

a. *Metals (antimony, beryllium, nickel and thallium).* Atomic Absorption Methods—Several parties commented on whether it was appropriate to use the four-times concentration procedure, described in Appendix to Method 200.7, for furnace techniques. They questioned whether EPA should allow the use of this concentration procedure in conjunction with the furnace techniques for the analyses of antimony and thallium. After reconsideration, EPA agrees with these commenters that adequate data to support the use of this procedure in conjunction with the furnace technique for the analysis of antimony and thallium are not available. EPA has, therefore, revised the table of approved methods by eliminating the use of the concentration step for the analysis of antimony and thallium. However, this concentration step is being approved for use in conjunction with Method 200.7 for the analysis of nickel and beryllium.

The corresponding method detection limits (Table 11) for these techniques, as well as others as discussed in the NOA, have been corrected to reflect the MDLs listed in the referenced analytical methods. There were several commenters who were supportive of

these corrections. However, they had concerns on how the resulting corrections would be used in the setting of the PQLs. This issue is addressed below in the PQL discussion.

ICP–Mass Spectrometric Method (EPA Method 200.8)—Several commenters had concerns with the listing of EPA Method 200.8 as an approved method because of the following: (1) the absence of an interlaboratory method validation study, (2) the limited availability in laboratories, and (3) the high acquisition cost of the instrumentation. With respect to the first point, the Agency recognizes the usefulness of interlaboratory performance data and has recently completed an interlaboratory method validation study (Determination of Trace Elements in Water by Inductively Coupled Plasma-Mass Spectrometry: Collaborative Study by J.E. Longbottom et al., 1991), which was made available for public comment with the NOA. The resulting study data indicate that laboratories using the ICP–MS method are quite capable of meeting the performance criteria (i.e., MDL, PQL and acceptance limits) designated for the metal contaminants in this rule. EPA received no public comments on these data.

With respect to the second point regarding the limited availability of laboratories, the Agency believes that laboratory capability will expand with time. Although ICP–MS is not currently widely used, EPA expects a progressive evolution of the technique and an increase in its use analogous to the development and use of another mass spectrometry technique, gas chromatography/mass spectrometry (GC/MS). When GC/MS was first introduced, it was considered state-or-the-art and few labs had the expertise or instrumentation to employ the technique. However, its use expanded quite rapidly and today there are very few laboratories that do not have the GC/MS instrumentation and employ this technique for routine analyses. The change in availability of GC/MS is attributed mostly to advantages and benefits for multi-analyte techniques, as discussed below. EPA believes this trend will also occur with the ICP–MS technique. Furthermore, this technique is only one of many being approved for use in the analyses of the metals in today's rule. Laboratories with the ICP–MS capability may use it for analysis of the metals in this rule, and those labs without it may use another method or consider acquiring ICP–MS instrumentation.

In response to the third point regarding high acquisition costs of instrumentation, EPA believes that while ICP–MS represents a substantial capital investment for labs, there are a number of cost advantages associated with having ICP–MS capability, i.e., sensitivity, multiple metals analysis capability and high volume sample throughput. ICP–MS is a stable and precise technique capable of excellent accuracy and very low detection limits, thus providing a laboratory with the option of performing multielement analysis using one technique. Another cost advantage can be realized when comparing the cost of running each individual metal analysis on an atomic absorption spectrophotometer versus the cost of simultaneous multiple metals analyses on ICP–MS. Despite the high initial capital cost, ICP–MS capability is cost-effective because of the speed of analysis it provides, thus reducing operational costs. EPA believes that these advantages will allow laboratories using ICP–MS to expand their capabilities and expertise and increase their productivity.

In conclusion, EPA has determined that ICP–MS is both technically and economically feasible for routine compliance monitoring and is designating it as one of the approved analytical methods for conducting monitoring for the metals in today's rule.

Digestion for Metals—Commenters to the NOA expressed concerns about the clarity of EPA's requirements for the use of the "total metals" technique and for digestion of drinking water samples prior to metals analysis. The commenters noted, first, that pp. 3–5 of Section (3030) of the seventeenth edition of the Standard Methods for the Examination of Water and Wastewater [USEPA, 1983], states:

"Colorless, transparent samples (primarily drinking water) containing a turbidity of <1 NTU, no odor, and single phase may be analyzed directly by atomic absorption spectroscopy or inductively coupled plasma spectroscopy for total metals without digestion * * * ."

The commenter also noted that EPA's 1983 "Method for Chemical Analysis of Water and Wastes" (MCAWW) on page Metals-5 states:

"Drinking water samples containing suspended material and settleable material should be prepared using the total recoverable procedure (4.1.4) * * * .", which includes a digestion step.

The commenters believe that, in light of these statements, samples without suspended and settleable materials may not have to be digested. The commenters stated that they recognize that, under certain circumstances, both digested and undigested drinking water samples should be compared to verify that metals are being properly recovered.

EPA agrees that the requirements for the use of the "total metals" technique and for digestion of drinking water samples may not be clear, which could result in different interpretations by different analysts. In addition to the notes above, page Metals-1 of the "Method for Chemical Analysis of Water and Wastes" (MCAWW) states that:

"While drinking waters free of particulate matter may be analyzed directly, domestic and industrial wastes require processing to solubilize suspended material."

While digestion may be necessary for turbid water samples, EPA does not believe it is critical for non-turbid, clean drinking water samples. The current methodologies being cited for metal analyses of drinking water samples are applicable for samples of other matrices. However, EPA agrees the guidance cited above on whether to digest or not to digest drinking water samples may not be very clear. EPA believes that results from analyses using the approved total element techniques, i.e., graphite furnace AA and ICP, can be reported as "total metals" for non-turbid (<1 NTU) samples that have been properly preserved (conc HNO_3 to pH <2), because under these circumstances the "total metals" result is equal to the "dissolved metals", since the concentration of the "suspended metals" would be negligible. However, samples containing a turbidity greater than one (>1 NTU) even though properly preserved, require digestion using the total recoverable technique as defined in the approved methods, and can be reported as "total metals". Therefore, to provide clarity for the "total metals" technique and to determine whether to digest or not to digest drinking water samples, EPA is amending the current requirement as footnoted in the tables of approved methodology. The revised footnotes will state:

[6] Samples that contain less than 1 NTU (nephelometric turbidity unit) and which are properly preserved (conc HNO3 to pH <2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to the initiation of metal analysis. When digestion is required, the total recoverable technique as defined in the method must be used.

[10] For the gaseous hydride determination of Sb and Se, or for determination of Hg by the cold vapor technique, the proper digestion technique as defined in the method must be followed to ensure the element is in the proper chemical state for analyses.

EPA believes that this revision will provide clarity for "total metals" analysis and a means for determining whether digestion is required when performing metals analyses in this rule. To provide consistency for all metals analyses for drinking water samples, EPA is also incorporating these footnotes, when applicable, by amending the tables of approved methodology in § 141.23(k)(4), which includes the metals in the January, 1991 rule, and § 141.89(a), which includes lead and copper.

b. *Anions (cyanide and sulfate).* (1). *Cyanide.* In the November 29, 1991 NOA, EPA addressed an issue raised in response to the July 1990 notice stating that although the proposed MCLG was based on "free" cyanide, the proposed analytical methods determine "total" cyanide. EPA concurred with commenters that it was appropriate to include methods that determined cyanide amenable to chlorination, or "free" cyanide. For this reason, the NOA proposed to add a methodology for amenable cyanide to the list of approved methods, and this notice finalizes the addition. The "total" cyanide methods are listed as well because they are adequate to screen samples for cyanide. If the "total" cyanide levels are greater than the MCL, then analysis for "free" cyanide should be performed to determine whether there is an MCl exceedance. The "total" cyanide analysis is still recommended as an initial test because it is cheaper than the amenable cyanide method. There are several commenters to the NOA who supported this action.

Several commenters had concerns with the approval of the titrimetric method for cyanide because of its lack of sensitivity (detection limit of 1 mg/l) with respect to the PQL, which was proposed to be set at 0.2 mg/l. EPA agrees with these commenters and has rescinded the approval of this method and deleted it from the list of approved methods. The spectrophotometric method has been added to the list of approved methods for cyanide because this method has adequate sensitivity. This change was indicated in Table 6 of the NOA. Comments received by EPA supported these revisions.

(2) *Sulfate.* A number of comments on sulfate analytic methods were received. Commenters objected to the absence of the methylthymol blue method from the list of approved methods and to the fact that the "non-suppressed" column is not stated as an acceptable option in Method 300, an ion chromatography method, for sulfate analysis [USEPA, 1989d].

EPA agrees with the commenters that the methylthymol blue method is adequate. However, there are no data to support the use of the non-suppressed column and the commenters submitted no data to support it.

Commenters to the NOA objected to the presence of the chloranilate method for sulfate analysis and stated that the chloranilate method has several problems. They stated that the required reagent (anhydrous chloranilate) is hard to find and that only a single vendor from England sells this form of the reagent. Second, the analytical equipment called for in the method is no longer available from the manufacturer. In addition, ASTM has dropped this method from its most recent edition of published methods and EMSL/CINN (EPA) is considering doing this as well. EPA agrees with the commenters on all these points.

However, as discussed above, EPA is deferring promulgation of a final regulation for sulfate, and so is not promulgating analytic methods for sulfate in today's final rule.

c. *Method detection limits and practical quantitation levels.* In the July 1990 notice, there were some inconsistencies and errors in the listed method detection limits (MDLs) of the cited methodologies for some of the inorganic contaminants. Several commenters to the proposal and the NOA expressed concerns with these errors and inconsistencies. The Agency addressed those concerns in the November 29, 1991 NOA and in this final rule, respectively, by making the appropriate corrections, as shown in the NOA, and by clarifying how the MDLs were used in setting the PQLs, as discussed below.

EPA determines practical quantitation levels (PQLs) for each substance for the purpose of integrating analytical chemistry data into regulation development. This becomes particularly important where MCLGs are zero or a very low concentration, near or below the detection limit. The PQL yields a limit on measurement and identifies specific precision and accuracy requirements which EPA uses to develop regulatory requirements. As such, PQLs are a regulatory device rather than a standard that labs must specifically demonstrate they can meet. The following is a discussion of how EPA determined the PQLs for the inorganic contaminants in today's rule.

The proposed PQLs in the July 1990 notice for cyanide and nickel were determined based upon MDLs and results from water pollution (WP) performance evaluation (PE) data as these data were available for concentrations near the MCLGs. There were no PE data available at the proposed MCLG levels for antimony, beryllium and thallium. Therefore, the proposed PQLs for these contaminants were estimated from the respective MDLs by using "five or ten times the MDL" to set the PQL. Only the proposed PQL for thallium was affected by the corrected MDLs discussed in the NOA.

Several commenters had concerns with EPA using the "five or ten times the MDL" to set the PQLs for antimony, beryllium and thallium. They asserted that it is not feasible to measure these contaminants at these PQLs. As discussed in other FR notices, EPA prefers to set PQLs based on PE data or multi-laboratory collaborative study data; however, when such data are not available, EPA uses the generalized rule of "5 to 10 times the MDL" to set the PQL. Where data becomes available, EPA evaluates the data to verify the generalization or make the appropriate change(s) dictated by the data.

EPA believes that the proposed PQLs for the inorganic contaminants are technologically and economically feasible and that in general the "5 to 10 times the MDL" rule is a good estimate of laboratory practical quantitation capability for drinking water analyses. This assertion has now been corroborated by evaluations of Water Supply (WS) performance data for the five inorganic contaminants in today's rule.

Several commenters to the NOA had concerns on how the WS performance data would be used. EPA has used the data in setting the PQLs in this rule as it has for most of the regulated inorganics, as discussed below.

The final PQLs for all five inorganics were derived from data gathered in recent Water Supply (WS) PE studies, using the procedure described in 54 FR 22100, May 22, 1989. The use of this procedure has been well documented. The final acceptance limits and PQLs for antimony, beryllium and thallium are based on EPA and State data from Water Supply PE studies #024–027 [USEPA, 1991d]. These PE studies were also evaluated to verify the earlier PE data on which EPA based the proposed acceptance limits and PQLs for cyanide and nickel. The new study data, made available for public comment in the November 29, 1991 NOA, indicated (1) for antimony and thallium, for which

two options were proposed, that their PQLs be set at 0.006 mg/1 and 0.002 mg/1, respectively (2) that the PQLs for nickel and cyanide should be lowered (the proposed PQLs for nickel and cyanide were already at levels that were at or below the proposed MCLGs) and (3) that the PQL for beryllium should remain the same as proposed.

The PQL procedure, described in the aforementioned May 22, 1989 notice, generates acceptance ranges, i.e., a range of acceptable variation in the analytical results compared to the known or "true" value. The acceptance limits for the inorganics in today's rule were generated using the procedure used to derive PQLs and the laboratory performance data generated in Water Supply Studies 24–27, which were discussed in the NOA. The PQLs were set at a concentration where it was estimated that at least 75 percent of the EPA and State labs are within the specified acceptance ranges. The final acceptance limits (1) are tighter than proposed for cyanide, (2) are based on the data rather than two standard deviations for antimony, beryllium and thallium and (3) remained the same for nickel as proposed. The resulting PQLs and acceptance limits are shown in Table 12.

TABLE 12.—INORGANIC CONTAMINANT ACCEPTANCE LIMITS AND PRACTICAL QUANTITATION LEVELS

Inorganic contaminant	MCL (mg/1)	Acceptance limits (plus or minus % of the true value)	PQL (mg/1)
Antimony	0.006	30	0.006
Beryllium	0.004	15	0.001
Cyanide	0.2	25	0.1
Nickel	0.1	15	0.01
Thallium	0.002	30	0.002

d. *Inorganic chemical sample preservation, container, and holding times.* The requirements for sample preservation, containers and holding times listed in Table 13 were proposed for the inorganic contaminants in this rule. One commenter on the NOA mentioned that the addition of 0.6 gram of ascorbic acid in the preservation of cyanide is not applicable to all samples, and that the specific procedure in the methods should be followed to determine the measure of ascorbic acid required. EPA agrees with the commenter and has amended the table accordingly.

No other comments were received on these requirements. Therefore, the Agency is promulgating these requirements today, as listed.

TABLE 13.—INORGANIC CONTAMINANT SAMPLE PRESERVATION, CONTAINER, AND HOLDING TIME REQUIREMENTS

Contaminant	Preservative [1]	Container [2]	Maximum holding time [3]
Antimony	Conc HNO_3 to pH <2	P or G	6 months.
Beryllium	Conc HNO_3 to pH <2	P or G	6 months.
Cyanide	Cool, 4°C, NaOH to pH >12 [4]	P or G	14 days.
Nickel	Conc HNO_3 to pH <2	P or G	6 months.
Thallium	Conc HNO_3 to pH <2	P or G	6 months.

[1] Samples that cannot be acid preserved at the time of collection because of sampling limitations or transportation restrictions should be acidified with nitric acid to a pH <2 upon receipt in the laboratory. Following acidification, the sample should be held for 16 hours before withdrawing an aliquot for sample processing and/or analysis.

[2] P = plastic, hard or soft; G = glass, hard or soft.

[3] In all cases, samples should be analyzed as soon after collection as possible.

[4] Ascorbic acid should only be used in the presence of residual chlorine.

3. Organic Analytical Methods

A minimum of eight of the 17 methods included in today's rule are needed to measure the 18 organic contaminants (Table 14). Eleven methods have been in use or promulgated in other rules; there were no significant comments on them. Four methods are single-analyte methods (i.e., they measure only one analyte). Most systems will conduct compliance monitoring for contaminants to which they are vulnerable using one of the volatile organic chemical (VOC) methods and one to three other methods—Methods 515.1, 525.1 and 531.1—all of which may be used to measure the organic contaminants regulated in two previous rules promulgated on July 8, 1987 [52 FR 25690] and January 30, 1991 [56 FR 3526].

Some commenters asked that when EPA permits flexibility in method selection by citing more than one method for a contaminant, that the detection limit, practical quantitation limit (PQL) and maximum contaminant limit (MCL) be set differently for each method; EPA disagrees. Although method detection limits (MDLs) as calculated by the procedures in 40 CFR 136, appendix B may sometimes differ for an analyte measured with different methods, for regulatory purposes EPA must set a single PQL and MCL. Since laboratories can sometimes achieve lower MDLs than those cited for a specific listed method, EPA believes that a laboratory which routinely achieves the detection limits specified for a contaminant (Table 14), should be permitted to use that method for compliance monitoring.

EPA also received comments recommending the use of alternate analytical procedures. Because reliable compliance data are necessary for enforcement of the regulations, EPA continues to cite only methodologies included in EPA regulations, as summarized in the guidance contained in the laboratory certification manual. However, EPA recognizes that improvements in analytical technology may occur frequently. Thus, the Agency is developing a regulatory process to expedite the revision and updating of older methods and the inclusion of new methods for drinking water compliance analysis.

TABLE 14.—ANALYTICAL METHODS, DETECTION LIMITS, MDLS, PQLS, MCLS AND MCLGS FOR ORGANIC CHEMICALS [1]

EPA method No. [3]	Contaminant	MDL	PQL	MCL	MCLG [2]
502.1, 502.2, 524.1, 524.2	Dichloromethane	0.0002	0.005	0.005	zero
502.2, 503.1, 524.2	1, 2, 4-Trichlorobenzene	0.0003	0.005	0.07	0.07
502.1, 502.2, 524.1, 524.2	1, 1, 2-Trichloroethane	0.0001	0.005	0.005	0.003
1613 [2]	2, 3, 7, 8-TCDD (Dioxin)	5×10^{-9}	3×10^{-8}	3×10^{-8}	zero
525.1, 550, 550.1	Benzo (a) pyrene	0.00002	0.0002	0.0002	zero
506, 525.1	Di (2-ethylhexyl) adipate	0.0006	0.006	0.4	0.4
506, 525.1	Di (2-ethylhexyl) phthalate	0.0006	0.006	0.006	zero
505, 508, 525.1	Endrin	0.00001	0.001	0.002	0.002
505, 508, 525.1	Hexachlorobenzene	0.0001	0.001	0.001	zero
505, 525.1	Hexachlorocyclopentadiene	0.0001	0.001	0.05	0.05
505, 507, 525.1	Simazine	0.00007	0.0007	0.004	0.004
515.1	Dalapon	0.001	0.01	0.2	0.2
515.1	Dinoseb	0.0002	0.002	0.007	0.007
515.1	Picloram	0.0001	0.001	0.5	0.5
531.1	Oxamyl (Vydate)	0.002	0.02	0.2	0.2
547	Glyphosate	0.006	0.06	0.7	0.7
548	Endothall	0.009	0.09	0.1	0.1
549	Diquat	0.0004	0.004	0.02	0.02

[1] All concentrations are in mg/1.
[2] Method 1613 [USEPA, 19901].
[3] All 500 Level Methods [USEPA, 1988e and USEPA, 1990k].

a. *Method-specific comments.* Some comments were received on individual chemicals—phthalates, adipates, 2,3,7,8-TCDD (dioxin), dalapon, dichloromethane, endothall and polynuclear aromatic hydrocarbons (PAHs)—and on certain methods being approved for drinking water regulations for the first time—Methods 506, 547, 548, 549, 550, 550.1, 513 and 1613 [USEPA, 1988e and 1990k].

Several commenters believe that not enough laboratories will be certified to timely conduct compliance monitoring analyses; EPA disagrees. These comments were similar to those raised and answered in 56 FR 3550 in the rule promulgated on January 30, 1991. EPA also received a comment on the NOA [56 FR 60949] about the effect of starting the monitoring on January 1, 1993 rather than January 1, 1996. EPA recognizes that an earlier compliance monitoring start-date accelerates the need for certification. EPA also believes there is some confusion about the criteria for obtaining laboratory certification.

EPA acknowledges that fewer laboratories currently are proficient with some of the single-analyte methods and the 2,3,7,8-TCDD Method 1613 than with older pesticide and volatile organic chemical methods. These same concerns were raised by commenters when EPA included newer methods in the rule promulgated January 30, 1991. EPA again expects systems to use vulnerability assessments as a cost affective way to characterize trends in their water quality and thereby be eligible for renewable monitoring waivers. For these and other reasons stated in the 1991 rule (56 FR 3550) EPA believes an adequate number of laboratories will have opportunity to obtain certification or provisional certification for these contaminants in today's rule.

Some commenters were concerned that high background contamination or interferences would make reliable detection and precise measurement of adipates, phthalates and dichloromethane difficult or impossible at the detection and MCL concentrations listed in the July 1990 notice. They believe that many false positives for dichloromethane, in particular, would occur due to ambient air conditions in the laboratory or sample collection site. All EPA methods detailed careful procedures that must be followed to minimize or eliminate interferences or contamination that can occur in sample collection, shipment, storage and analysis. In EPA's laboratory performance evaluation studies more than 75 percent of the laboratories have routinely and successfully analyzed samples with dichloromethane at concentrations near the practical quantification level of 0.005 mg/1. This affirms that laboratories appear to be taking precautionary steps outlined in the methods.

Based on public comment and further testing, EPA has modified Method 506 for the analysis of adipates and phthalates. EPA switched from ternary solvent mixture to the binary methylene chloride and hexane solvent mixture, which is used in a previously promulgated EPA method, EPA Method 606. Using this modification, a very good precision of ±6 percent was obtained in replicate measurements at concentrations near the practical quantification level.

EPA acknowledges that methods can often be improved and the Agency works to refine them and to adopt new analytic technology and techniques. For example, EPA's Environmental Monitoring Systems Laboratory in Cincinnati is working to change derivatization procedures that use diazomethane for the measurement of several chemicals, including dalapon. Dalapon is now measured with Method 515.1. EPA plans to include dalapon in the next version of Method 552, which will be named 552.1. Method 552.1 replaces diazomethane with acidic methanol in the derivatization step, and liquid-liquid extraction is replaced by liquid-solid extraction. This should reduce interferences and improve the precision of the analysis.

EPA also plans to change the procedure (Method 548) for measurement of endothall. The new method would be named Method 548.1. It would replace pentafluorophenylhydrazine with acidic methanol in the derivatization step, and liquid-solid extraction is used. The electron capture detector is replaced with a flame ionization detector in the new method. Data and method write-ups were not available in time for these methods (552.1 and 548.1) to be included in today's rulemaking. However, EPA anticipates adopting these methods for compliance monitoring of dalapon and endothall as soon as possible after they are released by the Environmental Monitoring Systems Laboratory.

An early success is EPA Method 1613, which is a consolidated method for the measurement of 2,3,7,8-TCDD (dioxin) in all matrices. It replaces Method 513, which had been cited in the July 25, 1990 proposal and as the method for monitoring dioxin as an unregulated contaminant in the rule promulgated January 30, 1991 [56 FR 3592,

§ 141.40(n)(11)]. This rule promulgates its use only for drinking water. Its use in other media will be promulgated as part of the appropriate regulations.

EPA agrees with commenters who stated that only one polynuclear aromatic hydrocarbon (PAH), benzo(a)pyrene, should be regulated at this time (see earlier discussion in Section III–4). Three analytical methods were proposed in the July 1990 notice for the measurement of benzo(a)pyrene. Method 550 and 550.1 use high pressure liquid chromatography (HPLC). Method 525 uses a gas chromatograph connected to a mass spectrometer. No significant comments were received on these methods. Methods 550 and 550.1 are included in today's rule for compliance analyses [USEPA, 1990k].

Several commenters asked for more mass spectrometer methods to increase the number of analytes in an analysis and to decrease the probability of interferences that can cause false positives. EPA proposed multi-analyte mass spectrometric Method 525 in the July 25, 1990 proposal. As discussed in an earlier **Federal Register** notice (56 FR 30272, July 1, 1991), EPA improved the method, renumbered and adopted it as Method 525.1. Because Method 525.1 supersedes Method 525, EPA is adopting 525.1 for seven organic chemicals in today's rule.

Method 525.1 has the potential to measure a large number of organic chemicals; the question is whether the required sensitivity can be achieved. As always, laboratories using this method (and other methods) for compliance analysis must demonstrate an ability to achieve the detection limits specified in Section 141.24 using the procedure described in 40 CFR part 136, appendix B.

Some commenters requested that EPA consolidate methods across all EPA programs and in all media. EPA realizes the difficulty laboratories may have in conducting certified analyses for the same organic chemical in several matrices over a wide range of concentrations using similar yet different EPA methods. Through EPA's Environmental Methods Management Council, EPA is working to consolidate methods, performance requirements and definitions of quantitation and detection. Regulatory, quality assurance, enforcement and other issues make this a complicated task.

b. *Responses to comments specific to Method 1613 for dioxin.* EPA has received comments related to the application of Method 1613 to the measurement of chlorinated dioxins and furans in drinking water. Some of these comments address a narrow range of issues, primarily the Method Detection Limit (MDL) and practical quantitation limit (PQL). Others are very extensive in that nearly every aspect of the technical details in Method 1613 are addressed. In organizing its response to the comments submitted, the Agency has responded to general issues first, then to comments specific to the technical details of Method 1613.

Some comments on Method 1613 overall are incorporated into these comment replies. Many commenters were concerned about the performance of Method 1613 on sample matrices other than drinking water, particularly on treated and untreated industrial wastewaters, paper pulp, and sludge from wastewater treatment processes. EPA stated in the proposal of this rule [55 FR 30426] that Method 1613 was developed for these matrices. In 1991 EPA proposed Method 1613 for analysis of these matrices by industrial discharges under the Clean Water Act (proposed amendment to 40 CFR part 136 in 56 FR 5090, February 7, 1991), and solicited comments on that proposal. To date, EPA has not responded to the comments received on that proposal. Because EPA desires to move quickly on today's drinking water rule, EPA is responding to comments on Method 1613 related to application of the method to drinking water prior to responding to comments on the February 7, 1991 proposal of Method 1613.

General issues concerning Method 1613. A commenter noted that Method 1613 has not been promulgated. EPA agrees. As mentioned above, EPA proposed Method 1613 under section 304(h) of the FWPCA at 40 CFR part 136 on February 7, 1991, accepted comments at that time, and has not promulgated Method 1613 in part 136 as of today's date. EPA has used data from its studies of Method 1613 to support the practical quantitation limit (PQL), the Method Detection Limit (MDL), and other technical aspects of the regulation of dioxin in drinking water, in the same way that EPA references other documents in support of its rules. The Agency is not required to use promulgated methods for reference purposes.

A commenter stated that EPA Office of Water Method 1613 and Office of Solid Waste SW–846 Method 8290 are significantly different, contradicting recommendations to Congress in the report titled "Availability, Adequacy and Comparability of Testing Procedures for the Analysis of Pollutants Established Under section 304(h) of the Federal Water Pollution Control Act" [USEPA, 1988f]. The commenter provided a block diagram showing differences in these two methods. EPA agrees that the two methods are different in exact technical detail, but the measurement principle of the two methods is the same. In developing testing methods for its regulatory programs, such methods evolve at different rates for different purposes. For example, Method 1613 was originally developed primarily for use in treated and untreated effluents, but is applicable to pulps, sludges, drinking water and other solid and semi-solid matrices. Similarly, EPA Method 8290 was developed for use primarily in solid and semi-solid matrices, but is applicable to analysis of water. EPA is in the process of consolidating methods for dioxin measurement in air, water, and solid waste, consistent with the recommendations in the report that the commenter references. However, such a merger cannot take precedence over EPA's development of methods to meet specific program needs and for regulatory programs with Congressional deadlines and court-ordered timetables.

A commenter stated that, although EPA used Method 1613A for analysis of more than 500 samples, there have been many versions of this method and the data produced using these versions were inaccurate. EPA acknowledges that some data produced with early versions of Method 1613 may have been less accurate than data produced with more recent versions. Much of these earlier data were developed using complex matrices, such as industrial effluents, and were generated as the method was being developed. The method and MDL proposed in the November 1991 notice, and being finalized here, are based not on these early data but on later data generated using reagent water, which is a matrix more similar to drinking water. The accuracy of analytic methods usually improves with experience in using the method. However, the fact that data become more accurate as a function of time does not mean that earlier data are necessarily unsuitable for their intended purpose. The Agency is careful to consider in its rulemaking the effects of the variability of the analytical data. For example, in this rulemaking, data variability is accounted for in the determination of the MDL, and is considered in setting the PQL.

A commenter noted that Method 1613 calls for instrument calibration to be verified at a high level, but that calibration should be verified instead at the minimum level, because of uncertainties at that level. EPA disagrees that calibration should be verified at the minimum level. In method

1613, calibration is verified at the mid-point of the analytical range. This verification is common and accepted practice for analytical methods (see e.g., the methods in 40 CFR 136, appendix A). The generally accepted practice followed by EPA is to verify calibration in a region where error is a constant proportion of the level being measured. This may not be the case if calibration were done at the minimum level.

A commenter stated that the MDL tests for Method 1613 use reagent water for tests of initial precision and recovery (IPR) and on-going precision and recovery (OPR), and that this practice is inappropriate for methods that must rely on extensive cleanup. Reagent water is water in which the analyte(s) of interest and interfering compounds are not detected by the method being used. EPA disagrees that reagent water is inappropriate for the IPR, OPR, and other tests. EPA believes that in the case of dioxin in drinking water, reagent water and drinking water are nearly equivalent matrices, in that the concentrations of potentially interfering compounds in drinking water are extremely low.

A commenter stated that allowing the analyst the flexibility to modify the method may adversely affect method performance on real world samples, and cited as examples that the performance test solution used to evaluate the particular columns in Method 1613 will not work with other columns, and that reducing the solvent volumes to elute the dioxin from the AX–21 cleanup column would prevent analysts from meeting the detection limits specified in the method. EPA disagrees. In developing and promulgating the 40 CFR part 136, appendix A methods, EPA has received comments in the past similar to this one that the methods should allow no flexibility in procedures [49 FR 43246]. EPA also received comments that there should be great leeway to modify the methods [49 FR 43245]. EPA's general response to those comments and to this comment is that flexibility is permitted only in discretionary elements of the test procedures, and that the data generated must meet all stated performance criteria.

For the specific examples that the commenter cited, EPA believes that the requirement for an alternate gas chromatographic column to meet not only the specifications for the performance test solution but also to meet the relative retention time criteria in Method 1613 effectively precludes any column with inferior performance, and that reducing the solvent volumes used with the AX–21 column to the point where native dioxin becomes non-detectable would probably cause the recovery of the labeled compounds to fall below the recovery specifications in the Method; therefore, this would not be allowed.

EPA notes that the objective of permitting flexibility in certain discretionary parts of its methods is to allow for improvements in technology while requiring all performance specifications in the method to be met.

A commenter included with its comments approximately 40 pages of suggested technical modifications of Method 1613 to improve the reliability of the Method. EPA appreciates these suggestions. This commenter has participated in EPA's validation studies, has conducted validation studies of its own, has scrutinized the details of Method 1613 and other EPA methods, and has provided many valuable suggestions for improvements to these methods. EPA has considered all of these suggestions, as well as the suggestions of others, in its continuing evolution and upgrading of analytical methods, and shall continue to work with all interested parties to assure that these methods are as state-of-the-art as possible. Many of the suggestions relate to analyses of more complex non-drinking water matrices and are not relative to analysis of drinking water samples.

1613 Inter-laboratory study. A commenter said that EPA had not completed its inter-laboratory study of Method 1613 at time of proposal of the drinking water regulation for dioxin, and that EPA is premature in proposing Method 1613 without validating it first. EPA has relied only on the MDL studies on Method 1613 in determining the MDL and the PQL. Inter-laboratory validation studies are on-going and EPA will make them public when complete. However, EPA is not required by statute or policy to use inter-laboratory data to establish MDLs or PQLs.

Two commenters stated that EPA's inter-laboratory study used extracts of samples but not real-world samples. Both commenters are correct. However, this rule relies on an MDL study as the basis for the PQL, and not the inter-laboratory studies. Therefore, this is not a relevant issue for this rule. EPA used extracts of real-world samples because the shipment of large volumes of dioxin-containing water both intra- and internationally was deemed to be too great a risk to human health and the environment, and because of the difficulty in producing a homogeneous mixture of dioxins in such large water volumes. EPA understands the commenters' argument and concerns that performing an inter-laboratory study on extracts of water rather than water itself could possibly result in less bias and greater precision than if water had been used, but EPA believes that the risk of using raw waste water samples was unacceptable. EPA has recently collected and received a large volume of data on application of Method 1613 to paper industry wastewater and believes that the matrix effects associated with extraction of dioxin from water are fairly well quantified at this point. EPA believes that its international inter-laboratory validation study will be valuable in assessing method and laboratory performance, even though the study will not be conducted on raw wastewater. However, the complex matrix effects these data are intended to identify and help resolve are not relevant to drinking water samples.

SDS extraction. A commenter stated that the Soxhlet/Dean-Stark (SDS) extraction procedure for solids has only been tested to a limited extent on one municipal sludge. The commenter was correct at the time of this comment in that EPA had performed limited testing of the SDS extraction procedure on a limited number of samples. Since that time, EPA and others have extracted many samples using the SDS technique, and although some data show that some of the higher isomers and congeners of dioxin may not be extracted as efficiently as other extraction techniques, EPA has not confirmed these results. However, SDS extraction is not a method that would be used on drinking water samples, and so this comment is not relevant to the present rulemaking.

A commenter noted that use of liquid-solid extraction using 3M's Empore Disk is approved by EPA for Method 525.1, and is included in dioxin Method 513. The commenter suggested that EPA include the option of using the Empore Disk in Method 1613. EPA is currently evaluating the Empore disk as an extraction device for aqueous samples in Method 1613. EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL–Ci) has performed extensive testing of liquid-solid extraction devices. EPA will continue to study the Empore disk and similar devices because of their potential for reducing solvent use in the laboratory, and will incorporate such devices into Method 1613 and other EPA methods if the performance of these devices is demonstrated to be equivalent to extraction devices presently in these methods. Nationwide

application for an alternate test procedure may be made under 40 CFR 136.5.

Labeled compound recovery. A commenter stated that recovery of labeled compounds in Method 1613 do not adequately correct for incomplete recovery of the native analytes because it is nearly impossible to spike the labeled compound into the sample in such a fashion that it distributes itself identically to the native analyte. EPA has chosen the isotope dilution technique for quantification because it is the most precise analytic technique currently available to measure dioxin. EPA is aware that in some instances the labeled compounds are not distributed identically to the native analytes, but believes that the advantages of the isotope dilution technique far outweigh any limited imprecision and reduced accuracy that may occur when external standard quantitation techniques are used. Nearly all analytical methods for dioxin employ isotope dilution to provide the highest accuracy and greatest precision.

Method Detection Limit (MDL) and minimum level. A commenter stated that Method Detection Limits (MDL's) of 5 and 10 ppq for Methods 1613 and 513, respectively, have not been demonstrated and that it is not possible for even the best laboratories to attain the MDL developed by EPA. EPA disagrees. EPA has now demonstrated that the MDL = 5 ppq using Method 1613, as described in the NOA.

A commenter stated that the proposed standard for dioxin is based upon detection limits associated with outmoded analytical methods that are thousands of times less sensitive than the most advanced methods available, that methods developed by Christoffer Rappe, University of Umea, Sweden are capable of detecting TCDD at 0.001–0.020 ppq in drinking water, and that Canadian methods achieve MDL's of 2 ppq in pulp mill effluents and could be extended to achieve 0.2 ppq in drinking water. EPA is aware that it is possible to achieve lower detection limits by revising the dioxin methods to use sample volumes 10 to 1,000 times (or more) larger than the existing methods. At present, most dioxin methods employ a one liter sample. This sample is shipped from field locations to laboratories that have HRGC/HRMS instruments. Samples will need to continue to be shipped from remote locations to laboratories. Most sample shipments are by overnight courier so that the samples can be maintained refrigerated from the time of collection until extraction. Shipping 10 to 1,000 liters presents unique logistics problems and is prohibitively costly (a 1,000 liter sample weighs approximately 2,500 lbs., and costs $1.50/lb. to ship for a total of $4,500 per sample). Also, while large volume samples might theoretically result in a lower MDL, increased interferences are likely to result. EPA is aware of no data demonstrating that lower MDLs may be achievable. An alternative would be to collect the samples on a liquid-solid extraction device at the remote location and ship the device to the laboratory. However, EPA has not developed or validated this sampling means at this time. EPA is aware of the methods proposed for regulatory use in Canada, and believes that the improvements in sensitivity suggested by the commenter are simply the result of differences in terminology and reporting practices. The Canadian methods use the term "MDL" to mean the sample-specific detection limit that is calculated solely on the basis of signal-to-noise measurements. In contrast, EPA uses the term MDL to refer to the statistically determined value that results from replicate measurements, as described in 40 CFR part 136, appendix B. EPA will continue to study devices and procedures for lowering the detection limit to levels commensurate with the Agency's measurement and regulatory needs.

1613 Method Detection Limit (MDL) study. A commenter stated that the 5 ppq MDL in Method 1613 was calculated from a single-shot experiment that does not represent a real work estimate of the MDL. It alleges that a real world estimate of the MDL is at least 10 ppq based on the 104 mill study and an estimate by Georgia-Pacific. EPA agrees that the MDL in Method 1613 was obtained by a single use of the MDL procedure [40 CFR part 136, appendix B]. As described in the proposal of Method 1613, the MDL procedure was followed as prescribed, with a result of 5 ppq. EPA has reviewed the data submitted by the contract laboratory that performed the MDL procedure and believes that the tests were performed properly and that the 5 ppq MDL is valid. EPA believes that if the MDL procedure were performed in other qualified laboratories, similar results would be obtained using Method 1613, although some laboratories might obtain slightly higher or slightly lower results. However, the MDL is by definition a single laboratory single operator concept. EPA is unaware of any samples in the 104 Mill study that were analyzed at least seven times, or that conformed to other requirements of the procedure for determining the MDL. The commenter provided no specific data for analysis. Moreover, the 104 Mill study analyses concern pulp, sludge and industrial wastewater matrices and so the MDL derived in that study is not necessarily the lowest that could be obtained in samples that more closely resemble drinking water matrices.

Two commenters claim that the MDL study cited was conducted with reagent water and, therefore, the MDL study is not relevant. As EPA stated in its response above to the use of reagent water for initial and on-going precision and recovery and other quality control tests, EPA believes that in the case of dioxin in drinking water, reagent water and drinking water are nearly equivalent matrices, in that the concentrations of potentially interfering compounds in drinking water are extremely low.

A commenter said that no data are presented in the Federal Register notice [56 FR 5090] other than for reagent water. Therefore, the proposed minimum levels for solid matrices are insupportable. For the purpose of the regulation of dioxin in drinking water, data on matrices other than on reagent water or drinking water are unnecessary.

A commenter said that the MDL experiment is inappropriate due to the high spike levels chosen for the study, that the variability increases as the concentration levels approach the MDL, and that the only way to truly determine the MDL is to perform the experiment at the exact level of the MDL. EPA notes that the 25 ppq level was chosen as described in EPA's proposal of Method 1613 [56 FR 5095]. As stated earlier, EPA believes that its contract laboratory followed the MDL procedure correctly, including the use of 25 ppq as the spiking level. EPA agrees that the variability increases as the concentration levels approach the MDL. However, one of the tenets of the concept of the MDL is that the relationship between the level and the standard deviation of the measurement becomes approximately constant in the region of the MDL and the spiking level is not critical in this region. In addition, EPA believes that spiking at too high a level will tend to overestimate the MDL rather than underestimate it. EPA is also in the process of contracting for additional MDL studies in a variety of matrices and at other spiking levels appropriate to the matrices. These data will be made available at a later date.

Two commenters stated that it is well known that a break in the calibration curve occurs at approximately 5 ppq. Consequently, extrapolation from 25 or

12 ppq to 5 ppq is not technically valid. Extrapolation must be made at or below the break point. One of the commenters stated further that extrapolation of the instrument calibration far beyond demonstrated performance is not sound science and provided a graph showing relative standard deviation as a function of corresponding effluent concentration for native dioxin in calibration standards. EPA agrees that calibration error increases as concentration levels approach the MDL, but believes that the measurement of the MDL in Method 1613 was made in a valid region of the calibration curve and was made according to the MDL procedure, as detailed in the proposal of Method 1613 [56 FR 5095] and the support documents for the NOA. EPA has reviewed the graph provided by the commenter and believes that the graph supports the validity of an MDL of 5 ppq. The graph shows data points at equivalent concentrations of approximately 3, 5, 12, 100, 1,000 and 5,000 ppq, associated with relative standard deviations of approximately 16, 8, 7, 5, 2 and 2 percent, respectively. Calculating the relative standard deviation (RSD) of these values results in standard deviations of 0.48, 0.40, 0.84, 5, 20, and 100 ppg, respectively, for the concentrations. Assuming that the RSD's are the result of three replicate determinations, the Student's t multiplier used in the MDL procedure is 6.97, resulting in MDL values of 3.4, 2.8, 5.9, 35, 140, and 700 ppq. (If more than three replicates were used, the MDL values would be lower). These data clearly show that in the region of the MDL (2–10 ppq), the MDL is approximately constant, but rises rapidly as the spike level increases. Thus, the use of a high spike level would tend to overstate the MDL, the opposite of what is argued by the commenters. Further, the data provided clearly show that measurements can be made in the range of 5 ppq because data were reported in this range.

Two commenters stated that dioxin was not detected in one of seven replicates in EPA's test of the MDL for Method 1613. EPA believes that in EPA's studies of the MDL for Method 1613, EPA's contract laboratory performed the study improperly in its first attempt. In this attempt, the laboratory spiked the native analytes into the blank that was a part of the quality control associated with the MDL test. Also, as pointed out by the commenters, the laboratory failed to detect dioxin in one of the seven replicates. EPA rejected the data from this MDL study, and had the laboratory determine the MDL under the controlled conditions that EPA requires. The MDL of 5 ppq that EPA states for Method 1613 is the result of the properly conducted study. EPA did not formally release the results of the improperly conducted study, but has made all results of all studies available to all interested parties.

MDL/POL issues. A commenter said that the lowest level that can be measured is the PQL. EPA disagrees. EPA has demonstrated that measurements can be made as low as the MDL, but has defined the concept of the PQL as the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions [50 FR 46902]. Thus, the PQL provides an allowance for the degree of measurement precision and accuracy that EPA estimates can be achieved across laboratories. If EPA desires a level of measurement precision and accuracy that is high, the PQL is set slightly higher (on the order of 10 times the MDL); whereas if the Agency desires a slightly lesser level of measurement precision and accuracy (in exchange for reduced health risks), EPA will set the PQL level somewhat lower (on the order of 5 times the MDL), but EPA believes that measurements can be made in the range between the PQL and MDL.

A commenter stated that finalization of the PQL should await completion of an appropriately designed inter-laboratory study because the PQL is intended to reflect performance of multiple laboratories. The commenter also noted that the preferred method of determining the PQL would be to utilize performance evaluation data from as many labs as possible. EPA believes that inter-laboratory studies, whether method validation or performance evaluation, are useful in establishing the PQL, but also believes that a multiplier of 5 –10 times the MDL is an effective way to establish the PQL. In estimating the PQL, EPA takes into consideration all data available, including single laboratory, multi-laboratory, performance evaluation, and other data, as well as regulatory needs to protect human health and the environment. In the regulation of dioxin in drinking water, EPA has reviewed the data from its study of Method 1613, as well as data submitted by commenters. EPA has established the PQL for this rule after a review of technical data from method studies and from health risk considerations.

A commenter said that decreasing the PQL from 50 ppq to 30 ppq represents a very slight decrease in the level of risk that does not justify the drastic increase in the level of uncertainty that would occur. EPA disagrees that there is a drastic increase in the level of uncertainty between 50 and 30 ppq. As the data submitted by the commenter demonstrate, the uncertainty attributable to calibration increases from approximately six percent to approximately seven percent when the level decreases from the equivalent of 50 to 30 ppq.

A commenter stated that it is a longstanding practice within the scientific community to use a 3-fold multiplier in establishing the limit of quantitation. The American Chemical Society (ACS) uses the concepts of the Limit of Detection (LOD) and Limit of Quantitation (LOQ) in discussions of the lower limits of analytical measurements. The LOD is approximately equivalent to EPA's MDL and the LOQ is approximately 3.3 times the MDL. As EPA has stated in previous discussions of the PQL [50 FR 46902], the MDL and LOQ are single laboratory concepts, whereas the PQL is the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions. EPA uses a multiplier of 5 to 10 times the MDL as well as other factors to establish the PQL. EPA is presently in the process of reviewing its approach to establishing the limits of analytic chemistry for drinking water samples and the use of this information in setting drinking water standards. EPA may propose revisions to its general approach in a later **Federal Register** notice. The ACS concepts are among those that will be considered in this process. EPA will review its MCLs at that time to determine whether revisions are appropriate.

A commenter stated that the PQL should be set at 10 times the MDL since the carcinogenic risks do not justify less precision in dioxin measurement. As EPA has noted in response to other comments, EPA has set the PQL at approximately five times the MDL based on technical and health risk considerations. The PQL is a regulatory tool that may include consideration of health risk. EPA also reiterates that the precision of the dioxin measurement is not significantly degraded between 50 and 30 ppq.

c. *Detection and quantitation levels; laboratory performance criteria.* Many comments were received on EPA's procedures for determining MDLs and PQLs. Calculation of method detection limits (MDLs) by procedures set forth at 40 CFR Part 136 Appendix B is understood and generally accepted by

the laboratory community. A few commenters wrote that since some MDLs cited in EPA methods are a one time determination by one analyst, the results may not generally be achievable by the number of laboratories needed to handle compliance monitoring on a routine basis. EPA believes that laboratory performance improves as an analysis progresses from being novel to routine. The purpose of the PQL concept is to allow for this inter-laboratory variability and ensure that the majority of good laboratories can adequately measure contaminants. EPA has also provided relief for most contaminants in today's rule by permitting performance evaluation samples to be judged by the results of the group of laboratories participating in each study rather than on an absolute scale (i.e. the pass criteria are two standard deviations from the average result rather than within a fixed ±percentage of the spiked concentration).

The selection of practical quantitation levels (PQLs) has been discussed at 55 FR 30370 and references therein. EPA received comments on PQLs identical or similar to those received and responded to in earlier rules [55 FR 30370, and 56 FR 3547–3552 and 30269–30271]. Some commenters on the July 1990 proposal wrote that some PQLs were too low for most laboratories to quantify a contaminant with acceptable precision because EPA relied too much on performance by the "best" laboratories in setting the PQLs. Some commenters objected to the PQL for dioxin that was proposed at five times the method detection limit. They suggested all PQLs be ten or more times the MDL even if this required that a maximum contaminant level (MCL) be increased; EPA disagrees. EPA recognizes that use of a five-fold multiplier, rather than ten-fold, may result in some loss of precision and accuracy in performing analyses. However, EPA believes it is sometimes appropriate to accept somewhat greater imprecision and inaccuracy when necessary to achieve health risks within EPA's target risk range. EPA makes such judgments on a case-by-case basis.

Other commenters stated that some PQLs were too high, especially for contaminants with zero or very low maximum contaminant level goals. These commenters suggested that PQLs and MCLs could be lowered significantly to reduce risk, thereby allowing only the best laboratories to perform compliance analysis. However, EPA believes this is impractical, due to the large number of compliance samples that are required to be analyzed by these rules.

In response to this interest in detection and quantitation levels, EPA, the American Chemical Society (ACS) and the American Society for Testing and Materials (ASTM) are working on standard definitions of analytical detection and quantitation levels for chemical analyses in any matrix. The definitions, if adopted by EPA, would be only a part of the process used to determine the feasibility of measuring a contaminant with acceptable precision at the MCL. The Agency is also developing criteria to define what data should be collected to set interlaboratory performance standards.

EPA has determined, however, that it is appropriate to set PQLs for today's contaminants using the procedures discussed in the proposal (55 FR 30370 and references therein) rather than waiting for the results of the new definitions. The maximum contaminant level goal (MCLG) for several of the organic chemicals in today's rule is significantly greater than the MDL listed for each contaminant in the EPA methods. This means setting MCLs equal to MCLG does not pose the same problem as when reliable detection and quantification is desirable near or below MDLs.

For sixteen regulated organic chemicals in today's rule, the PQLs are based on laboratory performance data. As discussed earlier, considerable variation in interlaboratory performance was observed. For this reason, the PQLs for benzo(a)pyrene and 2, 3,7,8-TCDD are respectively estimated at ten times and five times the method detection limit (as defined at 40 CFR part 136, appendix B). Table 15 lists MCLs, PQLs and laboratory acceptance limits for each organic contaminant. The ranges of concentrations included in EPA's laboratory performance samples are also listed.

TABLE 15.—MCLS, PQLS AND ACCEPTANCE LIMITS DETERMINED FROM LABORATORY PERFORMANCE STUDIES

Contaminant	MCL (mg/l)	PQL (mg/1)	±Acc. Lim.
1,2,4-Trichlorobenzene	0.07	0.005	±40%.
1,1,2-Trichlorobenzene	0.005	0.005	±40%.
Benzo(a)pyrene	0.0002	0.0002	2 Std. Dev
Dalapon	0.2	0.01	2 Std. Dev/
Dichloromethane	0.005	0.005	±40%.
Di (2-ethylhexyl) adipate	0.4	0.006	2 Std. Dev.
Di (2-ethylhexyl) phthalate	0.006	0.006	2 Std. Dev.
Dinoseb	0.007	0.002	2 Std. Dev.
Diquat	0.02	0.004	2 Std. Dev.
Endothall	0.1	0.09	2 Std. Dev.
Endrin	0.002	0.001	±30%.
Glyphosate	0.7	0.06	2 Std. Dev.
Hexachlorobenzene	0.001	0.001	2 Std. Dev.
Hexachlorocyclopentadiene	0.05	0.001	2 Std. Dev.
Oxamyl (Vydate)	0.2	0.02	2 Std. Dev.
Picloram	0.5	0.001	2 Std. Dev.
Simazine	0.004	0.0007	2 Std. Dev.
2,3,7,8-TCDD (Dioxin)	3×10^{-8}	3×10^{-8}	2 Std. Dev.

In the July 1990 proposal only the PQLs for the VOCs were based on an analysis of EPA-sponsored laboratory performance studies. The remaining PQLs were calculated as multiples of the MDL. More performance study data, which was cited in the November 29, 1991 notice, has now been obtained and evaluated. The final acceptance limits to successfully analyze the samples were generally set at plus or minus two standard deviations (±2 std. dev.) from the average value measured in each study.

With the exception of endrin and three volatile organic chemicals (1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and dichloromethane), EPA agrees with

commenters that the performance by the current pool of laboratories does not warrant setting pass/fail criteria within fixed plus or minus percentage limits of the true concentration and acceptance limits for the other organic contaminants in today's rule remain at ±2 standard deviations. EPA disagrees with the comment that regulation be delayed until fixed acceptance ranges can be determined by interlaboratory performance. EPA believes performance will improve as laboratories routinely use a method to maintain certification for compliance monitoring analyses. The new methods are based on the same basic analytic techniques as many existing methods (such as GC, GC-MS, HPLC). EPA's experience in applying these techniques to other analytes has been that laboratory proficiency improves as laboratories become more experienced with the basic technique and specific individual methods.

Although the data are insufficient to change the proposed certification acceptance limits, they are sufficient to examine the relationship between study-generated PQLs and PQLs calculated by multiplying MDLs by a factor. In today's rule, EPA has set PQLs for 16 organic contaminants after considering an analysis of the performance from EPA-sponsored laboratory studies and MDL data. In most cases the PQLs are ten times the MDL. For four contaminants, the PE data were adequate for establishing the PQLs. For the remainder, PQLs were established on the generalization of 10 times the MDL. For many of these contaminants, a limited number of laboratories participated in the PE studies, and EPA therefore believes these data do not adequately represent likely performance over time. For other cases, while there were a considerable number of laboratories participating, the regression-derived acceptance limits were broad (> ±50%), and the PQL was based on 10 times the MDL, with acceptance limits set at ±2 standard deviations, to allow for improvement in the future. EPA found that federal and State laboratories, which were more experienced with the methods performed better. EPA therefore believes the other laboratories' performance will improve over time and use of 10 times the MDL to set the PQL is appropriate.

For dioxin (PQL=5 MDL) and benzo(a)pyrene (PQL=10 MDL), PQLs could not be derived from an analysis of the limited laboratory performance database. The commenter correctly notes that in most studies, benzo(a)pyrene was not tested near the final maximum contaminant level of 0.0002 mg/1. However, in the November 29, 1991 notice and in today's rule, EPA discusses a two-laboratory study of this contaminant. The precision obtained in samples spiked at 0.0002 mg/1 was excellent—±6 percent or better. A similar study, which is discussed in today's rule, for dioxin using Method 1613 was conducted with good results. Thus, the PQL for dioxin and benzo(a)pyrene are today specified respectively as five and ten times the MDL.

The final PQLs for di(2-ethylhexyl)adipate and di(2-ethylhexyl)phthalate are set at ten times the MDL. This is consistent with EPA's general guidelines that calculated PQLs be equal to five to ten times the MDL. The commenter refers to the relatively poor performance in some of EPA's cited studies. However, in the November 29, 1991 notice and in today's rule, EPA discusses an improvement in the Method 506 eluant mixture, which has been tested in samples spiked near the final maximum contaminant levels. EPA believes these data warrant setting a PQL at ten times the MDL.

EPA notes that PQLs that are based on an evaluation of the concentration at which about 75 percent of the laboratories participating in a study can successfully analyze a sample use a criterion that is more stringent than setting a pass criterion of ±2 std. dev. Using this approach, the final PQLs for volatile organic chemicals are very close to ten times the MDL. This is consistent with the performance observed with other regulated volatile organic chemicals, all of which can be measured in the same sample by an identical analytical procedure. Since analyses for dioxin, pesticides and other organic chemicals in today's rule use several different analytical techniques, EPA expected laboratory performance would be less homogeneous than for the VOC chemicals, which used the now-routine purge and trap method. Use of study-dependent laboratory criteria is consistent with the requirement to achieve the lowest feasible MCL.

EPA disagrees that performance sample data need to be normally distributed in order to proceed with a determination of the suitability of a method for compliance measurements. It is not practical or necessary to benchmark interlaboratory performance on anything but a standard matrix. Each analytical method notes if and how the analyst should check a compliance sample or laboratory reagents for possible interferences. As discussed in today's rule, the available data indicate that laboratories have done so even with potentially difficult analytes such as dichloromethane.

EPA agrees with the comment that when analytical variability poses a problem, the system should have the opportunity to use multiple samples and average the results. EPA's monitoring requirements already provide this relief. The requirements permit confirmation of sample results, and the elimination (with State concurrence) of spurious analytical results. And more than one confirmation sample may be taken, provided the State concurs.

EPA notes that for most of the analytes presented in the table with relatively high confidence intervals, the PQLs and MDLs are significantly less than the final MCLGs and MCLs, so imprecision of the analysis is not as likely to lead to resource-wasting false positives.

The PQLs for most of the contaminants are identical to the PQLs proposed on July 25, 1990. The PQL for 2, 3, 7, 8–TCDD decreased based on an evaluation of data from an interlaboratory study that used Method 1613. The data were cited and discussed [56 FR 60952–60953] in the November 29, 1991 notice of availability.

For the reasons cited elsewhere in this rule and in the July 25, 1990 proposal [55 FR 30416], the final MCLG for 2, 3, 7, 8–TCDD (dioxin) remains at zero mg/l, and the final PQL is estimated as five, rather than 10, times the MDL. As discussed in the November 29, 1991 notice, MDLs of 6×10^{-9} mg/l and 4×10^{-9} mg/l were obtained with a precision of ±12% in an EPA-sponsored study. Considering the zero MCLG, the high relative health risk, and the low probability of occurrence in finished drinking water, the final PQL has been set at five times the average of the two MDLs. The average MDL is 5×10^{-9} mg/l—five times this MDL is 2.5×10^{-8} mg/l, which rounded up becomes the final PQL of 3×10^{-8} mg/l. The final MDL is 50% lower than the proposed MDL of 10×10^{-9} mg/l. The final PQL for dioxin is 40% less than the proposed PQL of 5×10^{-8} mg/l.

The important use of laboratory performance data is to help EPA set fixed ranges of ± acceptance limits (Table 15) for laboratories to obtain and maintain certification. For fourteen of the organics covered by today's notice, EPA has set the acceptance limits for certification samples at two standard deviations based on performance sample study statistics rather than defining fixed acceptance limits.

These limits will permit a reasonable number of laboratories to obtain

certification for compliance monitoring analyses while ensuring continued progress toward more efficient analysis.

Laboratory performance data for the remaining five organic contaminants were obtained in the following studies, which were also cited in the November 29, 1991 notice. In the first study, the lowest concentration of benzo(a)pyrene tested in an EMSL study was 0.002 mg/l, which is ten times greater than the proposed MCL. Rather than extrapolate these data, two EPA laboratories tested Method 550 for benzo(a)pyrene at the proposed MCL of 0.0002 mg/l [USEPA, 1991c]. They achieved a very good precision of ±6 percent or better. The second study concluded that the precision for adipate and phthalate analysis with Method 506 was relatively poor in EMSL PE studies [USEPA, 1991c]. With the solvent changes discussed in Section III–B–3a, an EMSL laboratory obtained very good precision of ±6 percent or better in samples spiked near the MCLs. Based on these results EPA is citing Methods 506, 550 and 550.1 as compliance methods in today's rule, and is permitting individual performance evaluation sample study statistics to determine the acceptance limits (ranges) by setting them at two standard deviations around the average concentration (Table 15).

For endrin and the volatile organic chemicals, an analysis of laboratory performance evaluation data, the most recent of which were cited in the November 29, 1991 NOA, affirms that laboratory performance warrants using fixed limits of ±30 percent for endrin. The data also support using the fixed acceptance limits of ±40 percent for three volatile organic chemicals included in today's rule—dichloromethane, 1,2,4-trichlorobenzene and 1,1,2-trichloroethane. These are the same limits listed in Table 16 of the July 25, 1990 notice.

Several commenters on the NOA data for the SOC contaminants expressed concern about broad confidence intervals (near ±100 percent) and stated doubts about PQLs based on such wide bands. EPA agrees that the data for some contaminants showed broad acceptance bands, and for those contaminants, EPA has established acceptance limits as ±2 standard deviations of the data developed in PE studies. As laboratory performance with these methods improves, as is EPA's experience with new methods, the confidence intervals will narrow.

4. *Laboratory certification.* Several commenters expressed concern about the resources needed and the time constraints to achieve full certification prior to the initial monitoring period for newly regulated contaminants. EPA understands that certification for all parameters in time to comply with the initial monitoring deadlines (specifically, the January 1993–December 1995 period in today's rule) may present some difficulties in some areas. To alleviate this, EPA is recommending that States and Regions grant provisional certification, but only for recently regulated analytes. The provisional certification criteria are not regulatory in nature. Guidelines for granting provisional certification are described in EPA's "Manual for the Certification of Laboratories Analyzing Drinking Water" [USEPA, 1990m].

States and Regions are encouraged to begin certifying laboratories for analytes as soon as MCLs and certification requirements for those analytes have been promulgated. It is not necessary to wait for MCLs to become effective or for the State or Region to become certified. Under the Certification Manual, a State is to grant a laboratory provisional certification only for newly regulated analytes until the next regularly scheduled on-site audit after the effective date of the MCLs or until the end of the first monitoring period, whichever comes first. Also, according to the Certification Manual, in order to be granted provisional certification a laboratory should currently be certified to test for other drinking water parameters, pass an annual performance evaluation sample containing the analytes of interest, and meet all the other criteria stated in the rule. States may add additional requirements that they deem appropriate. In addition, States may set criteria for certifying a laboratory for the measurement of dioxin (2,3,7,8–TCDD) with EPA Method 1613.

EPA wishes to clarify the effective date of promulgated analytical methods in this rule. A promulgated method or method update must be used for those analytes for which it was promulgated as soon as the MCLs become effective, which is usually 18 months after promulgation. However, the methods may and should be used starting 30 days after promulgation of the rules for analyzing samples. This will enable laboratories to be well prepared and at least provisionally certified when the MCLs and monitoring requirements become effective.

5. Selection of Best Available Technology

a. *Inorganics.* On July 25, 1990, EPA proposed the best available technologies (BATs) for the removal of the five inorganic contaminants from drinking water [55 FR 30416]. Today's notice finalizes these determinations. Table 16 summarizes the final BATs for the five inorganic contaminants.

TABLE 16.—FINAL BAT FOR INORGANIC CONTAMINANTS

Contaminant	BAT [1]
Antimony	C/F; RO.
Beryllium	AA, IE; RO, LS, C/F
Cyanide	IE; RO; CH
Nickel	IE; RO; LS.
Thallium	AA; IE.

[1] Best Available Technology (BAT):
AA = Activated Alumina.
IE = Ion Exchange.
LS = Lime Softening.
RO = Reverse Osmosis.
C/F = Coagulation/Filtration.
CH = Chlorine Oxidation.

The BATs presented in this notice are the same as in the proposal with one exception: ion exchange for cyanide removal is amended to require pH adjustment for better removal efficiency. This issue is discussed below in further detail with the discussions of the other major concerns expressed during the public comment period for the proposed rule regarding the BATs for the IOCs.

(1) *BAT field demonstrations.* Several commenters stated that the proposed BATs have not been demonstrated specifically for some of the inorganic contaminants under field conditions. These commenters were concerned that the reliance upon bench-scale and pilot-scale data in the absence of field studies might not meet the requirements of BAT for these contaminants under section 1412(b)(5) of the SDWA.

The Agency does not believe that the SDWA requires field studies as a prerequisite to establishing BAT for a contaminant. The SDWA directs EPA to set the MCL as close to the MCLG as "feasible." The SDWA defines "feasible" as "feasible with the use of the best technology which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, [is] available (taking costs into consideration)." Section 1412(b)(3)(D). EPA interprets this provision to require field trials for a technology, not for the application of that technology to each individual contaminant. Consequently, EPA has not required full-scale field validation of a technology's feasibility for treating a specific contaminant if its effectiveness has been demonstrated at bench or pilot scale for that compound. The technology, however, must reasonably be expected to perform in a similar manner under field conditions regardless of aberrations due to scale-up factors.

It should also be noted that many of the 83 contaminants for which Congress required EPA to establish NPDWRs by June 19, 1989 had never been regulated by EPA or treated by public water systems. Thus for many of the contaminants which Congress required EPA to regulate, the data which the commenter asserts are a prerequisite to selecting a technology as BAT do not yet exist. The commenter's arguments suggest that Congress required EPA to regulate many new contaminants within 3 years of the 1986 amendments but effectively precluded EPA from selecting any technologies as BAT for the regulations. Therefore, EPA believes it is appropriate to consider pilot plant and laboratory studies to project the removal efficiencies for these inorganics that would be achieved by technologies that have been in full-scale use by public water systems for other similar contaminants. A detailed discussion of the efficiencies of each of the treatments can be found in the July 1990 proposal and in the "Technology and Costs for the Removal of Phase V Inorganic Contaminants from Potable Water Sources" [USEPA, 1990b].

While some of the treatments listed as BATs in Table 16 are not currently in full-scale use to treat specifically for the inorganic contaminants in today's notice, they are demonstrated technologies currently in use to treat a variety of drinking water contaminants, including previously regulated inorganic contaminants. Further, in each case, high quality bench- or pilot-scale data obtained under verifiable conditions which replicate typical drinking water treatment conditions have been provided. These data confirm that the treatment efficiencies of these technologies are high and that these technologies may be properly designated as BAT for the inorganic contaminants.

(2) *Potential for antimony leaching from tin/antimony solder.* Several commenters were concerned that antimony could leach from tin/antimony solder joints similar to lead leaching from lead/tin solder joints.

EPA has determined that antimony leaching from tin/antimony solder does not present a contamination problem. EPA has based this determination upon a theoretical analysis of the potential for leaching and on three studies that investigated antimony levels in water in contact with tin/antimony-soldered copper pipe joints [Herrera et al., 1981, Subramanian et al., 1991, and USEPA, 1988a].

When different types of metals are in contact with each other, galvanic corrosion can occur. In a galvanic couple, one metal will serve as the anode, which will deteriorate, and the other metal will serve as the cathode. For copper pipes soldered with either lead/tin solder or tin/antimony solder, three galvanic couples can exist. For lead/tin-soldered copper pipe joints, the three couples which exist are: copper-tin, copper-lead, and lead-tin. The strongest galvanic couple of these three will be the copper-lead couple and lead will serve as the sacrificial anode. Thus, galvanic corrosion would promote lead leaching from a lead/tin-soldered copper plumbing joint. For the tin/antimony-soldered copper pipe joint, the three couples which may exist are: copper-antimony, copper-tin, and tin-antimony. The strongest galvanic couple of these three will be the copper-tin couple and tin will serve as the sacrificial anode. Thus, galvanic corrosion would promote tin leaching, rather than antimony leaching, from a tin/antimony-soldered copper pipe joint and very little antimony would be expected to leach. In addition, tin can be passivated by tin oxide, which could form a passivating film to further inhibit antimony leaching from a tin/antimony solder joint.

Laboratory experiments and field tests were conducted to verify the theory on the potential for antimony leaching from tin/antimony solder joints (Seattle Distribution System Corrosion Control Study: Volume III. Potential for Drinking Water Contamination from Tin/Antimony Solder prepared by Herrera et al. for USEPA (August, 1981) [Seattle, 1981] and also reported in Herrera et al., Journal of the American Water Works Association, July 1982) [Herrera et al., 1982].

The laboratory experiments evaluated antimony levels from tin/antimony-soldered copper coupons with stagnation times between one-half hour to 98 hours. Two coupons of pure antimony were also tested with a stagnation time of 70 hours for comparative purposes. The coupon tests demonstrated that antimony dissolution was several orders of magnitude lower than the dissolution from pure antimony metal even though the stagnation time was longer (98 hours versus 70 hours). The highest antimony concentration observed in the tin/antimony coupon testing was 3.7 $\mu g/1$, which is below the MCLG promulgated in this noticed for antimony. In addition, tin oxides were found adhering to areas on the solder, which may provide additional inhibition of antimony leaching from tin/antimony solder.

Field tests were conducted at the University of Washington where tin/antimony solder has been used for building plumbing systems since 1968. Samples (0.9 liter) were taken at the point where the distribution system entered the building to obtain the characteristics of the inflow water. Several commenters stated that these were the only type of samples taken and claimed that the study did not evaluate the leaching potential of the plumbing. However, overnight standing samples (0.9 liter) were taken at the tap located the furthest distance from the entry point to the building. The plumbing systems ranged from 1 to 10 years in age. Thus, the contribution of antimony leaching from tin/antimony soldered copper pipe joints was evaluated by comparing the results from the overnight tap sampling with the building inflow sampling results. A difference in antimony concentrations between the overnight tap sample and the building inflow sample was observed in only one of the eight buildings where sampling was conducted. The concentration of antimony in that overnight tap sample was below the MCLG. All of the other antimony concentrations were below the detection limit. In addition, tin oxide films were found on three solder joints which were removed from a building's plumbing system. These films could have contributed to the inhibition of antimony leaching from these joints [Herrera et al., 1981].

The commenters noted that the study conducted at the University of Washington evaluated only one type of water quality. However, Seattle's finished water quality, at the time of this study, was corrosive, yet significant antimony leaching from tin/antimony solder was not observed under these conditions. In fact, all of the antimony concentrations measured in this study were below the MCLG and most were below the detection limit. The amount of antimony leaching from tin/antimony solder would be even less in non-corrosive waters.

This was confirmed by another study which evaluated the impact of several water qualities on antimony leaching from tin/antimony solder with various stagnation times (Impact of Lead and Other Metallic Solders on Water Quality, prepared by Murrell for USEPA, July, 1988) [USEPA, 1988a]. In this study, a pipe loop was constructed with tin/antimony-soldered joints to evaluate the effect of water quality or antimony leaching from tin/antimony solder. Four waters with the following characteristics were evaluated with varying stagnation times to determine their effect on antimony leaching from tin/antimony solder: (1) pH between 5.1 and 5.3; (2) pH between 6.3 and 6.6; (3)

pH 7.4; and (4) pH between 8.5 and 8.6. The stagnation times evaluated in this study were 4 hours, 8 hours, 12 hours, 24 hours, and 4 weeks. Six samples were taken at each pH and stagnation time combination.

For the two higher pH ranges, where the pH was above pH 7.0, all of the samples had antimony concentrations below 4 μg/l for stagnation times up to 24 hours. All of the samples for the lowest pH range also had antimony concentrations below 4 μg/l for stagnation times up to 24 hours. For the second lowest pH range (pH between 6.3 and 6.6), results at 4 μg/l and above were observed at stagnation times below 24 hours. One of the six samples with a stagnation time of 12 hours exceeded the final MCLG and three of the six samples with a 24-hour stagnation time exceeded the MCLG. However, EPA believes that systems with such a low pH would likely fail to meet the requirements of the recently promulgated lead and copper rule (June 7, 1991, **Federal Register** [56 FR 26460]). Those systems would therefore likely need to increase the pH of the finished water to comply with that regulation. Finished water with a pH above pH 7 did not produce antimony concentrations above the MCLG in this study and this water quality is a likely minimum necessary to comply with the lead and copper rule.

EPA also believes that this study addresses several commenters' concerns about antimony leaching from newly soldered joints. The commenters apparently believe that antimony leaching from tin/antimony solder could be similar to lead leaching from lead/tin solder and thus were concerned that significant concentrations of antimony could leach from newly soldered joints. As discussed above, antimony leaching from newly soldered joints was *not* observed in non-acidic waters which will predominate as systems comply with the lead and copper rule requirements.

The effect of water quality on antimony leaching from tin/antimony solder was also investigated in Subramanian, Conner and Meranger, Journal of Environmental Science and Health, 1991 [Subramanian et al., 1991]. This study investigated the effect of three water qualities on metals leaching from four non-lead-based solders. The amount of metals leaching from newly soldered joints was evaluated using high purity, tap, and well water samples with various standing times. The pH of the high-purity water was 6.8. The pH and alkalinity of the tap water was 7.8 and 30 mg/l (as $CaCO_3$). The pH and alkalinity of the well water was 8.1 and 155 mg/l (as $CaCO_3$).

The amount of antimony leached into samples was at or below the detection limit of 1.2 mg/l for standing times up to 7 days, regardless of the water quality. For the high-purity and well water samples, there was no detectable leaching of antimony with standing times longer than 7 days. However, the amount of antimony leached into tap water after 14, 28, and 90 days of contact was 2.0, 3.7, and 7.3 μg/l, respectively. EPA does not believe that such unusually long standing times are typically encountered in public water supplies. Thus, this study supports EPA's position that antimony leaching from tin/antimony solder joints should not be a problem.

(3) *Disposal of wash brines from ion exchange and reverse osmosis treatments in water-scarce areas.* Commenters expressed concerns regarding the potential costs associated with disposal of wastes (particularly brine wastes) generated by treatment processes which remove inorganics. Of particular concern are waste brines generated by reverse osmosis (RO) and ion exchange (IE) processes. One commenter expressed concern about the environmental impacts as well as the potential impact of waste water treatment on water conservation concerns in water-scarce regions. For example, reverse osmosis results in loss of a percentage of the influent water as brine.

EPA does not agree with the commenter's assertion that environmental impacts (discussed below) would be extreme if a low sulfate standard (i.e., 400 mg/l) were promulgated. The Agency believes that water wastage could be minimized by treating only a portion of source water containing elevated sulfate levels, blending the treated water with source water, and by further treating brine wastes. Waste volume reduction and waste handling options appear not to have been fully considered by commenters. Other very conservative assumptions were employed by the commenter which led to conclusions not shared by EPA. The commenter's assumptions include: An increase in Colorado River sulfate levels beyond recent historical levels; and the overall importance of that source to the Southern California supplier, when competing entitlements to that river source may diminish the supplier's share of available river water.

One commenter stated that there are potential economic impacts where limited disposal options exist. The Agency agrees with the commenter that cheaper options (such as direct discharge into a receiving body of water) are not always available. For these reasons, EPA has included several waste treatment and waste disposal options in its analysis and incorporated costs for all projected systems in the Regulatory Impact Analysis (RIA) Document developed for this rule [USEPA, 1992d]. These costs are a substantial part of the overall estimated treatment costs for meeting the drinking water MCLs.

Commenters raised questions about competition for scarce water in certain regions, the need for source water protection measures (i.e., pollution prevention), and waste quantity and quality that may limit disposal options. EPA has addressed these concerns in this rulemaking and in previous actions (**Federal Register**, Vol. 56, No. 20, pp. 3553–3554) and does not believe that the data and assertions presented in response to the July 1990 proposal are sufficient to raise regulatory concerns.

(4) *Alkaline chlorination treatment for cyanide.* Several commenters were concerned about the potential for increased concentration of trihalomethanes resulting from the alkaline chlorination treatment for cyanide. For systems whose raw water has a high trihalomethane formation potential, EPA agrees that this treatment could exacerbate the problem. However, systems can choose to install ion exchange or reverse osmosis, which would be less likely to significantly increase trihalomethanes. As stated in the proposal, the highest observed occurrence level for cyanide in drinking water (8 μg/l) is considerably lower than the MCL for cyanide (200 μg/l). Therefore, EPA expects that few, if any, systems would need to install treatment for cyanide and that increased trihalomethanes resulting from a cyanide BAT is unlikely to be a widespread problem.

(5) *Ion exchange as BAT for cyanide.* Several commenters stated that anion exchange would not remove cyanide because at the near-neutral pH values for most drinking waters, cyanide is much more likely to be present as HCN rather than CN. EPA agrees with the commenters' assertions that anion exchange would only likely remove cyanide that is present as CN. EPA believes, however, that systems that need to can increase the pH of their water to further dissociate HCN to CN. The ion exchange data presented in the Technology and Cost Document indicate that ion exchange can efficiently remove dissociated cyanide [USEPA, 1990b].

Cyanide is dissociated at lower pH levels than those cited in some of the studies in the Technology and Cost Document. EPA has provided the treatment costs for pH adjustment (see Lead and Copper in Drinking Water as a Result of Corrosion: Evaluation of Occurrence, Cost and Technology, 1991 [USEPA, 1991a]). An option for systems using ion exchange for cyanide removal would be to adjust the pH to dissociate and remove the cyanide and then lower the pH somewhat prior to chlorination and distribution. EPA believes this approach to be a more effective way to address cyanide removal in waters with significant trihalomethanes (THM) formation potential than alkaline chlorination. Nevertheless, for the reasons provided in the discussion of alkaline chlorination, EPA does not believe that increased trihalomethanes resulting from a cyanide BAT will be a widespread problem when using that method.

(6) *Sulfate reverse osmosis costs.* Several commenters questioned why the total treatment costs for sulfate removal by reverse osmosis were lower than the total treatment costs for the inorganic contaminants in this rule. The MCLs proposed for sulfate were several orders of magnitude higher than the MCLs for the inorganic contaminants in this rule. EPA assumed that systems would blend a treated portion and an untreated portion to reduce the total production costs for sulfate. EPA believes that only in extreme cases would systems require both high removal efficiency and treatment of the entire influent flow. Thus, systems were only assumed to treat a part of the product water to remove sulfate rather than the entire product flow as is assumed in the T&C document for the other inorganic contaminants. However, as was noted in the July 1990 proposal, blending to reduce total treatment costs is an option for systems using RO for the other IOCs. Since a smaller volume of water is being treated, capital costs and operation and maintenance costs would be lower, resulting in lower treatment costs than estimated.

(7) *Sulfate ion exchange costs.* Several commenters questioned why the total production costs for sulfate removal by anion exchange were higher than the total production costs for cyanide removal by anion exchange. The difference in the total production costs for these two inorganic contaminants resulted from higher operation and maintenance costs for sulfate removal associated with resin regeneration. The increased regeneration costs are due to faster saturation of the resin because of the significantly higher levels of sulfate that would be treated to meet the proposed MCL levels compared to the levels of cyanide.

b. *Synthetic organic contaminant.* MCLs In the 1986 SDWA amendments, Congress specified in section 1412(b)(5) that "Granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon." On July 25, 1990, the Agency proposed the best available technology (BAT) for the removal of the 18 synthetic organic chemicals (SOCs) from drinking water [55 FR 30420]. Today's notice promulgates the final rule for these contaminants, including identification of the Bat. Table 17 provides a summary of the proposed and final BATs.

TABLE 17.—PROPOSED AND FINAL BAT FOR ORGANIC CONTAMINANTS

Contaminant	Proposed BAT	Final BAT
Di-(2-ethylhexyl) adipate.	GAC/PTA	GAC or PTA
Dalapon	GAC	GAC
Dichloromethane	PTA	PTA
Dinoseb	GAC	GAC
Diquat	GAC	GAC
Endothall	GAC	GAC
Endrin	GAC	GAC
Glyphosate	GAC	OX
Hexachlorobenzene	GAC	GAC
Hexachlorocyclo-pentadiene	GAC/PTA	GAC or PTA
Oxamyl	GAC	GAC
Benzo (a) pyrene	GAC	GAC
Di-(2-ethylhexyl) phthalate.	GAC	GAC
Picloram	GAC	GAC
Simazine	GAC	GAC
2, 3, 7, 8-Tetrachloro-dibenzo-p-dioxin	GAC	GAC
1, 2, 4-Trichlorobenzene.	GAC/PTA	GAC or PTA
1, 1, 2-Trichloroethane.	GAC/PTA	GAC or PTA

GAC—Granular Activated Carbon.
PTA—Packed Tower Aeration.
OX—Oxidation (Chlorine or Ozone)

With one exception, the BAT presented in today's notice is the same as proposed in July 1990. The exception is glyphosate. The BAT for glyphosate was proposed as granular activated carbon (GAC) but has been finalized as oxidation. This change is discussed below.

The BATs for organics in today's final rule listed in Table 17 are discussed in detail in the Technology and Cost (T&C) document contained in the rulemaking docket [USEPA, 1992e]. In the T&C document the available technologies are discussed, a summary of the literature documenting treatment performance is provided, and the cost estimates of BAT are detailed. The information presented in the T&C document, including the availability of a technology, its performance, and an estimated cost of compliance of using the technology are all considered and form the basis for determining the final BATs for the SOCs in today's rule.

The following discussion addresses the major concerns expressed during the public comment period for the July 25, 1990 proposed rule regarding the proposed BATs for the SOCs.

(1) *BAT field evaluations.* A number of commenters expressed concern that the BAT proposed for the SOCs had not been demonstrated to be effective according to the criteria set forth by the SDWA. They recommended that the Agency conduct field testing of all the SOCs under various conditions to determine the effectiveness of the BATs as proposed.

The SDWA directs EPA to set the MCL as close to the MCLG as "feasible." The SDWA defines "feasible" as "feasible" with the use of the best technology . . . which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, [is] available (taking costs into consideration)." As mentioned above, EPA interprets this provision to require field trials for a technology, not for the application of that technology to each individual contaminant. Consequently, EPA has not required full-scale field validation of a technology's effectiveness for treating a specific contaminant if its effectiveness has been demonstrated at bench or pilot scale for that compound. The technology, however, must reasonably be expected to perform in a similar manner under field conditions after considering aberrations due to scale-up factors.

For three of the contaminants in the July 1990 proposal (di(2-ethylhexyl)adipate and endothall and 2,3,7,8-TCDD), EPA relied on model predictions based on the compounds' physical/chemical characteristics, to specify GAC as BAT. At the time of proposal, treatment performance data were not available due to analytical difficulties with (di(2-ethylhexyl)adipate and endothall. Since proposal, however, the Agency has obtained treatment performance data for these two compounds. The treatment performance studies and data for both (di(2-ethylhexyl)adipate, endothall are included in the Technology and Cost

Document contained in the rulemaking docket [USEPA, 1992e]. The results of the studies on these two compounds support earlier BAT determinations of GAC made using the model. Further, the SDWA states that GAC is feasible for the control of SOCs.

With respect to dioxin, there is a pilot-scale treatment performance study indicating removal of dioxin from Agent Orange using GAC [Chemical Eng., 1977]. This study has limited applicability since the solvent is not water, but due to the associated health risks during analysis of dioxin, the treatment performance of GAC was determined based solely on the model predictions.

The Agency is designating GAC as BAT for dioxin in today's rule in spite of the lack of performance data. GAC has been statutorily designated as "feasible for the control of synthetic organic chemicals" (section 1412(b)(5), SDWA) and the results from model predictions based on the physical/chemical properties of dioxin support this determination. In light of the SDWA statement that GAC is feasible and the fact that GAC has proven to be effective in the laboratory and under full-scale conditions for other synthetic organic contaminants of similar characteristics, the Agency believes it is appropriate to establish GAC as BAT.

Cost considerations. One commenter stated that a BAT must be evaluated and applied to site-specific conditions and that estimated costs might not be representative of actual operating conditions.

In response, costs at specific sites may be higher than estimated in the Cost and Technology Documents. The design and costs of the treatment technologies evaluated as part of the T&C document pertain to an average system (not worst case), and are meant to be used for a system's preliminary planning purposes, for generating national cost estimates and for determining affordability for typical systems. Worst-case cost estimates are not used because the Agency does not believe that such estimates would accurately represent the affordability of treatment for large water suppliers on a national basis. Individual systems should develop a more complete and detailed design and cost evaluation based on pilot-plant testing and site-specific considerations. The cost estimates presented in the T&C document provide a basis that can be used by any system regardless of water quality.

Use of other technologies. One commenter noted that treatment facilities are free to choose technologies other than BAT to meet the MCL. Other technologies may be chosen in lieu of BAT because they may be more cost effective or better suited to the specific operating conditions of the particular site to meet the MCL. Making the choice not to use BAT, however, means that a system will not be eligible for a variance under SDWA section 1415. For example, if a facility does not install GAC where it is the designated BAT, but uses PAC instead, and fails to meet the MCL, the facility would not be eligible for a variance. On the other hand, the same facility may be eligible for an exemption under SDWA § 1416 if for example GAC could not be installed due to an inability to obtain financing and PAC was used instead, and the facility failed to meet the MCL.

EPA agrees with commenters that GAC, and any other treatment technology for that matter, can create problems if not properly maintained and operated. Again, technologies other than GAC, PTA or OX can be used if they seem better suited to site-specific conditions in order to achieve the MCL.

Carbon disposal costs. Some commenters were concerned that the cost of disposal of spent carbon was not taken into account at all in the costing assumptions for the design and operation and maintenance (O&M) for a facility. The cost of carbon "disposal" is essentially the cost of regenerating the spent carbon (and replacing the 12 to 15 percent lost in the process). For plants whose daily carbon use is less than 1,000 pounds per day, EPA assumes that the carbon would be regenerated off-site by the carbon supplier and that cost is included in the cost of replacement carbon. For plants whose carbon demand is more than 1,000 pounds per day, it is generally economical to regenerate on-site. The cost of the incinerator used to regenerate the carbon and its operation and maintenance costs are part of the facility capital and O&M costs already factored into total costs. The revised model that EPA now uses in developing costs [Adams and Clark, 1989] factors into total costs the expense of carbon regeneration and replacement.

When powdered activated carbon (PAC) is used, it is usually disposed of with the alum sludge in a sanitary landfill. Because this rule does not consider PAC to be BAT, EPA is not addressing the issue of PAC costs, including the costs of disposal.

PTA and air emissions. One commenter stated that it is possible to transfer risk from water to air when using PTA. As the commenter points out, there is a possibility of transferring the risk associated with VOCs from water to air when using PTA as a treatment technology (and that increased costs may result from a requirement to also treat the PTA emissions). EPA agrees that control of such air emissions may be required by regulations outside the SDWA (e.g., local or State regulations) and could increase the costs of this technology. Consequently, the cost of controlling emissions was estimated as a separate cost item in Table 13 of the July 1990 notice and was included in chapter 7 of the proposed and final T&C document [USEPA, 1992e]. These emission control costs can be added to the PTA costs to get an estimate of the total costs. The costs are based on treatment by vapor-phase GAC.

Empty bed contact time. A number of commenters expressed concern about the use of an empty bed contact time (EBCT) of 7.5 minutes and urged field studies to identify an EBCT or range of EBCT values. A reference cited in the July 1990 proposal on general information about the parameters of the cost model may have misled these commenters. The values used to satisfy the variables of the parameters were stated in the T&C document. The EBCT was used for estimating cost of GAC removal of SOCs in the July 1990 proposal and in today's rule, and the EBCT was assumed to be 10 minutes, not 7.5 minutes. For additional information on the basis for the use of a 10-minute contact time, EPA refers readers to the January 30, 1991 rule [56 FR 3555] and supporting documents.

Carbon usage rate. Some commenters stated that natural organic matter is a major contributor to the carbon use rate (CUR). The concern was that costs of carbon replacement and regeneration would be much higher in actual practice than those calculated in theory. The Agency agrees with these commenters that natural organics contributes to the CUR. To account for the competitive adsorption and fouling of GAC by these organics present in the water matrix, EPA used an adjusted CUR in both the proposed and final rules. The CURs are calculated using an equation derived from the Freundlich isothermal relationship and a mass balance for each specific SOC based on distilled water isotherm data. The CUR is then adjusted by comparison of field to distilled water usage rates to account for the competing effects of natural organics. The method used to determine and adjust the CUR is presented in Chapter 4 of the Technology & Cost Document [USEPA, 1992e] and is a reasonable approximation of the effects of natural organics. The CUR as well as the adjusted CUR provide a mechanism

to compare relative absorbabilities, and ultimately, relative costs. The Agency recommends that each system use its own water quality and geographical conditions, as well as the appropriate EBCT and CURs as part of their design considerations. EPA discussed these same issues in its Phase II final regulation (January 30, 1991 [56 FR 3556]).

Powdered activated carbon as BAT. One commenter suggested that PAC be considered BAT since it can be used for removal of pesticide contamination in surface waters and is the same substance as GAC. EPA's position is that the use of PAC may be an appropriate choice of technology in certain instances. PAC treatment of surface water that is only intermittently contaminated by pesticides or other SOCs could be both economical, in combination with an existing filtration plant, and effective.

While PAC has proven effective in taste and odor control, its efficacy for trace SOC removal in drinking water is variable due to factors such as carbon particle size, background organics, and plant efficiency. Therefore, EPA does not believe that PAC is as effective as GAC overall, and the Agency has not designated it as BAT. If application of PAC will reduce the contaminant below the MCL in particular cases, it may be used in lieu of the designated BAT (for example, if the utility finds that PAC is more cost effective). See discussion above on use of these technologies in lieu of BAT.

BAT for glyphosate. As presented earlier in today's notice, the BAT proposed for glyphosate was GAC. One commenter stated that GAC is not BAT for glyphosate and indicated that conventional treatment is more effective in removing this compound from drinking water. Conventional treatment typically combines disinfection (usually chlorine), coagulation, flocculation, sedimentation, and filtration. EPA agrees that other technologies appear to provide better treatment removal efficiencies for glyphosate than GAC, and conducted additional bench- and pilot-scale studies to evaluate and determine the BAT. As the commenter suggests, and as we determined from subsequent study, GAC is not effective in removing glyphosate from drinking water. Bench-scale treatability studies documented by Speth [Speth, 1990] indicate that oxidation using chlorination (potentially as part of conventional treatment) or ozonation were significantly more effective treatment techniques for glyphosate than is GAC. EPA stated in the November 1991 NOA [56 FR 60954] that it was considering designating these technologies instead of GAC as BAT for glyphosate. Today, EPA is identifying oxidation (using chlorination or ozonation) instead of GAC as BAT for glyphosate.

The proposed BAT was based on treatment evaluations conducted using distilled water and a limited number of data points. Subsequent bench-scale analyses [Speth, 1990] revealed that glyphosate's behavior in natural waters is unlike that of any of the other SOCs associated with this rulemaking. Glyphosate exhibits very different treatability characteristics in distilled water than in natural waters. This is thought to be due to extremely slow kinetics and the influence of organo/metallic complexation. These additional studies also provided a preliminary examination of the effectiveness of various other treatment methods for removing glyphosate. The results indicated that carbon did not remove glyphosate under raw water conditions, but oxidation, specifically chlorine or ozone, was very effective. These bench-scale studies also seemed to suggest that under some conditions glyphosate could be removed by membranes and coagulation/filtration. These bench scale studies were completed too late for inclusion in the July 1990 proposal. EPA made these bench-scale studies available for public comment in the November 1991 NOA.

During 1991, the Agency conducted pilot-scale studies to further evaluate the effectiveness of conventional treatment (including chlorination and ozonation). The results of the pilot studies demonstrated that lower levels of glyphosate were detected after chlorination or ozonation. The pilot study also showed, however, that conventional treatment, which typically combines disinfection (usually by chlorine), coagulation/flocculation/sedimentation and filtration, has not added effect over chlorination or ozonation. The results of these pilot-scale studies were too late to be included in the November 29, 1991 NOA [56 FR 60954].

One commenter raised a number of concerns in response to the November 1991 NOA regarding the designation of oxidation as BAT for glyphosate. The commenter argues that by selecting chlorination (or oxidation by chlorine) as BAT the oxidation by-products themselves may present health risks and may need to be regulated under the SDWA in the future. The commenter goes on the state that the costs associated with the treatment modifications that would be required to accommodate an oxidation process could be appreciable. In addition, public water suppliers already have to contend with the Surface Water Treatment Rule (SWTR), disinfection by-product (DBP) concerns, and upcoming DBP regulation. The commenter also states that the bench-scale studies included in the public docket of the NOA [Speth, 1990] indicated that conventional coagulation/flocculation/sedimentation was being overlooked by the Agency, and that additional studies should be conducted, beyond bench-scale, to evaluate the effects of pH, coagulant, water matrix, etc., on the removal of glyphosate by conventional methods.

As mentioned earlier in response to comments, the Agency conducted follow-up pilot studies to evaluate the effectiveness of the various treatment alternatives identified by Speth [Speth, 1990]. While chlorination used as a treatment method could raise concerns of associated health risks due to disinfection by-products (DBPs), these concerns can be addressed through effective precursor removal. This approach is fully consistent with EPA's anticipated approach in the upcoming DBP regulations. To the degree existing disinfection also accomplishes oxidation of glyphosate, little or no cost would be incurred. Installation of new disinfection has been costed and the cost considered acceptable. Further, the option to choose a treatment technology other than the BAT to meet the MCL when necessitated by specific conditions is available (see earlier discussion of selection of technologies other than BAT). Also, consistent with the commenter's recommendation to do additional pilot-scale studies to evaluate conventional treatment, including coagulation/filtration/sedimentation, EPA has now conducted such studies as described above, and based on these studies, EPA has decided not to identify those technologies as BAT.

The BAT for glyphosate is determined to be oxidation. Details of the treatability studies conducted in support of selecting a BAT for glyphosate can be found in the Technology & Cost Document [USEPA, 1992e] for the SOCs.

BAT for Di(2-ethylhexyl)adipate and endothall. As stated earlier in today's notice, proposed BAT for di(2-ethylhexyl)adipate and endothall was GAC and is not being changed by today's notice. One commenter stated that EPA should use treatability study data instead of relying solely on model predictions to select BAT for di(2-ethylhexyl)adipate. The proposed BAT for di(2-ethylhexyl)adipate and

endothall was based on model predictions due to analytical problems encountered during the earlier treatment evaluations. The Agency recently conducted additional treatability studies to provide additional support for the selection of GAC as BAT for these compounds.

The treatability studies for di(2-ethylhexyl)adipate and endothall demonstrate that GAC is as effective in removing these compounds from drinking water as predicted by the model. In addition, the SDWA section 1412(b)(5) states that GAC is feasible for the control of SOCs. Therefore, the BAT for these compounds remains GAC. Details of the treatability studies conducted for di(2-ethylhexyl)adipate and endothall can be found in the Technology & Cost Document for the SOCs [USEPA, 1992E].

BAT for Benzo(a)pyrene. One commenter suggested that PAC should be used to remove PAHs. As indicated in the T&C document, however, PAHs can be removed more effectively using GAC than by other technologies; therefore, the Agency has defined only GAC as BAT for PAHs. However, any other technology that seems better suited to the particular operating conditions of the particular site can be chosen as long as the MCL for the particular SOC is met. See above for a discussion of the use of other technologies in lieu of BAT.

6. Determination of MCLs

EPA proposed MCLs for 24 chemicals based upon an analysis of several factors, including:

(1) The effectiveness of BAT in reducing contaminant levels from influent concentrations to the MCLG.

(2) The feasibility (including costs) of applying BAT. EPA considered the availability of the technology and the costs of installation and operation for large systems.[1]

(3) The performance of available analytical methods as reflected in the PQL for each contaminant. In order to ensure the precision and accuracy of analytical measurement of contaminants at the MCL, the MCL is set at a level no lower than the PQL.

After taking into account the above factors, EPA then considered the risks at the MCL level for the EPA Group A and B carcinogens to determine whether they would be adequately protective of public health. EPA considers a target risk range of 10^{-4} to 10^{-6} to be safe and protective of public health when calculated by the conservative linear multistage model. The factors EPA used in its analysis are summarized in Table 18 for the Category I and Table 19 for the Category II and III contaminants, respectively.

a. *Inorganic contaminant MCLs.* The MCLs for the inorganic contaminants promulgated today are at the same level as the promulgated MCLG for each contaminant, except for thallium (see Table 1). Also, EPA is deferring action on sulfate, and no sulfate MCL is promulgated today.

The July 1990 notice proposed alternative PQLs or MCLs for antimony and thallium. Alternative PQLs/MCLs of 0.005 mg/l and 0.01 mg/l were proposed for antimony based on multiples of 5 and 10 times the MDL. As discussed above, however, the final PQL for antimony is not being set as a multiple of the MDL but rather is being set at 0.006 mg/l based on new PE data [USEPA, 1991d]. This PQL is equal to the final MCLG for antimony, as discussed in section III–A. The Agency is, therefore, finalizing the MCL at the same level as the promulgated MCLG of 0.006 mg/l for this contaminant.

The Agency proposed alternative MCLGs/MCLs for sulfate of 400 mg/l and 500 mg/l. Today EPA is deferring promulgation of a sulfate MCL because the Agency believes it needs to consider innovative approaches to regulating sulfate. The length of this deferral period will be determined in the course of ongoing litigation with an interested citizen's group concerning EPA's legal deadlines for establishing regulations for drinking water contaminants. Unlike most drinking water pollutants, sulfate appears to be primarily of concern for unacclimated transient populations (as well as for infants).

Because of the high cost of regulating sulfate, its relatively low risk, and its impact primarily on the transient consumer, EPA is deferring the promulgation of the sulfate MCLG and MCL. In the interim, EPA intends to resolve the following issues: (1) Whether further research is needed on how long it takes infants to acclimate to high sulfate-containing water, (2) whether new regulatory approaches need to be established for regulating a contaminant whose health effect is confined largely to transient populations, and (3) whether the Agency should revise its definition of Best Available Technology for small systems (i.e., what should be considered affordable for transient noncommunity water systems).

During this deferral period, the Agency also intends to consider ways to expedite the process for granting potential exemptions and variances to ease the impact of eventual regulations on small systems. Also in the interim, the Agency plans to issue a Health Advisory and encourage States where sulfate levels may be high to conduct additional monitoring and encourage the use of alternative water supplies where appropriate.

For thallium, alternative PQLs/MCLs of 0.002 mg/l and 0.001 mg/l were proposed in the July 1990 notice based on 5 and 10 times the MDL. As discussed above, however, the final PQL and MCL for thallium is being set today at 0.002 mg/l based on new PE data [USEPA, 1991d]. The MCL for thallium is limited by the sensitivity of available analytical methods (i.e., it is being set at the PQL). The PQL constraint results in an MCL higher than the 0.0005 mg/l MCLG by a factor of 4. However, the Agency has concluded that the promulgated MCL is adequately protective of health because the MCLG includes a large cumulative safety factor of 3,000. Thus, EPA believes that the health risks of exceeding the MCLG up to the MCL are minimal.

EPA has determined that each inorganic contaminant has one or more BATs to reduce contaminant levels to the MCLG, and that the BAT(s) is feasible (as defined by the Act), analytical methodologies are available to ensure accurate and precise measurement for each MCL, and each MCL adequately protects public health. EPA also calculated the household cost for water suppliers to remove IOC contaminants to or below the MCLs, based on the identified BATs. The inorganic contaminants are not expected to occur in the very large water systems and household costs were not estimated for them. In the largest systems where they may occur (25,000–50,000 population), costs were approximately $100/household per year, and would likely be lower for larger systems. EPA believes these costs are reasonable. Also, the national costs associated with the MCLs for these contaminants, as shown in the RIA, are considered reasonable. Also, the national costs associated with the MCLs for these contaminants, as shown in the RIA, are considered reasonable.

B. *Synthetic organic contaminant MCLs*—(1) *Category I contaminants.* EPA considered the same factors in determining the proposed MCLs for Category I contaminants as for Category II and III contaminants. However, the proposed MCLGs for Category I contaminants are zero, a level that by definition is not "feasible" because no analytical method is capable of determining whether a contaminant

[1] EPA also evaluates the national costs and costs to smaller systems in its analysis of economic impacts.

level is zero. The lowest level that can be reliably measured is the PQL. EPA calculated PQLs for these contaminants from available analytical performance data, as described above.

In developing MCLs, the Agency attempts to attain a level as close to the MCLG as is feasible. For carcinogens, EPA evaluates the cancer risk at various contaminant levels in order to ensure that the MCL adequately protects public health. The Agency targets a reference cancer risk range of 10^{-4} to 10^{-6} excess individual risk from lifetime exposure using conservative models which are not likely to underestimate the risk. Since the underlying goal of the Safe Drinking Water Act is to protect the public from adverse health effects due to drinking water contaminants, EPA seeks to ensure that the health risks associated with carcinogenic contaminants are not significant.

For most contaminants regulated today, the PQL is identical to that proposed in the July 1990 notice. In the case of dioxin, EPA lowered the PQL based upon a new MDL study using Method 1613 [USEPA, 1990h]. This study identifies an MDL of 5×10^{-9} mg/l, which is exactly twice as low as the MDL of 1×10^{-8} mg/l that EPA identified in the July 1990 proposal. EPA provided this new information through the November 29, 1991 Notice of Availability. Based on the new information, EPA has decided to set the PQL at five times the MDL, or at 3×10^{-8} mg/l.

In the July 25, 1990 proposed regulation for dioxin [55 FR 30416], EPA proposed to set the PQL (and MCL) at five times the MDL, rather than ten times the MDL, because of concerns about the health risk posed at the concentration corresponding to ten times the MDL. EPA recognized that some loss of analytic precision would likely result from this, but believed it was warranted by the additional health protection that would be ensured by the lower MCL. In soliciting public comment on the new dioxin analytic method (1613) and MDL, EPA asked for comment on this same issue, of whether the additional health protection afforded by a lower MCL warranted the likely reduction in analytic precision. Several commenters expressed concern about likely reduction in analytic precision. In using a multiplier of five rather than ten in setting the PQL (based on the new data), estimated lifetime cancer risks would be reduced from 2.5×10^{-4}, to 1.3×10^{-4}. EPA believes this reduction in risk is warranted, because it brings the MCL closer to the 1×10^{-4} target maximum risk that EPA uses for national primary drinking water regulations. Also, as discussed above, EPA believes that the degradation in analytic precisional accuracy is not unreasonable in going from 50 to 30 ppq.

EPA also calculated the annual household costs for large systems to remove the SOC contaminants to or below the MCL using GAC, PTA or oxidation. As Table 18 shows, these costs are estimate to be generally about $20 per household per year for large systems to install and operate any of these technologies. Cost estimates have not changed from the estimates in the proposal. No significant comments on unit treatment costs were submitted. EPA believes these costs are reasonable, as are the associated national costs as shown in the RIA. EPA therefore promulgates the MCLs at the levels listed in Table 18.

Pursuant to SDWA section 1412(b)(10), the effective date for all MCLs promulgated today (except for the MCL for endrin) is 18 months after publication of today's notice (see the beginning of today's notice for the exact date). The effective date for the MCL for endrin is set at 30 days after publication of today's notice. The MCL for endrin promulgated today represents a relaxation of the existing MCL for endrin (from 0.0002 mg/l to 0.002 mg/l). Even though SDWA section 1412(b)(10) calls for the effective date of MCLs to be 18 months after promulgation, EPA interprets this provision not to apply in the case of an existing MCL that is being revised to a higher level, since utilities do not need time to prepare to meet the revised level (they are, in effect, already required to be meeting it).

TABLE 18—MCL ANALYSIS FOR CATEGORY I SYNTHETIC ORGANIC CONTAMINANTS

SOC contaminant	Final MCLG [1] (mg/l)	Final MCL (mg/l)	10^{-4} risk (mg/l)	PQL (mg/l)	Annual household costs [2]		Notes
					GAC	PTA	
Dichloromethane	0	0.005	0.05	0.005		18.00	
Di(2-ethylhexyl)phthalate	0	0.006	0.4	0.006	$20.00		
Hexachlorobenzene	0	0.001	0.002	0.001	20.00		
Benzo(a)pyrene	0	0.0002	0.0002	0.0002	20.00		
2,3,7,8-TCDD	0	3×10^{-8}	2×10^{-8}	3×10^{-8}	20.00		MCL is at 1.3×10^{-4} risk.

[1] EPA policy is that for all Category I carcinogens the MCLG is zero.
[2] For large systems.

(2) *Category II and III contaminants.* For the Category II and III SOC contaminants listed in Table 19, each of the MCLs was proposed equal to its proposed MCLG. Because the MCLGs for di(2-ethylhexyl)adi-pate and simazine have changed from the levels proposed in July 1990, as discussed above, the MCLs have also changed. The MCL for di(2-ethylhexyl)adipate changed from 0.5 to 0.4 mg/l and the MCL for simazine changed from 0.001 to 0.004 mg/l. The MCL for 1,2,4-trichlorobenzene changed from 0.009 to 0.07 mg/l. Both of these changed MCLs are equal to the final MCLGs, which were revised based on a reassessment of the health data as discussed above.

Section 1412 of the SDWA requires EPA to set MCLs as close to the MCLGs as is feasible (taking costs into consideration). EPA believes that it is feasible to set the MCLs at the MCLGs for the Category II and Category III contaminants because (1) the PQL for each contaminant is at or below the level established by the MCLG; (2) BAT can remove each contaminant to a level equal to or below the MCLG; and (3) the annual household cost to install BAT in large systems is reasonable. Final estimated costs are the same as were established for the proposal. EPA believes that these costs are affordable for large systems. EPA also believes the associated national costs, as shown in the RIA, are reasonable. Therefore, EPA promulgates the MCLs for the non-carcinogenic contaminants equal to their MCLGs.

TABLE 19.—MCL ANALYSIS FOR CATEGORY II AND III SYNTHETIC ORGANIC CONTAMINANTS

SOC contaminant	Final MCLG (mg/l)	Final MCL (mg/l)	PQL (mg/l)	Annual household costs using BAT [1]		
				GAC	PTA	OX
Dalapon	0.2	0.2	0.01	$35.00		
Di(2-ethylexyl)adipate	0.4	0.4	0.005	25.00	$17.00	
Dinoseb	0.007	0.007	0.002	20.00		
Diquat	0.02	0.02	0.004	25.00		
Endothall	0.1	0.1	0.09	35.00		
Endrin	0.002	0.002	0.001	20.00		
Glyphosate	0.7	0.7	0.4			$1.50–9.00
Hexachlorocyclopentadiene	0.05	0.05	0.001	20.00	17.00	
Oxamyl (Vydate)	0.2	0.2	0.05	25.00		
Picloram	0.5	0.5	0.002	35.00		
Simazine	0.004	0.004	0.001	20.00		
1,2,4-Trichlorobenzene	0.07	0.07	0.005	20.00	17.00	
1,1,2-Trichloroethane	0.003	0.005	0.005	25.00	42.00	

[1] For large systems.

C. Compliance Monitoring Requirements

1. Introduction

The proposed compliance monitoring requirements [55 FR 30427] included specific monitoring requirements for inorganic contaminants (IOCs), volatile organic contaminants (VOCs); and non-volatile synthetic organic chemicals (SOCs). EPA proposed that all community and non-transient non-community water systems comply with the monitoring requirements for all contaminants. EPA also requested comment on whether the MCL for sulfate and the associated monitoring requirements should apply to transient, non-community system since this contaminant is associated with acute effects. The compliance monitoring requirements promulgated in today's rule apply to all community and non-transient non-community water systems. The compliance monitoring requirements that EPA is promulgating today are the minimum currently necessary to determine whether a public water supply delivers drinking water that meets the MCLs.

The proposed compliance monitoring requirements for the contaminants in the July 25, 1990 notice were similar to the monitoring requirements proposed in a May 1989 notice [54 FR 22124] for 38 inorganic and synthetic organic contaminants. In the July 1990 proposal [55 FR 30428], EPA explained that the Agency's goal in promulgated compliance monitoring requirements is to standardize the requirements and to synchronize the schedules to minimize overall sample collection and analysis efforts. In keeping to that goal, the Agency further stated in that notice [55 FR 30429] that changes to the monitoring requirements in the final rule to the May 1989 proposal would likely affect the final requirements for the contaminants in today's notice.

EPA promulgated final regulations for the contaminants in the May, 1989 proposed rule on January 30, 1991 and July 1, 1991 [56 FR 3526 and 56 FR 30266, respectively]. In the January 1991 final rule, EPA described a standard monitoring framework that was developed by the Agency based on the proposed monitoring requirements and on the comments received by EPA in response to the May 1989 notice. The final rule, and the November 1991, NOA concerning today's rule, indicated that EPA intends to apply this framework to future requirements for source-related contamination (i.e., inorganics, VOCs, SOCs and radionuclides), as appropriate. The framework and how it applies to today's rule is described in more detail below.

The contaminants in today's rule usually occur at limited frequencies, thereby justifying flexible monitoring requirements. In general, the possible occurrence of these contaminants in drinking water may be predictable to some extent based upon a multiplicity of factors such as geological conditions, use patterns (e.g., pesticides), presence of industrial activity in the area, type of source or historic record. Therefore, EPA believes that States should be allowed the discretion to increase or decrease monitoring based on established criteria and site-specific conditions. As part of today's rule EPA is withdrawing these contaminants from the unregulated contaminant monitoring requirements of § 141.40 since they will now be monitored as regulated contaminants under §§ 141.23 and 141.24.

In developing the compliance monitoring requirements for these contaminants, EPA considered:

(1) The likely source of drinking water contaminants,

(2) The nature of the potential adverse health effects, i.e., chronic versus acute effects,

(3) Differences between ground and surface water systems,

(4) How to collect samples that are representative of consumer exposure,

(5) Sample collection and analysis costs,

(6) The use of historical monitoring data to identify vulnerable systems,

(7) The limited occurrence of some contaminants, and

(8) The need for States to tailor monitoring requirements to system- and area-specific conditions.

EPA monitoring requirements are designed to ensure that compliance with the MCLs is met and to efficiently utilize State and utility resources. EPA's goal in today's rule is to ensure these monitoring requirements are consistent with monitoring requirements promulgated previously by EPA and with known occurrence trends. The monitoring requirements promulgated today focus monitoring in individual public water systems on the contaminants that are likely to occur, an approach that includes:

- Allowing States to reduce monitoring frequencies based upon system vulnerability assessments for the organic chemicals listed in § 141.61 (a) and (c).
- Allowing States to target monitoring to those systems that are vulnerable to a particular contaminant.
- Allowing the use of recent monitoring data in lieu of new data if the system has conducted a monitoring program generally consistent with today's requirements and using reliable analytical methods.
- Encouraging the States to use historical monitoring data meeting specific quality requirements and other

available records to make decisions regarding a system's vulnerability.

• Requiring all systems to conduct repeat monitoring unless they demonstrate through an assessment or other data that they are not vulnerable.

• Designating sampling locations and frequencies that permit simultaneous monitoring for all regulated source-related contaminants, whenever possible.

• Phase-in monitoring requirements based on system size. For systems with 150 or more service connections, monitoring begins in the first compliance period (January 1, 1993 to December 31, 1995). For those systems with less than 150 service connections, monitoring begins in the second compliance period (January 1, 1996 to December 31, 1998).

Although base monitoring requirements for surface and groundwater systems are the same for all contaminants, groundwater systems will qualify more frequently for reduced monitoring and return more quickly to the base monitoring requirements because (1) the sources and mechanisms of contamination for ground and surface water systems are different, (2) the overall quality of surface waters tends to change more rapidly with time than does the quality of ground waters, and (3) seasonal variations tend to affect surface waters more than ground waters. Spatial variations are more important in ground waters than in surface waters since groundwater contamination can be a localized problem confined to one or several wells within a system. Therefore, monitoring frequency is an important factor to determine baseline conditions for surface water systems, while sampling location within the system generally is more important for groundwater systems. Today's monitoring requirements generally require surface water systems to monitor at an increased frequency for longer periods than groundwater systems.

2. Effective Date

In the July 25, 1990 **Federal Register** Notice, EPA proposed to allow an additional 12 months after the effective date of the rule taking final action on the proposal for public water systems to complete the first round of sampling and analysis and to report the results of such monitoring to the States. The effective date of the rules is by statute, 18 months from promulgation. EPA also proposed to allow an additional 12 months after the effective date of the final regulations for the States to complete vulnerability assessments.

Most commenters supported extending the initial monitoring and reporting period as well as the date to complete vulnerability assessments. They claimed that the 18 months compliance schedule is too rigorous, especially since extensive investigation is required. Some commenters claimed there is a lack of laboratory capacity for conducting analyses using the new analytical methods and a lack of qualified staff as a rationale for extending the first round of monitoring and the reporting of the results of such monitoring to the States. Other commenters cited the impact on State resources to properly notify water systems regarding the new monitoring requirements, develop the necessary guidance and procedures, train staff, to review vulnerability assessments, reduced monitoring decisions, etc., and to be prepared to administratively handle the data generated, as the rationale for allowing States sufficient time to initiate the monitoring requirements. One commenter suggested that small systems be given more time to comply with the requirements because of the cost burden on these systems. Another commenter suggested that the systems should be allowed to submit to the State their own schedule for compliance for State approval.

In the November 29, 1991 NOA, EPA stated that it was considering requiring that monitoring begin during the first compliance period following promulgation. This change would synchronize the monitoring schedule for the 23 contaminants with those promulgated for other SOCs and IOCs in the January 30, 1991 notice. Two commenters supported this change. However, 14 commenters disagreed with the change since they felt it effectively moved monitoring up three years from what was proposed, there would be a lack of time to conduct vulnerability assessments, inadequate time for laboratories to become certified, and increased cost to States and public water systems.

EPA agrees with the commenters that problems may occur in the early stages of implementing the monitoring requirements. These problems are alleviated to some extent, however, by the fact that this rulemaking is adopting the Agency's Standard Monitoring Framework (which EPA originally adopted in the January 30, 1991 rule setting regulations for 33 contaminants), and is adopting a phased approach for initial monitoring. Specifically, the Agency has decided to require that monitoring for the contaminants in today's rule be completed (1) during the first compliance period, as specified in the Standard Monitoring Framework, which begins January 1, 1993 and ends December 31, 1995 for systems with 150 or more service connections, and (2) during the period beginning January 1, 1996 and ending December 31, 1998 for systems with fewer than 150 connections. In addition, all vulnerability assessment decisions must be completed prior to the calendar year when the initial monitoring must be completed. Laboratories can be granted provisional certification to perform analyses for the contaminants in today's rule during the 1993–1995 compliance period. See the discussion under Laboratory Certification.

EPA believes this phased-in time frame allows adequate time for implementation of the monitoring requirements since for larger systems it provides for more than two additional years after the effective date of today's rule for completion of the first round of sampling and analysis and for small systems it provides three years additional time. This monitoring schedule also coincides with the sampling and analysis schedule for 38 contaminants previously regulated [56 FR 3526 and 56 FR 30266]. By allowing systems with less than 150 service connections to begin initial monitoring in the second compliance period (January 1, 1996 to December 31, 1998), more time is allowed for States, laboratories, and small systems to be fully prepared (i.e., conduct vulnerability assessments, find funding).

EPA believes that the earlier 1993–1995 compliance period for those systems with 150 or more service connections is appropriate, to better protect health. These systems would have been required to begin monitoring for these contaminants under unregulated monitoring requirements of the January 30, 1991 rule. Since many of the previously unregulated contaminants are contaminants being regulated in today's rule, the Agency believes the 1993 monitoring will result in only minor increased monitoring impact. Those individual contaminants moving from "unregulated" to "regulated" status are being deleted from the unregulated contaminant monitoring requirements.

States have the discretion, and may well choose, to require a percentage (e.g., one-third) of the required systems to monitor during each year of the three-year compliance period. States have the option to prioritize monitoring based on system size. EPA has decided not to allow systems to submit their own monitoring schedule for State approval as some commenters suggested. EPA believes States need to control the flow of samples and data to them in order to

ensure orderly implementation and enforcement, within the regulatory requirements and avoid undue administrative burdens and potentially unmanageable enforcement problems.

3. Standard Monitoring Framework

In response to the May 1989 notice covering a different set of contaminants, EPA received extensive comments stating that the proposed monitoring requirements were complex and would lead to confusion and misunderstanding among the public, water utilities, and State personnel. Commenters also cited the lack of coordination among various regulations. Many commenters suggested that EPA simplify, coordinate, and synchronize the proposed regulation with previous regulations. In response to these comments, EPA developed a Standard Monitoring Framework to reduce the complexity of the monitoring requirements, coordinate the requirements among various regulations, and synchronize the monitoring schedules. This framework is discussed extensively in the January 30, 1991 final rulemaking to the May 1989 Notice [56 FR 3560]. The Agency also indicated that this framework will serve as a guide for future source-related monitoring requirements. The framework was developed based on the proposed requirements, the options and requests for comments EPA discussed in the proposal, and the comments received by EPA.

The use of a Standard Monitoring Framework for the contaminants in today's rule was supported by many of the comments received. Commenters cited the efficient use of resources as the major reason to synchronize the monitoring requirements.

EPA believes that using a Standard Monitoring Framework satisfies the comments that recommended reducing the complexity of the requirements, synchronizing monitoring schedules, standardizing regulatory requirements, and giving regulatory flexibility to States and systems to manage monitoring programs. EPA believes these changes will reduce costs by combining monitoring requirements for the contaminants regulated by the January 30, 1991 rule and today's rule (i.e., the presence of multiple contaminants can be evaluated in a single laboratory sample and analysis, or by a single vulnerability assessment) and will promote greater voluntary compliance by simplified and standardized monitoring requirements.

Use of the framework envisions a cooperative effort between EPA and States. The monitoring requirements promulgated today are the minimum federal requirements necessary to ascertain systems' compliance with the MCLs. In some cases, States will increase the monitoring frequencies beyond the federal minimums to address site-specific conditions.

For all contaminants contained in today's rule, minimum (or base) monitoring requirements requirements may be increased or decreased by States based upon prior analytical results and/or the results of a vulnerability assessment. The monitoring requirements outlined today follow to a large extent the requirements proposed on July 25, 1990. In the July 1990 proposal EPA stated as a goal to efficiently utilize State and utility resources and be consistent with monitoring requirements previously promulgated by EPA. EPA believes that today's requirements meet that goal.

a. *Three-, six-, nine-year cycles.* In order to standardize the monitoring schedule for different regulations, EPA has established nine-year compliance cycles. Each nine-year compliance cycle consists of 3 three-year compliance periods. All compliance cycles and periods run on a calendar year basis (i.e., January 1 to December 31). The January 30, 1991 rule established the first nine-year compliance cycle beginning January 1, 1993 and ending December 31, 2001; the second cycle beginning January 1, 2002 and ending December 31, 2010; etc. Within the first nine-year compliance cycle (1993 to 2001), the first compliance period begins January 1, 1993 and ends December 31, 1995; the second begins January 1, 1996 and ends December 31, 1998; and the third begins January 1, 1999 and ends December 31, 2001.

In the January 1991 Notice, EPA required that initial monitoring (which was defined as the first full three-year compliance period beginning 18 months after the promulgation date of a rule) must begin in the first full compliance period after the effective date of the final rule. EPA solicited comments on this issue in the November 29, 1991 NOA and is modifying initial monitoring, as described above. For today's regulation, the effective date is January 17, 1994. The next full three-year compliance period after this effective date begins January 1, 1996. After reviewing comments received, the Agency has decided that systems serving 150 or more service connections must conduct initial monitoring during the January 1, 1993 to December 31, 1996 period and those serving less than 150 service connections must conduct initial monitoring during the January 1, 1996 to December 31, 1998 period. EPA believes the phase-in of monitoring based on system size will increase public health protection to the public by identifying noncompliance earlier for larger systems which serve a large fraction of the population (and which would have been required to monitor these contaminants in any event under the "unregulated contaminant" requirements of the January 1991 rule). At the same time, the phase-in will allow States, small systems, and laboratories more time to effectively implement today's rule for small systems. EPA believes this is an appropriate balancing of the need to identify noncomplying systems through monitoring, and the implementation burden on States and laboratories. This change would synchronize the monitoring schedule for the 23 contaminants in this rule with those promulgated for other SOCs and IOCs in the January 30, 1991 notice.

Under the July 1990 proposal, monitoring for the contaminants in this rulemaking would have been required to be initiated no later than November 1993 (i.e., the effective date of this rulemaking). EPA does not believe that changing the initial monitoring schedule to begin January 1993 instead of November 1993 for systems with 150 or more service connections will significantly affect costs for those systems. Under this schedule, States must establish an enforceable monitoring schedule for each system during the initial three-year compliance period. States have the discretion to schedule systems by size, vulnerability, geographic location, laboratory access, or by other factors. In some cases systems will not need to conduct monitoring until the latter part of the first three-year period, rather than needing to start monitoring immediately as of January 1993 (see discussion of the Standard Monitoring Framework at 56 FR 3560). In addition, EPA believes there will be a decrease in costs due to the effects of synchronizing the monitoring requirements in this rule with those of earlier rules—e.g., there will be a cost savings resulting from a system's ability to evaluate the presence of multiple contaminants with the analysis of a single sample, and to perform vulnerability assessments covering multiple contaminants.

Several commenters believed that States would be unable to develop adequate certified laboratory capacity in order to monitor during the 1993–1995 period. EPA has responded to this concern by encouraging provisional certification of laboratories, as discussed above.

b. *Base monitoring requirements.* In order to standardize the monitoring

requirements, EPA has established base (or minimum) monitoring frequencies for all systems at each sampling point. These base monitoring frequencies apply to all community and non-transient water systems. In cases of detection or non-compliance, EPA has specified increased monitoring frequencies from the base. These increases are explained below. Systems will also be able to decrease monitoring frequencies from the base requirements by obtaining waivers from the State where a State permits such waivers. Decreases from base monitoring requirements through waivers are discussed in general under the section on decreased monitoring and in the discussion of monitoring frequency for each class of contaminants.

In most cases, these increased or decreased frequencies are similar to the frequencies proposed in July 1990. Specific changes are discussed below under each contaminant group.

Inorganic contaminant base requirements are the same as proposed—one sample at each sampling point every three years for groundwater systems and annually for surface water systems. Modification of base requirements for VOCs is discussed below in the section on VOC monitoring frequency.

For the non-volatile synthetic organic compounds (SOCs), EPA proposed that monitoring was not required unless the State determined that the system was vulnerable based upon a State-conducted assessment. EPA requested comment on the appropriate time frame for completing these assessments. If the State determined that a system was vnlerable to these SOCs, systems would be required to monitor on a three- or five-year schedule depending upon system size and whether contaminants were detected.

The July 1990 notice also included an alternative monitoring scheme which would require all CWSs and non-transient, non-community water systems (NCWSs) to monitor for the non-volatile SOCs at specified (base) frequencies. Most comments EPA received opposed a round of initial monitoring by all systems. These commenters cited the lack of occurrence of these contaminants in drinking water and the expense of monitoring. Several commenters questioned the availability of sufficient laboratory capacity.

After reviewing and evaluating the comments on monitoring for the SOCs in the May 1989 Notice, EPA adopted an alternative monitoring approach which requires systems to monitor at specified base frequencies unless the requirements are waived (either reduced or eliminated) by the State. The reasons for this change are given in the January 1991 rule [56 FR 3560]. In summary, the requirement that all systems monitor for these contaminants is more protective of health than were the proposed requirements because systems will be required to monitor if the State does not conduct a vulnerability assessment, or does not approve a vulnerability assessment conducted by the system. The result of this change is that there will always be an enforceable requirement in the absence of a State waiver.

In today's rule EPA is adopting the same monitoring approach for the SOCs. EPA believes that the cost impact of this approach is the same as under the proposed scheme provided a vulnerability assessment is conducted and a waiver is granted.

EPA has combined the above change with the provision that public water systems may conduct their own vulnerability assessments and, at the State's discretion, may obtain a waiver if they are determined not to be vulnerable (see waiver discussion below). EPA has shifted the responsibility to conduct vulnerability assessments from States to systems because the vulnerability assessment is a monitoring activity that historically has been a system responsibility. Each individual system can decide whether to conduct a vulnerability assessment (rather than simply going right to monitoring) based on cost, previous monitoring history, and coordination with other vulnerability type assessments (i.e., sanitary surveys, Wellhead Protection Assessments). In addition, because of States' indicated resource shortfalls, many States might not conduct vulnerability assessments. Though EPA is permitting systems to conduct vulnerability assessments, approval of waivers based on those vulnerability assessments rests with the States. EPA believes the changes outlined above address, in part, the State resource issue and will result in adequate monitoring and enforceable drinking water standards.

Based on limited occurrence data, EPA anticipates that most systems would qualify for a waiver from monitoring for most SOCs in today's rule. In cases where a system is not granted a waiver by the State, it will be required to monitor at the specified base frequency. In sum, for the reasons specified above, all systems will be required to monitor for all SOCs with an opportunity for reduced monitoring based upon a vulnerability assessment.

c. *Volatile Organic Chemicals (VOCs).* In order to standardize the monitoring requirements for all VOCs, EPA promulgated on July 1, 1991 some modifications to the monitoring requirements for the 18 VOCs in two previous rules (July 8, 1987 and January 30, 1991 Federal Register Notices). The comments submitted to EPA during the comment period for the January 1991 notice revealed support for synchronization of the monitoring requirements and schedules. Therefore, the monitoring requirements in today's rule are identical to the requirements for these previously regulated VOCs [56 FR 39267].

d. *Increased monitoring.* In general, today's rule requires monitoring frequencies to increase when a contaminant is measured at a certain concentration. These concentrations are specified in each rule, and vary by class or toxicity of the contaminant. In today's rule, consistent with the monitoring requirements set forth in the January 1991 rule for other inorganic contaminants, VOCs, and SOCs, these "trigger" concentrations are set at (1) the MCLs for the inorganic contaminants; and (2) the analytical detection limits for VOCs and SOCs. The detection limit for each VOC is 0.0005 mg/1. The SOC detection limits are the method detection limits given in Table 14 and § 141.24(i)(18). The rationale for varying the detection limits for increased monitoring is addressed in each section for the contaminant monitoring frequencies below (also see the January 1991 rule, 56 FR 3560–68).

After exceeding the trigger concentration for each contaminant, systems must immediately increase monitoring to quarterly (beginning in the subsequent quarter after detection) to establish a baseline of analytical results. Groundwater systems are required to take a minimum of two samples and surface water systems must take four samples before the State may permit less frequent monitoring. EPA is requiring surface water systems to take a minimum of four samples (rather than the two samples required for groundwater systems) because surface water is generally more variable than ground water and, consequently, additional sampling is required to determine that the system is "reliably and consistently" below the MCL. Today's rule allows a State, after a baseline is established, to reduce the quarterly monitoring frequency if the system is "reliably and consistently" below the MCL. "Reliably and consistently" means that the State has enough confidence that future sampling results will be sufficiently below the MCL to justify reducing the quarterly

monitoring frequency. At a minimum, all individual samples should be below the MCL. Systems with widely varying analytical results or analytical results that are just below the MCL would not meet this criterion. In all cases, the system remains on a quarterly sampling frequency until the State determines that the system is "reliably and consistently" below the MCL. EPA is adopting this approach based on comments received on the May 1989 and July 1990 proposed rules that suggested the EPA allow States to modify the monitoring schedules in those systems which are less than the MCL. EPA believes this approach will result in consistency among the regulatory requirements for the different classes of contaminants.

In the July 1990 proposal, EPA requested comment on whether EPA should reduce the three year quarterly monitoring requirement to one year of quarterly monitoring in situations where initial monitoring shows particularly low levels of detection relative to the levels of concern (i.e., MCLs) or in situations where cleanup activities have resulted in low levels of detection. Several commenters indicated that a minimum of 12 quarters after monitoring had been increased by a trigger level was too long and supported a reduction in the monitoring requirements in cases such as these. These commenters suggested that EPA should require sufficient monitoring to establish a baseline. In the January 1991 Notice EPA prescribed a minimum of two samples for groundwater systems and four samples for surface water systems to establish a baseline. EPA is adopting the same approach today because the Agency agrees with commenters who pointed out that systems whose analytical results remain below the MCL do not pose a health threat.

In the July 1990 proposal, the Agency proposed to reduce the repeat monitoring requirements when a contaminant is consistently detected at less than 50 percent of the MCL. Many commenters objected to this trigger, stating that it was "arbitrary". The Agency modified this requirement in the January 1991 notice with respect to other contaminants to give States additional flexibility to reduce monitoring for those systems whose analytical results are "reliably and consistently less than the MCL" (see §§ 141.23(c)(8), 141.24(f)(11)(ii) and 141.24(h)(7)(ii) 56 FR 3560–68, 3580, 3584, 3586). EPA has decided that systems meeting this criteria are also eligible for reductions from the increased monitoring frequency requirements for the contaminants in today's rule.

e. *Decreased monitoring.* Systems may decrease monitoring from the base requirement by receiving a waiver from the State. State waivers may either eliminate the monitoring requirement for that compliance period (for SOCs) or reduce the frequency (for inorganics and VOCs). Waivers are either based on a review of established criteria ("a waiver by rule") or by a vulnerability assessment.

A "waiver by rule" is based simply on meeting certain criteria set out in EPA regulations and based, for example, on previously collected analytical results. For example, § 141.23(c) (originally adopted in the January 1991 notice and, by this notice, applicable to the contaminants in today's rule) specifies that States may grant "waivers by rule" to systems for five inorganic contaminants. The waivers are effective for up to nine years (or one compliance cycle). In order to qualify for a waiver, a system must have a minimum of three previous samples (including one taken after January 1, 1990) with all analytical results below the MCL. The State must consider a variety of issues in making a "waiver by rule" determination, such as: (1) Reported concentrations from all previous monitoring, (2) degree of variation in reported concentrations, and (3) other factors which may affect contaminant concentrations such as groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

A "waiver by vulnerability assessment" may take one of two forms. The first involves a determination as to whether a given contaminant which does not occur naturally is or was used, manufactured, and/or stored in an area nearby the system. If the contaminant is not used, manufactured, and/or stored nearby, the system can receive a "use waiver." Second, if a "use waiver" cannot be granted, a system may conduct a thorough assessment of the water source to determine the system's susceptibility to contamination. Susceptibility considers: (1) Prior analytical and/or vulnerability assessment results, (2) environmetal persistence and transport, (3) how well the source is protected, (4) wellhead protection program reports, and (5) elevated nitrate levels. Systems with no known susceptibility to contamination (based upon an assessment of the above factors) may be granted a "susceptibility waiver."

All waivers must be granted on a contaminant-by-contaminant basis. However, systems and States will find it economical to apply for and grant the waiver for those contaminants that may be analyzed using the same analytical methods. This packaging of assessments and State decision making will yield significant cost savings to both systems and State primacy programs.

Waivers for the SOCs and VOCs may be granted after the system conducts a vulnerability assessment and the State determines the system is not vulnerable based on that assessment. A waiver must be renewed during each compliance period. Waivers for inorganic contaminants may be granted for up to nine years. If a system does not receive a waiver by the beginning of the year in which it is scheduled to monitor, it must complete the base monitoring requirement.

One change that EPA is adopting in § 142.92 is that EPA may rescind waivers issued by a State where the Agency determines that the State has issued a significant number of inappropriate waivers. EPA does not intend to utilize this provision except in special situations where the State has not followed its own established and EPA-approved protocols and procedures (see also the discussion on State primacy requirements). If a waiver is resinded, the system must monitor in accordance with the base requirements in today's rule.

f. *Vulnerability assessments.* EPA received numerous comments on the issue of vulnerability assessments. In the July 1990 Notice, EPA requested comment on several alternatives for the process of making vulnerability decisions. One option involved requiring States to assess the overall hydrogeological vulnerability of each water source supplying a PWS instead of making contaminant-specific determinations for each contaminant at each PWS. Another option was to assess the overall use of each contaminant within specific regions, focusing on potential sources of contamination within a defined region. EPA also requested comment on whether systems should be required to monitor for all contaminants that are subject to the same analytical technique. EPA proposed to allow States to conduct area-wide assessments (based on contaminant use information) or one assessment of the water source susceptibility to contamination (based on hydrogeological information).

Commenters generally supported the use of vulnerability assessments as a first step in lieu of requiring all systems to monitor. Different opinions were expressed regarding how to conduct these assessments.

Some commenters indicated that EPA should provide detailed guidelines that States would use to make vulnerability determinations. Examples cited included the development of environmental fate documents, identification and characterization of the available sources of information regarding the presence of contaminants, and disposal facilities that may impact water sources, among others. Other commenters questioned whether State agencies would have sufficient financial and human resources to collect the necessary information to conduct an assessment of a water system's vulnerability.

EPA has decided that a detailed protocol for what is usually a very site-specific analysis is not appropriate. Instead, EPA desires that each State develop its own specific vulnerability assessment procedures that use the general guidelines established by EPA. The Agency believes that the States are in the best position to develop detailed protocols. If a State chooses not to develop these procedures, systems cannot receive waivers and must monitor at the base requirements.

In the proposal, EPA listed the following criteria systems must consider in conducting vulnerability assessments for SOCs: Previous analytical results; proximity of the system to sources of contamination; environmental persistence; protection of the water source; and nitrate levels as an indicator of potential contamination by pesticides. For VOCs, the criteria were previous monitoring results, number of people served, proximity to a large system, proximity to commercial or industrial use, storage or disposal of VOCs, and protection of the water source.

EPA received comments on the process of how to make vulnerability decisions. Comments ranged from allowing the use of area-wide assessment to contaminant-specific assessment for individual supplies. One commenter suggested combining two options proposed (assessing the overall hydrological vulnerability of the water supplies and assessing the overall contaminant use). EPA agrees with this comment and, as part of the earlier rulemaking for 38 contaminants, has made several changes to the vulnerability assessment criteria and the process to simplify the procedure [56 FR 3562]. Today's rule also adopts these changes. First, a two-step waiver procedure is available to all systems. Step #1 determines whether the contaminant that does not occur naturally is or was used, manufactured, stored, transported, or disposed of in the area. In the case of some contaminants an assessment of the contaminant's use in the treatment or distribution of water may also be required. "Area" is defined as the watershed area for a surface water system or the zone of influence for a groundwater system and includes effects in the distribution system.

If the State determines that the contaminant was not used, manufactured, stored, transported, or disposed of in the area, then the system may obtain a "use" waiver. If the State cannot make this determination, a system may not receive a "use" waiver but may receive a "susceptibility" waiver, discussed below. Systems receiving a "use" waiver are not required to continue on to Step #2 to determine susceptibility. EPA anticipates that obtaining a "use" waiver will apply mostly to the SOCs where use can be determined more easily than for VOCs. Obtaining a "use" waiver for the VOCs will be limited because VOCs are used extensively in the United States. If a "use" waiver cannot be given, a system may conduct an assessment to determine susceptibility, Step #2.

Susceptibility considers prior occurrence and/or vulnerability assessment results, environmental persistence and transport of the chemical, the extent of source protection, and Wellhead Protection Program reports. Systems with no known "susceptibility" to contamination based upon an assessment of the above criteria may be granted a waiver by the State. If "susceptibility" cannot be determined, a system is not eligible for a waiver. A system must receive a waiver by the beginning of the calendar year in which it is scheduled to begin monitoring.

Several commenters requested that EPA permit "area wide" or geographical vulnerability assessment determinations. Though EPA at this time is skeptical that "area wide" determinations can be conducted with sufficient specificity to predict contamination over a large area, the final rule allows this option when States submit their procedures for conducting vulnerability assessments to determine "use" waivers.

EPA's goal is to combine vulnerability assessment activities in other drinking water programs with today's requirements to create efficiencies. EPA also desires to use the results of other regulatory program requirements, such as Wellhead Protection Assessments, to determine a system's vulnerability to contamination. Systems and States may schedule today's assessments with sanitary surveys required under the Total Coliform Rule [54 FR 27546], watershed assessments, and other water quality inspections so that all regulatory, operational, and managerial objectives are met at the same time.

In the July 25, 1990 Notice, EPA solicited comments on whether the contaminant source assessments conducted under State Wellhead Protection Programs (see section 1428 of the SDWA) could be used for the vulnerability assessments and what the relationship of the two assessments should be. Commenters were supportive of this concept but requested that specific guidance be developed to determine how this might be accomplished and where it is appropriate.

EPA intends to issue a guidance that will give flexibility to States in conducting vulnerability assessments and allow them and local public water systems to meet these and similar requirements under the Wellhead Protection Program, satisfying the requirements of both programs with one assessment. Additionally, this combined assessment approach may be used to meet similar requirements under the evolving Underground Injection Control (UIC)—Shallow Injection Well Program.

g. *Relation to the Wellhead Protection (WHP) program.* As stated in the January 1991 Notice, the Agency plans to integrate particular elements of the Public Water System, Wellhead Protection, and UIC programs related to contaminant source assessments around public water supply wells. Specifically, the Agency plans to prepare a guidance document on groundwater contaminant source assessment that merges the vulnerability assessment of the PWS program for SOCs and VOCs with the wellhead delineation and contaminant source which can be used to establish priorities of UIC wells. This integration is expected to assist State and local drinking water program managers responsible for groundwater supplies to more efficiently and effectively administer the portion of their programs addressing source protection and will be the basis for determining monitoring frequency. The guidance will give States flexibility in revising vulnerability/contaminant source assessments.

Section 1428 of the SDWA requires each State to submit a WHP program for EPA review and approval in order to be eligible for grant funds to support the State's wellhead protection efforts. The implementation of WHP programs by States may be phased in to allow resources to be used most effectively. This matter can be addressed in the State WHP submittal.

When States submit WHP programs for approval in the future, program documents should address how the State will phase requirements for Wellhead Protection Areas (WHPAs) with other PWS regulations. In some States, to be most effective, this program integration may need to be accomplished through a coordinating agreement or other mechanism among several State agencies. The guidance would allow States to tailor their program provisions to conditions in the States, within broad guidelines. Information from the other related groundwater programs (such as Superfund, RCRA) will be useful in this assessment. This information also includes identification of sources not regulated under Federal programs, but perhaps regulated by States, such as septic tanks. Therefore, States may be able to meet similar requirements of these three programs through following a general set of guidance procedures.

A State may choose from several methods to delineate WHPAs. As long as the method is determined to be protective, a State may choose a simplified method described in "Guidelines for the Delineation of Wellhead Protection Areas" [USEPA, 1987a]. If a State desires more information for use in the decision-making process, it may choose more sophisticated methods identified in the "Guidelines." EPA has made available to States and local agencies computer software and training for use of the "Guidelines" to make the process of WHPA delineation less difficult.

WHPAs may incorporate recharge areas as long as they are within the jurisdiction of the agencies identified in the EPA-approved programs. However, WHPAs must meet the requirements of this rule if they are to be used to make monitoring waiver determinations. The State cannot accept a WHP program in lieu of a vulnerability assessment if the recharge area is not covered to meet all the requirements of this rule.

Once a WHPA is delineated, a State may desire to apply a range of assessment measures to define hydrogeologic vulnerability within the delineated area. A State may decide on a method of assigning priorities to the public water systems based on vulnerability, size, or other criteria acceptable to EPA.

EPA's Ground-Water Protection Division has developed a document entitled "Managing Ground Water Contamination Sources in Wellhead Protection Areas: A Priority Setting Approach" [USEPA, 1991h] to help States and local water supply managers prioritize potential contaminant sources in carrying out their programs for resource protection, a concern of one commenter. This system could also be used in setting monitoring priorities but was not designed specifically for that application. The States may use the regulatory mechanisms available to them (e.g., RCRA permits, NPDES permits) to determine the point sources of regulated, and potentially contaminating, substances in or near areas needing protection, such as wellhead and recharge areas.

h. *Ground water policy.* The Agency now has a new, integrated ground-water policy. In July, 1980, EPA established a Ground-Water Task Force to review the Agency's ground-water protection policies. The outcome of this effort is the Ground-Water Task Force Report, which includes EPA's Ground-Water Protection Principles [USEPA, 1991e]. The Principles are intended to foster more effective and consistent decision-making in all Agency decisions affecting ground water.

With respect to prevention, the Principles call for ground water to be protected to ensure that the nation's currently used and reasonable expected drinking water supplies, both public and private, do not present adverse health effects and are preserved for present and future generations. Ground water should also be protected to ensure that ground water that is closely hydrologically connected to surface waters does not interfere with the attainment of surface water quality standards, which are designed to protect the integrity of associated ecosystems. Ground-water protection should be achieved through a variety of means including: pollution prevention programs aimed at eliminating and minimizing the amount of pollution that could potentially affect ground water, source control, siting controls, the designation of wellhead protection areas and future water supply areas, and the protection of aquifer recharge areas. Efforts to protect ground water must consider the use, value, and vulnerability of the resource, as well as social and economic values.

With respect to remediation, the Principles call for activities to be prioritized to minimize human exposure to contamination risks first, and then to restore currently used and reasonably expected sources of drinking water and ground water closely hydrologically connected to surface waters, whenever such restorations are practicable and attainable.

With respect to Federal, State, and local responsibilities, under the Principles, the primary responsibility for developing and implementing comprehensive ground-water protection programs continues to be vested with the States. An effective ground-water protection program must link Federal, State, and local activities into a coherent and coordinated plan of action. EPA should continue to improve coordination of ground-water protection efforts within the Agency and with other Federal agencies with ground-water responsibilities.

This rule responds to the Ground-Water Protection Principles in the following ways. With respect to the Principles' emphasis on prevention, this rule sets MCLs and monitoring frequencies for 18 synthetic organic and five inorganic chemicals. These MCLs will be used for ground water protection (i.e., as an indication of possible need for source control) as well as surface water protection. The rule also recognizes State wellhead protection areas as a method of prevention and a basis for granting waivers.

With respect to the allocation of Federal, State, and local responsibilities, this rule gives States the authority to grant reductions in monitoring frequency, based on a vulnerability assessment. The guidance document for this rule will give flexibility to the States in conducting vulnerability assessments. As a method of coordination among the PWS, UIC, and Wellhead Protection Programs, the guidance document will allow States to use the methods and approaches of the Wellhead Protection Program in meeting the requirements for vulnerability assessments.

i. *Initial and repeat base monitoring.* Initial monitoring is defined as the first full three-year compliance period that occurs after the regulation is effective. As described in the January 1991 Notice [56 FR 3564], under the standard monitoring framework, States have flexibility to schedule monitoring for each system during the three-year compliance period. As discussed earlier, all systems must monitor at the base monitoring frequency unless a waiver is obtained. The initial monitoring period for today's regulation begins January 1, 1993 and ends December 31, 1995 for public water systems having 150 or more service connections. For systems having less than 150 connections, the initial monitoring period will be from January 1, 1996 through December 31, 1998. After the system fulfills the initial (or first) base monitoring requirement, it must monitor at the repeat base frequency. Generally the repeat base frequency is the same as the initial monitoring frequency but in some instances the base monitoring frequency may be

reduced based on previous analytical results.

Also, under today's rule, EPA is requiring the States to establish a sampling schedule that may result in approximately one-third of the systems monitoring during reach of the three years of a compliance period at the State's discretion. States will have the flexibility to designate which systems must monitor each year based upon criteria such as system size, vulnerability, geographic location, and laboratory access. EPA believes that allowing States the discretion to schedule monitoring for each system during the compliance monitoring period will enable States to manage their drinking water programs more efficiently.

In cases where EPA is the primacy authority for today's regulation (i.e., where the State has not adopted regulations corresponding to the NPDWRs in today's rule by its effective date, and in States and on Indian lands where EPA retains primary enforcement responsibility), systems will be required to complete monitoring within 12 months after notification by EPA. In such cases, EPA intends to use a prioritizing scheme similar to the kind that the States will use. This should minimize the disruption to the regulated community when the State does adopt the requirements and begins to develop its own monitoring schedules for systems within the State.

Once a system is scheduled for the first, second, or third year of a compliance period, the repeat schedule is set for future compliance periods. For example, if a system is scheduled by the State to complete the initial base requirement by the end of the first year, all subsequent repeat base monitoring for that system must be completed by the end of the first year in the appropriate three-year compliance period. This is necessary to prevent systems from monitoring in the first year of the first compliance period and the third year of the repeat base period.

4. Monitoring Frequencies

a. *Inorganics*—(1) *Initial and repeat base requirements.* In the July 1990 Notice, EPA proposed that surface water systems monitor annually and groundwater systems monitor every three years. Some commenters supported that frequency. Other commenters suggested that the Agency should allow waivers based on vulnerability assessments for the initial round of monitoring. The monitoring frequencies in today's rule are identical to these proposed frequencies. EPA disagrees with commenters regarding the issuance of waivers in lieu of an initial round of monitoring. A reduction in monitoring frequency may be appropriate if the levels found are reliably and consistently below the MCL (see discussion on decreased monitoring below). Systems with 150 or more service connections will be required to take the initial base sample for each inorganic during the initial compliance period of 1993 to 1995 (subject to State scheduling). Surface water systems with 150 or more service connections that are on an annual sampling schedule are required to start in 1993.

(2) *Increased monitoring.* In the January 1991 Notice, EPA added a requirement that systems that exceed the MCL (either in a single sample or with the average of the original and repeat sample) and which, consequently, are out of compliance must immediately (i.e., the next calendar quarter after the sample was taken) begin monitoring quarterly. Systems must continue to monitor quarterly until the primacy agent determines that the system is "reliably and consistently" below the MCL. Groundwater systems must take a minimum of two samples and surface water systems must take a minimum of four samples after the last analytical result above the MCL, before the State can reduce monitoring frequencies back to the base requirement (i.e., annually for surface systems and every three years for groundwater systems).

EPA made this change for several reasons. First, it is consistent with the monitoring requirements contained elsewhere in this rule that more frequent monitoring occur in instances of non-compliance. Second, EPA believes that systems that are out of compliance should, in general, monitor more frequently to determine the extent of the problem. If EPA has not made this change, groundwater systems that exceed the MCL could continue to monitor every three years. EPA believes the previous frequencies for ground and surface systems were not adequate to protect the public in those cases where systems exceeded the MCL.

(3) *Decreased monitoring.* In both the May 1989 and the July 1990 Notices, EPA proposed that systems be allowed to reduce the monitoring frequency to no less frequent than once every 10 years between monitoring episodes provided a system had previously taken three samples that were all less than 50 percent of the MCL. States would base their decision on prior analytical results, variation in analytical results, and system changes such as pumping rates or stream flows/characteristics.

EPA received numerous comments on the 50 percent trigger for reduced monitoring with most commenters opposing the 50 percent trigger, calling it arbitrary. In the January 1991 notice, EPA decided to eliminate the 50 percent trigger and change the condition for reduced monitoring to require three compliance samples, all of which are "reliably and consistently" less than the MCL, to give the States additional flexibility to decide which systems are eligible for reduced monitoring. Systems meeting this criterion are also eligible for reduced monitoring for the contaminants in today's rule. While States have discretion in making this determination, EPA believes that as a minimum, all individual samples should be below the MCL before the determination should be made.

Most commenters supported the 10-year time frame as a reasonable monitoring frequency for reduced monitoring. Because EPA has adopted a 3/6/9-year compliance cycle, EPA has changed the maximum reduced monitoring frequency from the proposed 10 years to 9 years to gain consistency in its regulations. EPA believes this change will have a minimal impact on systems. EPA is requiring at least one of the three previous samples to be taken since January 1, 1990. The other two samples could be taken at any time after January 1, 1988. Because the reduction in monitoring to every nine years begins in the 1993–2001 compliance cycle, EPA believes that one sample must be recent (i.e., taken after January 1, 1990 for systems scheduled to monitor in 1993) to preclude unduly long time frames occurring between samples. Data obtained to satisfy monitoring requirements for unregulated contaminants specified in the January 1991 notice may be used to reduce the monitoring frequencies. Systems receiving a waiver may monitor at any time during the nine-year compliance cycle, as designated by the State.

b. *Cyanide.* In the July 1990 Notice, EPA proposed monitoring requirements for the IOCs applicable to all community (CWS) and non-transient non-community water systems. Several commenters disagreed with the requirement to monitor for cyanide at non-vulnerable systems. They argued that the main sources of cyanide contamination are industrial and manufacturing processes, not natural occurrence, and that it would be more appropriate to regulate cyanide under the requirements that apply to synthetic organic compounds (SOCs), which distinguish vulnerable and non-vulnerable systems.

The Agency agrees with these commenters and has changed the requirement for cyanide to require only

vulnerable systems to monitor, provided a waiver (by vulnerability assessment) is available and has been granted by the State.

Other commenters stated that the monitoring requirements for all the IOCs in today's notice should apply to vulnerable systems only, and that EPA should allow waivers based on vulnerability assessments for the initial round of monitoring. EPA disagrees with these commenters (except for cyanide because it does not occur naturally at concentrations near the MCL) because some minimum monitoring requirements for the inorganic contaminants will provide a baseline of data on the natural background levels expected for these contaminants. Systems may qualify for reduced monitoring once a baseline of data shows levels that are reliably and consistently below the MCL, thus decreasing the monitoring burden.

c. *Volatile Organic Contaminants (VOCs)*—(1) *Initial and repeat base requirements.* In the rule promulgated in July 1987 setting MCLs for eight VOCs, EPA required all systems to take four consecutive quarterly samples. Groundwater systems that conducted a vulnerability assessment and were judged not vulnerable, however, could stop monitoring after the first sample provided no VOCs were detected in that initial sample. Repeat frequencies for all systems vary by system size, detection, and vulnerability status.

On July 1, 1991, EPA amended the monitoring requirements for VOCs to streamline the requirements and to make all VOC requirements consistent [56 FR 30267]. For the contaminants in today's rule, the July 1990 proposal made distinctions in base requirements for VOCs between ground and surface water systems, less than and more than 500 service connections, and vulnerable and non-vulnerable systems. In today's final rule, to be consistent with the July 1991 rule, and for the reasons discussed there [56 FR 30267], EPA is requiring all groundwater systems as well as surface water systems to initially take four quarterly samples for the VOCs (dichloromethane, 1,2,4-trichlorobenzene, and 1,1,2-trichloroethane), regardless of size or vulnerability status. Systems that do not detect VOCs in the initial round of four quarterly samples are required to monitor annually beginning in the next calendar year after quarterly sampling is completed. For example, systems which complete quarterly monitoring in calendar year 1993 are required to begin annual monitoring in 1994. The State may allow groundwater systems which conducted three years of sampling and have not detected VOCs to take a single sample every three years thereafter. The reasons for these changes are further explained in the January 1991 notice [56 FR 3566].

In the May 1989 proposal covering 38 contaminants, EPA requested comment on whether vulnerable systems may take only one sample if no VOCs are detected in the initial year of monitoring. EPA's intent was to require quarterly sampling in vulnerable systems, but most commenters opposed a change to more frequent monitoring. Based on the comments received on that notice, EPA specified in the January 1991 final rule for 33 of the 38 contaminants that vulnerable systems will be required to take one annual sample (instead of four quarterly samples) if no VOCs were detected in the initial (or subsequent) monitoring. For consistency, EPA has adopted this same requirement for the VOCs in today's rule.

(2) *Increased monitoring.* In the proposal, systems detecting VOCs (defined as any analytical result greater than 0.0005 mg/1) were required to monitor quarterly. In today's rule, EPA is requiring systems that detect VOCs to monitor quarterly until the State determines that the system is "reliably and consistently" below the MCL. However, groundwater systems must take a minimum of two samples and surface water systems must take a minimum of four samples before the State may reduce the monitoring to the base requirement (i.e., annual sampling).

Systems remain on an annual sampling frequency even if VOCs are detected in subsequent samples, unless an MCL is exceeded (or if the State otherwise specifies). In this case, the system returns to quarterly sampling in the next calendar quarter until the State determines that the new contamination has decreased below the MCL and is expected to remain reliably and consistently below the MCL. This determination shall again require a minimum of four quarterly samples for surface water systems and two quarterly samples for groundwater systems.

EPA has made this change because some systems may detect VOCs at a level slightly above the detection limit. EPA believes that where the State can determine that contamination is "reliably and consistently" less than the MCL, those systems should be able to return to the base monitoring requirement (i.e., annually). Giving States the discretion to determine whether systems meet this criterion may allow States to give monitoring relief to some systems.

(3) *Decreased monitoring.* States may grant waivers to systems that are not vulnerable and did not detect VOCs while conducting base monitoring. Vulnerability must be determined using the criteria specified above in the discussion of vulnerability assessments. EPA anticipates that most systems will not be able to qualify for a "use" waiver because of the ubiquity of VOCs. However, systems conducting an assessment that considers prior occurrence and vulnerability assessments (including those of surrounding systems), environmental persistence and transport, source protection, Wellhead Protection Assessments, and proximity to sources of contamination may apply to the State for a "susceptibility" waiver. If the waiver is granted, systems are required to take one sample and update the current vulnerability assessment during two consecutive compliance periods (i.e., six years). The vulnerability assessment update must be completed by the beginning of the second compliance period. EPA has increased the time frame from five to six years to bring the five-year monitoring frequency in the proposal in line with the 3/6/9-year frequencies specified in the standard monitoring framework.

States have the discretion to set subsequent frequencies in systems that did not detect VOCs in the initial round of four quarterly samples and that are designated as not vulnerable based on assessment. The repeat monitoring frequency for groundwater systems meeting this criteria shall be not less than one sample every six years as discussed above. For surface water systems meeting this criteria, the repeat frequency is at State discretion.

d. *Synthetic Organic Chemicals (SOCs)*—(1) *Initial and repeat base requirements.* In the proposal, systems were not required to monitor for the non-volatile SOCs unless the State, on the basis of a vulnerability assessment, determined the system to be vulnerable. Once determined vulnerable by the State, a system would be required to take four consecutive quarterly samples. EPA requested comment on an alternative approach that would require all systems to monitor for all contaminants. As discussed below, today's requirements specify that all systems monitor for all SOCs by taking four quarterly samples every three years, unless decreased or increased monitoring requirements apply. All systems are eligible for waivers from the quarterly monitoring requirement, as

discussed in the section on decreased monitoring below.

Most comments on the proposal revolved around two issues—the requirement that systems monitor quarterly and the requirement that all systems monitor at the time of highest vulnerability. Many commenters stated that quarterly monitoring was not necessary to detect changes in contamination. Many commenters recommended annual monitoring for pesticides. After reviewing the information and comments submitted, EPA believes that quarterly monitoring remains the best scheme to determine contamination. Occurrence information available to EPA indicates that seasonal fluctuations from runoff and applications of pesticides may occur; thus, quarterly monitoring is better than annual monitoring to determine pesticide contamination. In some cases, States may consider it appropriate to require monitoring at greater frequencies than those specified by today's rule to better determine exposure. States have the option to require monitoring at greater frequencies than the federal minimums in today's rule. Systems, of course, may always monitor more frequently when they deem it prudent.

Most commenters opposed the requirement to monitor at the time of highest vulnerability, stating the highest vulnerability, stating that highest vulnerability cannot be predicted or determined. Several commenters stated that the requirement to monitor at the time of highest vulnerability was unenforceable. EPA agrees and eliminates this requirement from today's rule. However, States are advised to examine sampling practices of systems to assure that periods of likely contamination are not avoided. This is especially true for surface water systems monitoring for pesticides after rainfall and/or application of pesticides.

EPA proposed that systems conduct repeat monitoring every three or five years, depending on system size and ground/surface distinctions. In today's rule, the repeat monitoring frequency for all systems is set at four consecutive quarterly samples each three-year compliance period, unless decreased or increased monitoring requirements apply. EPA has made several adjustments for systems that do not detect contamination in the initial compliance period. After the initial monitoring round is completed, systems that serve 3,300 or more persons may reduce the sampling frequency to two samples in one year during each compliance period. Systems serving less than 3,300 persons may reduce the sampling frequency to one sample per compliance period. EPA has increased the frequency at which small systems must monitor in this rule from every five years to every three years, because EPA believes that this change will offer greater health protection. EPA believes that every five years is too long an interval to determine changes in consumer exposure.

EPA has made the granting of "use" waivers for pesticides easier in this rule by permitting States to grant "area wide" or "Statewide" waivers based upon pesticide use information. EPA anticipates that many systems will be able to obtain a "use" waiver. Therefore, the impact of the increased monitoring frequency discussed in the above paragraph should be minimal. For those systems not able to obtain a waiver (i.e., vulnerable systems), EPA believes it is appropriate to monitor at three-year intervals to determine contamination.

(2) *Increased monitoring.* EPA proposed that systems with 500 or less service connections that detect SOCs contamination monitor annually, while systems with more than 500 service connections that detect SOCs would monitor quarterly. EPA defined detection as greater than 50 percent of the MCL. Many comments revolved around the 50 percent trigger. Consistent with the above discussion concerning VOCs, EPA is redefining detection for SOCs to mean the method detection limit (as specified in the approved analytical method). EPA believes it is appropriate to use the method detection limit as the trigger for increased monitoring because detection implies that the potential for increasing contamination exists. Consequently, additional monitoring is required to determine the extent and variability of SOCs contamination. In today's rule, all systems that detect SOCs must comply with the baseline monitoring requirements (i.e., waivers are not available).

As described in the proposal, upon detection, all systems must immediately begin quarterly monitoring. The State may reduce the requirements to annual monitoring for SOCs after determining that samples are "reliably and consistently" below the MCL. A reduction to annual monitoring may occur after a minimum of two samples for groundwater and four samples for surface water systems. After three years of annual monitoring which remains "reliably and consistently" below the MCL, systems can return to the base monitoring requirement for SOCs (i.e., four quarterly samples every three years).

(3) *Decreased monitoring.* Systems that obtain a waiver from the monitoring requirements are not required to monitor. All systems are eligible for waivers in the first three-year compliance period of 1993 to 1995. As discussed above, EPA has simplified the vulnerability assessment procedures by allowing the system to assess whether the contaminant has been used, transported, mixed, or stored in the watershed or zone of influence. Where previous SOCs use in the area can be ruled out, systems may apply to the State for a use waiver. EPA's intent in promulgating this change is to make it easier for systems to obtain waivers in those situations where the chemical has not been used. States may be able to determine that the entire State or specific geographic areas of the State have not used the contaminant and consequently grant "area wide" waivers. Systems that cannot determine use may still qualify for a waiver by evaluating susceptibility according to the criteria discussed in the VOC section above. Waivers must be renewed every three years.

e. *Sulfates.* Some commenters believed that systems violating the sulfate MCL should not be required to monitor quarterly, because sulfate levels are stable, and additional monitoring would provide no new information. EPA has collected additional data on sulfate levels and agrees with the comment. However, as discussed above, EPA is not setting a final MCL for sulfate today and is, therefore, not setting final monitoring requirements for sulfate. For the time being, monitoring for sulfate will continue to be required under the provisions for monitoring of unregulated contaminants established in the January 1991 rulemaking.

5. Other Issues

a. *Compliance determinations.* One commenter opposed the use of a single sample to determine compliance with the IOC MCLs for systems that monitor yearly or less frequently. The commenter argued that this procedure provides an advantage to the system required to monitor quarterly, because if an annual average is the basis for compliance an entire year may go by before the system monitoring quarterly is deemed out of compliance and public notification is required, whereas the system monitoring annually is deemed out of compliance immediately if it violates the MCL once. The commenter recommended that all systems monitor

on a quarterly basis with compliance based on a running average.

EPA believes that quarterly monitoring is not generally necessary for the IOCs and is no longer requiring initial quarterly monitoring. However, if the system exceeds the MCL at any sampling point, then the system is out of compliance (based on the original and one confirmation sample, at State discretion) and quarterly monitoring is thereafter required. For those systems monitoring more frequently than annually, the Agency requires that if any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately and public notification is required. In addition, a system, if it wishes, may apply to the State to conduct more frequent monitoring of the IOCs than the minimum frequencies specified in this regulation (see § 141.23(h)). Under § 141.23(i), systems that are monitoring at a greater than annual frequency determine their compliance by a running annual average of results.

EPA believes that this approach puts emphasis on monitoring on those systems that are of greatest concern while providing cost savings to most systems.

b. *Confirmation samples.* Several commenters stated that collection of a confirmation sample within 14 days of the original sample is unrealistic. EPA continues to believe that the 14-day period is reasonable for the collection of a confirmation sample since it is important to get a conclusive determination of any MCL exceedance as soon as possible. In addition, one commenter stated that confirmation of negative samples should not be required due to cost constraints. In response, the collection of confirmation samples is not a federal requirement, but a State option. The Agency agrees that States should consider costs in making decisions about confirmation samples, especially for negative results.

c. *Compositing.* EPA proposed to allow systems, at the discretion of the State, to composite up to five samples. Compositing must be done in the laboratory. Some commenters supported compositing as a methodology to cut costs. In this final rule, EPA is limiting compositing among different systems to only those systems serving fewer than 3,300 people. Systems serving greater than 3,300 persons will be allowed to composite but only within their own system. EPA also requested comments on whether State discretion on compositing is necessary or whether systems can composite automatically without State approval. Several States opposed this change; consequently, the final rule is unchanged from the proposal. EPA believes that compositing is to be used only when cost savings are important and systems alone should not make that determination. Today's rule limits compositing to those contaminants where the MDL is less than one-fifth of the MCL, in order to avoid situations where compositing of five samples would mask the presence of a contaminant in one sample by dilution with the other samples.

d. *Polynuclear Aromatic Hydrocarbons (PAHs).* In the July 1990 proposal, EPA requested comments on the following monitoring issues related to the PAHs: (1) Should fluoranthene and naphthalene be used as indicators of the potential presence of carcinogenic PAHs; (2) should EPA require sampling at the tap; and (3) should PAH monitoring be at State discretion if the State bans the use of coal tar in distribution systems. Below is a summary of the comments on these issues and EPA's response.

Use of indicators: Commenters generally opposed the use of non-regulated PAHs such as naphthalene and fluoranthene to determine a system's vulnerability to PAH contamination and recommended that systems monitor only for BaP (and any other PAHs the Agency decides to regulate). For the reasons stated earlier in today's notice, EPA is promulgating an MCLG and an MCL for BaP only at this time. On reconsideration, EPA agrees that naphthalene and fluoranthene are not necessarily good indicators for the presence of BaP in water. On reconsideration of the data, EPA acknowledges that BaP is much less soluble than naphthalene and fluoranthene, and has not been found to co-occur with them. Therefore, EPA has decided against the use of these PAHs as indicators of BaP contamination in drinking water. This is consistent with the commenters' recommendations.

Sampling at the tap: EPA received numerous comments on this issue. Most commenters opposed sampling at the tap, claiming that it is neither acceptable nor appropriate to sample at the tap for PAHs. These commenters argued that coal tar, which may be a major source of PAH contamination in the distribution system, is not used in home plumbing and that the tap is a location beyond the control of the water utility. Some commenters suggested, however, that sampling in the distribution system, downstream of the lined section of the system, may be appropriate. One commenter further stated that monitoring for PAHs originating from the distribution system should be a "one-time effort" under worst case conditions.

Elsewhere in today's rulemaking, EPA has explained that it is regulating only BaP within the group of PAHs. MCLs have not been set for other PAHs that the proposal indicated EPA was considering regulating.

Further, there are data indicating that BaP does not leach from materials in the water delivery system (i.e., distribution system pipe materials, storage tanks), as noted by one commenter. Survey of data on leaching of BaP from U.S. water storage/distribution systems has revealed that data are available for at least 36 U.S. cities. In these studies water samples were collected from the treatment site as well as from one or more locations in the storage and/or distribution system. The increase in concentration of BaP from distribution systems in these studies has ranged from none to 2.9 ppt [Saxena et al., 1978; Robeck, 1978; Zoldak, 1978; McClanahan, 1978; Alben, 1980; Basu et al., 1987]. Laboratory studies involving exposure of tap water to panels coated with coal tar coating support these findings [Alben, 1980; Lampo, 1980]. Higher BaP concentration (78–110 ppt) in the water was reported only in one laboratory study where rigorous leaching conditions not representing actual distribution/storage system exposure were used [Sorrell et al., 1980]. In addition, coal tar and asphaltic linings are not generally used in home plumbing which is usually copper, galvanized, or plastic piping.

Based on these studies, EPA has concluded that contribution of BaP from coal tar-lined storage and distribution systems is very small overall and is only a small percentage of the final BaP MCL. Therefore, EPA has decided that there is no need to set controls for BaP contributions from the materials in the water delivery system. This contaminant is appropriately controlled by controlling its levels in source water, as is true for the other contaminants in today's rule. Consequently, EPA has determined that there is no need for today's rule to require monitoring at the tap or anywhere else in the distribution system.

Coal tar ban/States' discretion for monitoring. Commenters generally opposed banning the use of coal tar and asphaltic linings in the distribution system and storage tanks at this time. One commenter suggested that additional evaluation of the potential risks due to the use of coal tar linings in water distribution systems is necessary before recommending discontinuation of their use. Another commenter stated

that the banning of the use of coal tar may not be warranted, especially in light of the ubiquitousness of PAHs in foodstuffs and consumer products. One commenter indicated that its water supplier had halted the further use of coal tar materials in the late 1970s. This commenter indicated it has found cost-effective alternatives for both pipes and tanks.

As noted above, the Agency finds that the contribution of BaP from coal tar lined pipes and storage tanks is generally very small relative to dietary sources, as one commenter stated. It is possible, however, that there may be leaching of PAHs other than BaP due to coal tar in the distribution system. Thus, the Agency believes that States should carefully evaluate any actions related to this potential source of contamination (such as banning the further use of coal tar) to be sure that action is warranted.

With respect to State discretion concerning monitoring requirements if it bans the use of coal tar, one commenter stated that vulnerable systems should still be required to monitor, while another commenter indicated that monitoring should be at State discretion, and a third commenter recommended that monitoring at the tap be at State discretion. EPA has carefully considered these comments and is not requiring that systems monitor for BaP in the distribution system, as discussed above.

D. Variances and Exemptions

1. Variances

Under section 1415(a)(1)(A) of the SDWA, EPA or a State that has primacy may grant variances from MCLs to those public water systems that cannot comply with the MCLs because of characteristics of their water sources. At the time a variance is granted, the State must prescribe a compliance schedule and may require the system to implement additional control measures. The SDWA requires that variances may only be granted to those systems that have installed BAT (as identified by EPA). However, in limited situations a system may receive a variance if it demonstrates that the BAT would only achieve a *de minimis* reduction in contamination (see § 142.62(d)). Before EPA or a State issues a variance, it must find that the variance will not result in an unreasonable risk to health.

Under section 1413(a)(4) of the Act, States with primacy that choose to issue variances must do so under conditions and in a manner that is no less stringent than EPA allows under section 1415. Before a State may issue a variance, it must find that there were no opportunities for the system to (1) join another water system, or (2) develop another source of water and thus comply fully with all applicable drinking water regulations.

The Act permits EPA to vary the BAT established under section 1415 from that established under section 1412 based on a number of findings such as system size, physical conditions related to engineering feasibility, and the cost of compliance. Paragraph 142.62 of this rule lists the BAT that EPA has specified under section 1415 of the Act for the purposes of issuing variances. This list mirrors the proposed list except that oxidation (chlorination or ozonation) is considered BAT for glyphosate, as discussed in "Selection of Best Available Technology" above. Tables 20 and 21 provide a list of the section 1415 BATs for the inorganic and organic compounds in this rule.

TABLE 20.—SECTION 1415 BAT FOR INORGANIC COMPOUNDS

Chemical	BATs
Antimony	2,7
Beryllium	2,5,6,7
Cyanide	5,7,10
Nickel	5,6,7
Thallium	5,7

Key to BATs in Table 2:
[2] = Coagulation/Filtration (not BAT for systems with <500 service connections).
[5] = Ion Exchange.
[6] = Lime Softening (not BAT for systems with <500 service connections).
[7] = Reverse Osmosis.
[10] = Chlorine.
[11] = Ultraviolet.

TABLE 21.—SECTION 1415 BAT FOR ORGANIC COMPOUNDS

Chemical	PTA [1]	GAC [2]	OX [3]
Benzo(a)pyrene		X	
Dalapon		X	
Dichloromethane	X		
Di(2-ethylhexyl)adipate	X	X	
di(2-ethylhexyl)phthalate.		X	
Dinoseb		X	
Diquat		X	
Endothall		X	
Endrin		X	
Glyphosate			X
Hexachlorobenzene		X	
Hexachlorocyclo-pentadiene.	X	X	
Oxamyl (Vydate)		X	
Picloram		X	
Simazine		X	
1,2,4-Trichlorobenzene	X	X	
1,1,2-Trichloroethane	X	X	
2,3,7,8-TCDD (Dioxin)		X	

[1] PTA = Packed tower aeration.
[2] GAC = Granular activated carbon.
[3] OX = Oxidation (Chlorination or Ozonation).

2. Exemptions

Under section 1416(a), a State or EPA may grant an exemption extending deadlines for compliance with a treatment technique or MCL if it finds that (1) due to compelling factors (which may include economic factors), the PWS is unable to comply with the requirement; (2) the exemption will not result in an unreasonable risk to human health; and (3) the system was in operation on the effective date of the NPDWR, or, for a system not in operation on that date, no reasonable alternative source of drinking water is available to the new system.

In determining whether to grant an exemption, EPA expects the State to determine whether the facility could be consolidated with another system or whether an alternative source could be developed. It is possible that very small systems may not be able to consolidate or find a low-cost treatment. EPA anticipates that States may wish to consider granting an exemption when the requisite treatment is not affordable.

Under section 1416(b)(2)(B) of the Act, an exemption may be extended or renewed (in the cases of systems that serve 500 or less service connections and that need financial assistance for the necessary improvements) for one or more two-year periods provided that no unreasonable risk to the health of persons would result from granting the exemption.

3. Point-of-Use Devices, Bottled Waters and Point-of-Entry Devices

Under sections 1415(a) and 1416(b) of the SDWA, when the State grants a variance or exemption, it must prescribe an implementation schedule and any additional control measures that the system must take. States may require the use of point-of-use (POU) devices, bottled water, point-of-entry (POE) devices and other mitigating devices as "additional" control measures if an "unreasonable risk to health" would otherwise exist. Sections 142.57 and 142.62 allow these measures as an interim control measure while a variance or exemption is in effect.

4. Public Comments

EPA received several comments regarding the issuance of variances and exemptions. Comments were concerned about the high cost of the proposed BAT technologies (reverse osmosis and ion exchange) for sulfate for small systems that may need to obtain variances under section 1415 of the SDWA. One commenter states that variances and exemptions are temporary and that systems will still be required to comply at some point. This commenter further states that any cost saving due to granting of temporary variances or

exemptions must be reduced by the costs of complying with the "interim control measures" required under the Act and the transaction costs of documenting and applying for exempt status.

Another commenter argued that health protection is not ensured because systems may be granted variances and exemptions due to the prohibitive cost to implement available technology to achieve lower sulfate levels. This commenter recommended the use of a monitoring program and public notification for sulfates instead of an MCL.

Two commenters stated that EPA should allow States the discretion to grant variances from the sulfate MCL for all systems (large as well as small), as long as the variance does not result in an unreasonable risk to health. These commenters recommend that concerns about the water supply and availability should be considered to be pertinent "characteristics of raw water sources" and that provision of public information and alternate water supplies for sensitive populations could be regarded to be appropriate BATs for granting variances.

EPA Response: In response to the commenters concerned about the high costs of reverse osmosis and ion exchange for sulfate removal, the Agency agrees that these costs are high for very small systems. A majority of the systems which would have been affected had EPA not deferred the sulfate rule serve 500 or less persons. Exemptions for these systems could have been renewed as long as the system qualifies for an exemption under section 1416(b) of the SDWA. The costs given in the Regulatory Impact Analysis (RIA) for regulating sulfate assumed no variances and exemptions are granted (i.e., that all systems treat). Thus, the Agency believes that costs to meet a sulfate regulation would have been lower than those projected in the RIA, after consideration of costs associated with granting variances and exemptions.

In response to the commenter that alleged lack of health protection because variances and exemptions will be granted, a variance or exemption can only be granted if it will not result in an unreasonable risk to health. In addition, the associated public notification requirements whenever an MCL exceedance occurs would have provided additional protection to consumers.

In response to the commenters that recommended allowing the States discretion to grant variances to all systems regardless of size, States do have the discretion to grant variances to all public water systems that cannot comply with the MCLs because of characteristics of their source waters. Variances generally can only be granted if the systems have installed BAT and have failed to meet the MCL. In granting variances, the State may prescribe interim control measures such as public information or provision of alternate water supplies (e.g., bottled water).

The population served by transient water systems is likely to be at greatest risk of suffering from the adverse effects of sulfate. Because populations that regularly consume water containing sulfate will acclimate to its effects, it is people using higher sulfate water on a transient basis that make up the population at risk. This group is largely travelers, i.e., visitors to communities or facilities that are non-transient non-community public water systems, or visitors to facilities such as gas stations, campgrounds or other recreational facilities that serve an almost exclusively transient population. It is this latter group of facilities or public water systems that are most likely to serve water to non-acclimated persons who are at risk from high sulfate.

Sulfate's high treatment cost, low risk, and impact primarily on the transient consumer, combine to create a different set of regulatory challenges than posed by most other drinking water contaminants. For these reasons, EPA is deferring the sulfate standard for a current undetermined period. Specifically, EPA is seeking to extend the legal deadline for establishing the sulfate standard for a period that would allow the Agency to resolve the following issues: (1) Whether further research is needed on how long it takes infants to acclimate to high sulfate-containing water, (2) whether new regulatory approaches need to be established for regulating a contaminant whose health effect is confined largely to transient populations, and (3) whether the Agency should revise its definition of Best Available Technology for small systems (i.e., what should be considered affordable for transient noncommunity water systems). During this deferral period, the Agency also intends to consider ways to expedite the process for granting potential exemptions and variances to ease the impact of these regulations on small systems. Also in the interim, EPA plans to issue a Health Advisory for sulfate and to encourage States where sulfate levels may be high to conduct additional monitoring and encourage the use of alternative water supplies where appropriate.

E. Public Notice Requirements

1. General Comments

Two comments were received on the general issue of public notification requirements. One commenter stated that the required public notifications should provide a more accurate and balanced explanation of potential health effects. The second commenter stated that public notification should not be required unless contaminant levels remain excessive after BAT has been installed.

EPA Response: EPA believes that the public notification language prescribed is, and should be, simple and non-technical in nature while providing sufficient information to the public about the health implications. EPA believes that the statements are accurate and balanced. The Agency also believes that the public has the right to know whenever there is a violation of a standard. The public water system may supplement the notice with additional information such as the steps being taken to meet the standards as long as the notice informs the public of the health risks which EPA has associated with violation of the standards and the mandatory health effects language remains intact.

2. Contaminant-Specific Comments

Two commenters provided specific suggestions on changes for the public notification language for several contaminants. These changes were editorial in nature.

EPA Response: EPA has made most of the changes suggested, as appropriate.

F. Secondary MCL for Hexachlorocyclopentadiene

EPA proposed a secondary maximum contaminant level (SMCL) based upon odor detection levels for hexachlorocyclopentadiene (HEX). Odor detection for this organic chemical has been reported at levels lower than the MCL of 0.05 mg/l. The July 1990 notice proposed to set the SMCL for this compound at 0.008 mg/l.

EPA received two comments on the proposed SMCL for HEX. One commenter stated that an SMCL for HEX will "erode the public's confidence in the overall quality of the drinking water," and recommended against an SMCL for this compound. Another commenter opposed the proposed SMCL alleging it is based on an inadequate experimental basis. The commenter argued that the literature citation [Amoore and Hautala, 1983] was based on theoretical extrapolation (from air odor thresholds), and the levels have not

been confirmed by any published literature.

After reviewing the public comments, EPA has decided to defer promulgating an SMCL for HEX. EPA disagrees with the first comment and believes that taste and odor problems do have an adverse impact on consumers' confidence in the drinking water supply. However, the Agency agrees with the second commenter that additional work is necessary to determine appropriate levels for aesthetic effects. Accordingly, the Agency may initiate in the future a "National Task Force of Experts" to review and assess the data, information and opinions available with respect to taste and odor problems in public water supplies [as noted at 56 FR 3572, January 30, 1991].

G. State Implementation

The Safe Drinking Water Act provides that States may assume primary implementation and enforcement responsibilities. Fifty-five out of 57 jurisdictions have applied for and received primary enforcement responsibility (primacy) under the Act. To implement the federal regulations for drinking water contaminants, States must adopt their own regulations which are at least as stringent as the federal regulations. States must also comply on the requirements in 40 CFR 142.12 on revising approved primacy programs. This section of today's rule describes the regulations and other procedures and policies States must adopt or have in place to implement the new regulations.

To implement today's rule, States will be required to adopt the following regulatory requirements when they are promulgated: § 141.23, Inorganic Chemical Sampling and Analytical Requirements; § 141.24, Organic Chemicals Other Than Total Trihalomethanes, Sampling and Analytical Requirements; § 141.32, Public Notice Requirements (i.e., mandatory health effects language to be included in public notification or violations); § 141.61 (a) and (c), Maximum Contaminant Levels for Inorganic and Organic Chemicals.

In addition to adopting drinking water regulations no less stringent than the federal regulations listed above, EPA is requiring that States adopt certain requirements related to this regulation in order to have their program revision application approved by EPA. In various respects, the NPDWRs provide flexibility to the State with regard to implementation of the monitoring requirements under this rule. Because State determinations regarding vulnerability and monitoring frequency will have a substantial impact with implementation of this regulation, today's rule requires States to submit, as part of their State program submissions, their policies and procedures in these areas. This requirement will serve to inform the regulated community of State requirements and also help EPA in its oversight of State programs. These requirements are discussed below under the section on special primacy requirements.

1. Special State Primacy Requirements

To ensure that the State program includes all the elements necessary for an effective and enforceable program, the State's request for approval must contain a plan to ensure that each system monitor for the contaminants listed in this rule by the end of each compliance period.

In general, commenters supported the proposed primacy requirements. Most of the comments were very similar to those made on a previous proposed rulemaking (May 22, 1989, [54 FR 22135]), including the following: The States do not have enough resources, States should not have to report vulnerability assessments to EPA, and records should be kept for less than the 40-year requirement. These issues were all addressed in the January 1991 rule [56 FR 3574].

Numerous comments were made regarding requirements for sulfates. One commenter was concerned about the cost impacts on small systems trying to achieve compliance with the proposed MCL options of 400 mg/l and 500 mg/l. Under the SDWA, exemptions may be granted by a State which would have helped alleviate the cost impact of compliance for sulfate. Another commenter claimed that if variances and exemptions were allowed for sulfates, a significant portion of the population would not be protected. Under sections 1415 and 1416, before a State may grant a variance or exemption it must determine that the variance or exemption will not result in an unreasonable risk to health. In addition, a State must notify the public and provide an opportunity for a public hearing before a variance or exemption is granted. Also, the State may require that bottled water, POU devices, or POE devices be used as a condition for granting the variance or exemption. In this manner, EPA believes that public health would have been protected where variances and exemptions were granted for sulfate. To comply with today's rule, States may update their monitoring plan submitted under the January 1991 rule or they may simply note in their application that they will use the same monitoring plan for this group of contaminants.

In general, States may use their discretion to schedule when, within the overall three-year compliance period, each system will need to perform its one-year-long initial monitoring. For example, States may decide to schedule approximately one-third of the systems for monitoring during each of the three years, to provide for an even flow of samples through State-certified laboratories. States will be able to establish their own criteria to schedule the systems to monitor but the schedules must be enforceable under State law.

If a State does not have primacy for today's rule at the time the initial compliance period begins (i.e., January 1, 1993), then EPA will be the primacy agent. Because water systems must monitor, EPA has established procedures (§§ 141.23(k), 141.24(f)(23), and 141.24(h)(18)) that require systems to monitor at the time designated by the State. If EPA implements today's provisions because a State has not yet adopted the regulatory requirements in today's rule, EPA intends to use the State's monitoring schedule to schedule systems during each compliance period. EPA believes this approach will reduce confusion over the required monitoring schedule that might occur upon the eventual transfer of primacy from EPA to the State.

2. State Recordkeeping Requirements

Some commenters characterized the proposed recordkeeping requirements as burdensome and unwarranted. Similar comments were received in reference to the May 1989 proposed rules [54 FR 22135]. Similar comments were received in reference to the May 1989 proposed rules. In response to comments received on that proposal, EPA modified the State recordkeeping requirements to alleviate the State burden. These changes are explained in the January 1991 rule at 56 FR 3575. No additional changes have been made in today's rule to the recordkeeping requirements.

3. State Reporting Requirements

Generally, commenters characterized the proposed State reporting requirements as burdensome and useless. Similar comments were received in response to the May 1989 proposed regulations [54 FR 22136]. In finalizing those regulations, EPA deleted the proposed reporting requirements (except for unregulated contaminants), having determined that the core reporting requirements of the Primacy Rule (December 20, 1989 [54 FR 52126]) would be sufficient (see 56 FR 3576).

Today's rule similarly deletes the proposed reporting requirements and relies on the core reporting requirements of the Primacy Rule.

IV. Economic Analysis

In accordance with Executive Order 12291, the Environmental Protection Agency (EPA) has performed a Regulatory Impact Analysis (RIA) which is required for all "major" regulations. A rule is considered "major" if it is expected to cause:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis, titled Economic Impact Analysis of Proposed National Primary Drinking Water Standards for 24 Inorganic and Synthetic Organic Chemicals (Revised Final) April 1990, was prepared [USEPA, 1990c]. An addendum to the EIA, dated May 15, 1990, reclassified the rule as a "major" rule [USEPA, 1990a]. The EIA indicated that national costs may exceed $100 million if stringent options were exercised. If stringent options were not employed, then costs may not exceed $100 million and the rule may be classified as minor. Another addendum to the EIA which revised the waste disposal costs for sulfate was added to the public docket on August 3, 1990.

Today's final rule is accompanied by a Regulatory Impact Analysis, titled the Regulatory Impact Analysis of Proposed Phase V Synthetic Organic and Inorganic Chemical Regulations [USEPA, 1992d]. However, with the deferral of the sulfate portion of the rule, total costs are projected substantially below those shown in the Regulatory Impact Analysis. The Regulatory Impact Analysis contains sulfate costs because the document was completed before the decision to defer sulfate was made.

In order to estimate the economic impacts these analyses used the following data, where available, for each of the 23 contaminants:

- Occurrence data, to determine the number of systems violating MCLs;
- Treatment and waste disposal cost data and corresponding probabilities that systems will select each of the various treatment and disposal options, to estimate the system level and aggregate costs of achieving the proposed MCLs; and
- Monitoring costs, to estimate aggregate costs of the monitoring requirements.

Occurrence data adequate to estimate the number of systems likely to violate the MCLs are available for 15 of these 23 contaminants. For the remaining 87 contaminants (endothall, diquat, di(2-ethylhexyl) phthalate, glyphosate, hexachlorobenzene, hexachlorocyclopentadiene, 1,1,2-trichloroethane, and 2,3,7,8-TCDD) cost impacts could not be evaluated because national occurrence data are not available. In response to public comments, impacts of the rule are not based on extrapolation from other SOC contaminant occurrence, as in the proposal.

The EIA supporting the proposed rule estimated treatment costs for SOCs to be $11 million per year and also estimated the rule would affect 900 systems. Treatment costs for IOCs varied depending upon the MCL used for sulfate. Treatment costs for IOCs, estimated in the EIA dated April 1990 and modified by the Addendum dated August 3, 1990, were projected to be $60 million and to affect 1,397 systems with a sulfate MCL of 400 mg/1. An estimated 795 systems were projected to spend about $28 million per year to achieve compliance with a sulfate MCL of 500 mg/1. Monitoring costs for the proposed rule, detailed in the Information Collection Request for: Proposed National Primary Drinking Water Regulations For Phase V SOCs and IOCs [USEPA, 1989a], were estimated to be about $6 million per year. Thus, the total annualized cost of the proposed regulations were estimated to be $87 million per year with an MCL of 400 mg/1, and $50 million per year at an MCL of 500 mg/1.

With the receipt of new data or information, EPA made several changes to the proposed economic analysis which would have resulted in an overall increase in the projected compliance costs for the final rule if sulfate has not been deferred. In addition, revised unit cost and occurrence data were incorporated into the final RIA. These changes, and their corresponding effects on the original cost estimates, are described below.

A. Costs of the Final Rule

Treatment and waste disposal costs associated with the final rule are estimated based on occurrence information available for 15 of 23 contaminants in this regulation. For the other 8 contaminants costs were not estimated because adequate occurrence data are not available. Monitoring and State implementation cost estimates include a consideration of all 23 contaminants.

Annualized total water treatment and waste disposal costs are estimated at $31 million per year (Table 22). Monitoring costs are estimated to be about $5 million per year. The annual cost to State drinking water programs to implement the final rule is estimated to be $10 million. Thus, the total annualized compliance cost to the nation is estimated to be $46 million per year. Further, given the uncertainty associated with the inputs used to estimate costs for the 16 contaminants for which occurrence data are available, the total annual cost of this rule could range from approximately $1 million to $128 million. These cost estimates would increase if the 8 contaminants for which costs have not currently been estimated were included.

Of the 23 contaminants covered by this rulemaking, endrin is the only contaminant regulated by an existing National Primary Drinking Water Regulation. The final MCL for endrin promulgated today is greater than the previously existing MCL. No systems are projected to fail the final MCL for endrin. Therefore, no incremental costs of meeting the new MCL are anticipated. However, costs associated with regulating the other 22 contaminants in this rulemaking do represent an increased cost burden.

Table 23 shows the benefits of today's rule. Most contaminants are being regulated on the basis of non-carcinogenic effects. Five contaminants are being regulated on the basis of their carcinogenicity. These are: dichloromethane, benzo(a)pyrene, di(2-ethylhexyl)phthalate, hexachlorobenzene, and 2,3,7,8-TCDD. Insufficient occurrence data were available to estimate the number of cancer cases avoided for these contaminants. For the regulated contaminants that are not carcinogens, the adverse effects associated with exposure are discussed in both the proposed rules and these final rules, under the portions of the preamble that describe derivation of the MCLGs. The benefits of reduced exposure to these contaminants relates to reducing the possibility that water consumers may experience these adverse effects. For example, antimony caused shortened life spans, weight loss, increased cholesterol levels, and reduced blood glucose levels in test animals. The possibility of any of these effects occurring in exposed populations would be reduced by reducing antimony exposure to below the MCL.

TABLE 22.—SUMMARY OF COST ESTIMATES FOR FINAL RULE

	Best estimate	Low estimate	High estimate
Number of Systems Affected	256	30	795
Cost in millions of Dollars			
Capital Water Treatment and Waste Disposal	238	2	925
Operation and Maintenance	14	<1	65
Annualized Cost @3%	30	1	128
Monitoring Costs	5	N/A	N/A
	10	N/A	N/A4
State Implementation Costs			
Annual cost: Total	46	1	128

TABLE 23.—SUMMARY OF BENEFITS ESTIMATES FOR FINAL RULE

	Best estimate	Low estimate	High estimate
Benefits ($ Millions):			
Population with Reduced Exposure (thousands)	340	4	1,729
Cancer Deaths Avoided	[1] 0.0	N/A	N/A

[1] Of the five carcinogenic contaminants regulated in this package, occurrence data are only available for dichloromethane, and these data indicate that MCL exceedences are unlikely. The estimate here does not include the other 4 carcinogens, nor does it reflect the fact that other contaminants in this package are group "C" possible human carcinogens, but are not being regulated on the basis of carcinogenicity.

B. Comparison to Proposed Rule

The costs and benefits of today's final rule are compared to those estimated for the proposal (Table 24). The differences in the cost estimates are attributable to a variety of changes in the rule and in the available input data used in the analysis. Among the more important changes are the following.

1. Monitoring Requirements

The Agency has developed a standardized monitoring framework (SMF) to address the issues of complexity, coordination of monitoring requirements between various regulations, and synchronization of monitoring schedules. The monitoring requirements in today's rule are somewhat different from those included in the proposed rule, resulting in reduction in annual national monitoring costs of approximately $1 million, for all contaminants, excluding sulfates. The estimated monitoring cost of the final rule is $5 million annually.

In this regulation, EPA is requiring that initial monitoring begin in the first compliance period after the promulgation date for systems having 150 or more service connections. The initial monitoring period for these systems is from January 1, 1993 through December 31, 1995. For systems with fewer than 150 service connections, initial monitoring is from January 1, 1996 to December 31, 1998. All systems must monitor at the base monitoring frequency unless a waiver is obtained. Systems may decrease monitoring from the base requirement upon receiving a waiver from the state. In cases of detection or noncompliance, EPA has specified increased monitoring frequencies.

2. Changes in MCLs

Several MCLs in the final rule have changed from those that were proposed. As discussed above, regulation of sulfate has been deferred and no final MCL has been set. The MCL for di(2-ethylhexyl)adipate is more stringent based on a new health study which resulted in a revised reference dose. The MCL for 2,3,7,8-TCDD changed from 5×10^{-6} mg/l to 3×10^{-6} mg/l because of recently available analytic chemistry data and the MCL for di(2-ethylhexyl)phthalate changed from 0.004 mg/l to 0.006 mg/l based on reevaluation of the chemistry data. The MCL for beryllium was revised from 0.001 mg/l to 0.004 mg/l based on public comments and because there are inadequate data to justify the more stringent proposal. The MCL for 1,2,4-trichlorobenzene was revised because EPA agrees with public comments that the oral RfD should not be based on an inhalation study, particularly because insufficient pharmacokinetic data are available for route-to-route extrapolation, changing from 0.009 mg/l to 0.07 mg/l. The MCL for antimony was revised based on a reassessment of the relative source contribution, and simazine was revised based on new health effects data which allowed elimination of an uncertainty factor included to account for a data gap.

TABLE 24.—COMPARISON OF COSTS FOR PROPOSED AND FINAL RULES

[Dollar Figures in Millions]

Contaminants	Proposed		Final	
	Systems affected	Total cost (annualized) $ millions	Systems affected	Total cost (annualized) $ millions
Sulfate (400 mg/l)	1,087	67	N/A	N/A
Sulfate (500 mg/l)	485	30	N/A	N/A
IOCs (Excluding Sulfate)	310	3	207	30
SOCs (including pesticides and VOCs	900	11	49	1
Annualized treatment costs	2,297	81	256	31
Monitoring costs	78,703	6	78,703	5
State Implementation costs	54 States and Territories.	Not estimated	54 States and Territories.	10

TABLE 24.—COMPARISON OF COSTS FOR PROPOSED AND FINAL RULES—Continued

[Dollar Figures in Millions]

Contaminants	Proposed		Final	
	Systems affected	Total cost (annualized) $ millions	Systems affected	Total cost (annualized) $ millions
National annualized cost ($M/Yr)		87		46

Note: Totals may not tally due to independent rounding. MCLs of 400 mg/l and 500 mg/l were proposed for sulfate.

3. Changes in Occurrence Data

Some occurrence data used in the final RIA have been changed. A re-evaluation of the National Inorganics and Radionuclides Survey data resulted in revised antimony occurrence estimates and estimates of systems exceeding the MCL. The number of systems estimated to exceed the beryllium MCL changed as a result of MCL changes. Further review of the EPA occurrence document resulted in a revised occurrence estimate for dichloromethane. For di(2-ethylhexyl)adipate, the occurrence estimate has been changed to reflect a re-evaluation of available occurrence data and a change in the MCL. For 8 contaminants (endothall, diquat, di(2-ethylhexyl) phthalate, glyphosate, hexachlorobenzene, hexachlorocyclopentadiene, 1,1,2-trichloroethane, and 2,3,7,8-TCDD) adequate data are not available. In the EIA accompanying the proposed rule, approximately 82 systems were assumed to fail the MCL for each contaminant and to be required to install treatment equipment. EPA currently believes that there are inadequate data with which to estimate number of systems exceeding the MCLs for these contaminants and that an estimate of 82 systems for each contaminant is potentially inaccurate. While EPA is unable to estimate the number of systems potentially exceeding the MCL it is recognized that an unknown number of systems may be required to install treatment for each contaminant.

4. Changes in Unit Treatment Cost Estimates

The differences between unit treatment costs in today's rule and in the proposed rule are due to differences in the treatment alternatives included, the assumed percentage of production flow treated, and the discount rate used in annualizing capital costs. Capital costs in the proposed rule were annualized over 20 years at a 10% interest rate to derive annual costs. The 3% interest rate used in today's final rule was selected in order to make the costs of the Phase V regulations comparable to cost estimates prepared for earlier rules.

C. Cost to Systems

Table 25 indicates that relatively few water systems and consumers will be affected by the regulations. However, costs will vary depending upon the specific chemical contaminant and the size of the public water system.

Systems serving 500 or less people will incur higher per household costs because they do not benefit from engineering economies of scale. Households served by these systems would have to pay significantly more, should their system have contamination greater than the MCL.

TABLE 25.—INCREASED COST OF COMPLIANCE IN SELECTED SYSTEM SIZE CATEGORIES

System Size	25–100			101–500			3,301–10,000			25,001–50,000		
Contaminant	Annual Cost per Household	Cost per System	Number of Systems	Annual Cost per Household	Cost per System	Number of Systems	Annual Cost per Household	Cost per System	Number of Systems	Annual Cost per Household	Cost per System	Number of Systems
Antimony	$3,651	$49,500	89	$1,721	$102,800	57	$274	$521,000	10	$137	$1,935,000	2
Nickel	1,747	25,000	4	717	43,300	3	0	0	0	0	0	0
Dichloromethane	353	4,400	18	138	7,300	11	12	25,000	2	0	0	0
Dinoseb	984	12,500	4	343	20,000	3	0	0	0	0	0	0

Note: For systems serving over 1,000,000 people, no MCL exceedance or cost is estimated.

D. Cost to State Programs

In 1988, EPA and the Association of State Drinking Water Administrators (ASDWA) conducted a survey of State primacy program resource needs for implementing the 1986 SDWA amendments. State implementation costs for the Phase V rule were not included in the ASDWA survey. State implementation costs of previously regulated Phase II inorganic and synthetic organic chemicals are estimated to be $21 million during the initial phase. An additional $17 million is estimated to be required for States to annually conduct enforcement actions, assist in the expansion of laboratory capabilities, and manage compliance schedules. Laboratory expansion undertaken to implement Phase II regulations will largely satisfy the monitoring needs of this rule. Total State implementation costs are anticipated to be in the range of $7 million to $12 million. A gross point estimate of $10 million per year has been selected for today's final rule.

V. Other Requirements

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to consider the effect of regulations on small entities [5 U.S.C. 602 et seq.]. If there is a significant economic effect on a substantial number of small entities, the Agency must prepare a Regulatory Flexibility Analysis (RFA) describing significant alternatives that would minimize the impact. The Agency had determined that the proposed rule, if promulgated would not have a significant economic impact

on a substantial number of small entities.

According to EPA guidelines for conducting RFA assessments, less than 20 percent of a regulated population is not considered a substantial number. The RFA for the final rule indicates that of 77,910 community and non-transient non-community water supplies serving 50,000 or fewer people, about 253 (<1 percent) are estimated to exceed the final MCLs promulgated in today's rule. Therefore, today's rule does not affect a substantial number of such small systems.

Compliance costs for the 253 systems serving 50,000 or fewer people required to install treatment are about $31 million per year for capital and operational maintenance. This is less than one percent of the total national operating expense for such systems. Therefore, at a national aggregate level, the Phase V rule would not have a significant impact on small systems. This finding does not change if the costs of monitoring to these systems, $6 million per year, are included.

The Agency's determination of no significant economic impact on a substantial number of small systems would remain unchanged under a more stringent definition of small systems. Defining systems serving 3,300 or fewer people as small, today's rule would affect 235 of the 65,766 public systems in this size category. This represents less than one percent of such systems. Costs would increase $16 million, or approximately one percent of the total operating expense for all systems in this category. The inclusion of monitoring costs of less than $4 million for such systems does not alter this finding.

EPA's determination of no significant economic impact on a substantial number of small systems would likely also remain the same if occurrence data on the eight contaminants not currently included in this analysis became available. While it is not possible to estimate the number of systems exceeding the MCLS for these contaminants the number is potentially small as these contaminants have rarely been found in drinking water.

Although there will not be a significant economic impact on a substantial number of small systems on the whole, a small number of individual systems may find their costs increasing sharply, depending on the specific contaminant in their water. For example, it can be seen from Table 25 that a system serving 25–100 people with antimony-contaminated water is expected to incur additional annual costs of $49,500. EPA is concerned about such systems. Under the Safe Drinking Water Act, small systems may obtain an exemption for national primary drinking water regulation requirements if they can demonstrate that the granting of the exemption would not result in an unreasonable risk to health, among other conditions. Other aspects of the regulatory scheme that serve to reduce impacts on small systems are described in the proposal (55 FR 30436) and earlier in this notice.

B. 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.]. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

Public reporting burden for this collection of information is estimated to average 0.6 hours per response for public water systems and 13.6 hours for States to compile each response. These estimates include time for reviewing instructions, searching existing data sources, gathering the information needed, and completing and reviewing the collection of information as well as start-up activities such as staff training. Comments regarding the burden estimate of any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Federalism Review

Executive Order 12612 requires all federal agencies to consider legislative and regulatory proposals and other major policy actions to determine if they have substantial effects on federalism goals and principles as set forth in the Executive Order. According to EPA's Guidelines for Implementing Executive Order 12612: Federalism, "[i]f an EPA action is mandated or the necessary means to carry it out are implied by statute, then no further federalism assessment is required." Twenty-two of the 23 contaminants regulated today are included in the list of 83 contaminants for which EPA is required to promulgate National Primary Drinking Water Standards. Therefore, a federalism assessment is not required to support this rule for these listed contaminants.

For hexachlorobenzene, which is not on the list of 83 contaminants, a federalism assessment is not required because today's regulation will not have a substantial direct effect on States, the relationship between the Federal Government and the States or on the distribution of power and responsibilities among the various levels of government.

VI. References

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List of Subjects in 40 CFR Parts 141 and 142.

Administrative practice and procedure, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting, recordkeeping requirements, Water supply.

Dated: May 18, 1992.

F. Henry Habicht II,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

2. Section 141.2 is amended by revising the definition for "Initial compliance period" to read as follows:

§ 141.2 Definitions.

* * * * *

Initial compliance period means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed at 141.61(a) (19)–(21), (c)(19)–(33), and 141.62(b) (11)–(16), initial compliance period means the first full three-year compliance period after promulgation for systems with 150 or more service connections (January 1993–December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996–December 1998) for systems having fewer than 150 service connections.

* * * * *

3. Section 141.6 is amended by adding paragraph (h), to read as follows:

§ 141.6 Effective Date.

* * * * *

(h) Regulations for the analytic methods listed at § 141.23(k)(4) for measuring antimony, beryllium, cyanide, nickel, and thallium are effective August 17, 1992. Regulations for the analytic methods listed at § 141(f)(16) for dichloromethane, 1,2,4-trichlorobenzene, and 1,1,2-trichloroethane are effective August 17, 1992. Regulations for the analytic methods listed at § 141.24(h)(12) for measuring dalapon, dinoseb, diquat, endothall, endrin, glyphosate, oxamyl, picloram, simazine, benzo(a)pyrene, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, hexachlorobenzene, hexachlorocyclopentadiene, and 2,3,7,8-TCDD are effective August 17, 1992. The revision to § 141.12(a) promulgated on July 17, 1992 is effective on August 17, 1992.

4. Section 141.12 is amended by removing and reserving paragraph (a) in the table to read as follows:

§ 141.12 Maximum contaminant levels for organic chemicals.

* * * * *

(a) [Reserved]

* * * * *

5. Section 141.23, which will be effective, is amended by revising the introductory text to paragraph (a)(4), by revising the introductory text to a (a)(4)(i), (a)(4)(i) table, by adding paragraph (a)(4)(iii), by revising paragraph (c) introductory text, (c)(1), and (i)(1), by redesignating (k)(5) as (k)(6) and revising it, redesignating (k)(4) as (k)(5) and revising it, and by adding a new (k)(4) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) The State may reduce the total number of samples which must be analyzed by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory.

(i) If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample must be taken within 14 days at each sampling point included in the composite. These samples must be analyzed for the contaminants which exceeded one-fifth of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/l)	Methodology	Detection limit (mg/l)
Antimony	0.006	Atomic Absorption, Furnace	0.003
			0.0008 [6]
		ICP-Mass Spectrometry	0.0004
		Hydride-Atomic Absorption	0.001
Asbestos	7 MFL [2]	Transmission Electron Microscopy	0.01 MFL
Banum	2	Atomic Absorption; furnace technique	0.002
		Atomic Absorption; direct aspiration	0.1
		Inductively Coupled Plasma	0.002
			(0.001) [1]
Beryllium	0.004	Atomic Absorption; Furnace	0.0002
		xl	0.00002 [6]
		Inductively Coupled Plasma [3]	0.0003
		ICP-Mass Spectrometry	0.0003
Cadmium	0.005	Atomic Absorption; furnace technique	0.0001
		Inductively Coupled Plasma	0.001 [1]
Chromium	0 1	Atomic Absorption; furnace technique	0.001
		Inductively Coupled Plasma	0.007
			(0.001) [1]
Cyanide	0 2	Distillation, Spectrophotometnc [4]	0.02
		Distillation, Automated, Spectrophotometric [4]	0.005
		Distillation, Selective Electrode [4]	0 05
		Distillation, Amenable, Spectrophotometnc [5]	0.02
Mercury	0.002	Manual Cold Vapor Technique	0.0002
		Automated Cold Vapor Technique	0.0002
Nickel	0 1	Atomic Absorption; Furnace	0.001
			0.0006 [6]
		Inductively Coupled Plasma [3]	0.005
		ICP-Mass Spectrometry	0.0005

DETECTION LIMITS FOR INORGANIC CONTAMINANTS—Continued

Contaminant	MCL (mg/l)	Methodology	Detection limit (mg/l)
Nitrate	10 (as N)	Manual Cadmium Reduction	0.01
		Automated Hydrazine Reduction	0.01
		Automated Cadmium Reduction	0.05
		Ion Selective Electrode	1
		Ion Chromatography	0.01
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated Cadmium Reduction	0.05
		Manual Cadmium Reduction	0.01
		Ion Chromatography	0.004
Selenium	0.05	Atomic Absorption; furnace	0.002
		Atomic Absorption; gaseous hydride	0.002
Thallium	0.002	Atomic Absorption; Furnace	0.001
			0.0007 [6]
		ICP-Mass Spectrometry	0.0003

[1] Using concentration technique in Appendix A to EPA Method 200.7.
[2] MFL = million fibers per liter >10 μm.
[3] Using a 2X preconcentration step as noted in Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.
[4] Screening method for total cyanides.
[5] Measures "free" cyanides.
[6] Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

* * * * *

(iii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the State within 14 days of collection.

* * * * *

(c) The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in § 141.62 for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be as follows:

(1) Groundwater systems shall take one sample at each sampling point once every three years. Surface water systems (or combined surface/ground) shall take one sample annually at each sampling point.

* * * * *

(i) * * *

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium is determined by a running annual average at any sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is our of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.

* * * * *

(k) Inorganic analysis

(4) Analysis for the listed inorganic contaminants shall be conducted using the following methods:

Contaminant	Methodogy	EPA [1, 2, 12]	ASTM [2]	SM [3]	USGS [4]	Other
Antimony	Atomic Absorption; Furnace [6]	[1] 204.2		3113		
	Atomic Absorption; Platform [6]	[3] 220.9				
	ICP-Mass Spectrometry [6]	[3] 200.8				
	Hydride-Atomic Absorption [5]		D-3697-87			
Asbestos	Transmission Electron Microscopy	[12] EPA				
Barium	Atomic Absorption; Furnace [6]	[1] 208.2		3113B		
	Atomic Absorption; Direct [6]	[1] 208.1		3111D		
	Inductively Coupled Plasma [6]	[3] 200.7		3120		
Beryllium	Atomic Absorption; Furnace [6]	[1] 210.2	D-3645-84B	3113		
	Atomic Absorption; Platform [6]	[3] 200.9				
	Inductively Coupled Plasma [6]	[3] 200.7		3120		
	ICP-Mass Spectrometry [6]	[3] 200.8				
Cadmium	Atomic Absorption; Furnace [6]	[1] 213.2		3113B		
	Inductively Coupled Plasma [6]	[3] 200.7				
Chromium	Atomic Absorption; Furnace [6]	[1] 218.2		3113B		
	Inductively Coupled Plasma [6]	[3] 200.7		3120		
Cyanide	Distillation, Spec.	[5] 335.2	D-2036-89A	4500-CN-D	I330085	
	Distillation, Automated, Spec.	[5] 335.3		4500-CN-E		
	Distillation, Selective Electrode		D-2036-89A	4500-CN-F		
	Distillation, Amenable, Spec.	[1] 335.1	D-2036-89B	4500-CN-G		
Mercury	Manual Cold Vapor Technique [9]	[1] 245.1	D3223-86	3112B		
	Automated Cold Vapor Technique [9]	[1] 245.2				
Nickel	Atomic Absorption; Furnace [6]	[1] 249.2		3113		
	Atomic Absorption; Platform [6]	[3] 200.9				
	Atomic Absorption; Direct [6]	[1] 249.1		3111B		
	Inductively Coupled Plasma [6]	[3] 200.7		3120		
	ICP-Mass Spectrometry [6]	[3] 200.8				
Nitrate	Manual Cadmium Reduction	[1] 353.3	D3867-90	4500-NO_3-E		
	Automated Hydrazine Reduction	[1] 353.1				
	Automated Cadmium Reduction	[1] 353.2	D3867-90	4500-NO_3-F		

Contaminant	Methodology	EPA [1,5,12]	ASTM [2]	SM [3]	USGS [4]	Other
	Ion Selective Electrode					WeWWG/5880 [7]
	Ion Chromatography	[11] 300.0				B-1011 [8]
Nitrite	Spectophometric	[1] 354.1				
	Automated Cadmium Reduction	[1] 353.2	D3867-90	4500-NO_3-F		
	Manual Cadmium Reduction	[1] 353.3	D3867-90	4500-NO_3-E		
	Ion Chromatography	[11] 300.0				B-1011 [8]
Selenium	Hydride-Atomic Absorption [9]		D3859-84A	3114B		
	Atomic Absorption; Furnace [6,10]	[1] 270.2	D3859-88	3113B		
Thallium	Atomic Absorption; Furnace [6]	[1] 279.2		3113		
	Atomic Absorption; Platform [6]	[5] 200.9				
	ICP-Mass Spectrometry [6]	[5] 200.8				

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268 March 1983. EPA-600/4-79-020.

[2] Annual Book of ASTM Standards, Vols. 11.01 and 11.02, 1991, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

[3] "Standard Methods for the Examination of Water and Wastewater," 17th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989.

[4] Techniques of Water Resources Investigations of the U.S. Geological Survey, "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Book 5, Chapter A-1, Third Edition, 1989. Available at Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[5] "Methods for the Determination of Metals in Environmental Samples." Available at NTIS, PB 91-231498.

[6] Samples that contain less than 1 NTU (nephelometric turbidity unit) and are properly preserved (conc HNO_3 to pH <2) may be analyzed directly (without digestion) for total metals, otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to the initiation of metal analysis. When digestion is required, the total recoverable technique as defined in the method must be used.

[7] "Orion Guide to Water and Wastewater Analysis." Form WeWWG/5880, p. 5, 1985. Orion Research, Inc., Cambridge, MA.

[8] "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography, Method B-1011, Millipore Corporation, Waters Chromatography Division, 34 Maple Street, Milford, MA 01757.

[9] For the gaseous hydride determinations of antimony and selenium and for the determination of mercury by the cold vapor techniques, the proper digestion technique as defined in the method must be followed to ensure the element is in the proper state for analyses.

[10] Add 2 ml of 30% H_2O_2 and an appropriate concentration of matrix modifier $Ni(NO_3)_2 + 6H_2O$ (nickel nitrate) to samples.

[11] "Method 300. Determination of Inorganic Anions in Water by Ion Chromatography." Inorganic Chemistry Branch, Environmental Monitoring Systems Laboratory. August 1991.

[12] "Analytical Method For Determination of Asbestos Fibers in Water." EPA-600/4-83-043. September 1983. U.S. EPA Environmental Research Laboratory. Athens, GA 30613.

(5) Sample collection for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the table below:

Contaminant	Preservative [1]	Container [2]	Time [3]
Antimony	Conc HNO_3 to pH <2	P or G	6 months.
Asbestos	Cool, 4°C	P or G	
Barium	Conc HNO_3 to pH <2	P or G	6 months.
Beryllium	Conc HNO_3 to pH <2	P or G	6 months.
Cadmium	Conc HNO_3 to pH <2	P or G	6 months.
Chromium	Conc HNO_3 to pH <2	P or G	6 months.
Cyanide	Cool, 4°C, NAOH to pH >12,	P or G	14 days.
Fluoride	None	P or G	1 month.
Mercury	Conc HNO_3 to pH <2	P or G	28 days.
Nickel	Conc HNO_3 to pH <2	P or G	6 months.
Nitrate			
Chlorinated	Cool, 4°C	P or G	28 days.
Non-chlorinated	Conc H_2SO_4 to pH <2	P or G	14 days.
Nitrite	Cool, 4°C	P or G	48 hours.
Selenium	Conc HNO_3 to pH <2	P or G	6 months.
Thallium	Conc HNO_3 to pH <2	P or G	6 months.

[1] If HNO_3 cannot be used because of shipping restrictions, sample may be initially preserved by icing and immediately shipping it to the laboratory. Upon receipt in the laboratory, the sample must be acidified with conc HNO_3 to pH <2 and held for 16 hours before analysis.

[2] P=plastic, hard or soft; G=glass, hard or soft.

[3] In all cases, samples should be analyzed as soon after collection as possible.

[4] See method(s) for the information for preservation.

(6) Analysis under this section shall only be conducted by laboratories that have been certified by EPA or the State. Laboratories may conduct sample analysis under provisional certification until January 1, 1996. To receive certification to conduct analyses for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite and selenium and thallium, the laboratory must:

(i) Analyze Performance Evaluation samples which include those substances provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(ii) Achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance limit
Antimony	6#30 at ≥0.006 mg/1
Asbestos	2 standard deviations based on study statistics.
Barium	±15% at ≥0.15 mg/1
Beryllium	±15% at ≥0.001 mg/1
Cadmium	±20% at ≥0.002 mg/1
Chromium	±15% at ≥0.01 mg/1
Cyanide	±25% at ≥0.1 mg/1
Fluoride	±10% at ≥1 to 10 mg/1
Mercury	±30% at ≥0.0005 mg/1
Nickel	±15% at ≥0.01 mg/1
Nitrate	±10% at ≥0.4 mg/1
Nitrite	±15% at ≥0.4 mg/1

Contaminant	Acceptance limit
Selenium	±20% at ≥0.01 mg/1
Thallium	±30% at ≥0.002 mg/1

* * * * *

6. Section 141.24 is amended by revising paragraph (f) introductory text, paragraphs (f) introductory text, paragraphs (f)(4), (f)(5), (f)(7), and (f)(10), (f)(11), introductory text, (f)(12), the introductory texts of (f)(14), (f)(15) and (f)(16) revising (f) (17) and (18), (h)(10), (h)(12)(ii)–(iv), (h)(12)(vi)–(viii), (h)(18), (h)(19)(i)(B), and adding paragraphs (h)(12)(ix)–(xiv) to read as follows:

§ 141.24 Organic chemicals other than total trialomethanes, sampling and analytical requirements.

* * * * *

(f) Beginning with the initial compliance period, analysis of the contaminants listed in § 141.61(a) (1) through (21) for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

* * * * *

(4) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(a) (2) through 21 during each compliance period, beginning in the initial compliance period.

(5) If the initial monitoring for contaminants listed in § 141.61(a) (1) through (8) and the monitoring for the contaminants listed in § 141.61(a) (9) through (21) as allowed in paragraph (f)(18) has been completed by December 31, 1992, and the system did not detect any contaminant listed in § 141.61(a) (1) through (21), then each ground and surface water system shall take one sample annually beginning with the initial compliance period.

* * * * *

(7) Each community and non-transient ground water system which does not detect a contaminant listed in § 141.61(a) (1) through (21) may apply to the State for a waiver from the requirements of paragraphs (f)(5) and (f)(6) of this section after completing the initial monitoring. (For purposes of this section, detection is defined as >0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods). States may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

* * * * *

(10) Each community and non-transient surface water system which does not detect a contaminant listed in § 141.61(a) (1) through (21) may apply to the State for a waiver from the requirements of (f)(5) of this section after completing the initial monitoring. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Systems meeting this criterion must be determined by the State to be non-vulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the State (if any).

(11) If a contaminant listed in § 141.61(a) (2) through (21) is detected at a level exceeding 0.0005 mg/l in any sample, then:

* * * * *

(12) Systems which violate the requirements of § 141.61(a) (1) through (21), as determined by paragraph (f)(15) of this section, must monitor quarterly. After a minimum of four consecutive quarterly samples which show the system is in compliance as specified in paragraph (f)(15) of this section the system and the State determines that the system is reliably and consistently below the maximum contaminant level, the system may monitor at the frequency and times specified in paragraph (f)(11)(iii) of this section.

* * * * *

(14) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

* * * * *

(15) Compliance with § 141.61(a) (1) through (21) shall be determined based on the analytical results obtained at each sampling point.

* * * * *

(16) Analysis for the contaminants listed in § 141.61(a) (1) through (21) shall be conducted using the following EPA methods or their equivalent as approved by EPA. These methods are contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039, and are available from the National Technical Information Service (NTIS) NTIS PB91–231480 and PB91–146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–336–4700.

* * * * *

(17) Analysis under this section shall only be conducted by laboratories that are certified by EPA or the State according to the following conditions (laboratories may conduct sample analysis under provisional certification until January 1, 1996):

(i) To receive certification to conduct analyses for the contaminants in § 141.61(a) (2) through (21) the laboratory must:

(A) Analyze Performance Evaluation samples which include these substances provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(B) Achieve the quantitative acceptance limits under paragraphs (f)(17)(i) (C) and (D) of this section for at least 80 percent of the regulated organic chemicals listed in § 141.61(a) (2) through (21).

(C) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±20% of the actual amount of the substances in the Performance Evaluation sample when the actual amount is greater than or equal to 0.010 mg/l.

(D) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±40 percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is less than 0.010 mg/l.

(E) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in Appendix B of Part 136.

(ii) To receive certification for vinyl chloride, the laboratory must:

(A) Analyze Performance Evaluation samples provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(B) Achieve quantitative results on the analyses performed under paragraph (f)(17)(ii)(A) of this section that are within ±40 percent of the actual amount of vinyl chloride in the Performance Evaluation sample.

(C) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in appendix B of part 136.

(D) Obtain certification for the contaminants listed in § 141.61(a)(2) through (21).

(18) States may allow the use of monitoring data collected after January 1, 1988, required under section 1445 of the Act for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements of this section, the State may use these data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of

paragraph (f)(4) of this section. Systems which use grandfathered samples and did not detect any contaminant listed § 141.61(a)(2) through (21) shall begin monitoring annually in accordance with paragraph (f)(5) of this section beginning with the initial compliance period.

* * * * *

(h) * * *

(10) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

* * * * *

(12) * * *

(ii) Method 505, "Analysis of Organohalide Pesticides and Commercial Polychlorinated Biphenyl Products (Aroclors) in Water by Microextraction and Gas Chromatography." Method 505 can be used to measure alachlor, atrazine, chlordane, endrin, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorocyclopentadiene, lindane, methoxychlor, toxaphene and simazine. Method 505 can be used as a screen for PCBs.

(iii) Method 507, "Determination of Nitrogen- and Phosphorus-Containing Pesticides in Ground Water by Gas Chromatography with a Nitrogen-Phosphorus Detector." Method 507 can be used to measure alachlor, atrazine and simazine.

(iv) Method 508, "Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector." Method 508 can be used to measure chlordane, endrin, heptachlor, heptachlor epoxide, hexachlorobenzene, lindane, methoxychlor and toxaphene. Method 508 can be used as a screen for PCBs.

* * * * * *

(vi) Method 515.1, "Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector." Method 515.1 can be used to measure 2,4-D, dalapon, dinoseb, pentachlorophenol, picloram and 2,4,5-TP (Silvex).

(vii) Method 525.1, "Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry." Method 525.1 can be used to measure alachlor, atrazine, chlordane, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, endrin, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorocyclopentadiene, lindane, methoxychlor, pentachlorphenol, polynuclear aromatic hydrocarbons, simazine, and toxaphene.

(viii) Method 531.1, "Measurement of N-Methyl Carbamoyloximes and N-Methyl Carbamates in Water by Direct Aqueous Injection HPLC with Post-Column Derivatization." Method 531.1 can be used to measure aldicarb, aldicarb sulfoxide, aldicarb sulfone, carbofuran and oxamyl.

(ix) Method 1613, "Tetra- through Octa- Chlorinated Dioxins and Furans by Isotope Dilution." Method 1613 can be used to measure 2,3,7,8-TCDD (dioxin). This method is available from USEPA-OST, Sample Control Center, P.O. Box 1407, Alexandria, VA 22313.

(x) Method 547, "Analysis of Glyphosate in Drinking Water by Direct Aqueous Injection HPLC with Post-Column Derivatization" Method 547 can be used to measure glyphosate.

(xi) Method 548, "Determination of Endothall in Aqueous Samples." Method 548 can be used to measure endothall.

(xii) Method 549, "Determination of Diquat and Paraquat in Drinking Water by High Performance Liquid Chromatography with Ultraviolet Detection." Method 549 can be used to measure diquat.

(xiii) Method 550, "Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Liquid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection". Method 550 can be used to measure benzo(a)pyrene and other polynuclear aromatic hydrocarbons.

(xiv) Method 550.1, "Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Solid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection". Method 550.1 can be used to measure benzo(a)pyrene and other polynuclear aromatic hydrocarbons.

* * * * *

(18) Detection as used in this paragraph shall be defined as greater than or equal to the following concentrations for each contaminant.

Contaminant	Detection limit (mg/l)
Alachlor	.0002
Aldicarb	.0005
Aldicarb sulfoxide	.0005
Aldicarb sulfone	.0008
Atrazine	.0001
Benzo[a]pyrene	.00002
Carbofuran	.0009
Chlordane	.0002
Dalapon	.001
Dibromochloropropane (DBCP)	.00002
Di (2-ethylhexyl) adipate	.0006
Di (2-ethylhexyl) phthalate	.0006
Dinoseb	.0002
Diquat	.0004
2,4-D	.0001
Endothall	.009
Endrin	.00001
Ethylene dibromide (EDB)	.00001
Glyphosate	.006
Heptachlor	.00004
Heptachlor epoxide	.00002
Hexachlorobenzene	.0001
Hexachlorocyclopentadiene	.0001
Lindane	.00002
Methoxychlor	.0001
Oxamyl	.002
Picloram	.0001
Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl)	.0001
Pentachlorophenol	.00004
Simazine	.00007
Toxaphene	.001
2,3,7,8-TCDD (Dioxin)	.000000005
2,4,5-TP (Silvex)	.0002

* * * * *

(19) * * *

(i) * * *

(B) Achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance limits (percent)
DBCP	±40
EDB	±40.
Alachlor	±45.
Atrazine	±45.
Benzo[a]pyrene	2 standard deviations.
Carbofuran	±45.
Chlordane	±45.
Dalapon	2 standard deviations.
Di(2-ethylhexyl)adipate	2 standard deviations
Di(2-ethylhexyl)phthalate	2 standard deviations.
Dinoseb	2 standard deviations.
Diquat	2 standard deviations.
Endothall	2 standard deviations.
Endrin	±30.
Glyphosate	2 standard deviations.
Heptachlor	±45.
Heptachlor epoxide	±45.
Hexachlorobenzene	2 standard deviations.
Hexachloro-cyclopentadiene	2 standard deviations.
Lindane	±45.
Methoxychlor	±45.
Oxamyl	2 standard deviations.
PCBs (as Decachlorobiphenyl)	0–200.
Picloram	2 standard deviations.
Simazine	2 standard deviations.
Toxaphene	±45.
Aldicarb	2 standard deviations.
Aldicarb sulfoxide	2 standard deviations.
Aldicarb sulfone	2 standard deviations.
Pentachlorophenol	±50.
2,3,7,8-TCDD (Dioxin)	2 standard deviations.
2,4-D	±50.
2,4,5-TP (Silvex)	±50.

* * * * *

7. Section 141.32 is amended by adding paragraphs (e)(53) through (75) to read as follows:

§ 141.32 Public notification.

* * * * *

(e)* * *

(53) *Antimony.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that antimony is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in soils, ground water and surface waters and is often used in the flame retardant industry. It is also used in ceramics, glass, batteries, fireworks and explosives. It may get into drinking water through natural weathering of rock, industrial production, municipal waste disposal or manufacturing processes. This chemical has been shown to decrease longevity, and altered blood levels of cholesterol and glucose in laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for antimony at 0.006 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to antimony.

(54) *Beryllium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that beryllium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electrical equipment and electrical components. It generally gets into water from runoff from mining operations, discharge from processing plants and improper waste disposal. Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for beryllium at 0.004 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to beryllium.

(55) *Cyanide.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cyanide is a health concern at certain levels of exposure. This inorganic chemical is used in electroplating, steel processing, plastics, synthetic fabrics and fertilizer products. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide. EPA has set the drinking water standard for cyanide at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to cyanide.

(56) *Nickel.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nickel poses a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electroplating, stainless steel and alloy products. It generally gets into water from mining and refining operations. This chemical has been shown to damage the heart and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard at 0.1 parts per million (ppm) for nickel to protect against the risk of these adverse effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to nickel.

(57) *Thallium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that thallium is a health concern at certain high levels of exposure. This inorganic metal is found naturally in soils and is used in electronics, pharmaceuticals, and the manufacture of glass and alloys. This chemical has been shown to damage the kidney, liver, brain and intestines of laboratory animals when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for thallium at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to thallium.

(58) *Benzo[a]pyrene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzo[a]pyrene is a health concern at certain levels of exposure. Cigarette smoke and charbroiled meats are common source of general exposure. The major source of benzo[a]pyrene in drinking water is the leaching from coal tar lining and sealants in water storage tanks. This chemical has been shown to cause cancer in animals such as rats and mice when the animals are exposed at high levels. EPA has set the drinking water standard for benzo[a]pyrene at 0.0002 parts per million (ppm) to protect against the risk of cancer. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo[a]pyrene.

(59) *Dalapon.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dalapon is a health concern at certain levels of exposure. This organic chemical is a widely used herbicide. It may get into drinking water after application to control grasses in crops, drainage ditches and along railroads. This chemical has been shown to cause damage to the kidney and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for dalapon at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dalapon.

(60) *Dichloromethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dichloromethane (methylene chloride) is a health concern at certain levels of exposure. This organic chemical is a widely used solvent. It is used in the manufacture of paint remover, as a metal degreaser and as an aerosol propellant. It generally gets into drinking water after improper discharge of waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dichloromethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dichloromethane.

(61) *Di (2-ethylhexyl)adipote.* The United States Environmental Protection Agency (EPA) sets drinking water

standards and has determined that di(2-ethylhexyl)adipate is a health concern at certain levels of exposure. Di(2-ethylhexyl)adipate is a widely used plasticizer in a variety of products, including synthetic rubber, food packaging materials and cosmetics. It may get into drinking water after improper waste disposal. This chemical has been shown to damage liver and testes in laboratory animals such as rats and mice exposed to high levels. EPA has set the drinking water standard for di(2-ethylhexyl)adipate at 0.4 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standards is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)adipate.

(62) *Di(2-ethylhexyl)phthalate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)phthalate is a health concern at certain levels of exposure. Di(2-ethylhexyl)phthalate is a widely used plasticizer, which is primarily used in the production of polyvinyl chloride (PVC) resins. It may get into drinking water after improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice exposed to high levels over their lifetimes. EPA has set the drinking water standard for di(2-ethylhexyl)phthalate at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)phthalate.

(63) *Dinoseb.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dinoseb is a health concern at certain levels of exposure. Dinoseb is a widely used pesticide and generally gets into drinking water after application on orchards, vineyards and other crops. This chemical has been shown to damage the thyroid and reproductive organs in laboratory animals such as rats exposed to high levels. EPA has set the drinking water standard for dinoseb at 0.007 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dinoseb.

(64) *Diquat.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that diquat is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to damage the liver, kidney and gastrointestinal tract and causes cataract formation in laboratory animals such as dogs and rats exposed at high levels over their lifetimes. EPA has set the drinking water standard for diquat at 0.02 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to diquat.

(65) *Endothall.* The United States Environmental Protection Agency (EPA) has determined that endothall is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into water by runoff into surface water. This chemical has been shown to damage the liver, kidney, gastrointestinal tract and reproductive system of laboratory animals such as rats and mice exposed at high levels over their lifetimes. EPA has set the drinking water standard for endothall at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endothall.

(66) *Endrin.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endrin is a health concern at certain levels of exposure. This organic chemical is a pesticide no longer registered for use in the United States. However, this chemical is persistent in treated soils and accumulates in sediments and aquatic and terrestrial biota. This chemical has been shown to cause damage to the liver, kidney and heart in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for endrin at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

(67) *Glyphosate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that glyphosate is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control grasses and weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to cause damage to the liver and kidneys in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for glyphosate at 0.7 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to glyphosate.

(68) *Hexachlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that hexachlorobenzene is a health concern at certain levels of exposure. This organic chemical is produced as an impurity in the manufacture of certain solvents and pesticides. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for hexachlorobenzene at 0.001 parts per million (ppm) to protect against the risk of cancer and other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorobenzene.

(69) *Hexachlorocyclopentadiene.* The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that hexachlorocyclopentadiene is a health concern at certain levels of exposure. This organic chemical is used as an intermediate in the manufacture of pesticides and flame retardants. It may get into water by discharge from production facilities. This chemical has been shown to damage the kidney and the stomach of laboratory animals when exposed at high levels over their lifetimes. EPA has set the drinking water standard for hexachlorocyclopentadiene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorocyclopentadiene.

(70) *Oxamyl.* The United States Environmental Protection Agency (EPA) establishes drinking water standards

and has determined that oxamyl is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for the control of insects and other pests. It may get into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to damage the kidneys of laboratory animals such as rats when exposed at high levels over their lifetimes. EPA has set the drinking water standard for oxamyl at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to oxamyl.

(71) *Picloram.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picloram is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for broadleaf weed control. It may get into drinking water by runoff into surface water or leaching into ground water as a result of pesticide application and improper waste disposal. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for picloram at 0.5 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to picloram.

(72) *Simazine.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that simazine is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control annual grasses and broadleaf weeds. It may leach into ground water or runs off into surface water after application. This chemical may cause cancer in laboratory animals such as rats and mice exposed at high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for simazine at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to simazine.

(73) *1,2,4-Trichlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2,4-trichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a dye carrier and as a precursor in herbicide manufacture. It generally gets into drinking water by discharges from industrial activities. This chemical has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,2,4-trichlorobenzene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,2,4-trichlorobenzene.

(74) *1,1,2-Trichloroethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined 1,1,2-trichloroethane is a health concern at certain levels of exposure. This organic chemical is an intermediate in the production of 1,1-dichloroethylene. It generally gets into water by industrial discharge of wastes. This chemical has been shown to damage the kidney and liver of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for 1,1,2-trichloroethane at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,1,2-trichloroethane.

(75) *2,3,7,8-TCDD (Dioxin).* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dioxin is a health concern at certain levels of exposure. This organic chemical is an impurity in the production of some pesticides. It may get into drinking water by industrial discharge of wastes. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dioxin at 0.00000003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dioxin.

8. Section 141.40 is amended by revising paragraph (e), revising paragraph (f), revising paragraphs (g) and (h), and revising paragraphs (n) (11) and (12) including the tables to read as follows:

§ 141.40 Special monitoring for organic chemicals.

* * * * *

(e) Community water systems and non-transient, non-community water systems shall monitor for the following contaminants except as provided in paragraph (f) of this section:

(1) Chloroform
(2) Bromodichloromethane
(3) Chlorodibromomethane
(4) Bromoform
(5) Chlorobenzene
(6) m-Dichlorobenzene
(8) 1,1-Dichloropropene
(9) 1,1-Dichloroethane
(10) 1,1,2,2-Tetrachloroethane
(11) 1,3-Dichloropropane
(12) Chloromethane
(13) Bromomethane
(14) 1,2,3-Trichloropropane
(15) 1,1,1,2-Tetrachloroethane
(16) Chloroethane
(17) 2,2-Dichloropropane
(18) o-Chlorotoluene
(19) p-Chlorotoluene
(20) Bromobenzene
(21) 1,3-Dichloropropene

(f) [Reserved]

(g) Analysis under this section shall be conducted using the recommended EPA methods as follows, or their equivalent as determined by EPA: 502.1, "Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography," 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography," 524.1, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography/Mass Spectrometry," 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/Mass Spectrometry, or 502.2, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series." These methods are contained in "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water," September 1986, available from the Drinking Water Public Docket or the National Technical Information Service (NTIS), NTIS PB91-231480 and PB91-146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-336-4700.

(h) Analysis under this section shall only be conducted by laboratories approved under § 141.24(g)(11).

* * * * *

(n) * * *

(11) List of Unregulated Organic Contaminants:

Organic contaminants	EPA analytical method
Aldrin	505, 508, and 525.
Butachlor	507, 525.
Carbaryl	531.1.
Dicamba	515.1.
Dieldrin	505, 508, and 525.
3-Hydroxycarbofuran	531.1.
Methomyl	531.1.
Metolachlor	507, 525.
Metribuzin	507, 508, and 525.
Propachlor	507, 525.

(12) List of Unregulated Inorganic Contaminants:

Inorganic contaminants	EPA analytical method
Sulfate	Colorimetric.

9. Section 141.50 is amended by adding paragraphs (a)(19) through (a)(23) and paragraphs (b)(21) through (b)(33) in the table in paragraphs (b) as follows:

§ 141.50 Maximum contaminant level goals for organic chemicals.

(a) * * *

(19) Benzo[a]pyrene

(20) Dichloromethane (methylene chloride)

(21) Di(2-ethylhexyl)phthalate

(22) Hexachlorobenzene

(23) 2,3,7,8-TCDD (Dioxin)

(b) * * *

Contaminant	MCLG (mg/l)
* * * * *	
(21) Dalapon	0.2
(22) Di(2-ethylhexyl)adipate	.4
(23) Dinoseb	.007
(24) Diquat	.02
(25) Endothall	.1
(26) Endrin	.002
(27) Glyphosate	.7
(28) Hexachlorocyclopentadiene	.05
(29) Oxamyl (Vydate)	.2
(30) Picloram	.5
(31) Simazine	.004
(32) 1,2,4-Trichlorobenzene	.07
(33) 1,1,2-Trichloroethane	.003

10. Section 141.51 is amended by adding entries (b)(11) through (b)(15) as follows:

§ 141.51 Maximum contaminant level goals for inorganic contaminants.

(b) * * *

Contaminant	MCLG (mg/l)
* * * * *	
(11) Antimony	0.006
(12) Beryllium	.004
(13) Cyanide (as free Cyanide)	.2
(14) Nickel	1
(15) Thallium	.0005

11. Section 141.60 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 141.60 Effective dates.

(a) * * *

(3) The effective date for paragraphs (a)(19) through (a)(21) and (c)(19) through (c)(33) of § 141.61 is January 17, 1994.

(b) * * *

(3) The effective date for paragraphs (b)(11) through (b)(15) of § 141.62 is January 17, 1994.

12. Section 141.61 is amended by adding paragraphs (a)(19)–(21); by revising paragraph (b) including the table; by revising the introductory text to paragraph (c); and by adding paragraphs (c)(19)–(33).

§ 141.61 Maximum contaminant levels for organic contaminants.

* * * * *

CAS No.	Contaminant	MCL (mg/l)
* * * * *		
(19) 75-09-2	Dichloromethane	0.005
(20) 120-82-1	1,2,4-Trichlorobenzene.	07
(21) 79-00-5	1,1,2-Trichloroethane.	.005

(b) The Administrator, pursuant to section 1412 of the Act, hereby identifies as indicated in the Table below granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OX) as the best technology treatment technique, or other means available for achieving compliance with the maximum contaminant level for synthetic organic contaminants identified in paragraphs (a) and (c) of this section:

BAT FOR ORGANIC CONTAMINANTS LISTED IN SECTION 141.61(A) AND (C)

CAS No.	Contaminant	GAC	PTA	OX
50-32-8	Benzo[a]pyrene	X		
75-99-0	Dalapon	X		
75-09-2	Dichloromethane		X	
103-23-1	Di (2-ethylhexyl) adipate	X	X	
117-81-7	Di (2-ethylhexyl) phthalate	X		
88-85-7	Dinoseb	X		
85-00-7	Diquat	X		
145-73-3	Endothall	X		
72-20-8	Endrin	X		
1071-53-6	Glyphosate			X
118-74-1	Hexachlorobenzene	X		
77-47-3	Hexachlorocyclopentadiene	X	X	
23135-22-0	Oxamyl (Vydate)	X		
1918-02-1	Picloram	X		
122-34-9	Simazine	X		
120-82-1	1,2,4-Trichlorobenzene	X	X	
79-00-5	1,1,2-Trichloroethane	X	X	
1746-01-6	2,3,7,8-TCDD (Dioxin)	X		

(c) The following maximum contaminant levels for synthetic organic contaminants apply to community water systems and non-transient, non-community water systems:

* * * * *

	CAS No.	Contaminant	MCL (mg/1)
(19)	50-32-8	Benzo[a]pyrene	0.0002
(20)	75-99-0	Dalapon	0.2
(21)	103-23-1	Di(2-ethylhexyl) adipate	0.4
(22)	117-81-7	Di(2-ethylhexyl) phthalate	0.006
(23)	88-85-7	Dinoseb	0.007
(24)	85-00-7	Diquat	0.02
(25)	145-73-3	Endothall	0.1
(26)	72-20-8	Endrin	0.002
(27)	1071-53-6	Glyphosate	0.7
(28)	118-74-1	Hexachlorbenzene	0.001
(29)	77-47-4	Hexachlorocyclopentadiene	0.05
(30)	23135-22-0	Oxamyl (Vydate)	0.2
(31)	1918-02-1	Picloram	0.5
(32)	122-34-9	Simazine	0.004
(33)	1746-01-6	2,3,7,8-TCDD (Dioxin)	3×10^{-8}

3. Section 141.62 is amended by revising the introductory text to paragraph (b); by adding paragraphs (b)(11) through (b)(15); and by revising paragraph (c), including the table, to read as follows:

§ 141.62 Maximum contaminant levels for inorganic contaminants.

* * * * *

(b) The maximum contaminant levels for inorganic contaminants specified in paragraphs (b)(2)—(6), (b)(10), and (b)(11)—(15) of this section apply to community water systems and non-transient, non-community water systems. The maximum contaminant level specified in paragraph (b)(1) of this section only applies to community water systems. The maximum contaminant levels specified in (b)(7), (b)(8), and (b)(9) of this section apply to community water systems; non-transient, non-community water systems; and transient non-community water systems.

Contaminant	MCL (mg/l)
(11) Antimony	0.006
(12) Beryllium	0.004
(13) Cyanide (as free Cyanide)	0.2
(14) Nickel	0.1
(15) Thallium	0.002

(c) The Administrator, pursuant to Section 1412 of the Act, hereby identifies the following as the best technology, treatment technique, or other means available for achieving compliance with the maximum contaminant levels for inorganic contaminants identified in paragraph (b) of this section, except fluoride:

BAT FOR INORGANIC COMPOUNDS LISTED IN SECTION 141.62(B)

Chemical Name	BAT(s)
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 [2],7
Cyanide	5,7,10
Mercury	2 [1],4,6 [1],7 [1]
Nickel	5,6,7
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2 [3],6,7,9
Thallium	1,5

[1] BAT only if influent Hg concentrations ≤ 10μg/1.
[2] BAT for Chromium III only.
[3] BAT for Selenium IV only.

Key to BATS in Table

1 = Activated Alumina
2 = Coagulation/Filtration
3 = Direct and Diatomite Filtration
4 = Granular Activated Carbon
5 = Ion Exchange
6 = Lime Softening
7 = Reverse Osmosis
8 = Corrosion Control
9 = Electrodialysis
10 = Chlorine
11 = Ultraviolent

14. Section 141.89(a) table is amended by revising footnote 9 to read as follows:

§ 141.89 Analytical methods.

* * * * *

[9] For analyzing lead and copper, the technique applicable to total metals must be used and samples cannot be filtered. Samples that contain less than 1 NTU (nephelometric turbidity unit) and are properly preserved (conc HNO_3 to pH <2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. Turbidity must be measured on the preserved samples just prior to when metal analysis is initiated. When digestion is required, the 'total recoverable' technique as defined in the method must be used.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. 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.

2. Section 142.16 is amended by revising the introductory text to paragraph (e), and revising paragraph (e)(2) to read as follows:

§ 142.16 Special Primary Requirements.

* * * * *

(e) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.40, 141.61 and 141.62 must contain the following (in addition to the general primacy requirements enumerated elsewhere in this Part, including the requirement that State regulations be at least as stringent as the federal requirements):

(2) A monitoring plan for the initial monitoring period by which the State will assure all systems complete the required initial monitoring within the regulatory deadlines.

Note: States may update their monitoring plan submitted under the Phase II Rule or simply note in their application that they will use the same monitoring plan for the Phase V Rule.

(i) The initial monitoring plan must describe how systems will be scheduled during the initial monitoring period and demonstrate that the analytical workload on certified laboratories for each of the three years has been taken into account, to assure that the State's plan will result in a high degree of monitoring compliance and that as a result there is a high probability of compliance and will be updated as necessary.

(ii) The State must demonstrate that the initial monitoring plan is enforceable under State law.

3. Section 142.62 is amended by revising paragraphs (a) and (b) to read as follows:

§ 142.62 Variances and exemptions from the maximum contaminant levels for organic and inorganic chemicals.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act hereby identifies the technologies listed in paragraphs (a)(1) through (a)(54) of this section as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for organic chemicals listed in §§ 141.61 (a) and (c):

Contaminant	Best available technologies		
	PAT [1]	GAO [2]	OX [3]
(1) Benzene	X	X	
(2) Carbon tetrachloride	X	X	
(3) 1,2-Dichloroethane	X	X	
(4) Trichloroethylene	X	X	
(5) para-Dichlorobenzene	X	X	
(6) 1,1-Dichloroethylene	X	X	
(7) 1,1,1-Trichloroethane	X	X	
(8) Vinyl chloride	X		
(9) cis-1,2-Dichloroethylene	X	X	
(10) 1,2-Dichloropropane	X	X	
(11) Ethylbenzene	X	X	
(12) Monochlorobenzene	X	X	
(13) o-Dichlorobenzene	X	X	
(14) Styrene	X	X	
(15) Tetrachloroethylene	X	X	
(16) Toluene	X	X	
(17) trans-1,2-Dichloroethylene	X	X	
(18) Xylense (total)	X	X	
(19) Alachlor	X	X	
(20) Aldicarb		X	
(21) Aldicarb sulfoxide		X	
(22) Aldicarb sulfone		X	
(23) Atrazine		X	
(24) Carbofuran		X	
(25) Chlordane		X	
(26) Dibromochloropropane	X	X	
(27) 2,4-D		X	
(28) Ethylene dibromide	X	X	
(29) Heptachlor		X	
(30) Heptachlor epoxide		X	
(31) Lindane		X	
(32) Methoxychlor		X	
(33) PCBs		X	
(34) Pentachlorophenol		X	
(35) Toxaphene		X	
(36) 2,4,5-TP		X	
(37) Benzo[a]pyrene		X	
(38) Dalapone		X	
(39) Dichloromethane	X		
(40) Di(2-ethylhexyl)adipate	X	X	
(41) Di(2-ethylhexyl)phthalate		X	
(42) Dinoseb		X	
(43) Diquat		X	
(44) Endothall		X	
(45) Endrin		X	
(46) Glyphosate			X
(47) Hexachlorobenzene			X
(48) Hexachlorocyclopentadiene	X	X	
(49) Oxamyl (Vydate)		X	
(50) Picloram		X	
(51) Simazine		X	
(52) 1,2,4-Trichlorobenzene	X	X	
(53) 1,1,2-Trichloroethane	X	X	
(54) 2,3,7,8-TCDD (Dioxin)		X	

[1] Packed Tower Aeration
[2] Granular Activated Carbon
[3] Oxidation (Chlorination or Ozonation)

(b) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum

contaminant levels for the inorganic chemicals listed in § 141.62:

BAT FOR INORGANIC COMPOUNDS LISTED IN [6] 141.62(B)

Chemical name	BAT(s)
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 [2],7
Cyanide	5,7,10
Mercury	2 [1],4,6 [1],7 [1]
Nickel	5,6,7
Nitrite	5,7,9
Nitrate	5,7
Selenium	1,2 [3],6,7,9
Thallium	1,5

[1] BAT only if influent Hg concentrations ≤ 10μg/1.
[2] BAT for Chromium III only.
[3] BAT for Selenium IV only.

Key to BATS in Table

1 = Activated Alumina
2 = Coagulation/Filtration (not BAT for systems <500 service connections)
3 = Direct and Diatomite Filtration
4 = Granular Activated Carbon
5 = Ion Exchange
6 = Lime Softening (not BAT for systems <500 service connections)
7 = Reverse Osmosis
8 = Corrosion Control
9 = Electrodialysis
10 = Chlorine
11 = Ultraviolet

* * * * *

[FR Doc. 92-15580 Filed 7-16-92; 8:45 am]
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federal register

Friday
July 17, 1992

Part IV

Department of Defense

Department of the Army

32 CFR Part 516
Litigation; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 516

Litigation

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army announces a revision of 32 CFR part 516, to bring it in line with changes which will be promulgated in Army Regulation 27–40, Litigation. This part prescribes policy and procedures for litigation in civilian court proceedings, including the following: providing representation of the Army and its personnel in federal and state court proceedings; remedies for procurement fraud; environmental litigation; bankruptcy; prosecution in federal court of offenses in which the Army has an interest; release of information and appearance of witnesses in criminal and civil court actions; procedures to follow when soldiers are summoned for jury duty; and, procedures for cooperation with the Office of Special Counsel.

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Mail comments to Office of the Judge Advocate General, ATTN: Litigation Division (DAJA–LT/LTC William S. Trivette), 901 North Stuart Street, Arlington, VA 22203–1837.

FOR FURTHER INFORMATION CONTACT: LTC William S. Trivette, (703) 696–1610.

SUPPLEMENTARY INFORMATION: This part also prescribes policies and procedures for: defensive and affirmative litigation in federal and state civilian courts where the Army or DOD has an interest in the matter; proceedings before federal or state administrative bodies, such as utility rate commissions; release of official information and testimony by DA personnel with regard to litigation; prosecution of individuals committing crimes on military installations in federal district court before either a district judge or a magistrate judge; remedies for procurement fraud and corruption; and proceedings before the Office of Special Counsel. This part does not apply to DA or DOD proceedings such as courts-martial or administrative boards.

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Kenneth L. Denton,

Army Federal Register Liaison Officer.

Accordingly, it is proposed that 32 CFR part 516 be revised as follows:

PART 516—LITIGATION

Subpart A—General

Sec.

Subpart B—Service of Process

Subpart C—Reporting Legal Proceedings to HQDA

Subpart D—Individual Liability

Subpart E—Legal Proceedings Initiated by the United States

Medical Care and Property Claims

Assertion of Other Claims

Subpart F—Environmental Litigation

Subpart G—Prosecution of Criminal Offenses in Federal Courts

Subpart H—Release of Information and Appearance of Witnesses

Scope

Release of Records in Connection With Litigation

DA Personnel as Witnesses in Private Litigation

Litigation in Which the United States Has an Interest

Status, Travel, and Expenses of Witnesses

Subpart I—Remedies in Procurement Fraud and Corruption

Authority: 5 U.S.C. 552; 10 U.S.C. 218, 1037, 1089, 1552, 1553, 2306; 18 U.S.C. 219, 3401; 28 U.S.C. 50.15, 50.16, 515, 513, 543; 28 U.S.C. 543, 1696, 1733, 1746, 1781, 1783, 2415, 2671, 2679; 31 U.S.C. 3711, 3729; 33 U.S.C. 400, 1344; 41 U.S.C. 51; 42 U.S.C. 290, 2651; 43 U.S.C. 666; 32 CFR part 250, E.O. 12778, 56 FR 55195, 3 CFR, 1991 Comp., p. 359.

Subpart A—General

§ 516.1 Purpose.

(a) This regulation prescribes policies and procedures for the following:

(1) Defensive and affirmative litigation in federal and state civilian courts where the Army or DoD has an interest in the matter.

(2) Proceedings before federal or state administrative bodies, such as utility rate commissions.

(3) Release of official information and testimony by DA personnel with regard to litigation.

(4) Prosecution of individuals committing crimes on military installations in federal district court before either a district judge or a magistrate judge.

(5) Remedies for procurement fraud and corruption.

(6) Proceedings before The Office of Special Counsel.

(b) This regulation does not apply to DA or DoD proceedings such as court-martials or administrative boards.

§ 516.2 References.

Applicable publications and forms are in appendix A to this part.

§ 516.3 Explanation of abbreviations and terms.

(a) The glossary contains explanations of abbreviations and terms.

(b) The masculine gender has been used throughout this regulation for simplicity and consistency. Any reference to the masculine gender is intended to include women.

§ 516.4 Responsibilities.

(a) United States Department of Justice (DOJ). DOJ defends litigation, in domestic and foreign courts, against the United States, its agencies and instrumentalities, and employees whose official conduct is involved. The various U.S. Attorney Offices, under the oversight of the Attorney General, conduct much of the representation.

(b) The Judge Advocate General (TJAG). Subject to the ultimate control of litigation by DOJ (including the various U.S. Attorney Offices), and to the general oversight of litigation by the Army General Counsel, TJAG is responsible for all litigation in which the Army has an interest. Only TJAG has the authority to settle or compromise cases against DA.

(c) Assistant Judge Advocate General For Civil Law and Litigation (AJAG–CL). Responsible to TJAG for litigation issues; supervises Chief, Litigation Division.

(d) Chief, Litigation Division. Reports to AJAG–CL and is responsible for the following:

(1) Supervises litigation in which the Army has an interest.

(2) Acts for TJAG and Secretary of the Army on litigation issues; delegates to an SJA or legal adviser the authority to work directly with DOJ on select cases.

(3) Serves as primary liaison with DOJ on litigation matters.

(e) Special Assistant U.S. Attorneys (SAUSAs) and DOJ Special Attorneys. Army Judge Advocates and civilian attorneys may be appointed as SAUSAs under 28 U.S.C. 543 to represent the Army's interests in either criminal or civil matters in federal court.

(1) Felony and misdemeanor prosecutions in federal court. In accordance with guidance in Subpart G, Army attorneys at the installation level can be appointed to prosecute cases in which the Army has an interest in federal court. Army attorneys who prosecute criminal cases will not represent the United States in civil litigation without authorization from Chief, Litigation Division.

(2) SAUSAs for civil litigation. With the approval of the U.S. Attorney, TJAG can assign a Judge Advocate to a U.S. Attorney's office to represent the government in litigation in which the Army or DoD has an interest. These Judge Advocates have the same general authority and responsibility as an Assistant U.S. Attorney.

(3) Special Attorneys assigned to DOJ. With concurrence of the appropriate DOJ official, TJAG can assign Judge Advocates to work as Special Attorneys for DOJ, usually in Washington, DC. Special Attorneys are authorized to represent the United States in civil litigation in which the Army or DoD has an interest.

(f) Attorneys at Army activities or commands. SJAs or legal advisers, or attorneys assigned to them, will represent the United States in litigation only if authorized by this regulation or delegated authority in individual cases by the Chief, Litigation Division.

(g) Commander, U.S. Army Claims Service (USARCS). The Commander, USARCS and attorneys assigned thereto are authorized, subject to AR 27–20, chapter 4, to maintain direct liaison with DOJ in regard to administrative settlement of claims under the Federal Tort Claims Act.

(h) Chief, Contract Law Division, OTJAG. The Chief, Contract Law Division, attorneys assigned thereto, and other attorneys designated by the Chief, Contract Law Division, are authorized in litigation involving taxation to represent DA in negotiation, administrative proceedings, and litigation, and to maintain liaison with DOJ and other governmental authorities.

(i) Legal Representatives of the Chief of Engineers. The Office of Chief Counsel, attorneys assigned thereto, and

other attorneys designated by the Chief Counsel may maintain direct liaison with DOJ in litigation and administrative proceedings arising from the navigation, civil works, Clean Water Act section 404 permit authority, and real property functions of the U.S. Army Corps of Engineers.

(j) Chief Trial Attorney, Contract Appeals Division, USALSA. The Chief Trial Attorney, attorneys assigned to the Contract Appeals Division, and attorneys designated by the Chief Trial Attorney will represent the government before the Armed Services Board of Contract Appeals and The General Services Board of Contract Appeals. They will maintain direct liaison with DOJ concerning appeals from ASBCA and GSBCA decisions. The Chief Trial Attorney will present to the ASBCA all DA cases, except that COE attorneys will act as trial attorneys in connection with COE contract cases.

(k) Chief, Regulatory Law Office, USALSA. The Chief, Regulatory Law Office, attorneys assigned thereto, and other attorneys designated by the Chief, will represent DA consumer interests in all regulatory matters before state and federal administrative agencies and commissions, including but not limited to proceedings involving rates and conditions for the purchase of services for communications (except long-distance telephone), transportation, and utilities (gas, electric, water and sewer).

(l) Chief, Intellectual Property Law Division, USALSA. The Chief, Intellectual Property Law Division and the attorneys assigned thereto will represent DA in matters pertaining to patents, copyrights, and trademarks. They will maintain direct liaison with DOJ concerning intellectual property issues.

(m) Chief, Labor and Employment Law Office, OTJAG. The Chief, Labor and Civilian Personnel Law, attorneys assigned thereto, and attorneys identified as labor counselors are authorized to represent DA in matters pertaining to labor relations, civilian personnel, and federal labor standards enforcement before the following: Federal Labor Relations Authority; Merit Systems Protection Board; Equal Employment Opportunity Commission; Department of Labor; National Labor Relations Board; and, state workmen's compensation commissions. In the event that any individual mentioned in this subparagraph intends to make a recommendation to DOJ concerning an appeal of any case to a U.S. Court of Appeals, such recommendation will first be coordinated with Litigation Division.

(n) Chief, Procurement Fraud Division, USALSA. The Chief, Procurement Fraud Division, attorneys assigned thereto, and other attorneys designated by the Chief will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative body. They will maintain liaison and coordinate remedies with DOJ and other agencies in matters of procurement fraud and corruption.

(o) Chief, Environmental Law Division, USALSA. The Chief, Environmental Law Division, attorneys assigned thereto, and other attorneys designated by the Chief will maintain direct liaison with DOJ in all environmental and natural resources litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, all installations presently or previously managed by DA, and all other sites or issues in which DA has a substantial interest.

(p) Chief, Criminal Law Division, OTJAG. The Chief, Criminal Law Division, will have general oversight over felony and magistrate court prosecutions conducted by Army lawyers acting as Special Assistant U.S. Attorneys. (See Subpart G). The Chief will coordinate with DOJ and other governmental agencies concerning the overall conduct of these prosecutions.

§ 516.5 Restriction on contact with DOJ.

(a) General rule. Except as authorized by TJAG, the Chief of Litigation Division, or this regulation, no Army personnel will confer or correspond with DOJ concerning legal proceedings in which the Army has an interest.

(b) Exceptions. This prohibition does not preclude contact with DOJ required by the Memorandum of Understanding between DOJ and DOD relating to the investigation and prosecution of certain crimes. (See AR 27–10, paragraph 2–7). In addition, an installation SJA or legal officer is expected to maintain a working relationship with the U.S. Attorney in each district within his geographical areas. An SJA or legal adviser should request the U.S. Attorney to advise him immediately when litigation involving DA or its personnel is served on the U.S. Attorney.

§ 516.6 Appearance as counsel.

(a) General. Military personnel on active duty and DA civilian personnel will not appear as counsel before any civilian court or in any preliminary proceeding, e.g., deposition, in litigation in which the Army has an interest without the prior written approval of TJAG, except under one of the following conditions:

(1) The appearance is authorized by this regulation.

(2) The individual is a party to the proceeding.

(3) The appearance is authorized under an expanded legal assistance program (See AR 27–3).

(4) The individual is a Judge Advocate assigned or detailed by TJAG to DOJ to represent the United States in civil or criminal cases, e.g., a Special Assistant U.S. Attorney.

(5) The attorney is assigned to one of the following OTJAG organizations and is acting within the authority set out in § 516.4: Litigation Division; Contract Appeals Division; Environmental Law Division; Regulatory Law Division; Intellectual Property Division; Procurement Fraud Division; or, Contract Law Division.

(b) Procedure. All requests for appearance as counsel will be made through Litigation Division to the Personnel, Plans and Training Office, OTJAG. Requests for DA military or civilian attorneys to appear in any civilian court or proceeding on behalf of a soldier who is also facing UCMJ action will be delivered to the SJA, legal adviser, or Regional Defense Counsel, as appropriate. The SJA or legal adviser will forward the request to Litigation Division with an evaluation of the case and recommendation. Regional Defense Counsel should send requests for USATDS counsel to Chief, USATDS, who will forward the request to Litigation Division. Privileged or otherwise sensitive client information should only be submitted through USATDS channels.

§ 516.7 Mailing addresses.

Mailing addresses for organizations referenced in this regulation are in appendix B to this part.

Subpart B—Service of Process

§ 516.8 General.

(a) Defined. Process is a legal document that compels a defendant in an action to appear in court or to comply with the court's demands, e.g., in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, indictment, contempt order, subpoena, or summons. Service of process is the delivery of the document to a defendant to notify him of a claim or charge against him.

(b) Policy. DA personnel will follow the guidance of this chapter when civil officials attempt to serve civil or criminal process on individuals on federal property.

(c) Procedures. Provost marshals shall ensure that installation law enforcement personnel are adequately trained to respond to situations which arise with regard to service of civil and criminal process. SJAs or legal advisers shall provide advice to law enforcement personnel in these matters.

§ 516.9 Service of criminal process within the United States.

(a) Surrender of personnel. Detailed guidance for surrender of personnel to law enforcement officials is in Chapter 7 of AR 630–10 and AR 190–9. Army officials will cooperate with civilian law enforcement authorities who seek the surrender of a soldier in connection with criminal charges. Special rules apply when a bail bondsman or other surety seeks custody of a soldier.

(b) Requests for witnesses or evidence in criminal proceedings. See subpart H.

§ 516.10 Service of civil process within the United States.

(a) Policy. DA officials will not prevent or evade the service or process in legal actions brought against the United States or against themselves in their official capacities. If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service. DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(b) Requests for witnesses or evidence in civil proceedings. See subpart H.

(c) Process of federal courts. Subject to reasonable restrictions imposed by the commander, civil officials will be permitted to serve federal process. (See Fed. R. Civ. P. 4, 45).

(d) Process of state courts.

(1) In areas of exclusive federal jurisdiction that are not subject to the right to serve state process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive federal jurisdiction precludes service by state authorities on the military installation.

(2) On federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.

(e) Process of foreign courts. A U.S. District Court may order service upon a person who resides in the judicial district of any document issued in connection with a proceeding in a foreign or international tribunal. (28 U.S.C. 1696). In addition, the U.S. State Department has the power to receive a letter rogatory issued by a foreign or international tribunal, to transmit it to a tribunal, officer or agency in the United States and to return it after execution. (28 U.S.C. 1781). Absent a treaty or agreement to the contrary, these provisions will govern.

(f) Seizure of personal property. State and federal courts issue orders (e.g., writ of attachment) authorizing a levy (seizure) of property to secure satisfaction of a judgment. DA personnel will comply with valid state or federal court orders commanding or authorizing the seizure of private property to the same extent that state or federal process is served.

§ 516.11 Service of criminal process outside the United States.

Army Regulation 630–10 and international treaties, such as status of forces agreements, govern the service of criminal process of foreign courts and the surrender of soldiers to foreign civilian law enforcement officials.

§ 516.12 Service of civil process outside the United States.

(a) Process of foreign courts. In foreign countries service of process issued by foreign courts will be made under the law of the place of service, as modified by status of forces agreements, treaties or other agreements. In foreign areas under exclusive U.S. jurisdiction, service of process issued by foreign courts will be made under the law specified by appropriate U.S. authority.

(b) Process of federal courts. Service of process on U.S. citizens or residents may be accomplished under the following provisions: The Hague Convention, reprinted in 28 U.S.C.A. Federal Rules of Civil Procedure, following Rule 4; Fed. R. Civ. P. 4(i); 28 U.S.C. 1781 and 1783; and, the rules of the federal court concerned. If a DA official receives a request to serve federal process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned.

(c) Process of state courts. If a DA official receives a request to serve state court process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned. (See, e.g., The Hague Convention, reprinted in 28 U.S.C.A. Federal Rules of Civil Procedure, following Rule 4).

(d) Suits against the United States. DA personnel served with foreign civil process will notify the appropriate SJA or legal adviser, who will return the document to the issuing authority explaining the lack of authority to accept service for the United States. Service on the United States must be made upon DOJ through established diplomatic channels.

§ 516.13 Assistance in serving process overseas.

(a) Europe. For information and assistance concerning service of process of persons assigned to or accompanying U.S. forces in Europe, contact the International Criminal Jurisdiction and Civil Process Branch, Administrative Law Division, Office of The Judge Advocate, HQ U.S. Army Europe And Seventh Army, (Heidelberg, Germany) APO AE 09014.

(b) Korea. For information and assistance concerning service of process of persons assigned to or accompanying U.S. forces in Korea, contact Staff Judge Advocate, HQ, US Forces Korea, Seoul, Republic of Korea, APO San Francisco 96301–0009.

(c) Panama, Central and South America. For information and assistance concerning service of process of persons assigned to or accompanying forces in the U.S. Army Southern Command, contact Staff Judge Advocate, HQ, US Army South, Fort Clayton, Panama, APO AA 34004–5000.

Subpart C—Reporting Legal Proceedings to HQDA

§ 516.14 General.

(a) Legal proceedings requiring reporting. Actions must be taken upon commencement of litigation or administrative proceedings in which DA has an interest. Typically, the Secretary of the Army, DA, the United States, or DA personnel are named as defendant in a lawsuit or as respondent in an

administrative proceeding. A nonexclusive listing of cases in which DA has an interest include the following:

(1) Suits for damages, injunctive relief, or other action filed against the government or against DA personnel in their official capacity.

(2) Suits alleging individual liability arising from performance of official duties by DA personnel.

(3) Actions affecting DA operations or which might require official action by DA personnel.

(4) Actions arising out of DA contracts, subcontracts, or purchase orders wherein the government might be required to reimburse a contractor for litigation expenses.

(5) Bankruptcy proceedings involving government contractors in which DA or its instrumentalities may have an interest.

(b) Command and agency responsibility. Commanders and supervisors of Army units, installations, or organizations will ensure reports required by this section are promptly submitted.

(c) Reports to HQDA. Reports required by this regulation will be made telephonically or mailed to the responsible organization at DA. Appendix B to this part contains mailing addresses for these offices. Except in the situations described below, all reports required by this chapter will be made to Litigation Division:

(1) Actual or potential litigation (or administrative infringement claims) involving patents, copyrights, or trademarks will be made to Intellectual Property Law Division.

(2) Reports of pending or prospective litigation involving taxation will be made to Contract Law Division.

(3) Communications, transportation, and utility services reports will be made to Regulatory Law Division.

(4) Reports involving environmental and natural resource litigation and administrative proceedings will be made to Environmental Law Division.

(5) Potential civil recovery reports in cases of procurement fraud and corruption will be made to Procurement Fraud Division.

(6) Reports involving the felony prosecution program and magistrate court prosecutions will be made to Criminal Law Division, OTJAG.

(7) Cases before the Armed Services Board of Contract Appeals and the General Services Board of Contract Appeals will be made to Contract Appeals Division.

(d) Classified information. Information required by this regulation will be submitted in an unclassified form if possible. If downgrading or declassification is not feasible, the classified material should be separated from the report and forwarded under separate cover.

(e) Other reporting requirements. Reports required by this chapter are in addition to and do not satisfy any other reporting requirement, such as the following: notifying the FBI of offenses pursuant to AR 27–10; submitting serious incident reports pursuant to AR 190–40; reporting procurement fraud or other irregularities per Defense Federal Acquisition Regulation Supplement, section 9.406–3; or, reporting the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel pursuant to AR 27–50.

(f) Reports control exemption. The reports required herein are exempt from reports control under AR 335–15, paragraphs 3–3a(5) and 5–2e(4).

§ 516.15 Individual and supervisory responsibilities upon commencement of legal proceedings.

(a) Individual responsibilities. DA personnel served with civil or criminal process concerning a proceeding in which DA has an interest (See § 516.14) will immediately inform his supervisor and furnish copies of process and pleadings. There is no requirement to notify supervisors of purely private litigation.

(b) Supervisory responsibilities. When supervisors learn that legal proceedings in which DA has an interest have commenced, the supervisor will forward a copy of all process and pleadings, along with other readily available information, to the SJA or legal adviser. If no legal officer is available locally, the documents will be forwarded to the SJA or legal adviser of the next higher headquarters.

§ 516.16 SJA or legal adviser responsibilities.

(a) Immediate notice to HQDA. When an SJA or legal adviser learns of litigation in which the United States has an interest, and it appears that HQDA is not aware of the action, the SJA or legal adviser will telephonically notify the responsible HQDA office. (See § 516.14(c)). Immediate notice is particularly important when litigation involves one of the following: a lawsuit against an employee in his individual capacity; a motion for a temporary restraining order or preliminary injunction; a habeas corpus proceeding; a judicial or administrative proceeding involving less than 60 days to file an answer; and, actions with possible Congressional, Secretarial, or Army Staff interest. For legal proceedings instituted in foreign tribunals, the SJA or legal adviser will also notify the major overseas commander concerned and the appropriate U.S. Embassy or Legation. A telephonic report to HQDA should include the following:

(1) Title or style of the proceeding.

(2) Full names and addresses of the parties.

(3) Tribunal in which the action is filed, date filed, docket number, when and on whom service of process was made, and date by which pleading or response is required.

(4) Nature of the action, amount claimed or relief sought.

(5) Reasons for immediate action.

(b) Transmission of process, pleadings, and related papers. Unless instructed otherwise by HQDA, the SJA or legal adviser will FAX or mail HQDA a copy of all process, pleadings, and related papers. Use of express mail or overnight delivery service is authorized.

(c) Notice to U.S. Attorney. If the legal proceeding is instituted in the United States, the SJA or legal adviser, unless instructed otherwise by HQDA, will notify the appropriate U.S. Attorney and render assistance as required.

§ 516.17 Litigation alleging individual liability.

See subpart D for procedures to follow when DA personnel, as a result of performance of official duties, are either sued in their individual capacities or face criminal charges.

§ 516.18 Injunctive relief.

(a) General. Plaintiffs can attempt to force government action or restraint in important operational matters or pending personnel actions through motions for temporary restraining orders (TRO) or preliminary injunctions (PI). Because these actions can quickly impede military functions, immediate and decisive action must be taken.

(b) Notification to HQDA and U.S. Attorney. The SJA or legal adviser will immediately notify Litigation Division or other appropriate office at HQDA when a motion for TRO or PI has been, or is about to be, filed. The SJA or legal officer will also notify the responsible U.S. Attorney.

(c) Actions by SJA or legal adviser. The SJA or legal adviser will assist the DOJ or DA attorney responsible for the litigation. Installation attorneys or support personnel should begin accumulating relevant documentary evidence and identifying witnesses. If requested, installation attorneys will prepare a legal memorandum concerning the motion, giving particular attention to

the following issues relevant to a court granting injunctive relief:

(1) Plaintiff's likelihood of success on the merits.

(2) Whether plaintiff will be irreparably harmed if injunctive relief is not granted.

(3) Harm to defendant and other parties if injunctive relief is granted.

(4) The public interest.

§ 516.19 Habeas corpus.

(a) General. A soldier may file a writ of habeas corpus to challenge his continued custody (usually in a post court-martial situation) or retention in the Army. As is the case with injunctive relief in the preceding paragraph, installation SJAs and legal advisers must take immediate action.

(b) Notification to Litigation Division and U.S. Attorney. The SJA or Legal Officer will notify Litigation Division and the responsible U.S. Attorney's Office immediately upon learning that a petition for writ of habeas corpus has been filed. All relevant documentary evidence supporting the challenged action should be assembled immediately.

(c) Procedures in habeas corpus. Upon the filing of a petition for a writ of habeas corpus, the court will dismiss the petition, issue the writ, or order the respondent to show cause why it should not be granted. If a writ or order to show cause is issued, the SJA or legal adviser should be prepared to assist the responsible Litigation Division or DOJ attorney in preparing a return and answer. If so directed, the SJA will also prepare a memorandum of points and authorities to accompany the return and answer. The government's response should cover the following: whether the Army has custody of petitioner; whether respondent and petitioner are within the judicial district; and, whether appellate or administrative remedies have been exhausted.

(d) Writs or orders issued by state courts. No state court, after being judicially informed that a petitioner is in custody under the authority of the United States, should interfere with that custody or require that petitioner be brought before the state court. A deserter, apprehended by any civil officer having authority to apprehend offenders under the laws of the United States or of any state, district, territory, or possession of the United States, is in custody by authority of the United States. If a writ of habeas corpus is issued by a state court, the SJA or legal adviser will seek guidance from Litigation Division.

(e) Foreign court orders. A foreign court should not inquire into the legality of restraint of a person held by U.S. military authority. If a foreign court issues any process in the nature of a writ of habeas corpus, the SJA or legal adviser will immediately report the matter to the appropriate U.S. forces commander and to Litigation Division.

§ 516.20 Litigation against government contractors.

(a) General. A contract might require that the government reimburse a contractor (or subcontractor) for adverse judgments or litigation expenses. Unless a contractor or subcontractor facing a lawsuit requests representation by DOJ, the Army presumes the contractor will obtain private counsel to defend the case. If the contract so allows, however, the contractor may request and HQDA may recommend that DOJ represent the contractor if it is in the best interests of the United States.

(b) Actions by SJA or legal adviser. If a contractor or subcontractor faces litigation and the underlying contract with the government requires reimbursement for adverse judgments or costs of the litigation, the SJA or legal adviser, through the contracting officer, should determine if the contractor desires representation by DOJ. If so, the contractor or authorized agent will sign a request for representation. (See Figure 516.1, appendix L). The SJA or legal adviser will determine whether, in his opinion, representation by DOJ should be granted. He will prepare a memorandum to support his recommendation, especially concerning any issue regarding the government's obligation to reimburse the contractor under the contract. The SJA or legal adviser will forward his memorandum, along with the contractor's request, to Litigation Division.

(c) Actions by Litigation Division. The Chief, Litigation Division will evaluate the submission and decide if it is in the Army's best interest that the request be granted. He will prepare a memorandum supporting his decision and send the packet to DOJ. The Chief, Litigation Division's decision constitutes the final DA position on the matter. If DOJ grants the contractor's request, the Chief, Litigation Division will ensure that the contractor is notified through the SJA or legal adviser and the contracting officer.

(d) Private Counsel. A contractor represented by DOJ may ask that private counsel assist the DOJ attorney in the litigation. The DOJ attorney will remain in control of the litigation, and the fees for private counsel will not be reimbursable except under unusual circumstances. The contractor must seek both DOJ and DA approval to employ private counsel when DOJ representation has been granted. Even if DOJ and DA grant authority to employ private counsel, the contracting officer will determine whether a contractor will be reimbursed under the contract for private counsel.

(e) Settlement. The contractor, unless the contract specifies otherwise, will ultimately decide whether to compromise a suit. Reimbursement under the contract is determined by the contracting officer, with the advice of his attorney.

§ 516.21 Miscellaneous reporting requirements.

SJAs or legal advisers will comply with the directives cited below concerning actual or prospective litigation involving the following types of cases:

(a) Taxation. (1) Contractor transactions (FAR and DFARS, part 29).

(2) Army and Air Force Exchange Service (AAFES) activities. (AR 60–20).

(3) Purchase or sale of alcoholic beverages. (AR 215–2).

(4) Nonappropriated fund and related activities. (AR 215–1).

(5) Open messes and other military sundry associations and funds. (AR 215–1).

(b) Tort and contract claims, insurance and litigation involving nonappropriated fund activities. (AR 215–1).

(c) Annexation of Army lands. (AR 405–25).

(d) Communications, transportation, and utility services administrative proceedings. Any contracting officer or other Army official responsible for the acquisition of communications, transportation, utilities (gas, electric, water and sewer), or military mail services, who becomes aware of any action or proceeding of interest to the Army, will promptly refer the matter to the SJA or legal adviser, who will take the actions prescribed in § 516.16. Examples of actions requiring referral follow: New or amended rates, regulations, or conditions of service; applications for authority to discontinue or initiate service; changes in electromagnetic patterns causing adverse communications interference; or, zoning proposals affecting historic or aesthetic preservation. In addition, the SJA or legal adviser will transmit the following to Regulatory Law Division:

(1) The names and addresses of any parties intervening and the substance of their positions.

(2) Names of government users affected by any change.

(3) Copy of any proposed rules, rules, or regulations.

(4) A recommendation whether the Army should intervene in the action or proceeding. If intervention is recommended, provide a memorandum to support the recommendation.

(e) Legal proceedings overseas. Foreign communications, transportation, and utility service proceedings need not be reported. In other legal proceedings instituted in a foreign country, the SJA or legal adviser will take the actions prescribed in § 516.16.

(f) Maritime claims. Admiralty and maritime claims within the purview of chapter 8, AR 27–20, which have been investigated and processed under AR 55–19 or other applicable regulations, will be referred to USARCS.

(g) Army and Air Force Exchange Service litigation. The SJA or legal officer will send a copy of all documents relating to litigation against AAFES to General Counsel, AAFES, P.O. Box 660202, Dallas, TX 75266–0202.

§ 516.22 Litigation reports.

The SJA or legal adviser will prepare a litigation report when directed by HQDA. The report will contain the following sections: Statement of Facts; Setoff or Counterclaim; Responses to Pleadings; Memorandum of Law; Witness List; and, Exhibits.

(a) Statement of Facts. Include a complete statement of the facts upon which the action and any defense thereto are based. Where possible, support facts by reference to documents or witness statements. Include details of previous administrative actions, such as the filing and results of an administrative claim. If the action is predicated on the Federal Tort Claims Act, include a description of the plaintiff's relationship to the United States, its instrumentalities, or its contractors. Also include a statement whether an insurance company or other third party has an interest in the plaintiff's claim by subrogation or otherwise and whether there are additional claims related to the same incident.

(b) Setoff or Counterclaim. Discuss whether setoff or counterclaim exists. If so, highlight the supportive facts.

(c) Responses to Pleadings. Prepare a draft answer or other appropriate response to the pleadings. (See appendix C to this part, Sample Answer). Discuss whether allegations of fact are well-founded. Refer to evidence that refutes factual allegations.

(d) Memorandum of Law. Include a brief statement of the applicable law with citations to legal authority. Discussions of local law, if applicable, should cover relevant issues such as measure of damages, scope of employment, effect of contributory negligence, or limitations upon death and survival actions. Do not unduly delay submission of a litigation report to prepare a comprehensive memorandum of law.

(e) Potential witness information. List each person having relevant information to the case and provide their office address and telephone number. If there is no objection, also give the individual's social security account number, home address, and telephone number. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Finally, summarize the information or potential testimony that each person listed could provide.

(f) Exhibits. (1) Attach a copy of all relevant documents. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Unless otherwise directed by HQDA, each exhibit should be tabbed and internally paginated. References to exhibits in the litigation report should be to page numbers of particular exhibits.

(2) Copies of relevant reports of claims officers, investigating officers, boards or similar data should be attached, although such reports will not obviate the requirement for preparation of a complete litigation report.

(3) Prepare an index of tabs and exhibits.

(4) Where a relevant document has been released pursuant to a FOIA request, provide a copy of the response, or otherwise identify the requestor and the records released.

(g) Distribution and number of copies. Unless HQDA directs otherwise, SJAs or legal advisers will mail (first class) an original and one copy of the litigation report to the responsible HQDA office (See § 516.14) and one copy to the U.S. Attorney's Office handling the case.

§ 516.23 Preservation of evidence.

Because documents needed for litigation or administrative proceedings are subject to routine destruction, the SJA or legal adviser will ensure that all relevant documents are preserved.

§ 516.24 DA Form 4.

(a) General. The DA Form 4 (See Figure 516.2) is used to authenticate Army records or documents. Documents attached to a properly prepared and sealed DA Form 4 are self-authenticating. (See Fed. R. Evid. 902).

(b) Preparation at the installation level. A DA Form 4 need not be prepared until the trial attorney presenting the government's case identifies documents maintained at the installation level which he will need at trial. Once documents are identified, the custodian of the documents will execute his portion of the DA Form 4. (See Figure 516.2). The custodian certifies that the documents attached to the DA Form 4 are true copies of official documents. Documents attached to each form should be generally identified; each document need not be mentioned specifically. Only the upper portion of the form should be executed at the local level.

(c) Actions at HQDA. Upon receipt of the DA Form 4 with documents attached thereto, HQDA will affix a ribbon and seal and deliver it to The Office of The Administrative Assistant to The Secretary of the Army. That office will place the official Army seal on the packet.

§ 516.25 Unsworn declarations under penalty of perjury.

(a) General. Under the provisions of 28 U.S.C. 1746, whenever any matter is required or permitted to be established or proven by a sworn statement, oath or affidavit, such matter may also be established or proven by an unsworn written declaration under penalty of perjury. Because such declaration does not require a notary or other official to administer oaths, individuals preparing statements for use in litigation should consider using this format. (See Figure 516.3).

(b) When executed within the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on (date)
(Signature)

(c) When executed outside the United States.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on (date)
(Signature)

Subpart D—Individual Liability

§ 516.26 Scope.

This chapter provides guidance when DA personnel, as a result of the performance of their official duties, are either sued in their personal capacity, or are charged in a criminal proceeding. Examples of civil actions alleging individual liability include the following: A medical malpractice lawsuit against health care providers; suits resulting from motor vehicle accidents; constitutional torts; or, common law torts such as assault, libel, or intentional

infliction of emotional distress. Likewise, state or federal criminal charges can arise from the performance of official duties, including environmental crimes or motor vehicle accidents.

§ 516.27 Policy.

(a) Responsibility. Commanders, supervisors, and SJAs or legal advisers will give highest priority to compliance with the requirements of this chapter with regard to current or former DA personnel who face criminal charges or civil litigation against themselves individually as a result of performance of their official duties.

(b) DOJ policy on representation. If in the best interest of the United States, upon request of the individual concerned and upon certification by his agency that he was acting within the scope of his employment, DOJ may represent present and former DA personnel sued individually as a result of actions taken within the scope of their employment. Representation can be declined for a variety of reasons, including but not limited to the following: The employee was not acting within the scope of his office; there is a conflict of interest; or, actions were not taken in a good faith effort to conform to law.

§ 516.28 References.

(a) Federal Tort Claims Act (FTCA). (28 U.S.C. 2671 *et seq.*). A waiver of sovereign immunity which, with certain exceptions, makes the United States liable for tort claims in the same manner as a private individual.

(b) Federal Employees Liability Reform and Tort Compensation Act of 1988 (FELRTA or The Westfall Act). FELRTA, by amending the Federal Tort Claims Act, makes the FTCA the exclusive remedy for common law tort claims arising from actions taken by federal employees acting within the scope of employment. The law was passed to eliminate problems caused by *Westfall* v. *Erwin*, 108 S.Ct. 580 (1988).

(c) 10 U.S.C. 1089 (Defense of certain suits arising out of medical malpractice). This provision, commonly referred to as the Gonzales Act, makes the FTCA the exclusive remedy for suits alleging medical malpractice against a military health care provider.

(d) 28 CFR 50.15 (Representation of federal officials and employees by Department of Justice attorneys [* * *] in civil, criminal, and congressional proceedings in which federal employees are sued, subpoenaed, or charged in their individual capacities). These DOJ regulations set out the policy and procedures for requesting representation in individual liability cases. See also 28 CFR part 15 (Defense of Certain Suits Against Federal Employees, etc.).

(e) 28 CFR 50.16 (Representation of federal employees by private counsel at federal expense).

(f) AR 27–50 (Status of Forces Policies, Procedures, and Information).

§ 516.29 Procedures for obtaining certification and DOJ representation.

(a) SJA or legal adviser responsibilities. When an SJA or legal adviser learns of a criminal charge or of a lawsuit alleging individual liability against DA personnel as a result of performance of official duties, he will take the following actions:

(1) Immediately notify Litigation Division and the appropriate U.S. Attorney and FAX or express deliver copies of process and pleadings to each office. Where time for response is limited, request that the U.S. Attorney either petition the court for an extension of time, or provide temporary counsel and representation pending formal approval.

(2) Investigate whether the employee was acting within the scope of his office or employment. Obtain, if possible, statements from the defendant, supervisors, and witnesses.

(3) Advise the individual defendant of the rights and conditions set out in 28 CFR 50.15, which include the following:

(i) His right to request representation by a DOJ attorney and, in appropriate cases, certification that he was acting within the scope of employment. (See 28 U.S.C. 2679; 28 CFR 50.15).

(ii) The right to request private counsel at government expense, subject to the availability of funds. (See 28 CFR 50.16).

(iii) That the United States is not obligated to pay or indemnify defendant for any judgment rendered against him in his individual capacity.

(4) If the defendant desires certification or DOJ representation, have him sign a request. (See Figure 516.4, Appendix L). Obtain a signed scope of employment statement from the defendant's supervisor. (See Figure 516.5, Appendix L).

(5) Prepare a report with, at a minimum, the following information: Facts surrounding the incident for which defendant is being sued and those relating to scope of employment; the SJA or legal adviser's conclusions concerning scope of employment; and, a recommendation whether certification by the Attorney General or representation by a DOJ attorney should be granted.

(6) Send the report, request for representation, and scope of employment statements to Chief, Litigation Division.

(b) Chief, Litigation Division responsibilities. The Chief, Litigation Division, will review the report and evidence regarding representation and scope of employment and will determine DA's position whether certification and representation is appropriate. He will send his recommendation to the appropriate U.S. Attorney's office or other branch at DOJ. The Chief, Litigation Division, will notify the defendant of DOJ's decision.

§ 516.30 Private counsel at government expense.

(a) General. DA personnel, sued in their individual capacity or facing criminal charges as a result of performance of official duties, have no right to employ a private sector counsel at government expense or to expect reimbursement for the same. For proceedings in the United States, a request for employment of counsel at government expense may be approved by DOJ, contingent among other things upon availability of funds and a determination that employment of private counsel at government expense is in the best interests of the United States. (See 28 CFR 50.16). Special rules apply in overseas areas. (See § 516.30(e)).

(b) Individual responsibilities. The individual will prepare a request that private counsel be employed for him at government expense. The request must also contain the following statement: "I understand that the United States is not required to employ private counsel on my behalf, and that I may be responsible for expenses incurred prior to proper authorization by the Department of Army or the Department of Justice."

(c) Supervisory and legal adviser responsibilities. The request will be submitted through the individual's supervisors, who will make a recommendation and forward the packet to the local SJA or legal adviser. The SJA or legal adviser will prepare his own recommendation and forward the matter to Litigation Division.

(d) Chief, Litigation Division responsibilities. If the Chief, Litigation Division, determines that the request for private counsel is meritorious, he will prepare an appropriate recommendation and forward the packet to Civil Division, DOJ, for final approval.

(e) Special actions in foreign countries. Employment of private counsel in foreign proceedings is governed by AR 27–50 (Status of Forces Policies, Procedures, and Information). Under the authority of 10 U.S.C. 1037,

soldiers, as well as employees or those accompanying the armed forces overseas, may be granted individual counsel in civil and criminal proceedings, under the criteria of AR 27–50.

§ 516.31 Requests for indemnification.

(a) Policy. An individual liable for a judgment rendered against him in his individual capacity has no right to reimbursement from DA. DA will consider, however, a request for indemnification from DA personnel where conduct within the scope of official duties has resulted in personal liability and indemnification is in the best interests of the United States. Indemnification is strictly contingent upon an appropriation to pay the judgment, as well as availability of such funds.

(b) Individual responsibilities. An individual against whom an adverse judgment has been rendered may request indemnification. The request must include, at a minimum, the following: how the employee was acting within the scope of his employment; whether the requestor has insurance or any other source of indemnification; and, how reimbursement is in the best interests of the United States. The request must also contain the following statements: "I understand that acceptance of this request for indemnification for processing by DA does not constitute an acceptance of any obligation to make such a payment. I also understand that payment is contingent on availability of funds and that it will only be made if such is determined to be in the best interests of the United States." The individual should attach a copy of relevant documents, e.g., court's opinion, judgment, and other allied papers.

(c) Supervisory and SJA responsibilities. The request for indemnification will be submitted through supervisory channels to the local SJA or legal adviser, each of whom will make a recommendation on the propriety of reimbursement.

(d) Chief, Litigation Division responsibilities. Requests for indemnification will be forwarded to Chief, Litigation Division. The Chief, Litigation Division will examine the submission and, after consultation with DOJ or other agencies, forward the packet with his own recommendation to the Army General Counsel. The General Counsel will obtain a final decision by the Secretary of the Army or his designee on the matter. There is no administrative appeal of the Secretary's (or his designee's) decision.

Subpart E—Legal Proceedings Initiated by the United States

Medical Care and Property Claims

§ 516.32 General.

(a) Authorities. (1) Federal Medical Care Recovery Act (42 U.S.C. 2651). The act provides for the recovery of medical care expenses incurred because of a tortfeasor's actions.

(2) Federal Claims Collection Act (31 U.S.C. 3711). The act provides for the collection of claims for money or property arising from the activities of federal agencies.

(3) Executive Order No. 12788, 56 FR 207 (1991), Civil Justice Reform. This order establishes several requirements on federal agencies involved in litigation or contemplating filing an action on behalf of the United States.

(4) AR 27–20, Claims. Chapter 14 (Affirmative Claims) contains comprehensive guidance for Recovery Judge Advocates (RJAs) in the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the U.S. for property damage and for medical care claims.

(b) Responsibility. In accordance with Chapter 14, AR 27–20, Commander, USARCS has supervisory responsibility over the administrative processing of property and medical care claims by RJAs. Litigation Division, in conjunction with DOJ and U.S. Attorneys, is responsible for pursuing through litigation claims not resolved administratively. DOJ is ultimately responsible for initiating litigation for the United States. (28 U.S.C. 515).

(c) Assertion of claims on behalf of the United States by private attorneys. The Army incurs potentially recoverable expenses when it provides medical care to soldiers or dependents injured by tortfeasors (e.g., a soldier is hospitalized after an automobile accident). When injured personnel employ a private attorney to sue the tortfeasor, it may be in the government's best interests to enter into an agreement with the private attorney to include the Army's medical care claim.

(d) Statute of limitations. There is a three year statute of limitations for actions in favor of the U.S. for money damages founded upon tort. (28 U.S.C. 2415(b)). Limitations periods can vary, however, depending upon the theory of liability and the jurisdiction involved. RJAs must be alert to the applicable period of limitations. A case referred for litigation should arrive at Litigation Division at least 6 months before the expiration of the limitations period.

(e) Reporting of recoveries. Amounts recovered through litigation will be reported to USARCS by Tort Branch, Litigation Division or, where referred directly to a U.S. Attorney or the Nationwide Central Intake Facility (NCIF), by the responsible RJA.

§ 516.33 Referral of medical care and property claims for litigation.

(a) Criteria for referral. The RJA will forward the claims file and a litigation report (See § 516.34) through USARCS to Litigation Division when the claim has not been resolved administratively and any of the following conditions exist:

(1) The claim exceeds $5,000;

(2) It involves collection from the injured party or his attorney;

(3) The claim raises an important question of policy; or,

(4) There is potential for a significant precedent.

(b) Alternative methods. When none of the conditions cited in the preceding subparagraph are present, the RJA may refer the claim directly to the U.S. Attorney for the district in which the prospective defendant resides. Similar property claims may be referred through USARCS to DOJ's Nationwide Central Intake Facility (NCIF) rather than directly to the U.S. Attorney. Notice of all such referrals shall be provided through USARCS to Tort Branch, Litigation Division. The RJA should be ready to provide support to the U.S. Attorney if requested.

(c) Closing files. A file referred directly to the U.S. Attorney will be closed if the U.S. Attorney determines further action is unwarranted. If the RJA disagrees, the file should be forwarded with the RJA's recommendation through USARCS to Litigation Division.

§ 516.34 Preparation of claims for litigation.

(a) General. In preparing a referral for litigation the RJA will ensure the file contains at least the following:

(1) A litigation report (See § 516.22) that demonstrates a factual basis for the claim and a theory of recovery under applicable state law. (See Fed. R. Civ. P. 11).

(2) Copies of all medical records and bills reflecting the reasonable value of the medical care furnished to the injured party, including DA Form 2631–R (Medical Care-Third Party Liability Notification), and DA Form 3154 (MSA Invoice and Receipt). These documents should be authenticated as necessary on a DA Form 4.

(3) Copies of all documents necessary to establish the value of lost or damaged property.

(b) Transmittal letter. The letter of transmittal referring the claim for

litigation should briefly summarize the facts giving rise to the claim and the collection actions previously taken by the Army and the injured party.

Assertion of Other Claims

§ 517.35 Referral to Litigation Division.

(a) General. The majority of cases filed on behalf of the United States will fall under Section I above. All other civil cases which cannot be resolved administratively or by direct referral to DOJ will be forwarded through channels to Litigation Division with a litigation report. (See § 526.22).

(b) Government contractors. It may be in the government's best interest to authorize a government contractor, whose contract provides for the reimbursement of necessary legal expenses, to employ private counsel to initiate legal proceedings against a third party. To obtain authorization to employ private counsel in such instances the contractor should follow the procedures in § 516.20(c).

§ 516.36 Proceedings to repossess government real property or quarters or to collect delinquent rent.

(a) General. U.S. Attorneys are authorized to accept a federal agency's request for the following purposes: to initiate an action to recover possession of real property from tenants, trespassers, and others; to enjoin trespasses on federal property; and, to collect delinquent rentals or damages for use and occupancy of real property for amounts less than $200,000.

(b) Procedures. When eviction or an action to collect delinquent rent is necessary, the SJA or legal adviser will notify General Litigation Branch, Litigation Division, of the situation. If approved by Litigation Division, the SJA or legal adviser may ask the U S. Attorney to file suit. A copy of the complaint will be sent to Litigation Division. DOJ can take action to evict the occupants for violation of the terms of occupancy and collect delinquent rent or other charges. Once the matter has been referred to the U.S. Attorney, payments for rent should be sent to the U.S. Attorney. (See AR 210–50, chap 2.)

Subpart F—Environmental Litigation

§ 516.37 Scope.

This chapter contains guidance, policies, and procedures for DA environmental and natural resource litigation and administrative proceedings. The nature of environmental issues involves DA, not only in current missions and functions, but also in installations or sites previously managed by DA or property in which DA has or had a substantial interest. In this chapter, "litigation" includes civil administrative proceedings.

§ 516.38 Responsibilities.

(a) Water rights. Environmental Law Division will conduct direct liaison with DOJ and will represent DA in state and federal litigation relating to availability and allocation of surface and ground water and the establishment and protection of water rights. This will include litigation in state general adjudications of water rights under the McCarran Amendment, 43 U.S.C. 666. Such litigation relating solely to COE real estate activities or its civil works projects will be handled by attorneys under the technical supervision of the Chief Counsel, COE. With respect to any general adjudication which could affect the civil works or real property functions of COE, The Judge Advocate General, through the Chief, Environmental Law Division, and Chief Counsel, COE will jointly determine which office should maintain primary direct liaison with DOJ and will coordinate with each other and with the General Counsel with respect to that litigation.

(b) Navigable waters; The Chief Counsel, COE will conduct direct liaison with DOJ and represent DA in litigation involving activities in or across navigable waters of the United States or other activities regulated under the Rivers and Harbors Act of 1899, 33 U.S.C. 400 *et seq.*

(c) Waters of the United States. The Chief Counsel, COE will conduct direct liaison with DOJ and represent DA in litigation involving The Clean Water Act section 404 (See 33 U.S.C. 1344) permit authority of COE over the discharge of dredged or fill material into waters of the United States.

(d) Enforcement. Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation involving citizen or state enforcement of all requirements for control of pollution and management of hazardous wastes.

(e) Environmental response. (1) Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at facilities controlled by DA and, except as otherwise provided in this regulation, at all other sites where the Army is a potentially responsible party.

(2) The Chief Counsel, COE will conduct direct liaison with DOJ and represent DA in litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at civil works facilities, at former defense sites or at other sites where the Army is a potentially responsible party.

(f) Fish and wildlife, and plants. Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation involving citizen or state enforcement of applicable laws governing conservation of plant, fish and wildlife resources at facilities controlled by DA. Such litigation relating solely to the real estate, civil works, navigation and Clean Water Act section 404 (See 33 U.S.C. 1344) permit functions and activities of the COE will be supervised by Chief Counsel, COE.

(g) Toxic torts. (1) Environmental Law Division will conduct direct liaison with DOJ and represent DA in litigation involving claims of tort liability for exposure to environmental contamination emanating from federal facilities controlled by DA.

(2) Litigation Division will conduct liaison with DOJ and represent DA in litigation involving tort claims for discrete incidents of exposure to environmental contamination emanating from any facility controlled by DA.

(3) The Chief Counsel, COE will conduct direct liaison with DOJ and will represent the Army in litigation involving claims of tort liability for exposure to environmental contamination (including singular and discrete incidents) emanating from any civil works activities under the jurisdiction of the Secretary of the Army.

(4) The Chief Counsel, COE and Chief, Environmental Law Division will confer and jointly determine which office will conduct direct liaison with DOJ and represent DA in litigation involving all other claims of toxic tort liability.

Subpart G—Prosecution of Criminal Offenses in Federal Courts

§ 516.39 Scope.

(a) This chapter contains policies and procedures for prosecutions in the United States District Courts before either a District Judge or a Magistrate Judge for violations of federal law committed on Army installations or which involve Army interests or property.

(b) An individual (whether civilian or military) who violates federal law within the territorial limits of the United States can be prosecuted in U.S. District Court or Magistrate Division. These prosecutions can include, but are not limited to, the following situations: A

civilian, not subject to the UCMJ, violates federal law on an installation; routine traffic violations, whether the offender is military or civilian, are referred to the local U.S. Magistrate Division; or, DOJ seeks a federal indictment and prosecution for a serious offense committed by a soldier, despite existing UCMJ jurisdiction. (c) This chapter does not apply to military courts-martial.

§ 516.40 Authority.

The following authorities apply to this chapter:

(a) 18 U.S.C., ch. 219 (Trial By United States Magistrate Judges).

(b) 28 U.S.C. 515 (Authority For Legal Proceedings; Commission, Oath, And Salary For Special Attorneys).

(c) 28 U.S.C. 543 (Appointment of Special Attorneys by The Attorney General).

(d) Rule 58. Federal Rules of Criminal Procedure (Procedures for Misdemeanors and Other Petty Offenses).

(e) AR 190–29 (Misdemeanors and Uniform Notices Referred to US Magistrate or District Courts).

§ 516.41 Felony prosecution programs.

(a) General. DOJ is responsible for prosecuting federal offenses in U.S. District Court, whether before a District or a Magistrate Judge. It is often beneficial to both the Army and DOJ, however, to prosecute offenses in which the Army has an interest through a felony prosecution program, whereby one or more Army attorneys are appointed Special Assistant U.S. Attorneys. A felony prosecution program can promote rapid and efficient prosecutions of offenses in which the Army has an interest.

(b) Authorization. If an installation SJA or legal adviser believes a felony prosecution program would be in the Army's best interest, he will seek the views of the appropriate U.S. Attorney. If the U.S. Attorney agrees, the installation SJA or legal adviser will draft a mutually agreeable Memorandum of Understanding. (See appendix K to this part). The SJA will forward the MOU and a request to begin the program to the Criminal Law Division, OTJAG.

(c) Appointment of Army Attorneys as Special Assistant U.S. Attorneys. (See § 516.43).

(d) Reports. Installation SJAs or legal advisers will send a report quarterly to their MACOM SJA concerning prosecutions in federal magistrate court and felony prosecutions. The MACOM SJA will consolidate these reports and send it to Criminal Law Division, OTJAG, within 30 days after the end of each quarter. This report will provide the following information:

(1) The number of indictments filed.

(2) The number of misdemeanors tried by Army attorneys serving as SAUSAs.

(3) Results of any felony prosecutions tried by Army attorneys, to include a copy of any judgment or conviction, and sentence.

(4) Results of prosecutions of felonies in which the Army has an interest which are tried by the U.S. Attorney's office, to include a copy of any judgment or conviction, and sentence.

§ 516.42 Misdemeanors.

(a) General. An individual, military or civilian, who commits a misdemeanor or infraction on a military installation or on federal property can be prosecuted before a Magistrate Judge. The Magistrate system is particularly well adapted to dispose of traffic cases.

(b) Petition to District Court. If no Magistrate Judge has been designated to try misdemeanors committed on an installation, the SJA or legal adviser should request that the U.S. Attorney petition the U.S. District Court to designate a Magistrate Judge for that purpose. Criminal Law Division, OTJAG should be notified of any unsuccessful attempts to have a Magistrate Judge designated.

(c) Appointment of Army Attorneys as Special Assistanf U.S. Attorneys. Army Attorneys can represent the United States before a Magistrate Judge if appointed as a SAUSA. (See § 516.43).

(d) Complaints, warrants, and citations. A Magistrate Judge has authority to issue arrest warrants based upon complaints filed with the court. AUSAs and SAUSAs prepare complaints and warrants in accordance with local court rules and procedures. (See Figure 516.6, appendix L). Petty offenses may be prosecuted on a citation or violation notice. (See Fed. R. Grim. P. 58(b)(1)).

(e) Consent to be tried. A person charged with a misdemeanor may elect to be tried before a District Judge rather than before a Magistrate Judge. (18 U.S.C. 3401). The defendant must be informed of this right. (See Figure 516.7, appendix L). Assuming there is a MOU permitting it (See § 516.41), an Army SAUSA may prosecute misdemeanors before a District Judge when a defendant declines to consent to be tried by the Magistrate Judge.

(f) Procedure. Attorneys designated to prosecute cases before a Magistrate Judge must familiarize themselves with the local rules of court and Rule 58, Federal Rules of Criminal Procedure. (See also Moore's Federal Practice Rules Pamphlet, Magistrate Court Rules).

(g) Memorandum of Understanding and request for authorization. The SJA or legal adviser should execute a MOU with the U.S. Attorney covering responsibilities and procedures for trials in Magistrate court. If the installation has a felony prosecution program (See § 516.41, then any specific procedures for Magistrate Court should be included into one MOU. (See Appendix K to this part). If the installation only has a Magistrate Court program, then a MOU should be prepared and forwarded to Criminal Law Division, OTJAG for approval of the program.

(h) Reports. (See § 516.41(d)).

§ 516.43 Army Attorneys as Special Assistant U.S. Attorneys.

(a) General. Prosecutions in federal court are a DOJ responsibility. SJAs or legal advisers often find it beneficial, however, to have one or more Judge Advocates or DA civilian attorneys appointed as Special Assistant U.S. Attorneys under 28 U.S.C. 543 to prosecute crimes in which the Army has an interest.

(b) Procedure. The appropriate United States Attorney must agree to appointment of an Army attorney as a SAUSA. The U.S. Attorney may find such an appointment to be in his best interest, because he gains an additional prosecutor at no additional expense to DOJ. If the U.S. Attorney agrees, he will forward the request for appointment to the Attorney General for approval. (28 U.S.C. 543).

(c) Supervision. Army attorneys acting as SAUSAs will be supervised in that role primarily by the U.S. Attorney's office. SAUSAs will perform their duties consistent with the Memorandum of Understanding between the U.S. Attorney and the SJA or legal adviser. SJAs and legal advisers will monitor prosecutions conducted by SAUSAs and will, if necessary given DOJ's primary role, provide additional supervision.

(d) Civil litigation. SAUSAs appointed to prosecute criminal cases will not undertake representation of the United States in civil litigation unless authorized by Chief, Litigation Division.

§ 516.44 Witness expenses.

In felony prosecutions SAUSAs will follow the procedures outlined in the U.S. Attorneys' Manual for obtaining witnesses and funding for their travel. In misdemeanor prosecutions, however, SAUSAs will obtain funding through the local Army installation.

Subpart H—Release of Information and Appearance of Witnesses—Scope

§ 516.45 General.

(a) Introduction. This chapter implements DoD Directive 5405.2 (See appendix D to this part). It governs the release of official information and the appearance as witnesses of present and former DA personnel in response to subpoenas and other litigation-related requests and orders for information, interviews, or attendance at judicial or quasi-judicial proceedings. Requests for records, if not in the nature of legal process, should be processed under AR 25–55 (The Department of the Army Freedom of Information Act Program) or AR 340–21 (The Army Privacy Program). This chapter pertains to the following: civil cases; criminal proceedings; private litigation; and, litigation in which the United States has an interest.

(b) Definitions. (1) *DA personnel* includes soldiers, USMA cadets, civilian employees, nonappropriated fund employees, foreign nationals who perform services for DA overseas, and other individuals hired by or for DA.

(2) Deciding official is the SJA, legal adviser, or Litigation Division attorney who makes the final determination concerning release of official information.

(3) Official information is information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces. (See appendix D to this part).

§ 516.46 Policy.

(a) General rule. Except as authorized by this Chapter, present or former DA personnel will not disclose official information in response to subpoenas, court orders, or requests.

(b) Exception. Present DA personnel may make the disclosures described in paragraph (a) of this section, only with the prior written approval of their SJA or legal adviser or Litigation Division. Former DA personnel may make such disclosures only with the prior written approval of Litigation Division.

(c) Referral to deciding official. If DA personnel receive a subpoena, court order, request for attendance at a judicial or quasi-judicial proceeding, or request for an interview related to actual or potential litigation, and it appears the subpoena, order, or request seeks disclosures described in paragraph (a) of this section, the individual should immediately advise the appropriate SJA or legal adviser. If the SJA or legal adviser cannot informally satisfy the subpoena, order, or request in accordance with §§ 516.48 through 516.55, he should immediately notify Litigation Division. When former DA personnel receive such a subpoena, order, or request, they should immediately notify Litigation Division.

(d) Requesters' responsibilities. Individuals seeking official information by subpoena, order, or litigation-related request, must set forth in writing and with specificity the nature and relevance of the official information sought. (Requesters should be referred to 32 CFR part 97 for detailed instructions.) Subject to § 516.51(a), present and former DA personnel may only produce, disclose, release, comment upon, or testify concerning those matters specified in writing and properly approved by the SJA or legal adviser or Litigation Division. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(e) Litigation in which the United States has an interest. If a subpoena, order, or request relates to litigation in which the United States has an interest and for which litigation responsibility has not been delegated, the SJA or legal adviser will coordinate with Litigation Division under § 516.47.

(f) Motions to stay or quash subpoenas. A subpoena should never be ignored, and an SJA or legal adviser should seek assistance from Litigation Division or the U.S. Attorney's office. If a response to a subpoena or order is required before a release determination can be made or before Litigation Division or the U.S. Attorney can be contacted, the SJA or legal adviser will do the following:

(1) Furnish the court or tribunal a copy of this regulation and applicable case law;

(2) Inform the court or tribunal that the requesting individual has not complied with this subpart H, as set out in 32 CFR part 97, or that the subpoena or order is being reviewed; and,

(3) Seek to stay the subpoena or order pending compliance with this chapter or final determination.

(g) If the court or other tribunal declines to quash or stay the subpoena or order, Litigation Division will decide whether to challenge the subpoena or order. If Litigation Division decides not to challenge the subpoena or order, the affected personnel will comply with the subpoena or order. If Litigation Division decides to challenge the subpoena or order, it will direct the affected personnel to respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(h) Classified or sensitive information. Only Litigation Division may authorize the release of official information or appearance of DA personnel as witnesses in litigation involving terrorism, espionage, nuclear weapons, or intelligence means or sources.

§ 516.47 Reference to Litigation Division.

(a) General. Matters requiring approval or action by Litigation Division under this chapter will be immediately submitted by the most expeditious means to General Litigation Branch, Litigation Division, with the following exceptions:

(1) Those involving a case assigned to another branch of Litigation Division will be submitted to that branch (Appendix B of this part).

(2) Those involving affirmative litigation under subpart E will be submitted to Tort Branch.

(3) Those involving patents, copyrights, privately developed technical information, or trademarks will be submitted to Intellectual Property Law Division.

(4) Those involving taxation will be submitted to Contract Law Division.

(5) Those involving communication, transportation, or utility service proceedings will be submitted to Regulatory Law Division.

(6) Those involving environmental matters will be submitted to Environmental Law Division.

(b) Information to be submitted. When referring matters pursuant to paragraph (a) of this section, the following data should be provided:

(1) Parties (named or prospective) to the proceeding, their attorneys, and case number, where appropriate.

(2) Party making the request (if a subpoena, indicate moving party) and his attorney.

(3) Name of tribunal in which the proceeding is pending.

(4) Nature of the proceeding.

(5) Date of receipt of request or date and place of service of subpoena.

(6) Name, grade, position, and organization of person receiving request or served with subpoena.

(7) Date, time, and place designated in request or subpoena for production of information or appearance of witness.

(8) Nature of information sought or document requested, and place where document is maintained.

(9) A copy of each document requested (contact the appropriate office at HQDA if this would be both unduly

burdensome and unnecessary to a decision whether to release, redact, or withhold a particular document).

(10) Analysis of the problem with recommendations.

Release of Records in Connection With Litigation

§ 517.48 Release of Army and other agency records.

(a) Preservation of originals. Unless otherwise directed by Litigation Division, to preserve the integrity of DA records, DA personnel will not furnish originals of documents or other records to any person or agency for use in legal proceedings. DA personnel will submit properly authenticated copies of government records in place of originals. (See 28 U.S.C. 1733.)

(b) Authentication of copies. Copies of DA records approved for release will, when necessary, be authenticated for introduction in evidence by use of DA Form 4. (See § 516.24). After the custodian has executed his or her certificate, the preparing agency will forward the DA Form 4 and a copy of the record to the Army staff agency indicated below for authentication by the Secretary of the Army.

(1) Records maintained in U.S. Army Engineer Districts and Divisions will be forwarded to HQDA(DAEN–CCK), WASH DC 20314–1000.

(2) All other records will be forwarded to the official designated in AR 340–17 as the Initial Denial Authority (IDA) for the records.

(c) Fees and charges. AR 37–60 prescribes the schedule of fees and charges for searching, copying, and certifying Army records for release in response to litigation-related requests.

(d) Release of records of other agencies. Normally an individual requesting records originating in agencies outside DA (i.e., FBI reports, local police reports, civilian hospital records) that are also included in Army records should be advised to direct his inquiry to the originating agency.

§ 516.49 Determination of release authorization.

(a) Policy. DA policy is to make official information reasonably available for use in federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

(b) Releasability factors. In deciding whether to authorize release of official information, the deciding official should consider the following:

(1) Has the requester complied with DA policy governing the release of official documents in § 516.46(d)?

(2) Is the request unduly burdensome or otherwise inappropriate under the applicable court rules?

(3) Is the disclosure appropriate under the rules of procedure governing the matter in which the request arose?

(4) Would the disclosure violate a statute, executive order, regulation, or directive?

(5) Is the disclosure appropriate under the relevant substantive law concerning privilege?

(6) Would the disclosure reveal information properly classified pursuant to the DoD Information Security Program under AR 380–5, unclassified technical data withheld from public release pursuant to 32 CFR 250, or other matters exempt from unrestricted disclosure?

(7) Would disclosure have one or more of the following effects: Interfere with ongoing enforcement proceedings; compromise constitutional rights; reveal the identity of an intelligence source or confidential informant; disclose trade secrets or similarly confidential commercial or financial information; or, otherwise be inappropriate under the circumstances?

§ 516.50 Records determined to be releasable.

If the deciding official, after considering the factors set forth in § 516.49, determines that all or part of requested official records are releasable, copies of the records (authenticated if necessary) should be furnished to the requester, court, or other appropriate authority.

§ 516.51 Records determined not to be releasable.

(a) General. If the deciding official, after considering the factors in § 516.49, determines that all or part of requested official records should not be released, he will promptly communicate directly with the attorney or individual who caused the issuance of the subpoena, order, or request and seek to resolve the matter informally. If the subpoena or order is invalid, he should explain the basis of the invalidity. The deciding official should also explain why the records requested are privileged from release. The deciding official should attempt to obtain the agreement of the requester to withdraw the subpoena, order, or request or to modify the subpoena, order, or request so that it pertains only to records which may be released.

(b) Information protected by the Privacy Act. (1) A subpoena duces tecum or other legal process signed by an attorney or clerk of court for records protected by the Privacy Act, 5 U.S.C. 552a, does not justify the release of the protected records. The deciding official should explain to the requester that the Privacy Act precludes disclosure of records in a system of records without the written consent of the subject of the records or "pursuant to the order of a court of competent jurisdiction." (See 5 U.S.C. 552a(b)(11)). An "order of the court" for the purpose of subsection 5 U.S.C. 552a(b)(11) is an order or writ requiring the production of the records, signed by a judge or magistrate.

(2) Unclassified records otherwise privileged from release under 5 U.S.C. 552a may be released to the court under either of the following conditions:

(i) The subpoena is accompanied by an order signed by a judge or magistrate, or such order is separately served, that orders the person to whom the records pertain to release the specific records, or that orders copies of the records delivered to the clerk of court, and indicates that the court has determined the materiality of the records and the nonavailability of a claim of privilege.

(ii) The clerk of the court is empowered by local statute or practice to receive the records under seal subject to request that they be withheld from the parties until the court determines whether the records are material to the issues and until any question of privilege is resolved.

(3) Subpoenas for alcohol abuse or drug abuse treatment records must be processed under 42 U.S.C. 290d–3 and 290ee–3, and Public Health Service regulations published at 42 CFR 2.1–2.67.

(4) Upon request, SJAs and legal advisers may furnish to the attorney for the injured party or the tortfeasor's attorney or insurance company a copy of the narrative summary of medical care that relates to a claim under subpart E. If additional medical records are requested, only those that directly pertain to the pending action will be furnished. If furnishing copies of medical records would prejudice the cause of action, the matter will be reported to Litigation Division.

(c) Referral to Litigation Division. If the SJA or legal adviser is not able to resolve a request for Army records informally, he should contact Litigation Division.

(1) Litigation Division may respond to subpoenas or orders for records privileged from release by informing the local U.S. Attorney about the subpoena and requesting that office file a motion to quash the subpoena or a motion for a protective order. The records privileged from release should be retained by the custodian pending the court's ruling upon the government's motion.

(2) When a motion to quash or for a protective order is not filed, or the motion is unsuccessful, and the appropriate DA official has determined that no further efforts will be made to protect the records, copies of the records (authenticated if necessary) will be submitted to the court (or to the clerk of court) in response to the subpoena or order.

(d) Classified and privileged materials. Subpoenas duces tecum, and other legal process from DOJ, U.S. Attorneys, or attorneys for other governmental entities for records which are classified or otherwise privileged from release will be referred to Litigation Division. (See § 516.46(h)).

DA Personnel as Witnesses in Private Litigation

§ 516.52 Response to subpoenas, orders, or requests for witnesses.

(a) Policy. The involvement of present PA personnel in private litigation is solely a personal matter between the witness and the requesting party, unless one or more of the following conditions apply:

(1) The testimony involves information contained in DA files, or information which was acquired in the performance of official duties, or because of the official status of the witness.

(2) The witness is to testify as an expert.

(3) The absence of the witness from duty will seriously interfere with the accomplishment of a military mission.

(b) Former DA personnel. Former DA personnel may freely respond to requests for interviews and subpoenas except in instances involving paragraph (a)(1) of this section. In those instances, the subject of the request or subpoena should take the action specified in § 516.46(c) and § 516.47.

(c) Present DA personnel. Present DA personnel will refer all requests for interviews and subpoenas for testimony in private litigation to their commander or supervisor. Except in instances involving paragraphs (a)(1) through (a)(3) of this section, the commander or supervisor may permit the requested interview or attendance.

(d) Discretion to testify. If a present DA personnel does not desire to grant the interview or testify, he may seek the advice of an Army attorney on the legal consequences, if any, of refusal. Civilian employees and former military members not otherwise entitled to legal assistance should consult private counsel regarding any consequences of such a refusal.

§ 516.53 Official information.

(a) In instances involving § 516.52(a)(1), the matter will be referred to the SJA or legal adviser serving the organization of the individual whose testimony is requested, or to Litigation Division. The deciding official will determine whether to release the information sought under the principles established in § 516.49. If funding by the United States is requested, see § 516.50(d).

(b) If the deciding official determines that the information may be released, the individual will be permitted to be interviewed, deposed, or to appear as a witness in court provided such interview or appearance is consistent with the requirements of § 516.54 and § 516.55. A JA or DA civilian attorney should be present during any interview or testimony to act as legal representative of the Army. In the case of former DA personnel, Litigation Division will arrange for an Army attorney stationed near the location of the interview, deposition, or testimony to act as legal representative. If a question is asked for information not previously authorized for release, the legal representative will advise the witness not to answer. If necessary to avoid release of the information, the legal representative will advise the witness to terminate the interview or deposition, or in the case of testimony in court, advise the judge that DoD directives and Army regulations preclude the witness from answering without Litigation Division approval. Every effort should be made, however, to substitute releasable information and to continue the interview or testimony as to other subjects.

§ 516.54 Expert witnesses.

(a) General rule. Present DA personnel will not provide, with or without compensation, opinion or expert testimony either in private litigation or in litigation in which the United States has an interest for a party other than the United States. Former DA personnel will not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities either in private litigation or in litigation in which the United States has an interest for a party other than the United States. All requests for present or former DA personnel as opinion or expert witnesses will be forwarded to Litigation Division under § 516.47, unless paragraph (c) of this section applies.

(b) Exception. (1) If a requester can show:

(i) Exceptional need or unique circumstances and (ii) That the anticipated testimony will not be adverse to the interests of the United States,

Litigation Division may grant special written authorization for present or former DA personnel to testify as expert or opinion witnesses at no expense to the United States.

(2) In no event, may present or former DA personnel furnish expert or opinion testimony in a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

(c) Testimony of AMEDD personnel. Members of the Army medical department or other qualified specialists may testify in private litigation with the following limitations:

(1) The litigation involves patients they have treated, investigations they have made, laboratory tests they have conducted, or other actions taken in the regular course of their duties.

(2) They limit their testimony to factual matters, such as the following: Their observations of the patient or other operative facts; the treatment prescribed or corrective action taken; course of recovery or steps required for repair of damage suffered; and, contemplated future treatment.

(3) Their testimony may not extend to hypothetical questions or to a prognosis.

(d) Court-ordered expert or opinion testimony. If, despite an adverse final determination by Litigation Division, a court of competent jurisdiction, or other appropriate authority, orders expert or opinion testimony, the witness will immediately notify Litigation Division. If Litigation Division determines it will not challenge the subpoena or order, the witness will comply with the subpoena or order. If directed by Litigation Division, however, the witness will respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(e) Expert witness fees. All fees tendered to present DA personnel as an expert or opinion witness, to the extent they exceed actual travel, meals, and lodging expenses of the witness, will be remitted to the Treasurer of the United States.

§ 516.55 Interference with mission.

If the absence of a witness from duty will seriously interfere with the accomplishment of a military mission, the SJA or legal adviser will refer the matter to Litigation Division.

Litigation in Which the United States Has an Interest

§ 516.56 Response to subpoenas, orders, or requests for witnesses.

(a) Referral to a deciding official. Requests for interviews with or subpoenas for testimony of present DA personnel in litigation or potential litigation in which the United States has an interest will be immediately referred to the SJA or legal adviser serving the organization of the individual whose interview or testimony is requested. Except as in paragraph (b) of this section, the SJA or legal adviser will promptly refer the matter to Litigation Division. This requirement includes requests received from DOJ. Since each request or subpoena involves a question of release of information, the SJA or legal adviser will ensure that this aspect of the request or subpoena is also presented in the referral to Litigation Division. Former DA personnel will immediately refer such requests to Litigation Division under § 516.47.

(b) Approval by SJA or legal adviser. The SJA or legal adviser may authorize the appearance of present DA personnel requested by DOJ attorneys or by attorneys representing the interests of the United States in the following situations:

(1) The request or subpoena does not require travel by the witness outside the judicial district (unless the distance to be traveled is less than 100 miles) or overseas theater in which the witness is stationed, assigned, or employed.

(2) The testimony of the witness does not involve information which must be withheld under the principles in §§ 516.48 through 516.51, Release of Records in Connection with Litigation of this subpart H.

(c) Reassignment of witnesses. When requested by the U.S. Attorney, the SJA or legal adviser will ensure that no witnesses are reassigned or otherwise removed from the judicial district without first advising the DOJ attorney. If a witness is vital to the government's case, and trial is imminent, the SJA or legal adviser should make informal arrangements to retain the witness in the command until trial. If this is not feasible, or if a satisfactory arrangement cannot be reached with the DOJ attorney, the SJA or legal adviser should notify Litigation Division.

§ 516.57 Expert witnesses.

Requests for present or former DA personnel as expert or opinion witnesses from the DOJ attorneys or other attorneys representing the interests of the United States will be referred to Litigation Division unless the request involves a matter that has been delegated by Litigation Division to an SJA or legal adviser. In no event, may present or former DA personnel furnish expert or opinion testimony in a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

§ 516.58 News media and other inquiries.

News media inquiries regarding matters in litigation or potential litigation will be referred to the appropriate public affairs office. DA personnel will not comment on any matter actually or potentially in litigation without proper clearance. Local public affairs officers will refer press inquiries to HQDA (SAPA), WASH DC 20310–1500, with appropriate recommendations for review and approval by the Office of the Chief of Public Affairs. All releases of information regarding matters actually or potentially in litigation will be coordinated with Litigation Division prior to release.

Status, Travel, and Expenses of Witnesses

§ 516.59 Witnesses for the United States.

(a) Status of witness. A military member authorized to appear as a witness for the United States, including those authorized to appear under § 516.60(d), will be placed on temporary duty. The status of a civilian employee will be determined under Federal Personnel Manual 630.10. DA personnel who appear as necessary witnesses for a party asserting the government's claim for medical care expenses are witnesses for the United States, provided the government's claim is large enough to justify the expenditure.

(b) Travel arrangements. Travel arrangements for witnesses for the United States normally are made by DOJ through Litigation Division for other than local travel. Litigation Division will issue instructions for this travel including fund citation, to the appropriate commander. A U.S. Attorney, or an attorney asserting the government's medical care claim under subpart D of this part, may make arrangements for local travel through the SJA or legal adviser for attendance of a witness who is stationed at an installation within the same judicial district, or not more than 100 miles from the place where testifying. Other requests, including those under § 516.60(d), will be referred to Litigation Division. The instructions from Litigation Division, or the request from the U.S. Attorney or the attorney asserting the government's claim, will serve as a basis for the issuance of appropriate travel orders by the local commander.

(c) Travel and per diem expenses. The witness' commander or supervisor should ensure that the witness has sufficient funds to defray expenses. The SJA or legal adviser will provide assistance as required.

(1) Where local travel is performed at the request of a U.S. Attorney and the testimony does not involve information acquired in the performance of duties, transportation arrangements and any per diem expenses are the responsibility of the U.S. Attorney.

(2) An attorney asserting the government's medical care or property claim may be required to advance local travel expense money to the witness requested and to include these in recoverable costs where the government's claim is not large enough to justify expenditures of government travel funds.

(3) Other local travel and per diem expense for cases involving Army activities or claims are proper expenses of the command issuing the orders.

(4) Litigation Division will furnish travel expense and per diem funds for other than local travel and will receive reimbursement from DOJ or other government agencies as appropriate.

§ 516.60 Witnesses for a state or private litigant.

(a) Status of witness. If authorized to appear as a witness for a state or private litigant, and the testimony to be given relates to information obtained in the performance of official duties, a military member will attend in a permissive TDY status. If authorized to appear as a witness, but the testimony does not relate to information obtained in the performance of official duties, a military member may be granted a pass or permissive TDY under AR 630–5, or be required to take ordinary leave. The status of a civilian employee will be determined under Federal Personnel Manual 630.10.

(b) Travel arrangements. The requesting party or state agency will make all travel arrangements for attendance of DA personnel authorized to appear as witnesses for a state or private litigant. The local commander may issue appropriate orders when necessary.

(c) Travel expenses. The United States may not pay travel, meals, and lodging expenses of the witness, other than normal allowances for subsistence pursuant to the DoD Military Pay and Allowances Entitlements Manual. These expenses are solely a matter between

the witness and the party seeking his appearance. Witnesses ordinarily should be advised to require advance payment of such expenses. Military personnel authorized to appear in a pass or permissive TDY status are not entitled to receive witness attendance fees, but may accept travel, meals, and lodging expense money from the requesting litigant. All witness fees tendered the military member, to the extent they exceed such actual expenses of the member, will be remitted to the Treasurer of the United States. A civilian employee authorized to appear in his or her official capacity will accept the authorized witness fees, in addition to the allowance for travel and subsistence, and make disposition of the witness fees as instructed by his or her personnel office.

(d) Funding by the United States. Requests for DA personnel to appear at government expense as witnesses in state or local proceedings for a party other than the United States, including cases involving domestic violence or child abuse, will be referred to Litigation Division. Litigation Division may authorize travel and per diem expenses under § 516.59 when the case is one in which the United States has a significant interest.

§ 516.61 Witnesses before foreign tribunals.

(a) Referral to the SJA. Requests or subpoenas from a foreign government or tribunal for present DA personnel stationed or employed within that country to be interviewed or to appear as witnesses will be forwarded to the SJA of the command exercising general court-martial jurisdiction over the unit to which the individual is assigned, attached, or employed. The SJA will determine the following:

(1) Whether a consideration listed in § 516.52(a) (1) through (3) applies.

(2) Whether the information requested is releasable under the principles established in § 516.48 through 516.51, Release of Records in Connection with Litigation of this subpart H.

(3) Whether the approval of the American Embassy should be obtained because the person is attached to the Embassy staff or a question of diplomatic immunity may be involved.

(b) United States has an interest in the litigation. If the SJA determines that the United States has an interest in the litigation, the commander may authorize the interview or order the individual's attendance in a temporary duty status. The United States will be deemed to have an interest in the litigation if it is bound by treaty or other international agreement to ensure the attendance of such personnel.

(c) United States has no interest in the litigation. If the SJA determines that the United States does not have an interest in the litigation, the commander may authorize the interview or the appearance of the witness under the principles established in § 516.52 through 516.55, DA Personnel as Witnesses in Private Litigation of this subpart H.

(d) Witnesses located outside the country. If the requested witness is stationed in the United States, or in a country other than that which is seeking the witness' testimony, the matter will be referred to Litigation Division.

Subpart I—Remedies in Procurement Fraud and Corruption

§ 516.62 Purpose.

This chapter delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities (PFI) within DA. It implements DoD Directive 7050.5. (See appendix E to this part.)

§ 516.63 Policies.

(a) Procurement fraud and irregularities will be promptly and thoroughly addressed whenever encountered. Reports will be initiated in a timely manner and will be supplemented as appropriate.

(b) Investigations will be monitored to see that interim corrective action is taken and that final action is taken as expeditiously as possible.

(c) This regulation establishes the Procurement Fraud Division (PFD), U.S. Army Legal Services Agency, as the single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army procurement.

(d) The key elements of the Army's procurement fraud program follow: Centralized policy making and program direction; fraud remedies coordination; decentralized responsibility for operational matters, such as reporting and remedial action; continuous case monitorship by PFD from the initial report until final disposition; and, command-wide fraud awareness training.

(e) Remedies for PFI will be pursued in a timely manner and properly coordinated with other agencies. Every effort will be made to support criminal investigation and prosecution of fraudulent activity.

(f) A specific remedies plan will be formulated for each significant case of fraud or corruption involving procurement.

(g) Coordination on the status and disposition of cases will be maintained between PFD, OTJAG, PFI Coordinators at MACOMs, and Procurement Fraud Advisers at subordinate commands. Coordination of procurement and personnel actions will be accomplished with investigative agencies as required by those agencies.

(h) Training which relates to fraud and corruption in the procurement process is a significant element of this program.

§ 516.64 Responsibilities.

(a) TJAG has overall responsibility for the coordination of remedies in procurement fraud and corruption within the Army. This responsibility has been delegated to PFD. Functions of PFD will include the following:

(1) Serving as the single centralized organization in the Army to monitor the status of, and ensure the coordination of, criminal, civil, contractual, and administrative remedies for each significant case of fraud or corruption.

(2) Receiving reports of procurement fraud and corruption from any source including, but not limited to the following: DoD criminal investigative organizations; audit agencies; contracting officers; inspectors general of the executive branch; correspondence from the public; and, commanders. This provision does not repeal any other reporting requirement but establishes PFD as a recipient of PFI information at the earliest possible time.

(3) Establishing a monitoring system within OTJAG for all cases of fraud and corruption that relate to Army procurement.

(4) Discussing regularly with the U.S. Army Criminal Investigation Command (USACIDC) or the assigned DoD criminal investigative organization the current status of significant fraud or corruption cases and their coordination with prosecutive authorities.

(5) Ensuring that all criminal, civil, contractual, and administrative remedies are considered in each significant fraud or corruption case and that timely and applicable remedies are undertaken by commanders, contracting officers, and suspension and debarment authorities. For example, consideration of suspension or debarment of a contractor or individual should normally be initiated within 30 days of indictment or conviction.

(6) Coordinating, as appropriate, with other DoD components affected by a significant fraud or corruption case being monitored by the Army.

(7) Developing, with the responsible DoD investigative organization, Procurement Fraud Coordinators and Advisers, and other involved agencies, a specific comprehensive remedies plan for each significant fraud or corruption case.

(8) Coordinating remedies with DOJ. In the case of ongoing criminal investigations, coordinate these through, or with the prior knowledge of, the DoD criminal investigative organization responsible for the case.

(9) In significant fraud or corruption cases, identifying and documenting any known adverse impact on a DoD mission, and including the information in any remedies plan.

(10) Providing the appropriate DoD criminal investigative organization with information concerning final remedies as a result of an investigation by that organization.

(11) Receiving notifications from criminal investigative agencies concerning substituted, defective, and counterfeit hardware in which a serious hazard to health, safety or operational readiness is indicated; ensuring that appropriate safety, procurement and program officials are informed in accordance with enclosure 3 of DoD Directive 7050.5. PFD will specifically ensure that contract reviews (DD 350 reports) and adverse impact statements (See § 516.69(c)(2) are prepared, and that such information is used to determine if further inquiry is warranted to prevent reoccurrence and to detect other possible fraud. Impact statements will not be released to prosecutive agencies until reviewed by PFD. When appropriate, PFD will coordinate with other DoD agencies to establish a lead agency for victim impact statements in multi-DoD agency cases.

(b) The Commanding General, USACIDC, will take the following actions:

(1) Notify PFD of any investigations involving fraud or corruption related to procurement activities.

(2) Notify other DoD component criminal investigative organizations when investigations involving fraud or corruption affect that component. This includes evidence of fraud by a contractor, subcontractor, or employee of either, on current or past contracts with, or affecting, that component.

(3) Notify the Defense Investigative Service of any investigations that develop evidence which affects DoD cleared industrial facilities or personnel.

(4) Determine the effect on any ongoing investigations or prosecutions of any criminal, civil, contractual, or administrative actions being considered by a centralized organization and advise of any adverse impact.

(5) Promptly provide commanders, contracting officers, Procurement Fraud Advisers, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption from ongoing or completed criminal investigations. In cases of indictment or conviction of a contractor or individual, the information will be provided in time for initiation, if appropriate, of suspension or debarment action within 30 days of the indictment or conviction.

(6) Provide prosecutive authorities and centralized organizations with timely information on the adverse impact on a DoD mission of fraud or corruption that relates to DoD procurement activities. This information will be obtained from individuals such as the head of the contracting agency, appropriate commanders, and staff agencies. Some examples of adverse impact on a DoD mission are endangerment of personnel or property, monetary loss, compromise of the procurement process, or reduction or loss of mission readiness.

(7) Discuss regularly with Procurement Fraud Advisers the status of significant investigations of fraud or corruption and their coordination with prosecutive authorities and provide documents and reports resulting from the investigations.

(c) Commanders of service schools conducting procurement or procurement-related training (such as The Judge Advocate General's School, the U.S. Military Police School, and the U.S. Army Logistics Management Center) will ensure the following:

(1) All procurement and procurement-related training includes a period of instruction on fraud and corruption in the procurement process. The length of the period of instruction will be appropriate to the duration and nature of the training.

(2) Training materials are developed to support that training.

(3) Training materials developed will be sent to MACOM PFI Coordinators.

(d) MACOM commanders and heads of contracting activities will ensure the following:

(1) Substantial indications of fraud or corruption relating to Army contracts or Army administered contracts is reported promptly to the supporting USACIDC element and The Procurement Fraud Division.

(2) Information provided includes reports by contracting officers under DFARS 9.406–3.

§ 516.65 Procurement fraud and irregularities programs at MACOMs.

(a) Command counsel and SJAs at MACOMs will develop a program and appoint an attorney as PFI Coordinator for their command. Chief counsel and SJAs at commands with procurement advisory responsibility will appoint an attorney as a Procurement Fraud Adviser (PFA) to manage the PFI program at their installations as well.

(b) Provision may be made for activities not having sufficient attorney assets to obtain assistance from nearby installations that have a PFA.

(c) Reports and recommendations will be transmitted through command channels to the PFI coordinator for the affected MACOM.

(d) Command counsel, chief counsel, and SJAs will exercise supervisory authority to ensure effective operation of the fraud program and coordination of remedies within their organizations.

(e) The MACOM PFI Coordinator will have overall responsibility for the design and implementation of the MACOM's procurement fraud program.

(f) PFAs and PFI Coordinators will coordinate with the appropriate local CID or Defense Criminal Investigative Service (DCIS) activity to assure the prompt notification and coordination of all Procurement Fraud cases.

§ 516.66 Reporting requirements.

(a) Typical fraud indicators during the procurement cycle are listed in appendix F to this part. The mere presence of one or more of these indicators does not, by itself, require reporting under paragraph (b) of this section. Reports should be submitted if there is a reasonable suspicion of procurement fraud or irregularity or the procuring agency refers the matter for investigation.

(b) "Procurement Flash Reports" will be transmitted by FAX directly to PFD whenever a PFI Coordinator or PFA receives notice of a PFI involving the Army. To facilitate filing, a separate sheet should be used for each case reported. These reports will provide a succinct summary of the following available information:

(1) Name and address of contractor.

(2) Known subsidiaries of parent firms.

(3) Contracts involved in potential fraud.

(4) Nature of potential fraud.

(5) Summary of pertinent facts.

(6) Possible damages.

(7) Investigative agencies involved.

(8) Local PFAs (name and phone numbers).

Any of the above categories that cannot be completed will be annotated as "unknown at present."

(c) When a report is required by DFARS or is requested by PFD, the provisions of DFARS 9.406–3 will be followed. That paragraph provides the basic content and format for PFI reports.

(d) All personnel will cooperate to ensure that investigations and prosecutions of procurement fraud are completed in a timely and thorough manner. Requests for assistance from federal prosecutors should be processed through the local PFA whenever possible. Requests for federal investigators will be processed through the supporting USACIDC and the PFA will be notified. When the conduct of criminal investigations and prosecutions conflict with the progress of procurements, reasonable deference will be given to criminal investigators and prosecutors whenever possible. Any serious conflict that cannot be resolved at a local level will be immediately reported to the PFI Coordinator or PFD for action.

(e) PFI Coordinators and PFAs may request access to information obtained during criminal investigations that is not protected by Fed. R. Crim. P. 6(e) and use this information to assist them in taking appropriate administrative, contractual, and civil remedies. Requests for this information should be made directly to the appropriate federal investigative agency. The investigative organization may withhold requested information if release would compromise an investigation. Difficulties in obtaining information which cannot be resolved locally will be referred to PFD for appropriate action.

(f) USACIDC will notify, in writing, local PFAs as well as PFD within 30 days, of initiation of a significant investigation of fraud or corruption related to Army procurement activities. Such notification will include the following:

(1) Case title.

(2) USACIDC Report of Investigation number.

(3) Responsible investigative agency or agencies.

(4) Office of primary responsibility.

(5) Date opened.

(6) Summary of facts.

(7) Suspected offense.

(g) The transmission of the information in paragraph (f) of this section, may be delayed if the Commanding General, USACIDC, or the head of another DoD criminal investigation organization determines the transmission would compromise the success of any case or its prosecution. The prosecutive authorities dealing with the case will be consulted, when appropriate, in making such determinations.

(h) USACIDC will obtain the following information at the earliest possible point in an investigation of fraud or corruption that relates to DoD procurement activities, without reliance on grand jury subpoenas:

(1) The individuals suspected to be responsible.

(2) The suspected firm's organizational structure.

(3) The firm's financial and contract history.

(4) The firm's organizational documents and records.

(5) Statements of witnesses.

(6) Monetary loss to the government.

(7) Other relevant information.

This information will be provided to PFD or other cognizant DoD centralized organization.

(i) PFD will provide written notification to the Defense Investigative Service of all suspension or debarment actions taken by the Army.

§ 516.67 PFD and HQ USACIDC coordination.

PFD and HQ USACIDC will coordinate as follows:

(a) Discuss the status of significant procurement fraud or corruption investigations being conducted by USACIDC and possible remedies. These discussions should take place on a regular basis, but not less than once a quarter.

(b) Discuss the coordination of possible criminal, civil, contractual, or administrative remedies with prosecutive authorities.

(c) PFD will maintain liaison with other DoD centralized organizations and will coordinate remedies with those centralized organizations affected by a significant investigation of fraud or corruption that relates to DoD procurement activities.

(d) Ascertain the effect on any ongoing investigation of the initiation of civil, contractual, or administrative remedies as follows:

(1) PFD will maintain liaison with USACIDC and other DoD criminal investigative organizations in order to determine the advisability of initiating any civil, contractual, or administrative actions.

(2) USACIDC will advise PFD of any adverse effect on an investigation or prosecution by the initiation of civil, contractual, or administrative actions.

§ 516.68 Coordination with DOJ.

(a) PFD will establish and maintain liaison with DOJ and the Defense Procurement Fraud Unit on significant fraud and corruption cases to accomplish the following:

(1) Monitor criminal prosecutions.

(2) Initiate litigation for civil recovery.

(3) Coordinate administrative or contractual actions while criminal or civil proceedings are pending.

(4) Coordinate settlement agreements or proposed settlements of criminal, civil, and administrative actions.

(5) Respond to DOJ requests for information and assistance.

(b) In cases where there is an ongoing criminal investigation, coordination with DOJ by any member of the Army normally will be accomplished by or through USACIDC or the cognizant DoD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between government attorneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two latter attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ do not need to be brought to the attention of PFD.

§ 516.69 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 9.406–3 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan. The format for a remedies plan is at appendix G to this part.

(b) The plan will be developed initially by the PFA with the participation of the appropriate criminal investigators and other relevant personnel such as the contracting officer. In significant cases the PFA should also coordinate a remedies plan early with PFD. Defective product/product substitution remedies plans must comply with the requirements of appendix E to this part.

(c) A comprehensive remedies plan will include at a minimum the following information and considerations:

(1) Summary of allegations and investigative results.

(2) Statement of any adverse impact on a DoD mission. DoD investigative organizations, commanders, or procurement of officials will also provide this information to prosecutive authorities to enhance prosecution of offenses or to prepare a victim impact statement pursuant to Fed. R. Crim. P. 32(c)(2).

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DoD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should comply with appendix I to this part.

§ 516.70 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

(1) False Claims Act, 31 U.S.C. 3729.

(2) Anti-Kickback Act, 41 U.S.C. 51.

(3) Sherman Act, 15 U.S.C. 1–7.

(4) Racketeer Influenced and Corrupt Organizations, 18 U.S.C. 1961.

(5) Common law fraud.

(6) Unjust enrichment.

(7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 U.S.C. 218. See *K&R Engineering Co.* v. *United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD the report should summarize the available evidence and applicable theories of recovery and be prepared under § 516.22 of this part. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 9.406–3 report.

(d) The PFA will monitor all civil fraud recovery efforts throughout the command and will provide training and technical assistance as required. Monthly status reports of all civil fraud recovery efforts will be provided through channels to PFD.

§ 516.71 Administrative and contractual actions.

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

(1) Contractual. (i) Termination of contract for default.

(ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid option, a DFARS 9.406–3 report must be prepared where contractor nonresponsibility is based on lack of integrity).

(iii) Rescission of contract.

(iv) Revocation of acceptance.

(v) Use of contract warranties.

(vi) Withholding of payments to contractor. In the case of withholding pursuant to DFARS 32.173, the Chief, PFD is the Army Remedy Coordinating Official.

(vii) Offset of payments due to contractor from other contracts.

(viii) Revocation of facility security clearances.

(ix) Increased level of quality assurance.

(x) Refusal to accept nonconforming goods.

(xi) Denial of claims submitted by contractors.

(xii) Removal of contract from automated solicitation or payment system.

(2) Administrative. (i) Change in contracting forms and procedures.

(ii) Removal or reassignment of government personnel.

(iii) Review of contract administration and payment controls.

(iv) Revocation of warrant of contracting officer.

(v) Suspension of contractor.

(vi) Debarment of contractor.

(b) In cases which are pending review or action by DOJ, PFAs should coordinate with the DOJ attorney handling the case prior to initiating any contractual or administrative remedy. In the case of ongoing criminal investigations, this coordination will be accomplished through the appropriate DoD criminal investigation organization.

§ 516.72 Overseas cases of fraud or corruption.

(a) Commanders of overseas major commands will establish procedures, similar to this regulation and consistent with regulations and directives of their respective unified commands, for reporting and coordination of available remedies in overseas procurement fraud and corruption cases involving foreign firms and individuals. Overseas major commands will also maintain liaison with PFD and provide periodic reports of remedies coordination results.

(b) Suspension and debarment of foreign firms and individuals are governed by DFARS 9.403. The names of all foreign firms and individuals suspended or debarred will be expeditiously forwarded to PFD for inclusion on the List of Parties Excluded From Federal Procurement or Nonprocurement Programs.

(c) Overseas cases of fraud or corruption related to the procurement process that involve U.S. firms or U.S. citizens will be referred to PFD for coordination of remedies under this regulation.

§ 516.73 Program Fraud Civil Remedies Act (PFCRA).

(a) PFCRA was enacted on 21 October 1986 (Pub. L. 99–509). It was implemented by DoD on 30 August 1988 (DoD Directive 5505.5). (See appendix J of this part.)

(b) PFCRA expands the capability of the government to deter and recover losses from false, fictitious or fraudulent claims and statements. It is also applicable to program fraud and provides an administrative remedy in addition to those otherwise available to the Army in procurement fraud or pay and entitlements fraud cases.

(c) As part of the Army implementation, the Secretary of the Army's duties and responsibilities under PFCRA as Authority Head are delegated to the Army General Counsel. The Chief, Intellectual Property Law Division is the Army's Reviewing Official within the meaning of PFCRA. Army implementation also requires DA to follow the policies and procedures prescribed in enclosure 2 of DoD Directive 5505.5. (See appendix J of this part.)

(d) The DoD Inspector General (IG) is the Investigating Official within DoD. The duties of this position will be performed by the Assistant IG For Investigations. This individual is vested with the authority to investigate all allegations of liability under PFCRA. That authority includes the power to task subordinate investigative agencies to review and report on allegations that are subject to PFCRA. If the Investigative Official concludes that an action under PFCRA is warranted in an Army case, the official will submit a report containing the findings and conclusions of such investigation

through PFD to the Army Reviewing Official.

(e) Pursuant to DoD IG guidance, USACIDC will forward appropriate cases that appear to qualify for resolution under PFCRA to the Investigating Official in a timely manner. Additionally, USACIDC will forward current information regarding the status of remedies pending or concluded. USACIDC may obtain remedies information by coordinating with PFD and the cognizant command.

(f) In pay and entitlement or transportation operation fraud cases, USACIDC will coordinate with the Office of the Secretary of the Army, Financial Management, Review and Oversight Directorate (SAFM–RO) to determine the status of any pending or proposed action under the Debt Collection Act. This information, in addition to information obtained under § 516.73(e) of this section, will be forwarded with appropriate cases to the Investigating Official.

(g) In those cases where the Investigating Official has submitted a report to the Army Reviewing Official for action under PFCRA, PFD will, at the direction of the Reviewing Official, prepare all legal memoranda as necessary to transmit the Reviewing Official's intention to issue a complaint. As part of this responsibility PFD will do the following: coordinate with the affected command or agency to ensure that all appropriate remedies have been considered; evaluate the overall potential benefits to the Army; and, ensure that action under PFCRA is not duplicative of other remedies already taken. In order to fully supplement the Reviewing Official's file, PFD may request a litigation report.

(h) PFD will coordinate all cases involving transportation operations emanating from Military Traffic Management Command (MTMC) activity, under the military transportation exception to the FAR, and all cases involving pay and entitlements fraud with SAFM–RO, for comments and recommendations. These matters will be forwarded with the case file to the Reviewing Official.

(i) If the Attorney General approves the issuance of a complaint, PFD, at the direction of the Army Reviewing Official, shall prepare the complaint and all necessary memoranda as required. PFD shall also designate attorneys to represent the Authority in hearings under PFCRA.

Subpart J—Cooperation with the Office of Special Counsel

§ 517.74 Introduction.

This chapter prescribes procedures for cooperation with the Office of Special Counsel (OSC) when OSC is investigating alleged prohibited personnel practices or other allegations of improper or illegal conduct within DA activities.

§ 516.75 Policy.

(a) DA policy follows:

(1) Civilian personnel actions taken by management officials, civilian and military, will conform to laws and regulations implementing established merit system principles and will be free of any prohibited personnel practices.

(2) Management officials will take vigorous corrective action when prohibited personnel practices occur. Disciplinary measures under AR 690–700, chapter 751, may be initiated after consultation and coordination with appropriate civilian personnel offices.

(b) DA activities will cooperate with OSC in the following ways:

(1) Promoting merit system principles in civilian employment programs within DA.

(2) Investigating and reporting allegations of improper or illegal conduct forwarded to the activity by HQDA.

(3) Facilitating orderly investigations by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC, such as violations of the Freedom of Information Act or Hatch Act.

§ 516.76 Responsibilities.

(a) *DA General Counsel.* The DA General Counsel is responsible for the following:

(1) Provide overall guidance on all issues concerning cooperation with OSC, including the investigation of alleged prohibited personnel practices and allegations of improper or illegal conduct.

(2) Review for adequacy and legal sufficiency each OSC report of investigation that must be personally reviewed by the Secretary of the Army.

(3) Ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of allegations of improper or illegal conduct received from OSC. This includes compliance with time limits for reporting results of the investigation and personal review of the report by the Secretary of the Army when required.

(4) Forward to the DoD Inspector General (IG) copies of each allegation of improper or illegal conduct referred to DA by OSC.

(5) Delegate to The Judge Advocate General (TJAG) the authority to act on behalf of the DA General Counsel in all OSC investigations of prohibited personnel practices.

(b) *Chief, Labor and Employment Law Office.* The Chief, Labor and Employment Law Office, OTJAG (DAJA–LE) is responsible for the following:

(1) Act for TJAG as the Senior Management Official in cooperating with OSC. As Senior Management Official, the Chief, DAJA–LE, through TJAG, will be responsible to the DA General Counsel for administration of the policies and procedures contained in this chapter.

(2) Promptly inform the DA General Counsel of any OSC investigation and consult with the DA General Counsel on any legal or policy issue arising from an OSC investigation.

(3) Serve as the HQDA point of contact in providing assistance to OSC.

(4) Act as DA attorney-of-record in administrative matters initiated by OSC before the MSPB which arise from an OSC investigation. As DA attorney-of-record, the Chief, DAJA–LE will file necessary pleadings and make necessary appearances before the MSPB to represent DA interests.

(5) Monitor ongoing OSC investigations within DA.

(6) Ensure that appropriate DA personnel are fully apprised of their rights, duties and the nature and basis for an OSC investigation.

(7) Review and prepare recommendations to the General Counsel concerning any OSC recommended corrective action referred to DA. Such review and recommendations will address whether disciplinary action should be taken against DA civilian employees or military members, and whether the information warrants referral to appropriate authorities for corrective and disciplinary action.

(8) Seek OSC approval of DA proposed disciplinary action against an employee for an alleged prohibited personnel practice or other misconduct which is the subject of or related to any OSC investigation.

(9) Review and prepare recommendations for DA General Counsel concerning requests for counsel, to include identifying available DA attorneys to act as individual representatives. Upon approval of DA General Counsel, detail DA civilian and military attorneys, to include attorneys from the U.S. Army Materiel Command

and the Corps of Engineers, to represent individual military members or employees.

(10) Determine, to the extent practicable, whether an investigation is being or has been conducted which duplicates, in whole or in part, a proposed or incomplete OSC investigation, and convey that information to the OSC whenever it might avoid redundant investigative efforts.

(11) Provide guidance and assistance to activity Labor Counselors in fulfilling their duties as Liaison Officers.

(c) Activity Labor Counselor. The activity Labor Counselor will do the following:

(1) Act as Liaison Officer for OSC investigations arising within the command, activity or installation serviced by the Labor Counselor's Client Employment Office.

(2) Promptly inform the Chief, DAJA–LE of any OSC inquiry or investigation.

(3) Act as the legal representative of the command, activity, or installation.

(4) Assist the OSC investigator with administrative matters related to the investigation, such as requests for witnesses and documents.

(5) Process all OSC requests for documents.

(6) Make appropriate arrangements for OSC requests to interview civilian employees and military members.

(7) Ensure that personnel involved are advised of the nature and basis for an OSC investigation, the authority of the OSC, and their rights and duties.

(8) Consult with the Chief, DAJA–LE on policy and legal issues arising from the OSC investigation.

(9) Keep the Chief, DAJA–LE informed of the status of the OSC investigation.

(10) Act as agency representative before the MSPB in actions initiated by employees (individual right of action appeals).

§ 516.77 Procedures.

(a) *Witnesses and counsel for consultation.*

(1) DA military and civilian managers, supervisors, and employees who are requested by OSC for an interview will be made available in accordance with arrangements the Labor Counselor will establish. Requests for the testimony of IGs will be coordinated with the Inspector General Legal Office, SAIG–ZXL, DSN 227–9734 or Commercial (703) 697–9734.

(2) The Labor Counselor will ensure that witnesses are aware of their obligation to answer OSC questions, their potential to be considered "suspects" in OSC investigations, and their right to the assistance of counsel during interviews with OSC representatives. If the requested witness is not an "accused" or "suspected" individual and the witness asks for assistance of counsel, a DA attorney will be made available for the limited purpose of consultation regarding the witness' rights and obligations. An attorney-client relationship will not be established.

(3) The Labor Counselor will arrange for individual counsel from local assets. If local assets are not sufficient, assistance may be requested from other DoD activities in the area or from HQDA, DAJA–LE. DA attorneys tasked to consult with one or more witnesses individually will not be tasked to represent the DA activity concerned.

(4) The Labor Counselor, as the legal representative of the activity, is precluded from assisting or representing individual witnesses during OSC interviews.

(b) *"Accused" or "suspected" DA personnel.*

(1) If the OSC identifies a DA civilian employee or a military member as an "accused" or "suspected" individual, or if the Labor Counselor concludes that an individual is a "suspect," the Labor Counselor will inform the individual. The Labor Counselor also will advise the employee of the availability of counsel for representation upon approval by DA General Counsel.

(2) If the "suspected" employee desires legal representation by DA, the employee must request counsel by submitting a written request through DAJA–LE to DA General Counsel. (See appendix H of this part.)

(3) During the investigation but prior to DA General Counsel approval of the request for counsel, an "accused" or "suspected" employee will be provided the assistance of counsel for consultation in the same manner as any other OSC requested witness. "Accused" or "suspected" individuals who do not request counsel for representation will be provided counsel for consultation in the same manner as any other OSC requested witness.

(4) If the DA General Counsel approves the request for counsel, the Chief, DAJA–LE will assign a DA attorney to represent the employee. This assignment may be made telephonically but will be confirmed in writing. The Chief, DAJA–LE will make appropriate coordination with MACOM SJAs and command counsel to confirm availability of the attorney.

(5) An attorney assigned by DA may represent the civilian employee in any proceeding initiated by OSC before the MSPB. However, counsel provided by DA may not represent the employee in any proceeding initiated by DA, in any appeal from a final decision by the MSPB, or in any collateral proceeding before any forum other than the MSPB.

(6) OSC may not bring a disciplinary action before the MSPB against a military member. Accordingly, DA counsel will not be required to represent the military member in any MSPB disciplinary proceeding. However, counsel may represent the member during the OSC investigation with the understanding that the evidence obtained by OSC may be referred to the member's command for possible disciplinary action under the UCMJ or appropriate regulations. If DA initiates action against the military member for misconduct disclosed in the OSC investigation, the member will obtain counsel as provided under the UCMJ or relevant regulations.

(c) *Records.*

(1) OSC requests for records must be in writing. The Labor Counselor will assist OSC representatives in identifying the custodian of specific records sought during the inquiry.

(2) Generally, requested records should be furnished to OSC representatives if such records would be released under AR 25–55 or AR 340–21 to other government agencies in the normal course of official business. Records constituting attorney work product should not be released without approval of the Chief, DAJA–LE. IG records will not be released without the approval of the Inspector General (AR 20–1, para 1–30). The Labor Counselor should seek guidance from the Chief, DAJA–LE if there is any doubt concerning the release of records.

(3) If, after completion of the OSC investigation, the OSC files a complaint against DA or a DA employee, release of records and other information will be accomplished pursuant to MSPB rules of discovery (5 C.F.R. 1201, subpart B).

(d) *Funding.* The command, activity, or installation within which the allegations of misconduct arose will provide funding for travel, *per diem* and other necessary expenses related to the OSC investigation. These expenses may include appropriate funding for witnesses, counsel for assistance at interviews, and DA General Counsel approved counsel for representation.

§ 516.78 Assistance from HQDA.

Labor Counselors may seek guidance on questions arising from implementation of this subpart J, by calling the Chief, DAJA–LE, DSN 225–9476/9481 or Commercial (703) 695–9476/9481.

Subpart K—Soldiers Summoned to Serve on State and Local Juries

§ 516.79 General.

This chapter implements 10 U.S.C. 982 and DOD Directive 5525.8. It establishes Army policy concerning soldiers on active duty who are summoned to serve on state and local juries.

§ 516.80 Policy.

(a) Active duty soldiers should fulfill their civic responsibility by serving on state and local juries, so long as it does not interfere with military duties.

(b) The following active duty soldiers are exempt from complying with summons to serve on state and local juries:

(1) General officers.

(2) Commanders.

(3) Active duty soldiers stationed outside the United States, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(4) Active Duty soldiers in a training status.

(5) Active duty soldiers assigned to forces engaged in operations.

(c) Other active duty soldiers may be exempted from serving on local juries if compliance with such summons would have either of the following effects:

(1) It would unreasonably interfere with performance of the soldier's military duties; or,

(2) It would adversely affect the readiness of a summoned soldier's unit, command, or activity.

§ 516.81 Exemption determination authority.

(a) The commander exercising special court-martial convening authority (SPCMCA) over a unit has the authority to determine whether a soldier of that unit, who has been served with a summons, is exempt from serving on a state or local jury unless that authority has been limited or withheld in accordance with paragraphs (b) or (c) of this section. This authority may not be delegated to a subordinate commander who does not exercise SPCMCA.

(b) A commander superior to the SPCMCA, who also exercises SPCMCA or general court-martial convening authority (GCMCA) over a unit, may limit or withhold the exemption determination authority of subordinate commanders.

(c) A GCMCA, who orders a unit or soldier assigned to one command to be attached or detailed to another command for disciplinary purposes (e.g., "for administration" or "for administration of military justice"), may reserve exemption determination authority to the commander exercising SPCMCA in the chain of command to which the unit or soldier is assigned rather than the chain of command to which the unit or soldier is attached or detailed.

§ 516.82 Procedures for exemption.

(a) Active duty soldiers served with a summons to serve on a state or local jury will promptly advise their commander and provide copies of pertinent documents.

(b) Unit commanders will evaluate the summons considering both the individual soldier's duties and the unit mission. Coordination with the servicing judge advocate or legal adviser and with the appropriate state or local official may be necessary to determine any impact on the soldier's duties or on unit readiness.

(1) If the soldier is not exempt under § 516.80 (b) or (c), the commander will process the soldier for permissive TDY in accordance with AR 630–5, Leave, Passes, Permissive Temporary Duty, and Public Holidays.

(2) If the soldier is exempt under § 516.80 (b) or (c), the commander will forward the summons and any related documentation, with recommendations, through the chain of command to the commander with exemption determination authority over the soldier concerned.

(c) The commander with exemption determination authority over the soldier concerned will determine whether the soldier is exempt. His determination is final.

(d) The exemption determination authority will notify responsible state or local officials whenever a soldier summoned for jury duty is exempt. The notification will cite 10 U.S.C. 982 as authority.

§ 516.83 Status, fees, and expenses.

(a) Soldiers who are required to comply with summons to serve on state or local juries will be placed on permissive TDY under the provisions of AR 630–5.

(b) Jury fees accruing to soldiers for complying with the summons to serve on state and local juries must be turned over to the appropriate finance office for deposit into the U.S. Treasury. Commands will establish procedures with local authorities and their servicing finance and accounting activity to ensure that such jury fees are so deposited. Soldiers, however, may keep any reimbursement from state or local authority for expenses incurred in the performance of jury duty, including transportation, meals, and parking.

Appendix A to Part 516—References

These publications may be obtained from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, or may be reviewed at any Army public library.

Required Publications

AR 25–55
The Department of the Army Freedom of Information Act Program, (Cited in § 516.44(a), § 516.76(c)(2))
AR 27–20
Claims, (Cited in § 516.4(g), § 516.20(f), § 516.31(a)(4), § 516.3(b))
AR 37–60
Pricing for Material and Services, (Cited in § 516.47(c))
AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities, (Cited in § 516.20(a) (4) and (5)(b))
AR 215–2
The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities, (Cited in § 516(a)(3))
AR 340–17
Release of Information and Records from Army Files, (Cited in § 516.47(b)(2))
AR 340–21
The Army Privacy Program, (Cited in § 516.44(a), § 516.76(c) (2))
AR 380–5
Department of the Army Information Security Program, (Cited in § 516.48(b)(5))
AR 405–25
Annexation, (Cited in § 516.20(d))
AR 630–5
Leaves, Passes, Permissive Temporary Duty, and Public Holidays, (Cited in § 516.59(a), § 516.81(b)(1), § 516.82(a))

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand the regulation.
AR 20–1
Inspector General Activities and Procedures
AR 27–1
Judge Advocate Legal Service
AR 27–3
Legal Assistance
AR 27–10
Military Justice
AR 27–50
Status of Forces Policies, Procedures, and Information
AR 27–60
Patents, Inventions, and Copyrights
AR 37–103
Finance and Accounting for Installations: Disbursing Operations
AR 37–60
Pricing for Materiel and Services
AR 37–103
Finance and Accounting for Installations: Disbursing Operations
AR 37–104–3
Military Pay and Allowances Procedures
AR 37–105
Finance and Accounting for Installations: Civilian Pay Procedures
AR 55–19
Marine Casualties

AR 60–20
Operating Policies
AR 190–9
Military Absentee and Deserter Apprehension Program
AR 190–29
Misdemeanors and Uniform Violation Notices Referred to U.S. Magistrates or District Courts
AR 190–40
Serious Incident Report
AR 210–47
State and Local Taxation of Lessee's Interest in Wherry Act Housing (Title VIII of the National Housing Act).
AR 210–50
Family Housing Management
AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities
AR 215–2
The Management and Operation of Army Morale, Welfare and Recreation Programs and Nonappropriated Fund Instrumentalities
AR 335–15
Management Information Control System
AR 405–25
Annexation
AR 600–40
Apprehension, Restraint, and Release to Civil Authorities
AR 600–50
Standards of Conduct for Department of the Army Personnel
AR 630–10
Absence Without Leave and Desertion
AR 690–700
Personnel Relations and Services

Prescribed Form

DA Form 4
Department of the Army Certification for Authentication of Records, (Cited in § 516.23 (a) and (b))

Referenced Forms

DA Form 2631–R
Medical Care—Third Party Liability Notification
DA Form 3154
MSA Invoice and Receipt

Appendix B to Part 516—Mailing Addresses

U.S. Army Claims Service, ATTN: JACS–PC, Fort George G. Meade, MD 20755–5360.
Contract Appeals Division, HQDA(DAJA–CA), 901 North Stuart Street, Arlington, VA 22203–1837.
Contract Law Division, HQDA(DAJA–KL), Wash., DC 20310–2208.
Criminal Law Division, HQDA(DAJA–CL), Wash., DC 20310–2200.
Environmental Law Division, HQDA(DAJA–EL), 901 North Stuart Street, Arlington, VA 22203–1837.
Litigation Division, HQDA(DAJA–LT), 901 North Stuart Street, Arlington, VA 22203–1837.
(1) Civilian Personnel Branch, HQDA(DAJA–LTC), 901 North Stuart Street, Arlington, VA 22203–1837.
(2) General Litigation Branch, HQDA(DAJA–LTG), 901 North Stuart Street, Arlington, VA 22203–1837.
(3) Military Personnel Branch, HQDA(DAJA–LTM), 901 North Stuart Street, Arlington, VA 22203–1837.
(4) Tort Branch, HQDA(DAJA–LTT), 901 North Stuart Street, Arlington, VA 22203–1837.
Personnel, Plans, and Training Office, HQDA(DAJA–PT), Wash., DC 20310–2206.
Procurement Fraud Division, HQDA(DAJA–PF), 901 North Stuart Street, Arlington, VA 22203–1837.
Intellectual Property Division, HQDA(JALS–IP), 901 North Stuart Street, Arlington, VA 22203–1837.
Regulatory Law Division, HQDA(JALS–RL), 901 North Stuart Street, Arlington, VA 22203–1837.
U.S. Army Trial Defense Service, HQDA(JALS–TD), Nassif Building, Falls Church, VA 22041–5013.

Appendix C to Part 516—Sample Answer To Judicial Complaint

In the United States District Court for the Southern District of Texas Corpus Christi Division

In the Matter of John Doe, Plaintiff v. Michael P.W. Stone, Secretary of the Army, Department of the Army, Defendant.

[NO. C–90–100]

First Affirmative Defense

The Complaint is barred by laches.

Answer

For its answer to the complaint, defendant admits, denies and alleges as follows:

1. Admits.
2. Denies.
3. Denies.
4. The allegations contained in paragraph 4 are conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.
5. Denies the allegations contained in the first sentence of paragraph 5; admits the allegations contained in the second sentence of paragraph 5; denies the remainder of the allegations in paragraph 5.
6. Denies the allegations in paragraph 6 for lack of knowledge or information sufficient to form a belief as to their truth.
7. Denies each allegation in the complaint not specifically admitted or otherwise qualified.

Prayer for Relief

The remainder of plaintiff's Complaint contains his prayer for relief, to which no answer is required. Insofar as an answer is required, denies that plaintiff is entitled to any relief whatsoever.

Defendant respectfully prays that the Court dismiss plaintiff's Complaint and award to defendant costs and such further relief as the Court deems proper.

Respectfully Submitted,

Ronald M. Ford, United States Attorney.

Roy A. Andersen,
Assistant United States Attorney,
606 N. Carancua,
Corpus Christi, Texas 78476,
(512) 884–3454.

Captain Christopher N. Jones,
Department of the Army,
Office of the Judge Advocate General,
901 N. Stuart St., Suite 400,
Arlington, Virginia 22203–1837,
(703) 696–1666.

Certificate of Service

I hereby certify that a true and correct copy of Defendant's Answer has been placed in the mail, postage prepaid, this _____day of_____, 1991, addressed to plaintiff's counsel as follows: Mr. Eugene Henderson, 777 Fourth Street, Corpus Christi, TX 78888.

Roy Anderson, Assistant United States Attorney.

Appendix D to Part 516—Department of Defense Directive 5405.2

Department of Defense Directive

July 23, 1985
NUMBER 5405.2
GC, DOD

Subject: Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses

References:

(a) Title 5, United States Code, Sections 301, 552, and 552a
(b) Title 10, United States Code, Section 133
(c) DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976
(d) DoD Directive 5200.1–R, "Information Security Program Regulation," August 1982, authorized by DoD Directive 5200.1, June 7, 1982
(e) DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984
(f) DoD Instruction 7230.7, "User Charges," January 29, 1985
(g) DoD Directive 5400.7–R, "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, March 24, 1980

A. Purpose

Under Section 301 reference (a) and reference (b), this Directive establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

B. Applicability and Scope

1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"), and to all personnel of such DoD Components.

2. This Directive does not apply to the release of official information or testimony by DoD personnel in the following situations:

a. Before courts-martial convened by the authority of the Military Departments or in

administrative proceedings conducted by or on behalf of a DoD Component;

b. Pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), or pursuant to a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

c. In response to requests by Federal Government counsel in litigation conducted on behalf of the United States;

d. As part of the assistance required in accordance with the Defense Industrial Personnel Security Clearance Program under DoD Directive 5220.6 (reference (c)); or

e. Pursuant to disclosure of information to Federal, State, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

3. This Directive does not supersede or modify existing laws or DoD programs governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. 552 (reference (a)) or the Privacy Act, 5 U.S.C. 552a (reference (a)), nor does this Directive preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

4. This Directive is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases.

5. This Directive does not preclude official comment on matters in litigation in appropriate cases.

6. This Directive is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Defense.

C. Definitions

1. Demand. Subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority for the production, disclosure, or release of official DoD information or for the appearance and testimony of DoD personnel as witnesses.

2. DoD Personnel. Present and former U.S. military personnel; Service Academy cadets and midshipmen; and present and former civilian employees of any Component of the Department of Defense, including nonappropriated fund activity employees; non-U.S. nationals who perform services overseas, under the provisions of status of forces agreements, for the United States Armed Forces; and other specific individuals hired through contractual agreements by or on behalf of the Department of Defense.

3. Litigation. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

4. Official Information. All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

D. Policy

It is DoD policy that official information should generally be made reasonably available for use in federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

E. Responsibilities

1. The General Counsel, Department of Defense (GC, DoD), shall provide general policy and procedural guidance by the issuance of supplemental instructions or specific orders concerning the release of official DoD information in litigation and the testimony of DoD personnel as witnesses during litigation.

2. The Heads of DoD Components shall issue appropriate regulations to implement this Directive and to identify official information that is involved in litigation.

F. Procedures

1. Authority to Act

a. In response to a litigation request or demand for official DoD information or the testimony of DoD personnel as witnesses, the General Counsels of DoD, Navy, and the Defense Agencies; the Judge Advocates General of the Military Departments; and the Chief Legal Advisors to the JCS and the Unified and Specified Commands, with regard to their respective Components, are authorized—after consulting and coordinating with the appropriate Department of Justice litigation attorneys, as required—to determine whether official information originated by the Component may be released in litigation; whether DoD personnel assigned to or affiliated with the Component may be interviewed, contacted, or used as witnesses concerning official DoD information or as expert witnesses; and what, if any, conditions will be imposed upon such release, interview, contact, or testimony. Delegation of this authority, to include the authority to invoke appropriate claims of privilege before any tribunal, is permitted.

b. In the event that a DoD Component receives a litigation request or demand for official information originated by another Component, the receiving Component shall forward the appropriate portions of the request or demand to the originating Component for action in accordance with this Directive. The receiving Component shall also notify the requestor, court, or other authority of its transfer of the request or demand.

c. Notwithstanding the provisions of paragraphs F.1.a. and b., the GC, DoD, in litigation involving terrorism, espionage, nuclear weapons, intelligence means or sources, or otherwise as deemed necessary, may notify Components that GC, DoD, will assume primary responsibility for coordinating all litigation requests and demands for official DoD information or the testimony of DoD personnel, or both; consulting with the Department of Justice, as required; and taking final action on such requests and demands.

2. Factors to Consider

In deciding whether to authorize the release of official DoD information or the testimony of DoD personnel concerning official information (hereinafter referred to as "the disclosure") pursuant to paragraph F.1., DoD officials should consider the following types of factors:

a. Whether the request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules;

b. Whether the disclosure, including release in camera, is appropriate under the rules of procedure governing the case or matter in which the request or demand arose;

c. Whether the disclosure would violate a statute, executive order, regulation, or directive;

d. Whether the disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege;

e. Whether the disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to the DoD Information Security Program under DoD 5200.1-R (reference (d)), unclassified technical data withheld from public release pursuant to DoD Directive 5230.25 (reference (e)), or other matters exempt from unrestricted disclosure; and,

f. Whether disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances.

3. Decisions on Litigation Requests and Demands

a. Subject to paragraph F.3.e., DoD personnel shall not, in response to a litigation request or demand, produce, disclose, release, comment upon, or testify concerning any official DoD information without the prior written approval of the appropriate DoD official designated in paragraph F.1. Oral approval may be granted, but a record of such approval shall be made and retained in accordance with the applicable implementing regulations.

b. If official DoD information is sought, through testimony or otherwise, by a litigation request or demand, the individual

seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to paragraph F.3.e., DoD personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the appropriate DoD official designated in paragraph F.1. See United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

c. Whenever a litigation request or demand is made upon DoD personnel for official DoD information or for testimony concerning such information, the personnel upon whom the request or demand was made shall immediately notify the DoD official designated in paragraph F.1. for the Component to which the individual contacted is or, for former personnel, was last assigned. In appropriate cases, the responsible DoD official shall thereupon notify the Department of Justice of the request or demands. After due consultation and coordination with the Department of Justice, as required, the DoD official shall determine whether the individual is required to comply with the request or demand and shall notify the requestor or the court or other authority of the determination reached.

d. If, after DoD personnel have received a litigation request or demand and have in turn notified the appropriate DoD official in accordance with paragraph F.3.c., a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph F.1. shall furnish the requestor or the court or other authority with a copy of this Directive and applicable implementing Regulations, inform the requestor or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the Component concerned.

e. If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph F.3.d., or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the appropriate DoD official, the DoD personnel upon whom the request or demand was made shall notify the responsible DoD official of such ruling or order. If the DoD official determines that no further legal review of or challenge to the court's ruling or order will be sought, the affected DoD personnel shall comply with the request, demand, or order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

4. Fees

Consistent with the guidelines in DoD Instruction 7230.7 (reference (f)), the appropriate officials designated in paragraph F.1. are authorized to charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official DoD information not otherwise available under the DoD Freedom of Information Act Program (reference (g)). Such fees, in amounts calculated to reimburse the Government for the expense of providing such information, may include the costs of time expended by DoD employees to process and respond to the request or demand; attorney time for reviewing the request or demand and any information located in response thereto and for related legal work in connection with the request or demand; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. See *Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340 (1978).

5. Expert or Opinion Testimony. DoD personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate DoD official designated in paragraph F.1. may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction, or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such order. If the DoD official determines that no further legal review of or challenge to the court's order will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel, DoD, within 120 days.

Signed by William H. Taft, IV

Deputy Secretary of Defense.

Appendix E to Part 516—Department of Defense Directive 7050.5

Department of Defense Directive

June 7, 1989
NUMBER 7050.5
IG, DoD

SUBJECT: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

References:

(a) DoD Directive 7050.5, subject as above, June 28, 1985 (hereby canceled)

(b) Public Law 97-291, "The Victim and Witness Protection Act of 1982," October 12, 1982

(c) Defense FAR Supplement (DFARS), Subpart 4.6, "Contract Reporting"

(d) DoD Instruction 4105.61, "DoD Procurement Coding Manual," May 4, 1973

(e) DoD 4105.61-M, "Procurement Coding Manual" (Volume I), October 1988, authorized by DoD Instruction 4105.61 May 4, 1973

A. Reissuance and Purpose

This Directive reissues reference (a) to update policies, procedures, and responsibilities for the coordination of criminal, civil, administrative, and contractual remedies stemming from investigation of fraud or corruption related to procurement activities. More effective and timely communication of information developed during such investigations will enable the Department of Defense to take the most appropriate of the available measures.

B. Applicability

This Directive applies to the Office of the Secretary of Defense (OSD); the Inspector General, Department of Defense (IG, DoD); the Military Departments; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

C. Definitions

1. *DoD Criminal Investigative Organizations.* Refers to the U.S. Army Criminal Investigation Command; the Naval Investigative Service Command; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the IG, DoD (OIG, DoD).

2. Significant. Refers to all fraud cases involving an alleged loss of $100,000, or more; all corruption cases related to procurement that involved bribery, gratuities, or conflicts of interest; and any investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated, regardless of loss value.

D. Policy

It is DoD policy that:

1. Each of the DoD Components shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organizations, for the purpose of ensuring that all possible criminal, civil, administrative, and contractual remedies in such cases are identified to cognizant procurement and command officials and that appropriate remedies are pursued expeditiously. This process shall include appropriate coordination with all other affected DoD Components.

2. All investigations of fraud or corruption related to procurement activities shall be reviewed to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.

3. Appropriate civil, contractual, and administrative actions, including those set forth in enclosure 1, shall be taken expeditiously. During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during an investigation, such actions shall be taken with the advance knowledge of the responsible DoD criminal investigative organization and, when necessary, the appropriate legal counsel in

the Department of Defense and the Department of Justice (DoJ). When appropriate, such actions shall be taken before final resolution of the criminal or civil case.

E. Responsibilities

1. The *Heads of DoD Components* shall:

a. Establish a centralized organization (hereafter referred to as "the centralized organization") to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

b. Establish procedures requiring the centralized organization to discuss regularly with the assigned DoD criminal investigative organization(s) such issues as the current status of significant investigations and their coordination with prosecutive authorities.

c. Establish procedures requiring that all coordination involving the DoJ, during the pendency of a criminal investigation, is accomplished by or with the advance knowledge of the appropriate DoD criminal investigative organization(s).

d. Establish procedures to ensure appropriate coordination of actions between the centralized organizations of any DoD Components affected by a significant investigation of fraud or corruption related to procurement activities.

e. Establish procedures to ensure that all proper and effective civil, administrative, and contractual remedies available to the Department of Defense are, when found applicable and appropriate, considered and undertaken promptly by the necessary DoD officials (e.g., commanders, programs officials, and contracting officers). This includes initiation of any suspension and debarment action within 30 days of an indictment or conviction. The centralized organization shall ensure that all proposed actions are coordinated with appropriate investigative organization.

f. Establish procedures to ensure that a specific comprehensive remedies plan is developed for each significant investigation involving fraud or corruption related to procurement activities. These procedures shall include the participation of the appropriate DoD criminal investigative organization in the development of the plan.

g. Establish procedures to ensure that in those significant investigations of fraud or corruption related to procurement activities when adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the centralized organization. This information is to be used by the centralized organization of the DoD Component concerned in development of the remedies plan required in paragraph E.1.f., above, and shall be furnished to prosecutors as stated in paragraph E.2.e., below. The information shall also be used by the centralized organizations in development and preparation of "Victim Impact Statements" for use in sentencing proceedings, as provided for Public Law 97-291 (reference (b)). Some examples of adverse impact on a DoD mission are as follows:

(1) Endangerment of personnel or property.

(2) Monetary loss.

(3) Denigration of program or personnel integrity.

(4) Compromise of the procurement process.

(5) Reduction or loss of mission readiness.

h. Ensure training materials are developed on fraud and corruption in the procurement process, and that all procurement and procurement-related training includes a period of such instruction appropriate to the duration and nature of the training.

i. Establish procedures enabling the centralized organization to ensure that safety and readiness issues are examined and appropriately dealt with for all cases in which a notice is required under paragraph E.2.i., below. The minimum procedures to be followed by the centralized organization are in enclosure 3.

j. Ensure that appropriate command, procurement, and investigative organizations are provided sufficient information to determine if further inquiry is warranted on their part to prevent reoccurrence and detect other possible fraud within their activity.

(2) The Secretaries of the Military Departments and the Inspector General, Department of Defense (IG, DoD), or their designees, shall establish procedures that ensure that their respective criminal investigative organizations will:

a. Notify, in writing, the centralized organization for the affected DoD Component of the start of all significant investigations involving fraud or corruption that are related to procurement activities. Initial notification shall include the following elements:

(1) Case title.

(2) Case control number.

(3) Investigative agency and office of primary responsibility.

(4) Date opened.

(5) Predication.

(6) Suspected offense(s).

(b) Notify expeditiously the Defense Investigative Service (DIS) of any investigations that develop evidence that would impact on DoD-cleared industrial facilities or personnel.

(c) Discuss regularly with the centralized organization such issues as the current status of significant investigations and their coordination with prosecutive authorities. If the DoD criminal investigative organization has prepared any documents summarizing the current status of the investigation, such documents shall be provided to the centralized organization. Completed reports of significant investigations also should be provided to the centralized organization.

(d) Provide to the appropriate procurement officials, commanders, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption related to procurement activities. Such information shall be provided in a timely manner to enable the suspension and debarment authority to initiate suspension and debarment action within 30 days of an indictment or conviction.

(e) Provide expeditiously to prosecutive authorities the information regarding any adverse impact on a DoD mission, that is gathered under paragraph E.1.g., above, for the purpose of enhancing the prosecutability of a case. Such information also should be used in preparing a victim impact statement for use in sentencing proceedings as provided for in Public Law 97-291 (reference (b)).

(f) Gather, at the earliest practical point in the investigation, without reliance on grand jury subpoenas whenever possible, relevant information concerning responsible individuals, the organizational structure, finances, and contract history of DoD contractors under investigation for fraud or corruption related to procurement activities, to facilitate the criminal investigation as well as any civil, administrative, or contractual actions or remedies that may be taken. Some available sources of such information are listed in enclosure 2.

(g) Provide timely notice to other cognizant DoD criminal investigative organizations of evidence of fraud by a contractor, subcontractor, or employees of either, on current or past contracts with, or affecting, other DoD Components.

(h) Ascertain the impact upon any ongoing investigation or prosecution of civil, contractual, and administrative actions being considered and advise the appropriate centralized organization of any adverse impact.

(i) Obtain a DD 350 report in every investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

(j) Obtain a DD 350 report in all significant fraud investigations, as defined in subsection C.2. above, whether or not the case involved defective products or product substitution. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

3. The Inspector General, Department of Defense (IG, DoD), shall:

a. Develop training materials relating to fraud and corruption in procurement related activities which shall be utilized in all procurement related training in conjunction with training materials developed by the DoD Components. (See paragraph E.1.h., above.)

b. Establish procedures for providing to the DoD criminal investigative organizations, through the Office of the Assistant Inspector General for Auditing (OAIG-AUD), reports of data contained in the Individual Procurement Action Report (DD Form 350) System.

F. Procedures

Transmissions of information by DoD criminal investigative organizations required by subsection E.2., above, shall be made as expeditiously as possible, consistent with efforts not to compromise any ongoing criminal investigation. The transmission of the information may be delayed when, in the judgment of the head of the DoD criminal investigative organization, failure to delay would compromise the success of any investigation or prosecution. The prosecutive

authorities dealing with the investigation shall be consulted, when appropriate, in making such determinations.

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 120 days.

Donald J. Atwood,

Deputy Secretary of Defense.

Enclosures—3

1. Civil Contractual and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud
2. Source of Information Relating to Government Contractors
3. Actions to be Taken in Product Substitution Investigations

Civil, Contractual, and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud

A. Civil

1. Statutory

a. False Claims Act (31 U.S.C. 3729 et seq.).
b. Anti-Kickback Act (41 U.S.C. 51 et seq.).
c. Voiding Contracts (18 U.S.C. 218).
d. Truth in Negotiations Act (10 U.S.C. 2306(f)).
e. Fraudulent Claims-Contract Disputes Act (41 U.S.C. 604).
f. *Nonstatutory*
g. Breach of contract.
h. Breach of warranty.
i. Money paid under mistake of fact.
j. Unjust enrichment.
k. Fraud and/or Deceit.
l. Conversion.
m. Recision and/or Cancellation.
n. Reformation.
o. Enforcement of performance bond/guarantee agreement.

2. Contractual

a. Termination of contract for default.
b. Termination of contract for convenience of Government.
c. Termination for default and exemplary damages under the gratuities clause.
d. Recision of contract.
e. Contract warranties.
f. Withholding of payments to contractor.
g. Offset of payments due to contractor from other contracts.
h. Price reduction.
i. Correction of defects (or cost of correction).
j. Refusal to accept nonconforming goods.
k. Revocation of acceptance.
l. Denial of claims submitted by contractors.
m. Disallowance of contract costs.
n. Removal of the contractor from automated solicitation or payment system.

3. Administrative

a. Change in contracting forms and procedures.
b. Removal or reassignment of Government personnel.
c. Review of contract administration and payment controls.
d. Revocation of warrant contracting officer.
e. Suspension of contractor and contractor employees.
f. Debarment of contractor and contractor employees.
g. Revocation of facility security clearances.
h. Nonaward of contract based upon a finding of contractor nonresponsibility.
i. Voluntary refunds.

SOURCE OF INFORMATION RELATING TO GOVERNMENT CONTRACTORS

Type of information	Possible source
1. Location, dollar value, type, and number of current contracts with the Department of Defense.	a. DD Form 350 Report.[1] b. Defense Logistics Agency's (DLA) "Contract Administration Defense Logistics Agency's (DLA) Contract Administration Report (CAR Report) on contracts DLA administers.
2. Financial status of corporation, history of corporation, owners, and officers.	a. Dunn and Bradstreet Reports. b. Corporate filings with local secretaries of the State, or corporate recorders. c. Securities and Exchange Commission (public corporations). d. Small Business Administration (SBA) (small businesses). e. General Accounting Office (bid protests, and contractors indebted to the Government). f. Armed Services Board of Contract Appeals (ASBCA) or court litigation. g. List of Contractors Indebted to the United States (maintained, published and distributed by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249).
3. Security clearance background information on facility and officers.	a. Defense Investigative Service.
4. Performance history of contractor.	a. Local contracting officers. b. Defense Contract Administration Service preaward surveys. c. SBA Certificate of Competency records.
5. Name, location, offense alleged, and previous investigative efforts involving DLA-awarded or DLA- administered contracts.	DLA Automated Criminal Case Management System. (Available through field offices of the DLA Counsel's office.)
6. Bid protests, litigation, and bankruptcy involving DLA-awarded or DLA-administered contracts.	Field offices of the DLA Counsel's office.

[1] A determination as to the contract history of any DoD contractor with contracts in excess of $25,000 annually can be made through a review of the "Individual Procurement Action Report" (DD Form 350) system, as prescribed by Subpart 4.6 of the DoD FAR Supplement, DoD Instruction 4105.61, and DoD—4105.61-M (references (c), (d), and (e)).

Actions to be Taken in Product Substitution Investigations

A. The centralized organization, in all cases involving allegations of product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated shall:

1. Review the notice of the case immediately after receiving it from the Defense criminal investigative organization. Review the notice to determine any potential safety or readiness issues indicated by the suspected fraud.

2. Notify all appropriate safety, procurement, and program officials of the existence of the case.

3. Obtain a complete assessment from safety, procurement, and program officials of the adverse impact of the fraud on DoD programs and operations.

4. Ensure that the DoD Component provides the Defense criminal investigative organization with full testing support to completely identify the defective nature of the substituted products. Costs associated with the testing shall be assumed by the appropriate procurement program.

5. Prepare a comprehensive impact statement describing the adverse impact of the fraud on DoD programs for use in any criminal, civil, or contractual action related to the case.

B. In all cases involving allegations of product substitution that affect more than one DoD Component, that centralized organizations of the affected DoD Components shall identify a lead Agency. The lead centralized organization shall ensure that information on the fraud is provided to the centralized organization of all other affected DoD Components. The lead centralized organization shall ensure compliance with the requirements of section A., above. The lead centralized organization shall then be responsible for preparing a comprehensive "Victim Impact Statement" as required by paragraph E.1.g. of this Directive.

C. In all cases involving allegations of product substitution, the Defense Criminal Investigative Organization shall:

1. Immediately notify the appropriate centralized organization of the beginning of the case.

2. Continue to provide to the centralized organization any information developed during the course of the investigation that indicates substituted products have been, or

might be, provided to the Department of Defense.

3. Ensure that any request for testing of substituted products is provided to the centralized organization.

Appendix F to Part 516—Procurement Fraud Indicators

F–1. During the Identification of the Government and Services

a. Need determinations for items currently scheduled for disposal or reprocurement, or which have predetermined reorder levels.

b. Excessive purchase of "expendables" such as drugs or auto parts.

c. Inadequate or vague need assessment.

d. Frequent changes in the need assessment or determination.

e. Mandatory stock levels and inventory requirements appear excessive.

f. Items appear to be unnecessarily declared excess or sold as surplus, while same items are being reprocured.

g. It appears that an item or service is being purchased more as a result of aggressive marketing efforts rather than in response to a valid requirement.

h. Need determination appears to be unnecessarily tailored in ways that can only be met by certain contractors.

i. Items and services are continually obtained from the same source due to an unwarranted lack of effort to develop second sources.

F–2. During the Development of the Statements of Work and Specifications

a. Statements of work and specifications appear to be intentionally written to fit the products or capabilities of a single contractor.

b. Statements of work, specifications, or sole source justifications developed by or in consultation with a preferred contractor.

c. Information concerning requirements and pending contracts is released only to preferred contractors.

d. Allowing companies and industry personnel who participated in the preparation of bid packages to perform on subsequent contracts in either a prime or subcontractor capacity.

e. Release of information by firms or personnel participating in design or engineering to companies competing for prime contract.

f. Prequalification standards or specifications appear designed to exclude otherwise qualified contractors or their productions.

g. Requirements appear split up to allow for rotating bids, giving each contractor his or her "fair share."

h. Requirements appear split up to meet small purchase requirements (i.e., $25,000) or to avoid higher levels of approval that would be otherwise required.

i. Bid specifications or statement of work appear inconsistent with the items described in the general requirements.

j. Specifications appear so vague that reasonable comparisons of estimate would be difficult.

k. Specifications appear inconsistent with previous procurements of similar items of services.

F–3. During the Presolicitation Phase

a. Sole source justifications appear unnecessary or poorly supported.

b. Statements justifying sole source or negotiated procurements appear inadequate or incredible.

c. Solicitation documents appear to contain unnecessary requirements which tend to restrict competition.

d. Contractors or their representatives appear to have received advanced information related to the proposed procurement on a preferential basis.

F–4. During the Solicitation Phase

a. Procurement appears to be processed so as to exclude or impede certain contractors.

b. The time for submission of bids appears to be unnecessarily limited so that only those with advance information have adequate time to prepare bids or proposals.

c. It appears that information concerning the procurement has been revealed only to certain contractors, without being revealed to all prospective competitors.

d. Bidders conferences are conducted in a way that apparently invites bid rigging, price fixing, or other improper collusion between contractors.

e. There is an apparent intentional failure to fairly publish notice of the solicitation.

f. Solicitation appears vague as to the details such as time, place and manner, of submitting acceptable bids.

g. There is evidence of improper communications or social contract between contractors and government personnel.

h. Controls over the number and destination of bid packages sent to interested bidders appear inadequate.

i. Indications that government personnel or their families may own stock or have some other financial interest in either a contractor or subcontractor.

j. Indications that government personnel are discussing possible employment for themselves or a family member with a contractor or subcontractor or indications that a proposal for future employment from a contractor or subcontractor to a government employee or his or her family members has not been firmly rejected.

k. Indications that any contractor has received special assistance in preparation of his or her bid or proposal.

l. It appears that a contract is given an expressed or implied reference to a specific subcontractor.

m. Failure to amend solicitation to reflect necessary changes or modifications.

F–5. During the Submission of Bids and Proposals

a. Improper acceptance of a late bid.

b. Documents, such as receipts, appear falsified to obtain acceptance of a late bid.

c. Improperly attempting to change a bid after other bidders prices are known.

d. Indications that mistakes have been deliberately planted in a bid to support correction after bid opening.

e. Withdrawal by a low bidder who may later become a subcontractor to a higher bidder who gets the contract.

f. Apparent collusion or bid rigging among the bidders.

g. Bidders apparently revealing their prices to each other.

h. Required contractor certifications appear falsified.

i. Information concerning contractor's qualifications, finances, and capabilities appears falsified.

F–6. During the Evaluation of Bids and Proposals

a. Deliberately losing or discarding bids of certain contractors.

b. Improperly disqualifying the bids or proposals of certain contractors.

c. Accepting apparently nonresponsive bids from preferred contractors.

d. Unusual or unnecessary contacts between government personnel and contractors during solicitation, evaluation, and negotiation.

e. Any apparently unauthorized release of procurement information to a contractor or to non-government personnel.

f. Any apparent favoritism in the evaluation of the bid or proposal of a particular contractor.

g. Apparent bias in the evaluation criteria or in the attitude or actions of the members of the evaluation panel.

Appendix G to Part 516—Preparation of a Remedies Plan

(Date of Plan)

Section I (Administrative Data)

A. Subject of Allegation.

B. Principal Investigative Agency.

C. Investigative Agency File Number.

D. Subject's Location.

E. Location Where Offense Took Place.

F. Responsible Action Commander.

G. Responsible MACOM.

H. Contract Administrative Data (If Applicable):

1. Contract Number.

2. Type of Contract.

3. Dollar Amount of Contract.

4. Period of Contract.

I. Principal Case Agent (Name and Telephone Number).

J. Civilian Prosecutor (If Applicable) (Name, Address, and Telephone Number).

K. Is Grand Jury Investigating This Matter? If So, where is Grand Jury Located?

L. Audit Agency Involved (If Applicable). Name and Telephone Number of Principal Auditor.

M. Suspense Date for Update of This Plan.

Section II (Summary of Allegations and Investigative Results to Date)

(Provide sufficient detail for reviewers of the plan to evaluate the appropriateness of the planned remedies. If information is "close-hold" or if grand jury secrecy applies, so state.)

_____

_____

_____

_____

_____

Section III (Adverse Impact Statement)

(Describe any adverse impact on the DA/DOD mission. Adverse impact is described in DOD Directive 7050.5, paragraph E.1.g. Identify impact as actual or potential. Describe the impact in terms of monetary loss, endangerment to personnel or property, mission readiness, etc. This information should be considered in formulating your remedies as described below and provided to prosecutors for their use in prosecution of the offenses.)

Section IV (Remedies Taken and/or Being Pursued)

A. Criminal Sanctions. (As a minimum, address the following: Are criminal sanctions appropriate? If so, which ones? If not, why not? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? What actions have been taken or are intended? If and when action is complete, describe action and final results of the action. Other pertinent comments should be included.)

B. Civil Remedies. (As a minimum address the following: Which civil remedies are appropriate? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? How, when, where and by whom are the appropriate civil remedies implemented? If and when action is completed, describe action and final results. Other pertinent comments should be included.)

C. Contractual/Administrative Remedies. (As a minimum, address the following: Are contractual and administrative remedies appropriate: If so, which ones? If not, why? If contractual or administrative remedies are considered appropriate, describe how, when, and by whom the remedies are implemented. If and when action is completed, describe action and results of the action. Other pertinent comments should be included.)

D. Restrictions on Remedies Action. (Comment as to why obvious remedies are not being pursued. For example, the U.S. Attorney requests suspension action held in abeyance pending criminal action.)

Section V (Miscellaneous Comments/Information)

Section VI (Remedies Plan Participants)

Name

Grade

Organization

Telephone No.

Section VII (MACOM Coordination Comments)

Name and date

Grade

Office symbol

Telephone no.

(Signature)
(Date)

MACOM Focal Point

Section VIII (Coordination/Comments)

Name

Grade

Office symbol

Telephone no.

Date

Appendix H to Part 516—Legal Advice And Representation Before Office of Special Counsel

H–1. Overview

a. DA employees or military members asked to provide information (testimonial or documentary) to OSC may obtain legal advice through the Labor Counselor from DA attorneys concerning their rights and obligations. This includes assistance at any interviews with OSC investigators. However, an attorney-client relationship will not be established unless the employee or military member—

(1) Is suspected or accused by the OSC of committing a prohibited personnel practice or other illegal or improper act; and

(2) Has been assigned counsel by the DA General Counsel.

b. Any military member or employee who reasonably believes that he or she is suspected or has been accused by OSC of committing a prohibited personnel practice or other illegal or improper act may obtain legal representation from DA. The counsel assigned will be from another DOD component whenever a DA attorney is likely to face a conflict between the attorney's ethical obligation to the client and DA, or when the suspected or accused individual has requested representation from another DOD component. Outside legal counsel may be retained by DA on behalf of the member or employee under unusual circumstances and only with the personal approval of the DOD General Counsel.

c. The DA General Counsel will determine whether a conflict is likely to occur if a DA attorney is assigned to represent a military member or civilian. If the DA General Counsel determines a conflict may occur, or if the suspected or accused employee has requested representation from another DOD component, the DA General Counsel will seek the assistance of another General Counsel in obtaining representation outside DA.

H–2. Requests for Representation

a. To obtain legal representation, military members or civilian employees must—

(1) Submit a written request for legal representation through DAJA–LE to DA

General Counsel, explaining the circumstances that justify legal representation. Copies of all process and pleadings served should accompany the request.

(2) Indicate whether private counsel, at personal expense, has been retained.

(3) Obtain written certification from their supervisor that—

(a) They were acting within the scope of official duties; and

(b) DA has not initiated any adverse or disciplinary action against them for the conduct being investigated by the OSC.

b. Requests for DA legal representation must be approved by the DA General Counsel.

c. The conditions of legal representation must be explained and accepted in writing by the member or employee.

H–3. Limitations on Representation

a. DA will not provide legal representation with respect to a DA initiated disciplinary action against a civilian employee for committing or participating in a prohibited personnel practice or for engaging in illegal or improper conduct. This prohibition applies regardless of whether the participation or conduct is also the basis for the disciplinary action proposed by the OSC.

b. In certain situations, counsel provided by DA may be limited to representing the individual only with respect to some of the pending matters, if other specific matters of concern to the OSC or MSPB do not satisfy the requirements contained in this regulation.

H–4. Attorney-Client Relationship

a. An attorney-client relationship will be established and continued between the suspected or accused individual and assigned DA counsel.

b. In representing a DA employee or military member, the DA attorney designated as counsel will act as a vigorous advocate of the individual's legal interests before the OSC or MSPB. The attorney's professional responsibility to DA will be satisfied by fulfilling this responsibility to the employee or military member. Legal representation may be terminated only with the approval of the DA General Counsel and normally only on the basis of information not available at the time the attorney was assigned.

c. The attorney-client relationship may be terminated if the assigned DA counsel determines, with the approval of the DA General Counsel, that—

(1) The military member or civilian employee was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge; and

(2) Termination is not in violation of the rules of professional conduct applicable to the assigned counsel.

d. The DA attorney designated as counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise confidential communications between the client and the attorney.

H–5. Funding

This regulation authorizes cognizant DA officials to approve requests from military members or civilian employees for travel, per diem, witness appearances, or other departmental support necessary to ensure effective legal representation by the designated counsel.

H–6. Status

A military member's or civilian employee's participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official departmental business for time and attendance requirements and similar purposes.

H–7. Advice to Witnesses

The following advice to military members and civilian employees questioned during the course of an OSC investigation may be appropriate in response to these frequent inquiries:

a. A witness may decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's question.

b. Requests for clarification of both questions and answers are appropriate to avoid misinterpretation.

c. Means to ensure verifications of an interview by OSC investigators are appropriate, whether or not the military member or civilian employee is accompanied by counsel. Tape recorders may only be used for this purpose when—

(1) The recorder is used in full view.

(2) All attendees are informed.

(3) The OSC investigator agrees to record the proceeding.

d. Any errors that appear in a written summary of an interview prepared by the investigator should be corrected before the member or employee signs the statement. The military member or civilian employee is not required to sign any written summary that is not completely accurate. A military member or civilian employee may receive a copy of the summary as a condition of signing.

Appendix I to Part 516—Testing Defective Items Under Criminal or Civil Investigation

1. Under no circumstances is testing to proceed unless the command has committed sufficient funding to cover the entire cost of the projected testing.

2. No testing will be initiated unless there has been a written request for the testing to the appropriate Procurement Fraud Advisor from a criminal investigator or Assistant United States Attorney or Department of Justice Attorney (AUSA is used in these procedures to indicate either an AUSA or Department of Justice attorney). If they have not already done so, criminal investigators should be requested to coordinate their testing requests with the AUSA overseeing the investigation.

3. Barring extraordinary circumstances, only one test will be conducted to support the criminal and civil recovery efforts of a procurement fraud/irregularity matter. Early coordination with the Civil Division of Department of Justice or the local United States Attorneys Office is necessary to ensure that testing funds are not wasted.

4. The request for testing should include a clear, concise statement of the purpose of the testing to include a statement of the allegations made and the contact number(s) involved. Any test plan which requires destructive testing must be approved by the AUSA.

5. No testing will be initiated unless a test plan has been developed which states the following:

a. The contract number(s) involved

b. The National Stock Number (NSN) of the item to be tested

c. The purpose of the testing

d. The alleged defect or the contractual requirement violated

e. The CID report of investigation (ROI) number of the DCIS case number

f. Cost of the test (a cost proposal should be an attachment to the test plan)

g. Where the test will be conducted

h. How the test will be conducted

i. The name and telephone number of the test team leader

j. The names of all test team members

k. The approximate dates of the testing

l. The date that completion of the test is required

m. A clear statement of the desired product (i.e. test report, raw data, analysis of results, evaluation of test results)

n. The PRON to fund the testing

o. A retention plan.

6. The test plan shall be coordinated with the concurrence received in advance from the appropriate personnel in the Procurement Directorate, Product Assurance and Test Directorate, the Procurement Fraud Advisor, and the investigator/AUSA requesting the test. No testing will be initiated until the criminal investigator/AUSA who requested the testing has approved the test plan.

7. If the items tested are to be retained as evidence, the criminal investigator should arrange for retention of the evidence. While the Command will support evidence retention, this is primarily the responsibility of the criminal investigators. Agents should be advised that putting items in Code L or similar non-use status is insufficient to protect it from being released to the field. A decision not to retain the tested items as evidence must have the approval of the AUSA.

8. All items to be tested should be from a statistically valid random sample. The sample should conform with the inspection requirements of the contract or be in conformance with a random sample specifically developed for the instant test plan. It is recommended that a statistician be consulted to determine the feasibility of a random sample specifically created to support the test plan.

9. Results of testing should be available to Command and DA personnel for appropriate contractual and administrative remedies. Any request for testing results that indicates that dissemination of the testing results will be limited by rule 6(e) of the Federal Rules of Criminal Procedure is to be forwarded through the MACOM or AMC Procurement Fraud Coordinator to DA Procurement Fraud Division prior to the initiation of any testing.

10. Resolution of problems associated with testing requests should be conducted at the local level. In AMC the authority to refuse a testing request resides with the Office of Command Counsel. Any disputes which cannot be resolved at the local level will be forwarded to the AMC or MACOM Procurement Fraud Coordinator for resolution. This includes disputes regarding funding or any time sensitive issues.

11. Second requests for testing of the same item due to a change in the investigative plan require coordination by the PFA with the investigator and AUSA overseeing the investigation to determine the deficiencies in the earlier test. Disputes which cannot be resolved between the AUSA, PFA, and investigator regarding testing are to be forwarded simultaneously to the MACOM Procurement Fraud Coordinator and PFD for resolution. The procedures established in paragraphs 5 and 6 apply for second requests for testing with the additional requirement that the Assistant United States Attorney must be requested to approve the test plan.

Appendix J to Part 516—DoD Directive 5505.5

DoD Directive 5505.5 is contained in 32 CFR Part 277.

Appendix K to Part 516—Memorandum of Understanding, Felony Prosecution Program

Memorandum of Understanding Between the United States Attorney for the Western District of _____ and the Staff Judge Advocate Fort _____

Subject: Fort _____ Felony Prosecution Program

1. *Purpose:* This memorandum establishes a felony prosecution program for offenses committed on Fort _____ or which involve substantial Army interests.

2. *Policy:* The United States Attorney (USA) bears primary responsibility for the prosecution of federal offenses committed within the special maritime and territorial jurisdiction of the United States. The Fort _____ Staff Judge Advocate (SJA) will assist in this task by recommending prosecution of appropriate felony offenses committed on Fort_____. In addition, the SJA will nominate Special Assistant United States Attorneys (SAUSA) to prosecute these offenses. Such prosecutions will be executed using guidelines established by this agreement.

3. *Responsibilities:*

a. The USA retains supervisory responsibility for all prosecutions initiated under this agreement. The USA will provide logistical support to the SAUSA for items not available through military channels. The SJA will provide the SAUSA with word-processing equipment compatible with that in use in the U.S. Attorney's Office.

b. The SJA will select Army attorneys who, with the approval of the USA, will be appointed a SAUSA. Each SAUSA will have an expected two-year remainder on his military tour in this District, at the time of his appointment. The SJA will provide clerical and administrative support to the SAUSA.

c. The SAUSA performs his duties under the supervision of the USA or his appointed representative. The SAUSA will prosecute felonies and misdemeanors as described in this agreement. The SAUSA will not be used by the USA to prosecute cases unrelated to the interests of the Department of the Army, except during the training period described below in paragraph 4d. Army SAUSA will not represent the United States in any civil litigation absent approval of Chief, Army Litigation Division.

4. *Procedures:*

a. Warrants. The SAUSA will review all requests from law enforcement agencies for warrants in connection with crimes committed on Fort _____. If the SAUSA determines that a warrant request is supported by probable cause, he will notify the supervising AUSA and seek approval to apply for a warrant. Upon obtaining approval of the supervising AUSA, the SAUSA will then contact the appropriate Magistrate Judge for issuance of the warrant.

b. Detention Hearings. Military law enforcement authorities will notify the SAUSA when a civilian is apprehended for a felony offense or is believed to be a flight risk. The SAUSA will review the case to determine whether detention is appropriate, and will obtain the approval of the supervising AUSA before detention is sought. The SAUSA may authorize detention until such time as the U.S. Marshal can take custody of the suspect. Suspects detained before trial will be brought before the appropriate Magistrate Judge at the first reasonably available time. The SAUSA will represent the government at the detention hearing.

c. Presentation of Case. The U.S. Army Criminal Investigation Division and Military Police will normally present cases for prosecution to the SAUSA. The SJA, after consultation with the SAUSA, will make the recommendation to the USA as to appropriate disposition of the case. The USA or his designated representative will make the final charging decision.

d. Training. The USA will attempt to send SAUSAs to the Trial Advocacy Course in Washington, DC, at Army expense. In addition, the SJA agrees to detail each SAUSA appointed to the United States Attorney's Office for a period of one (1) month, as soon after appointment as practicable. During the one-month period, the USA will assign the SAUSA to the Complaint Unit of the Criminal Division, and provide the SAUSA with training in federal practice, grand jury practice, and familiarization with the U.S. Attorney's Office and the U.S. District Court.

e. All other procedures employed will be in accordance with the appropriate provisions of the U.S. Attorney's Manual.

5. This memorandum remains in effect until rescinded by either party or their successors.

Dated:

United States Attorney
Western District of

Colonel, United States Army
Staff Judge Advocate

Appendix L to Part 516—Figures

Figures which are referenced within the text of part 516 are included in this appendix.

FIGURE 516.1—FORMAT FOR CONTRACTOR REQUEST FOR REPRESENTATION

Request for Representation

I am the President of XYZ Corporation. I request the Attorney General of the United States designate counsel to defend me and my company in *Doe* v. XYZ, *Inc.*, now pending in the U.S. District Court for the Eastern District of North Carolina.

I understand that the assumption by the Attorney General of the defense of this case does not alter or increase the obligations of the United States under United States Contract No. WP–70–660415.

I further agree that such representation will not be construed as waiver or estoppel to assert any rights which any interested party may have under said contract.

D.D. Tango,
President, XYZ, Inc.

BILLING CODE 3710-08-M

United States of America

DEPARTMENT OF THE ARMY

El Paso, Texas (PLACE) *25 June 1992* (DATE)

I HEREBY CERTIFY that *the document, attached hereto consisting of 9 pages, is a true and exact copy of the Narrative Summary, Standard Form 502, pertaining to the hospitalization of Jane Doe during the period 3-6 January 1992, an official document in the custody of the Registrar of William Beaumont Army Medical Center.*

JOHN SMITH
Captain, MS
Registrar

I HEREBY CERTIFY that _____ **, who signed the foregoing certificate, is the** _____ **, and**

that full faith and credit should be given to his certification.

IN TESTIMONY WHEREOF I, _____ **,**
Secretary of the Army, have hereunto caused the seal of the Department of the Army to be affixed and my name to be subscribed by the Administrative Assistant of the said Department, at the City of Washington, this _____
day of _____ **, 19**

_____
Secretary of the Army.

By _____
Administrative Assistant.

DA FORM 1 MAR 66 4 REPLACES EDITION OF 1 OCT 47, WHICH WILL BE USED

Figure 516.2 - Sample DA Form 4

BILLING CODE 3710-08-C

FIGURE 516.3—UNSWORN DECLARATION UNDER PENALTY OF PERJURY EXECUTED WITHIN THE UNITED STATES

Declaration Under Penalty of Perjury

I am Private Paul Jones, currently assigned to Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina. I have personal knowledge of the following matters.

On the evening of 3 June 1970, I was present at the company party at Lake Popolopen when the accident occurred. I saw a bright, full moon that evening.

I declare under penalty of perjury that the foregoing is true and exact. (28 U.S.C. 4746).

Executed on:_____

Paul Jones,
Private, U.S. Army

FIGURE 516.4—FORMAT FOR A REQUEST FOR REPRESENTATION USING AN UNSWORN DECLARATION UNDER PENALTY OF PERJURY EXECUTED WITHIN THE UNITED STATES

Request for Representation (*and certification*)

I request that the Attorney General of the United States, or his agent, designate counsel to defend me in my official and individual capacities in the case of *Jahn Doe* v. *Private Paul Jones*, now pending in the U.S. District Court for the Eastern District of North Carolina. (*if appropriate insert, I also request that the Attorney General or his designee certify that I was acting within the scope of my official duties at the time of my actions.*) I have read the complaint filed in this case and I declare that all my actions were performed in my official capacity, within the scope of my official duties, and in a good faith belief that my actions conformed to the law. I am not aware of any pending related criminal investigation.

I understand the following: if my request for representation is approved, I will be represented by a U.S. Department of Justice attorney; that the United States is not required to pay any final adverse money judgment rendered against me personally, although I can request indemnification; that I am entitled to retain private counsel at my own expense; and, that the army expresses no opinion whether I should or should not retain private counsel.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).

Executed on:_____
Paul Jones,
Private, U.S. Army

FIGURE 516.5—FORMAT FOR SCOPE OF EMPLOYMENT STATEMENT USING AN UNSWORN DECLARATION UNDER PENALTY OF PERJURY EXECUTED OUTSIDE THE UNITED STATES

Declaration

I am currently the Commander of HHC, 6th armored Division, Bad Vilbel, Germany. I have read the allegations concerning Private Paul Jones in the complaint of *John Doe* v. *Private Paul Janes*, now pending in the U.S. District Court for the Eastern District of North Carolina.

At all times relevant to the complaint, I was Private Jones' company commander. His actions relevant to this case were performed within the scope of his official duties as Assistant Charge of Quarters, Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746.)

Executed on:_____

John Smith,
Captain, Infantry

AO 91 (Rev. 5/85) Criminal Complaint

FIG. 516.6—CRIMINAL COMPLAINT

United States District Court

District of

UNITED STATES OF AMERICA V.
(Name and Address of Defendant)
Criminal Complaint
Case Number:

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about _____ in _____ county, in the _____ District of _____ defendant(s) did, (Track Statutory Language of Offense) in violation of Title _____ United States Code, Section(s) _____. I further state that I am a(n) _____, Official Title and that this complaint is based on the following facts:

Continued on the attached sheet and made a part hereof: ☐ Yes ☐ No

Signature of Complainant

Sworn to before me and subscribed in my presence,

Date

at

City and State

Name & Title of Judicial Officer

Signature of Judicial Officer

AO 86A (Rev. 5/85) Consent to Proceed—Misdemeanor

United States District Court

District of

UNITED STATES OF AMERICA V.
Consent to proceed before United States magistrate in a misdemeanor case
Case Number:

The United States magistrate has explained to me the nature of the offense(s) with which I am charged and the maximum possible penalties which might be imposed if I am found guilty. The magistrate has informed me of my right to the assistance of legal counsel. The magistrate has also informed me of my right to trial, judgment, and sentencing before a United States district judge or a United States magistrate.

I Hereby: Waive (give up) my right to trial, judgment, and sentencing before a United States district judge and I consent to trial, judgment, and sentencing before a United States magistrate.

X_____,
Defendant

Waiver of Right to Trial by Jury

The magistrate has advised me of my right to trial by jury.

I Hereby: Waive (give up) my right to trial by jury.

Defendant

Consented to by United States

Signature

Name and Title

Waiver of Right to Have Thirty Days to Prepare for Trial

The magistrate has also advised me of my right to have at least thirty days to prepare for trial before the magistrate.

I Hereby: Waive (give up) my right to have at least thirty days to prepare for trial.

X_____,
Defendant

Defendant's Attorney (if any)

Approved By:

U.S. Magistrate

Date

Appendix M to Part 516—Glossary

Abbreviations

AAFES—Army and Air Force Exchange Service
AMEDD—Army Medical Department
AFARS—Army Federal Acquisition Regulation Supplement
ASBCA—Armed Services Board of Contract Appeals
AUSA—Assistant United States Attorney
C.F.R.—Code of Federal Regulations
COE—United States Army Corps of Engineers
DA—Department of the Army
DA personnel—Unless the context clearly demonstrates otherwise, DA personnel includes soldiers, USMA cadets, civilian employees of DA, nonappropriated fund employees, foreign nationals who perform services for DA overseas, and other individuals hired by or for the Army
DFARS—Defense Federal Acquisition Regulation Supplement
DOD—Department of Defense
DOJ—Department of Justice. In this regulation, reference to DOJ means either United States Attorneys' Offices or The

(main) Department of Justice in Washington, D.C.
DCIS—Defense Criminal Investigative Service
e.g.—An abbreviation for *exempli gratia*, meaning "for example"
et seq.—An abbreviation for *et sequentes*, meaning "and the following"
FAR—Federal Acquisition Regulation
FAX—Facsimile Transmission
FBI—Federal Bureau of Investigation
Fed. R. Civ. P.—Federal Rules of Civil Procedure
Fed. R. Crim. P.—Federal Rules of Criminal Procedure
FOIA—Freedom of Information Act
GAO—General Accounting Office
HQDA—Headquarters, Department of the Army
i.e.—An abbreviation for *id est*, meaning "that is"
IG—Inspector General
JA—Judge Advocate
MACOM—Major Command
MSPB—Merit Systems Protection Board
NAF—Nonappropriated Fund
OTJAG—Office of The Judge Advocate General
OSC—Office of Special Counsel
PFA—Procurement Fraud Advisor
PFCRA—Program Fraud Civil Remedies Act
PFD—Procurement Fraud Division
PFI—Procurement Fraud or Irregularities
RJA—Recovery Judge Advocate
SAUSA—Special Assistant U.S. Attorney
SJA—Staff Judge Advocate
TDY—temporary duty
TJAG—The Judge Advocate General
UCMJ—Uniform Code of Military Justice
USACIDC—U.S. Army Criminal Investigation Command
USALSA—U.S. Army Legal Services Agency
USARCS—U.S. Army Claims Service
USATDS—U.S. Army Trial Defense Service
USMA—United States Military Academy
U.S.C.—United States Code

Terms

Active Army

Full-time duty in the active military service of the United States. Includes: full-time training duty; annual training duty; active duty for training; attendance, while in the active military service, at a school designated as a Service School by law or by the Secretary of the military department concerned; and, attendance, while in the active military service, at advanced civil schooling and training with industry. It does not include full-time National Guard duty under title 32, United States Code.

Army Activities

Activities of or under the control of the Army, one of its instrumentalities, or the Army National Guard, including activities for which the Army has been designated the administrative agency, and those designated activities located in an area in which the Army has been assigned single service claims responsibility by DOD directive.

Army Property

Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefore, real or personal property of a foreign government which is in the possession or control of the Army, one of its instrumentalities, or the Army National Guard, including property of an activity for which the Army has been designated the administrative agency, and property located in an area in which the Army has been assigned single service claims responsibility.

Centralized Organization

That organization of a DOD component responsible for coordinating and monitoring of criminal, civil, contractual, and administrative remedies relating to contract fraud. For DOD components other than the Army, the Centralized organizations are as follows: The Office of General Counsel, Department of the Air Force; the Office of the Inspector General, Department of the Navy; and the Office of General Counsel, Defense Logistics Agency.

Claim

The Government's right to recover money or property from any individual, partnership, association, corporation, governmental body, or other legal entity (foreign and domestic) except an instrumentality of the United States. A claim against several joint debtors or tortfeasors arising from a single transaction or incident will be considered one claim.

Claims Officer

A commissioned officer, warrant officer, or qualified civilian employee designated by the responsible commander and trained or experienced in the conduct of investigations and the processing of claims.

Corruption

Practices that include, but are not limited to, solicitation, offer, payment, or acceptance of bribes or gratuities; kickbacks; conflicts of interest; or unauthorized disclosure of official information related to procurement matters.

Counsel for Assistance

An attorney, provided by DA at no expense to the military member or civilian employee, who will provide legal advice to the witness concerning the authority of OSC, the nature of an OSC interview and their individual rights and obligations. The counsel may accompany the witness to the interview and advise the witness during the interview. No attorney-client relationship is established in this procedure.

Counsel for Representation

An attorney, provided by DA at no expense to the military member or civilian employee, who will act as the individual's lawyer in all contacts with the MSPB and the OSC during the pendancy of the OSC investigation and any subsequent OSC initiated action before the MSPB. An attorney-client relationship will be established between the individual and counsel for representation.

Debarment

Administrative action taken by a debarring authority to exclude a contractor from Government contracting and Government-approved subcontracting for a specified period.

DOD Criminal Investigation Organizations

Refers to the USACIDC; the Naval Investigative Service; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the Inspector General, DOD.

Fraud

Any intentional deception of DOD (including attempts and conspiracies to effect such deception) for the purpose of inducing DOD action or reliance on that deception. Such practices include, but are not limited to, the following: Bid-rigging; making or submitting false statements; submission of false claims; use of false weights or measures; submission of false testing certificates; adulterating or substituting materials; or conspiring to use any of these devices.

Improper or Illegal Conduct

a. A violation of any law, rule, or regulation in connection with Government misconduct; or

b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Information Exempt From Release to the Public

Those categories of information which may be withheld from the public under one or more provisions of law.

Judge Advocate

An officer so designated (AR 27–1).

Legal Advisor

A civilian attorney who is the principal legal adviser to the commander or operating head of any Army command or agency. Litigation in which the United States has an interest:

a. A suit in which the United States or one of its agencies or instrumentalities has been, or probably will be, named as a party.

b. A suit against a military member or DA employee and arises out of the individual's performance of official duties.

c. A suit concerning an Army contract, subcontract, or purchase order under the terms of which the United States may be required to reimburse the contractor for recoveries, fees, or costs of the litigation.

d. A suit involving administrative proceedings before federal, state, municipal, or foreign tribunals or regulatory bodies that may have a financial impact upon the Army.

e. A suit affecting Army operations or purport to require, limit, or interfere with official action by a military member or civilian employee.

f. A suit in which the United States has a financial interest in the plaintiff's recovery.

g. Foreign litigation in which the United States is bound by treaty or agreement to ensure attendance by military personnel or civilian employees.

Litigation

Legal action or process involving civil proceedings, i.e., noncriminal.

Medical Care

Includes hospitalization, outpatient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

Misdemeanor

An offense for which the maximum penalty does not exceed imprisonment for 1 year. Misdemeanors include those offenses categorized as petty offenses (18 U.S.C. 3559).

Official Information

All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

Operating Forces

Those forces whose primary missions are to participate in combat and the integral supporting elements thereof. Within DA, the operating forces consist of tactical units organized to conform to tables of organization and equipment (TOE).

Personnel Action

These include—

a. Appointment.

b. Promotion.

c. Adverse action under 5 U.S.C. 7501 et seq. or other disciplinary or corrective action.

d. Detail, transfer, or reassignment.

e. Reinstatement.

f. Restoration.

g. Reemployment.

h. Performance evaluation under 5 U.S.C. 4301 *et seq.*

i. Decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.

j. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

Private Litigation

Litigation other than that in which the United States has an interest.

Process

The legal document that compels a defendant in an action to appear in court; e.g., in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, subpoena or summons.

Prohibited Personnel Practice

Action taken, or the failure to take action, by a person who has authority to take, direct others to take, recommend, or approve any personnel action—

a. That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited by certain specified laws.

b. To solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for, any personnel action, unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it, and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of the individual, or an evaluation of the character, loyalty, or suitability of such individual.

c. To coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

d. To deceive or willfully obstruct any person with respect to such person's right to compete for employment.

e. To influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

f. To grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

g. To appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) of the employee, if the position is in the agency in which the employee is serving as a public official or over which the employee exercises jurisdiction or control as an official.

h. To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined below.

i. To take or fail to take a personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by law, rule, or regulation.

j. To discriminate for or against any employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others.

k. To take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

Prosecutive Authorities

These include—

a. A U.S. Attorney;

b. A prosecuting attorney of a state or other political subdivision when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases; and

c. An SJA of a general court-martial convening authority considering taking action against a person subject to the UCMJ.

Recovery JA

A JA or legal adviser responsible for assertion and collection of claims in favor of the United States for property claims and medical expenses.

Significant Case of Fraud and Corruption

A procurement fraud case involving an alleged loss of $100,000 or more; all corruption cases related to procurement that involve bribery, gratuities, or conflicts of interest; any defective products or product substitution in which a serious hazard to health, safety or operational readiness is indicated, regardless of loss value; and any procurement fraud case that has received or is expected to receive significant media coverage.

Staff Judge Advocate

An officer so designated (AR 27–1). The SJA of an installation, a command or agency reporting directly to HQDA, or of a major subordinate command of the U.S. Army Materiel Command, and the senior Army JA assigned to a joint or unified command.

Subpoena

A process to cause a witness to appear and give testimony, e.g., at a trial, hearing, or deposition.

Suspension

Administrative action taken by a suspending authority to temporarily exclude a contractor from Government contracting and Government-approved subcontracting.

Suspension and Debarment Authorities

Officials designated in DFARS, § 9.403, as the authorized representative of the Secretary concerned.

Tortfeasor

A wrongdoer; one who commits a tort.

Whistleblower

A present or former Federal employee or applicant for Federal employment who discloses information he or she reasonably believes evidences—

a. A violation of any law, rule, or regulation.

b. Mismanagement, a gross waste of funds, or an abuse of authority.

c. A substantial or specific danger to public health or safety. Such disclosure is protected from reprisal if it is not specifically prohibited by statute and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

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July 17, 1992

Part V

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-4138-6]

RIN 2060-AC50

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Cold Temperature Carbon Monoxide Emissions From 1994 and Later Model Year Gasoline-Fueled Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes cold temperature carbon monoxide (CO) exhaust emission standards for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The emission standards at 20°F, applicable for a 50,000 mile useful life will be: 10.0 g/mi for LDVs; 10.0 g/mi for LDTs with 3,750 lbs or less loaded vehicle weight (LVW); and 12.5 g/mi for LDTs with a LVW greater than 3,750 lbs. These standards will be phased in over a period of three years. In 1994, 40% of each manufacturer's sales volume of LDVs and LDTs will be required to meet the cold CO standards. This percentage increases to 80% and 100% in 1995 and 1996, respectively. Vehicles produced by small-volume manufacturers (less than 10,000 units/year) are exempt until 1996 when 100 percent of these vehicles must comply.

Motor vehicle CO emissions continue to contribute to unacceptable CO air quality, with many urban areas exceeding the eight hour CO national ambient air quality standard (NAAQS). In recognition of this persistent problem, the Clean Air Act Amendments of 1990 (CAAA) mandate cold temperature CO control of LDVs and LDTs. This rule will address the mandate of the CAAA and assist noncompliant areas in meeting the CO NAAQS. Mobile source CO emissions will be reduced an estimated 20–29% when measured at 20°F. Averaging over all temperatures, it is estimated that this rule will reduce annual CO emissions by 2.6–3.1 million tons by the year 2000 and 5.8–7.7 million tons after complete fleet turnover.

DATES: This final rule is effective August 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 1992.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–89–01. The docket is located at The Air Docket, 401 M Street, SW., Washington, DC 20460, and may be viewed in room M–1500 from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Christine M. Mikolajczyk, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone (313) 668–4403.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On September 17, 1990 (55 FR 38250), EPA published a notice of proposed rulemaking (NPRM) proposing regulations requiring motor vehicles to meet cold temperature CO emission standards for their useful life. The proposed regulations were based on levels of control that are feasible in the near term. The NPRM also stated that the final rule would include any relevant requirements resulting from then pending legislative revisions to the Clean Air Act (CAA) that did not require another notice of proposed rulemaking and specifically invited comments regarding legislative developments.

On November 1, 1990, EPA held a public hearing concerning the proposed regulations. Comments from that hearing were considered in developing this final rule and are included in the public docket.

On November 15, 1990, amendments to the CAA were enacted. These amendments added a new section to the CAA, section 202(j), that requires EPA to promulgate regulations controlling cold CO emissions.

New section 202(j) provides for the establishment of cold CO standards for LDVs and LDTs in two phases. The final rule being announced today implements the first phase of those standards, which the statute requires EPA to promulgate by November 15, 1991, and to phase-in beginning with model year 1994. Section 202(j) also sets forth a specific standard (10.0 gpm) for LDVs and requires that EPA set standards of comparable stringency for LDTs. With respect to the second phase of cold CO standards, EPA is to undertake a study of the need for and achievability of additional CO reductions, which is to be completed by June 1, 1997. Furthermore, section 202(j)(2)(B) provides that a specified second phase of standards is to be implemented beginning with model year 2002 LDVs and LDTs if, as of June 1, 1997, six or more CO nonattainment areas have a CO design value of 9.5 or greater. Section 202(j)(3) sets the useful life period for these standards at 5 years or 50,000 miles, but authorizes EPA to establish a longer useful life period if EPA determines a longer period is feasible. Finally, section 202(j)(4) authorizes EPA to establish cold CO standards for heavy-duty vehicles and engines. While EPA's NPRM was consistent with the new section 202(j) in most respects, as suggested by the preamble of the NPRM, some changes from the NPRM, primarily concerning the timing of the implementation of the cold CO standards, were necessitated by the amendments to the CAA. Those changes will be discussed below.

II. Background

Exceedances of the national ambient air quality standard (NAAQS) for CO primarily occur between November and February, during cool or cold ambient periods which are often accompanied by low winds and atmospheric temperature inversions. In the past, it was thought that exceedances of the CO NAAQS were primarily due to localized conditions. However, evidence is accumulating which indicates that there is an associated area-wide component to CO nonattainment. (See Chapter 1 of the Regulatory Support Document.)

Compared to vehicles produced over twenty years ago, newer vehicles have substantially improved emission performance. However, as demonstrated by recent EPA tests, proportional improvements in emission performance under colder temperatures have not occurred in recent model year vehicles. The tests revealed that CO levels in

newer vehicles were 75% lower than those of a group of 1969–74 model year vehicles when measured at around 75 °F.[1] However, levels were only 51% lower for the same vehicles when measured at 20 °F.[2] EPA has also determined that cold temperature emission performance varies, with some vehicles exhibiting low cold temperature CO emissions and others exhibiting high cold temperature CO emissions.

European countries also have a problem with excess CO emissions. As a result, the European Economic Community is currently considering cold temperature CO controls.

III. Requirements of the Final Rule

A. Vehicle Standards

EPA is promulgating CO standards of 10.0 g/mi for LDVs; 10.0 g/mi for LDTs with 3,750 lbs or less LVW; and 12.5 g/mi for LDTs with a LVW greater than 3,750 lbs. As proposed in the NPRM, these standards apply only to gasoline-fueled vehicles. These standards are based on the 10.0 g/mi LDV standard at 50,000 miles which was proposed and is also mandated by CAA section 202(j)(1) for LDVs. Further, in accordance with that section of the CAA, the standard for LDTs must be a level comparable in stringency to the standard required for LDVs. As stated in the NPRM, EPA's analysis indicates that for a given fuel system type and engine size, light trucks and passenger cars have comparable CO emissions. However, the proposed LDT standards were for a full useful life of 120,000 miles, rather than the useful life of 50,000 miles being adopted today. Therefore, the proposed standards for LDTs have been adjusted to reflect a comparable stringency to the 10 g/mi LDV standard and a useful life of 50,000 miles. The above standards will apply when the vehicle is tested at 20 °F according to a revised Federal Test Procedure (FTP), also being announced today.

High-altitude standards for cold CO emissions are patterned after current FTP high-altitude provisions for LDVs. Therefore, all LDVs and LDTs are required to comply with the cold CO standards at all altitudes.

B. Effective Dates

The standards established in this final rule for LDVs and LDTs are to be phased in over the 1994 through 1996 model years as follows:

Model year	LDVs and LDTs
1994	40%
1995	80%
1996	100%

This phase-in schedule represents a delay of one year compared to the proposal for LDVs and light LDTs. This delay in the implementation schedule was required by section 202(j)(1) of the CAA.

In the NPRM, EPA proposed a four year lead time for heavy light-duty trucks (HLDT) unless the new CAAA removed the four-year lead time requirement for such vehicles. That would have meant that no HLDTs would have had to comply in 1993 and 1994, but 100 percent would have had to comply in 1995. Section 202(j) of the CAA specifically applies the cold CO requirement to all LDTs pursuant to the same implementation schedule. Consequently, EPA is treating the HLDTs in the same manner as other LDTs, and HLDTs must meet the same phase-in as other LDTs: 40% in 1994, 80% in 1995, and 100% in 1996.

The cold CO standards apply to all manufacturers. However, manufacturers that meet the EPA definition of small-volume manufacturer are exempted from the phase-in percentage requirements until the final year of the phase-in, that is, 1996. In that year, small-volume manufacturers, like other manufacturers, will have to comply at a 100 percent level. Small-volume manufacturers include independent commercial importers as defined in 40 CFR part 85, subpart P. This is consistent with both the NPRM and the approach taken by EPA in the Tier 1 regulations promulgated earlier this year.[3]

C. Phase-in Compliance Procedures

Phase-in compliance encompasses a number of important elements, including the use of actual sales as the basis for phase-in compliance, the legitimacy of using production data in lieu of actual sales data, credit for vehicles certified for sale in California or states adopting California emission standards, and whether certification for entire engine families are to be voided for phase-in noncompliance. These issues are only of significance where the phase-in percentages are less than full compliance; once the compliance requirement reaches 100 percent, the additional reporting requirements, and enforcement with respect to the phase-in disappear. The final rule contains some changes from the NPRM necessitated by the statutory language of the cold CO provision added to the CAA by the 1990 Amendments, as well as changes responsive to comments presented to EPA during the cold CO rulemaking. Due to the close similarity of the statutory provisions underlying the cold CO rule and the Tier 1 rule, this portion of the cold CO rule is virtually identical to the analogous portions of the Tier 1 rule in many respects.

To meet the phase-in percentage specified for each year during the phase-in period, manufacturers will be allowed to select any combination of LDV or LDT families at the time of certification. For example, in model year 1994, 40 percent of LDVs and 40 percent of LDTs combined must comply, not 40 percent of LDVs and 40 percent of LDTs. Only entire engine families can be included when determining the sales volume subject to cold CO standards.

During the phase-in period, compliance with the specified percentage of sales volume will be based upon actual sales of each engine family. EPA is taking this approach because the pertinent statutory language of section 202(j), concerning the cold CO standards, is the same as that contained in section 202(g) and 202(h), concerning the Tier 1 standards. The cold CO provision, like the Tier 1 provisions, describes the phase-in requirements in terms of "a percentage of each manufacturer's sales volume." As with the Tier 1 provisions, EPA's review of the statutory language and legislative history has led it to the conclusion that Congressional intent was to base phase-in compliance on actual sales.

Also consistent with its Tier 1 regulations, EPA believes that in most cases production data will be equivalent to sales data. Therefore, while compliance with the phase-in of Cold CO standards will be determined based upon actual sales, this final rule allows a manufacturer to request permission to submit actual production data rather than actual sales data, so long as the manufacturer can demonstrate to EPA that production and sales data are expected to be functionally equivalent.

In order to use production data rather than actual sales, a manufacturer must petition the Agency by providing information demonstrating functional equivalence of production and sales data. Such petition shall be made to EPA's Manufacturers Operations Division no later than 30 days following the end of the model year. Approval of the use of production data will be presumed unless otherwise notified by the Agency within 30 days of submittal.

[1] Robert E. Larson, "Vehicle Emission Characteristics Under Cold Ambient Conditions," SAE Paper 890021, January 9–11, 1989.

[2] Ibid.

[3] 56 FR 25724, June 5, 1991.

EPA retains the authority to determine actual sales data independently to confirm that there is no significant discrepancy between actual sales and production numbers. Also in accordance with the Tier 1 regulations, EPA has defined actual sales as sales to dealers, distributors, fleet operators, brokers, or any other entity which comprises the point of first sale.

Another phase-in compliance issue concerns the creditability of vehicles sold in California or any states that adopt California's emission standards pursuant to section 177 of the Clean Air Act ("section 177 states") in accordance with California's motor vehicle emission standards towards compliance with the phase-in percentages. Section 202(j) of the Act, like the provisions setting forth the Tier 1 standards, does not explicitly exclude California and section 177 vehicles from being creditable towards cold CO compliance. EPA believes, therefore, that the Act permits such vehicles (in the event they comply with the federal cold CO standard) to be counted towards compliance with the federal cold CO standard. Consequently, in the final rule, EPA is permitting manufacturers to have the choice of crediting towards phase-in compliance all vehicles that are certified to the federal cold CO standard, even if they are sold in California or section 177 states. This implies, however, that if a manufacturer elects to credit vehicles sold in California and section 177 states towards phase-in compliance, then all vehicles sold in California or section 177 states, including those not certified to the federal cold CO standards, must be included in the overall vehicle count used as the denominator for calculating compliance with the phase-in percentages. If a manufacturer does not choose this option, then vehicles sold in California and section 177 states will be excluded from both the numerator and denominator in determining compliance with the phase-in percentages.

This method is consistent with that adopted in the Tier 1 rule, which provides manufacturers with the option of crediting towards compliance with the phase-in of the federal Tier 1 standards vehicles sold in California and section 177 states that are certified to the California equivalents of the federal Tier 1 standards. In the cold CO context, however, at the present time California has no standard equivalent to the federal cold CO standard. Consequently, EPA is requiring that, to be counted towards compliance, vehicles sold in California or section 177 states be certified to the federal cold CO standard to provide adequate assurance that they in fact meet the standard.

The preceding discussion is predicated on the assumption that California has not adopted a cold CO standard equivalent to the federal standard, but still has a waiver of federal preemption under section 209 of the CAA for its motor vehicle emission standards. That is the situation as it currently stands, as EPA has granted waiver of federal preemption to California for its most recent LDV and LDT standards for model years 1993 and later. See 53 FR 36488 (September 20, 1988); 55 FR 43028 (October 25, 1990). EPA may reconsider the issuance of those waivers in light of the changes in the federal emission standards that have occurred since the waivers were issued, e.g., the promulgation of the Tier 1 standards and the cold CO standards promulgated today. If EPA does decide to reevaluate the waivers issued to California, it will do so through a notice and comment proceeding instituted through a separate Federal Register notice.

Enforcement of the phase-in percentages will be based on a per vehicle basis. For sales percentages not meeting or exceeding the necessary phase-in percentages, the number of additional vehicles necessary to reach the minimum phase-in percentage will be considered the number of vehicles in violation of the terms in which the certificate of conformity was issued, and therefore, as a vehicle which is not covered by a certificate of conformity for purposes of the Act. This approach departs from that proposed in the NPRM, which contemplated the voiding *ab initio* of certificates of conformity on an engine family basis, but is the same as that adopted in the Tier 1 rule. It is also responsive to manufacturer comments critical of the NPRM's proposed approach.

EPA will apply the same enforcement policy to violations of the cold CO phase-in schedule as it announced for the Tier 1 phase-in schedule. Thus, while the existence of a violation will depend solely on whether the manufacturer achieves the applicable phase-in percentage, the Agency reserves the right to exercise enforcement direction in the assessment of civil penalties for that violation. The EPA recognizes that a manufacturer, notwithstanding it best efforts, may fail to achieve the required phase-in percentage due to circumstances beyond its control (e.g., a fire at a plant that produces vehicles designed to comply with the phase-in standards). Thus, in seeking civil penalties for a violation, EPA will exercise its enforcement discretion according to the circumstances surrounding a violation. In practice, EPA does not intend to bring an enforcement action against a manufacturer if both of the following circumstances exist; the shortfall in actual sales from the required percentage is less than or equal to ten percent of the required phase-in percentage, and there is no indication that shortfall resulted from bad faith on the part of the manufacturer.

For example, when a 40 percent phase-in requirement applies, ten percent of the phase-in requirement would be four percent. Thus, the lower bound for the first criterion would be 36 percent (40 percent less four percent). In this case, EPA does not intend to bring an enforcement action against a manufacturer if the manufacturer obtained cold CO sales of 36 percent during the model year, and there was no indication that any shortfall was a result of bad faith. By a similar computation for a case where the phase-in requirement is 80 percent, EPA would not initiate enforcement action if the cold CO sales were 72 percent or greater and there was no indication that the shortfall was a result of bad faith on the part of the manufacturer. As mentioned above, application of this enforcement policy applies only to cases where the phase-in levels are below 100 percent; in the full-compliance years, all vehicles must comply with the applicable standards.

If the Agency determines that an enforcement action is appropriate, EPA would, of course, have some discretion in choosing the appropriate penalties. Such penalties would be assessed on the basis of the deviation between the required phase-in percentage (for example, 40 or 80 percent) and the percentage of cold CO sales actually achieved.

D. Cold CO Test Procedure

The cold CO test procedure is similar to the Federal Test Procedure (FTP) in that it uses the same Urban Dynamometer Driving Schedule for the operation of the test vehicle and the same analytical technique for the determination of carbon monoxide emissions. The cold CO test procedure differs from the FTP procedure in the following areas:

1. *Test fuel.* A fuel which is representative of a winter grade fuel is used for testing that is conducted by EPA. The manufacturer has the option of using an FTP-type fuel, provided cold CO emissions are not decreased.

2. *Temperature.* A temperature of 20°F is used by EPA for preconditioning,

soaking, and testing vehicles. The lower limit for cold temperature emission testing is set at 15°F (20° minus 5°F tolerance). The manufacturer has the option of using wider temperature tolerances during vehicle preconditioning and/or warmer preconditioning temperatures provided CO emissions are not decreased.

3. *Dynamometer roll configuration.* A 48-inch diameter single roll dynamometer is used for testing that is conducted by EPA. The manufacturer has the option of using dynamometer configurations which it determines do not decrease Cold CO emissions.

4. *Dynamometer power absorption.* An electrical power absorption unit is used for simulation of road load power for testing that is conducted by EPA.

5. *Dynamometer adjustment.* When testing is conducted by EPA, the dynamometer is adjusted to simulate the operation of a vehicle on the road at 20°F. Such adjustment is based on a determination of the road load force profile at 20°F. Alternatively, the adjustment is based on a 10% decrease in the target coastdown time that is used for FTP testing.

6. *Air conditioner load simulation.* The dynamometer load setting is not increased to simulate the load that the air conditioner imposes on the engine of the test vehicle.

7. *Heater and defroster usage.* The vehicle heater and/or defroster may be optionally used within their adjustable ranges.

8. *Measurement of other exhaust emissions.* The measurement of oxides of nitrogen, particulate matter and evaporative emissions is not required.

9. *Engine compartment cooling.* An air handling system that is integral with the test cell may be used in lieu of a separate fan if comparable air movement is obtained. The manufacturer has the option of using a variable speed fan and closed hood operation if cold CO emissions are not decreased.

Manufacturers have the optional test procedures listed above for manufacturer conducted certification testing, provided cold CO emissions are not decreased. These optional test procedures do not apply to Selective Enforcement Audit testing unless, as specified at 86.608–94 and 86.1008–94, they have been approved by the Administrator prior to SEA testing.

E. Certification Testing

A single data vehicle from the set of emission data vehicles within each engine family must be tested at cold temperatures. The vehicle selected must be the one expected to emit the highest levels of CO at 20°F in the relevant engine family. At EPA's option, the Administrator may designate the test vehicle. The emission data vehicle selected will be tested by the manufacturer using the test procedure announced today or an alternative procedure requested by the manufacturer and approved in advance by the Administrator. However, even if an alternative test procedure for manufacturer testing is approved by the Administrator, EPA reserves the right to conduct confirmatory testing prior to certification using the test procedure announced today. Further, EPA reserves the right to require confirmatory testing of any emission-data or fuel economy data vehicle at low or high altitude.

EPA may also elect to test any fuel economy data vehicle for compliance with the cold temperature CO standard. Like emission-data vehicles, the fuel economy data vehicles must be in compliance with the cold temperature CO standards. In other words, at 20°F, with the deterioration factors (DF) applied, a fuel economy data vehicle's test results must be less than or equal to the applicable standard. Failure of a fuel economy data vehicle to comply with the cold CO standard will be a sufficient reason to reject the vehicle for fuel economy purposes and will be used by EPA to investigate the calibration of similar vehicles for emissions noncompliance.

Cold CO confirmatory testing for certification will occur at 20°F at EPA's Motor Vehicle Emission Laboratory or another test facility designated by EPA for confirmatory testing. The emission-data vehicles tested will be those selected according to current regulations. EPA will not require additional certification vehicles specifically selected for evaluation of compliance with the cold temperature CO standard. Failure of a certification or running change vehicle to meet the cold CO standards, with DF applied, will be sufficient evidence to deny certification for that engine family.

EPA also expects that all vehicles will achieve proportional emission control at all temperatures between the standard FTP and cold CO test conditions (i.e., between 68° and 25°). EPA will regulate control of CO emissions at intermediate temperatures by using an amended defeat device policy. For intermediate temperature cold CO testing, vehicles must have either CO emissions less than the guideline levels determined by a linear interpolation of the cold CO standard applicable at 25°F and the CO standard applicable at 68°F; or demonstrate, in light of an exceedance, that reasonable CO emission control in reference to the linear guideline was engineered and achieved across the temperature range. For control of CO emissions at cold temperature driving conditions not exactly duplicated by the FTP driving cycles, any incongruous emission control strategy which results in a reduction in effectiveness of the emission control system may be considered a defeat device.

Manufacturers may use the same or, at the manufacturers option, a higher DF for cold temperature compliance as that used for certifying a vehicle to the 68°F–86°F FTP standard. In addition, a manufacturer may also elect to test a durability data vehicle at 20°F to generate a cold temperature CO DF. In the latter case, a manufacturer may use a cold temperature CO DF which is lower than the DF used to demonstrate compliance with the 68°F–86°F CO standard.

F. In-Use Enforcement

The enforcement provisions of sections 206 and 207 of the CAA apply to the cold CO standards. All LDV and LDT production will be subject to 20°F selective enforcement audits (SEAs). To ensure that manufacturers have access to sufficient cold temperature testing capabilities, the cold temperature CO SEA program does not begin until model year 1996. During SEA testing, manufacturers have the same options available as described in section D above, provided that these options have been approved by the Administrator prior to SEA testing.

In addition, effective with the 1994 model year, all LDVs and LDTs certified in compliance with the cold CO standards being adopted today will be subject to a 20°F in-use compliance program for CO similar to existing programs at 68°F–86°F for HC, CO, NOx, and particulates. In-use enforcement will also apply at high-altitude. In-use compliance enforcement testing will be conducted according to the test procedures being adopted today, regardless of the optional procedures the manufacturer may have followed for its certification or SEA program tests.

IV. Public Participation

EPA initiated development of this rulemaking through a public workshop held on March 8–9, 1988. Subsequently, on March 15, 1989, the major domestic manufacturers and several foreign manufacturers, under the auspices of their trade organizations, the Motor Vehicle Manufacturers Association (MVMA) and the Association of Imported Automobile Manufacturers (AIAM) (formerly AIA), met with EPA to

propose a voluntary cold CO program. That proposal was described in the NPRM, which was published on September 17, 1990. On November 1, 1990, a public hearing was then held on the proposal. The period for the submission of written comments closed on December 3, 1990, but EPA accepted comments submitted after that date. The comments were received from manufacturers and their associations, state agencies, and private consultants. The following sections briefly summarize comments on the major issues. For the complete response to the comments, see the "Response to Comments on the Cold Temperature CO NPRM." Copies of this document and all comments are available from the public docket (see "**ADDRESSES**").

V. Discussion of Comments and Issues

A. Useful Life

Summary of Proposal

The NPRM provided that the applicable useful life for vehicles would be 50,000 miles for LDVs and 120,000 miles for LDTs. Those useful life periods were proposed because they were the normal useful life periods for those vehicle categories under the CAA as it stood at the time of the proposal. Subsection 202(j)(3) of the CAA, added by the amendments, states that the useful life for the cold CO standards shall be 50,000 miles for LDVs and LDTs, except that the Administrator "may extend" the useful life period "if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life." If the Administrator does extend the useful life period, he is authorized to make appropriate adjustments to the standards for the extended useful life. The extension may not be beyond the period provided under subsection 202(d).

Comments

EPA received several comments that asserted that section 202(j) of the CAA limited cold CO useful life for all LDVs and LDTs to 50,000 miles pending additional study. Ford Motor Company stated that since Congress specified a useful life of 5 years/50,000 miles for cold temperature CO, Congress intended that the Agency make extensions only "pursuant to a substantial study and evidence of feasibility." In addition, Nissan and Ford argued that, presently, insufficient data exists to extend the useful life for LDVs and LDTs beyond the 5 years/50,000 miles period, and that actual experience in implementing the standard is needed before the feasibility of an extended useful life can be determined. Further, Honda maintained that with so many new requirements facing manufacturers under the 1990 Amendments, more time is needed to ensure that vehicles operate satisfactorily in the customers' hands.

The State of Alaska commented that EPA should adopt the 50,000 miles useful life period for LDTs as designated by the CAAA. However, it did not argue against the feasibility of extending the useful life.

EPA Response

EPA has the authority to extend the useful life if EPA determines that compliance during the longer useful life period beyond 50,000 miles is feasible. Such an extension is discretionary. As indicated in the NPRM, EPA is confident that technology exists to justify full useful life standards for LDTs. No objections were received showing any inadequacies in the EPA rationale for extrapolating higher mileage standards from those required at 5 years/50,000 miles as stated in the NPRM. Specifically, no comments were received suggesting that a full useful life standard would be more difficult to achieve technologically than 50,000 mile standard when adjusted for the mileage difference. However, for these interim standards EPA believes that an extension of 50,000 miles to full useful life would place an additional unnecessary compliance demonstration burden on manufacturers. Consequently, the useful life for the standards promulgated today is 5 year/50,000 miles for both LDVs and LDTs.

The Agency believes that CO emission control systems that experience problems beyond 50,000 miles will be flagged during warm temperature recall programs. The Agency's certification compliance program evaluates emission control durability under FTP conditions for the full useful life of the vehicle. EPA's in-use compliance program includes recall testing authority up thru 75,000 miles. While both programs are conducted under normal warm temperature FTP conditions, EPA expects that the types of problems which would result in high emissions under warm temperature FTP testing would be subject to subsequent recall. Therefore, a warm temperature high mileage compliance program should adequately monitor and correct problems which would cause high mileage cold CO non-compliance. It is expected that most manufacturers will not have specific cold CO deterioration problems. Therefore, EPA believes that full useful life demonstration at 20 °F should not be necessary to assure durable cold CO controls. Based on the above rationale the Agency has decided to adopt the useful life of 50,000 miles for all LDVs and LDTs. However, EPA will continue to evaluate vehicles and may extend the useful life in the future.

B. Standards

Summary of Proposal

The cold CO standards proposed in the NPRM were 10.0 g/mi for LDVs, 12.0 g/mi for LDTs up to 3750 lbs (LDT1) and 15.0 g/mi for LDTs greater than 3750 lbs (LDT2). The LDV standards were proposed for up to 50,000 miles useful life while both LDT standards were proposed for a useful life up to 120,000 miles. As explained in the NPRM, the proposed LDT standards were selected because they were comparable in stringency to the 10.0 g/mi LDV standard.

Summary of Comments

Only a few comments were received on the proposed standards. One manufacturer recommended EPA adopt standards of 10.0 g/mi for LDVs, 10.0 g/mi for LDT1s, and 12.5 g/mi for LDT2s. The LDT standards resulted from an adjustment of the proposed standards to reflect a 50,000 mile useful life for all categories. Another manufacturer recommended a 10.0 g/mi standard for light-duty vehicles and 10.0 g/mi for 0-3750 lbs LVW (LDT 1). In addition, this manufacturer also recommended 12.5 and 14.2 g/mi for LDT2s having 3751–5750 lbs test weight and >5750 lbs test weight respectively. One engine manufacturer also suggested that EPA set the LDV standard at 3.0 g/mi because this would be a feasible standard for its compressed air 2-stroke engine.

EPA Response

In response to the suggestion of a 3.0 g/mi standard, EPA has no data on which to support widespread feasibility of such a standard nor has EPA determined such a stringent standard is needed. EPA agrees with the recommended standards of 10.0 g/mi for LDVs, 10.0 g/mi for LDT1s, and 12.5 g/mi for LDT2s. In response to the comment regarding split test weight classes for LDT2s, the CAAA require two heavy LDT classes for Tier 1 but do not require the two classes for cold CO. As mentioned in the requirements section of this document, these new standards are a result of adjusting the proposed standards to reflect a 50,000 useful life. These standards are in accord with section 202(j), which specifies a standard of 10.0 g/mi for LDV, and standards of "comparable stringency" for LDTs.

C. Small Volume Manufacturer Exemption

In the NPRM, EPA proposed to allow small volume manufacturers an exemption of up to 10,000 vehicles until the last year of the phase-in schedule, which at that time was the 1995 model year.

Comments

A number of foreign manufacturers, under the auspices of their trade organization, the Association of Imported Automobile Manufacturers, and Rolls-Royce endorsed the proposal to allow the small volume exemption. In support of their position, they noted the small-volume manufacturers reliance on larger manufacturers for technology and, in this case, testing facilities. With the current shortage of testing facilities, small volume manufacturers also argued that they would be at a competitive disadvantage. Further, they asserted that without an exemption, most small volume manufacturers would be unable to take advantage of the phase-in period. In other words, due to the limited diversity in their product line, some small-volume manufacturers would have to be in 100% compliance in model year 1994. This would subject those manufacturers affected to an economic hardship. Finally, they indicated that a small-volume manufacturer exemption would be consistent with the CAA and Congress' prior practice of granting exemptions for small-volume manufacturers.

Conversely, Alaska opposed this exemptionasserting that it was precluded by the language of the CAAA.

EPA Response

The cold CO standards are written to apply to all manufacturers. However, the Agency recognizes that small-volume manufacturers with a limited number of families would be granted little or no flexibility by the phase-in. In addition, the reliance of these manufacturers on larger companies for vehicle components limits their vehicle design options. In a given year the small-volume manufacturer may be unable to produce their vehicles. As a result, a strict requirement that each manufacturer meet the phase-in percentage could place the small-volume manufacturers at a competitive disadvantage that the EPA believes was not intended by Congress. Alternatively, the Agency is concerned that small-volume manufacturers may experience inappropriate pressure to reach subsidiary agreements with larger manufacturers as a means to avoid a phase-in noncompliance they may face as an independent company. Again, the Agency believes this would create a non-competitive situation.

Finally, because the proportion of annual U.S. sales attributable to small-volume manufacturers is negligible (<0.1% of 1990 MY fleet), EPA considers the air quality effects of delayed applicability to be minimal. Therefore, EPA is adopting rules such that manufacturers that meet the EPA definition of small-volume manufacturer are exempted from the phase-in percentage requirements until the final year of the phase-in; that is, 1996. Small-volume manufacturers include independent commercial importers as defined in 40 CFR part 85, subpart P.

This exemption parallels one adopted for small-volume manufacturers in the Tier I rule. As explained there, EPA believes that it has the authority to grant such an exemption pursuant to its authority to exempt *de minimis* situations from statutory commands. See *Alabama Power Co* v. *Costle,* 636 F. 2d 323, 360–61 (D.C. Cir. 1979).

In *Alabama Power,* the court indicated that EPA had the implicit authority under the CAA to exempt *de minimis* situations. The court stated that "(c)ategorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis.*" 636 F.2d at 360. The court emphasized, however, that the ability "to exempt *de minimis* situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design." *Id.* The Agency believes that this authority provides a basis for establishing a small volume exemption from the phase-in requirements for the reasons described above.

D. CO Emission Control at Intermediate Temperatures

Summary of Proposal

EPA proposed that CO emissions be reduced at all temperatures below the standard FTP, not just 20°F. The NPRM proposed that all vehicles should be capable of achieving, at a minimum, a level of emission control meeting a linear projection between the respective standards at 25°F (the upper end of the 20°F temperature tolerance) and 68°F (the lower end of the standard FTP temperature tolerance). EPA indicated two options were being considered for regulating emissions over this intermediate temperature range. A function described by a linear interpolation between the respective standards at 25°F and 68°F was used in both options. The first option would have created a proportional standard from this function. The second option proposed amending the defeat device policy with this same intermediate temperature function used as CO emission level guidance.

Comments

No comments disputed the basic premise that vehicles can be designed to have CO emissions below this intermediate temperature function. Comments received from several manufacturers mainly concerned the costs and testing complexities that intermediate proportional standards would necessitate. These manufacturers stated that the cost of achieving CO emission reduction across the temperature range would be reduced under a defeat device policy regulation of CO emissions at intermediate temperatures. The manufacturers pointed out that the same amount of CO emission reduction could be achieved by a defeat device policy.

Conversely, comments were received from the State of Alaska that supported proportional standards in conjunction with more explicit defeat device policy guidance. Alaska strongly advocated certification and confirmatory testing by EPA at all temperatures using standards, not a policy approach. It stated that "certification and in-use compliance should depend on actual test results; a failed test should not merely raise a 'presumption' that a defeat device is being employed, as suggested in EPA's second enforcement option in the NPRM." However, Alaska also supported more explicit language regarding cold CO defeat devices (or strategies). It noted that the present defeat device program does not require sufficient documentation to make an appropriate judgment of defeat device program compliance. It recommended revising the defeat device policy to explicitly address applicable parameters. Also, the State recommended that manufacturers not be allowed to simply state their compliance with the defeat device policy in the application for certification.

Comments received from MVMA specifically stated its belief that EPA does not have the statutory authority to promulgate emission standards or require testing at temperatures between temperature ranges in which standards are legislated. However, the State of Alaska provided comments supporting EPA's position regarding the legality of emission standards at temperatures below 68°F.

EPA Response

EPA considered adopting the proportional standards option presented in the NPRM. EPA believes that it has the authority under section 202(a) to adopt that option but EPA concluded that such a level of regulatory control should not be necessary at this time to achieve the desired emission reductions. The imposition of a proportional standard (essentially an infinite number of standards) could add unnecessary administrative and testing burdens to document strict compliance. The Agency expects that a properly designed emission control strategy will achieve emission control over the intermediate temperature range equal to or better than that represented by a line drawn between the 68°F and 25°F CO levels applicable via the FTP and 20°F CO standards. EPA believes the ability to achieve such CO control is straightforward and should not present additional testing burdens. Therefore, the only reason to exceed the line would be the incorporation of a defeat device or defeat strategy. An amended defeat device policy, appropriately implemented by EPA, should be adequate to handle this situation. If, subsequent to the implementation of this regulation, EPA determines that significant evidence is available that a substantial number of vehicles are exceeding the intermediate temperature function, then EPA will revisit the need to adopt intermediate temperature standards.

With this rule, beginning in model year 1994, EPA will assure the proportional control of CO emissions at intermediate temperatures by using an amended defeat device policy. Under this amended policy, vehicles with properly designed CO emission control systems will be expected to attain CO emissions equal to or better than that represented by the intermediate temperature function.

This rule requires that vehicles be designed with at least linear proportional CO control at intermediate ambient temperatures. The criteria for acceptability will be based upon design evaluation as well as test data. As described in the following text, the test data will be used as an indicator of a potential defeat device design strategy and, when indicated, would be followed by further design evaluation with the potential for additional testing. This approach is similar to the current NO_x defeat device investigation criteria in Advisory Circular 24–2. If on an intermediate temperature test the emission of the vehicle exceeds the linear guideline, then the vehicle will be subjected to investigation under the defeat device policy.

The defeat device policy was initiated on December 11, 1972, with the issuance of Advisory Circular 24. This advisory circular clarified the intent of a letter dated July 12, 1972. This letter notified all manufacturers of light-duty motor vehicles that sensors and devices which may adversely affect emission control under conditions or during operations likely to occur in use would be inconsistent with the intent of the Clean Air Act. The Act's intent is that vehicles be designed, built, and equipped to reduce emissions to the extent indicated by the prescribed standards when operated during the vehicle's useful life. Even though it may not be practicable to test prototype or production vehicles to assure reductions under the many conditions which the vehicle will encounter, this does not imply that intentional elimination of these reductions outside the parameters of the test procedure is consistent with the Act.

Advisory Circular 24 addresses elements of design (Auxiliary Emission Control Devices (AECD's)) which sense any parameter related to the operation of any part of the emission control system. A defeat device is an AFCD that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use. The AECD may not be considered a defeat device if:

(1) Such conditions are substantially included in the Federal emission test procedure; or

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

This policy was further clarified in 1978, when EPA issued Advisory Circular 24–2. At that time, electronic control and module devices were rapidly being introduced into the design of vehicles. Advisory Circular 24–2 clarified EPA's policy that emission control system logic (including on-board computer software), calibrations, and hardware items are all auxiliary emission control devices and must be evaluated as potential defeat devices.

Given the complicated nature of evolving technology and the difficulty of evaluating the overall emission impact of multiple, continuously variable emission control system parameters, an optional procedure was developed. The purpose of this procedure was to assist manufacturers in receiving timely and consistent evaluation of this complex new technology. Advisory Circular 24–2 set forth objective guidelines which could be used by manufacturers to demonstrate that an AECD is not a defeat device with respect to NO_x on the Highway Fuel Economy Test within FTP temperatures.

EPA intends to evaluate CO emission control at ambient temperatures between test conditions at 25°F and 68°F in a similar way to the NO_x defeat device guidance in Advisory Circular 24–2. As discussed in the NPRM, the guideline for intermediate temperature CO emissions will be a line which connects the CO standard at the upper end of the 20°F test temperature tolerance (25°F) to the CO standard at the lower end of the FTP temperature tolerance (68°F). This line will be used as a defeat device investigation "trigger." Vehicles which exhibit emission levels at or below this line when tested over the FTP driving cycle will be deemed to not have a defeat device adversely impacting CO emission performance over these driving conditions. Emission control strategies or lack thereof which result in CO emissions that exceed the guideline may indicate an unacceptable emission reduction across the temperature range (i.e., not a reduction in CO emissions to the extent intended by the CAAA and these regulations). In light of this exceedence, if the manufacturer cannot demonstrate to EPA's satisfaction that reasonable CO emission control in reference to the linear guideline was engineered and achieved across the temperature range, then the system will be deemed to incorporate a defeat device. As ambient temperature decreases, any intermediate temperature cold test which results in emissions above the 20 °F standard value will automatically be considered the result of a defeat device strategy without further investigation.

Test procedures at intermediate temperatures below 50 °F will be the same as at 20 °F. For tests conducted at intermediate temperature of 50 °F and above, FTP test procedures will be followed. EPA recognizes that there may be a discontinuity at 50°F in the emission temperature function for a particular engine family due to the change in test procedure. If the guideline is exceeded, the manufacturer may prove in the defeat device investigation any significant procedural effect for a particular engine family.

For the intermediate temperature range, the manufacturer will not be required to submit test data along with the certification application. However,

the manufacturer must submit a statement of compliance which attests to the fact that they have assured themselves that the engine family complies to the intermediate temperature cold testing defeat device guidance. The manufacturer must briefly summarize the methodology for determining compliance. EPA has the authority to test or require testing at any temperature. The selection of test vehicles, temperature, and number of tests will be determined by the EPA. Also, the EPA may require manufacturers to supply vehicles to test for defeat device evaluation according to authority granted the Administrator in the Clean Air Act section 206 (a) and (b).

Any exceedence of the linear guideline will require an explanation by the manufacturer or the vehicle will be considered to include a defeat device. Optimally, the manufacturer will provide an explanation which demonstrates that comparable CO emission control in reference to the linear guideline was engineered and achieved for this emission control system across the temperature range. However, manufacturers will have the burden of proving to EPA's satisfaction why emission levels above the guideline are reasonable, do not result in unnecessary excess emissions, and therefore, should not be considered the result of a defeat device. EPA may require additional information and test results from the manufacturer. The following are examples of possible criteria or information which could be utilized in such an explanation or which could be requested by the EPA. This should not in any way be viewed as an all inclusive listing of areas of concern.

- Demonstration of how the emission control system was designed to provide CO control throughout the temperature range. This may require a review of computer control logic as it responds to ambient starting temperature.
- An explanation of the fuel scheduling strategy across the temperature range.
- An explanation of any timers or switches and the resultant effect upon CO emissions.
- A description of any open loop strategy.
- A review of parameters sensed and parameters controlled and how they should interact.
- An explanation of any timing of air injection delay.
- Submission of test data to support defeat device justification for safety or catalyst protection strategies.

With the promulgation of these cold CO regulations, an objective guideline is created to compare the significance of the reduction in effectiveness of emission control outside the FTP temperature range. A significant reduction in effectiveness occurs when the guideline is exceeded on an intermediate temperature cold test. If this exceedance is caused by an AECD strategy which operates in a manner which is incongruous with the operation of the strategy on the standard FTP and 20 F modes, the AECD may be considered a defeat device.

For example:

- The delay of closed loop initiation for an incongruous time period at a temperature just outside of FTP temperatures.
- Incongruous delay of air injection at temperatures different than FTP conditions.

An incongruous strategy means a strategy whose operation does not correspond to what is right, proper, or reasonable with regard to its operation under test conditions and driving cycles used to comply with standards. To illustrate the point, if the time of delay of closed loop operation is longer at 20 °F operating mode than at the standard FTP operating mode, EPA would consider the operation congruous at intermediate temperatures if the time increased gradually as temperature decreased. The time of delay of closed loop operation would be incongruous if the time increased suddenly just below standard FTP temperatures to the level at 20 °F. Alternatively, EPA would consider the operation incongruous if the time of air injection delay at intermediate temperatures exceeded the time during 20 °F FTP testing. These examples should not be viewed as an inclusive list of incongruous strategies.

Likewise, an AECD strategy whose operation during other driving cycles is incongruous with operation on FTP driving cycles may be considered a defeat device. Because the linear emission guideline described above applies to vehicle operation on intermediate temperature cold FTP tests, satisfying this guideline criteria does not necessarily indicate that the vehicle has no defeat devices on non-FTP driving cycles and conditions. Examples of operating conditions not found on the FTP driving cycles are long idles and cruises, speeds higher than 62 mph, maintaining high speeds for long periods of time, variations in loads placed on the vehicle, or other changes in operating conditions such as an increase in the amount of fuel in the fuel tank. Any incongruous strategy which is triggered by sensing a change in such conditions may be a defeat device.

In addition, manufacturers should utilize current technology which provides emission benefits without the use of defeat devices rather than employing outdated technology which necessitates the use of defeat devices. An example of such outdated technology is poor control of the air-fuel ratio through the use of old non-feedback carburetor technology. In this strategy the secondary air injection is substantially delayed for protection of the catalyst from overheating during cold start. In years past, this was allowed under the justification of protection of the catalyst. Currently, this justification would be mitigated by the fact that better air-fuel ratio control can be achieved with the current feedback technology. The use of non-feedback technology is inappropriate. Therefore, systems which, for example, necessitate excessive delay of secondary air injection, could be considered as a whole a defeat device.

E. Emission Averaging Program

In the NPRM, EPA solicited comments regarding an emission averaging program, although it did not propose such a program. EPA also indicated that it would issue an additional proposal regarding an averaging program before adopting final rules for such a program. Comments were received both in support and in opposition to averaging.

The averaging concept allows some engine families to emit at levels above that of the standard, as long as other engine families produced by the manufacturer within a specified averaging set can offset these higher emission levels by emitting at levels below that of the standard. Each engine family must comply, of course, with the family's individual emission standards. This averaging concept, then, allows manufacturers to optimize their emission control systems between different engine families. This reduces control costs while achieving the same overall emission reduction required by the non-averaged standards.

EPA has had substantial experience applying the emission averaging concept to emissions from heavy duty engines. Based in part on this experience, application of the averaging concept to the cold ambient temperature CO standards could yield important cost savings while achieving the emission reductions required under the standards in today's final rule. Based upon EPA's analysis of the comments to date, EPA will publish a proposal regarding an averaging program within the next few weeks.

F. Selective Enforcement Audit Program

Summary of Proposal

In the NPRM, EPA proposed a full enforcement program including a cold temperature Selective Enforcement Audit (SEA) testing program which applies at both the cold temperature and current FTP temperature ranges. This program was to begin within two years after the cold temperature CO standards first came into effect to allow manufacturers adequate time to secure sufficient cold temperature testing capability.

Comments

Comments submitted by manufacturers and their associations opposed the adoption of SEA testing with the exception of comments submitted by Ford Motor Company. Ford supports SEA testing provided EPA adopts interim in-use cold CO emission standards. Commenters emphasized the high cost and labor burdens in establishing cold temperature testing facilities due to the lack of present test capability. Manufacturers also argued the high cost and short time period to construct a test facility for SEA which would have a relatively low usage rate, would represent an inefficient use of scarce resources.

EPA Response

EPA acknowledges the concerns regarding costs associated with the construction of cold temperature test facilities for SEA. However, most manufacturers will have to construct and/or contract for a cold temperature test facility to handle development and certification of their 1994 model year engine families. Since the Cold CO SEA program will not begin for two years after the first model year that this rule becomes effective, manufacturers will have completed their third certification cycle before an SEA could occur. A significant portion of the initial development testing should already have been completed. Subsequently, manufacturers should have adequate testing capacity and capability to perform SEAs. In addition if a manufacturer has not or is unable to construct adequate testing facilities, independent test facilities will be available.

EPA believes that assembly line testing is an integral part of the overall enforcement program, especially with the implementation of new standards. The SEA testing program provides an incentive for manufacturers to focus on assuring adequate cold temperature CO performance across the range of vehicle designs produced.

As a result, all LDV and LDT production will be subject to potential 20°F SEAs, but the cold temperature CO SEA program will not start until the 1996 model year to allow manufacturers adequate time to secure sufficient cold temperature testing capability. As proposed, vehicles will be exempt from SEA testing at high-altitude locations.

G. In-use Compliance

Summary of Proposal

EPA proposed implementation of an enforcement program including in-use compliance testing to begin with the 1993 model year.

Comments

Several manufacturers are opposed to the proposed in-use enforcement of cold CO emission standards and requested alternative, higher standards applicable in use and delayed compliance with high altitude standards. Manufacturers are concerned that they have not been given enough time to collect cold temperature CO test data to assure themselves of adequate control in-use.

EPA Response

The Agency believes that delayed in-use compliance is not necessary. The cold temperature CO standards are not technology forcing. The standards represent CO emission reductions achievable in the very near future. Prior to the NPRM EPA collected in-use data from several EPA testing programs. These data indicated that the standards could be met using currently available technology.

Therefore, EPA will implement the in-use testing program as proposed in the NPRM. In-use testing for this program will begin with the 1994 model year because of the change in the phase-in schedule mandated by the CAAA. As proposed, LDVs and LDTs will be expected to comply at both low and high-altitude.

H. Test Procedures

Comments were received on several test procedure issues. These specific comments are discussed in detail in the Response to Comments document included in the docket. Of all test procedure issues, the issue of dynamometer specifications caused the most concern and generated the most significant comments. The following presents a discussion of the dynamometer issue.

Dynamometer Specifications

Summary of proposal. The NPRM specified the use of a dynamometer which utilizes twin-rollers that are 20.0 inches in diameter, spaced 24 inches apart, and synchronized by a mechanical coupling device.

Comments. In their written comments, most manufacturers objected to the NPRM proposal and requested that EPA specify the small diameter, uncoupled twin-roll type of dynamometer which is currently used for FTP testing. Manufacturers objections to the change to the larger coupled rolls concerned increased costs, insufficient lead time, and correlation problems. However, several manufacturers agreed that the use of an electrical power absorption unit is preferable to use of the hydrokinetic unit.

EPA response. Subsequent to the publication of the NPRM, the CAA was revised to require EPA review of testing procedures to assure vehicle testing reflected in-use conditions. In response to this revision, member companies of the MVMA and the Association of International Automobile Manufacturers (AIAM) recommended in a December 21, 1990, letter that EPA install a single roll dynamometer in its new cold facility test. Subsequently, in a letter dated January 31, 1991, the MVMA and AIAM recommended the use of a 48-inch roll diameter which would optimize the function and cost of the dynamometer and which appeared to be the "best compromise to simulate actual vehicle road load conditions." After careful review of the issue, EPA decided to equip its new cold temperature test facility with a 48-inch diameter single-roll dynamometer rather than the coupled 20-inch twin-roll dynamometer specified in the NPRM.

As a result, today's rule specifies the use of a 48-inch diameter, single roll dynamometer for cold temperature testing that is performed by EPA. This specification is consistent with the NPRM as the 48-inch single roll and 20-inch coupled twin-roll can be operated to yield comparable results.[4] Today's rule also allows cold CO testing at the manufacturer facility with other types of dynamometers which the manufacturer determines will yield comparable results. As always, EPA reserves the right to confirmatory test at its emission laboratory.

VI. Economic/Environmental Impact

No comments were received on the economic or environmental impacts as presented in the NPRM. As stated in the NPRM, consumers can expect a fuel economy benefit from this rule. The overall estimated average total cost

[4] It is also consistent with the FTP test procedure which allows the optional use of a 48 inch single roll dynamometer.

increases per vehicle of this rule to consumers, including fuel economy benefits, are:

(a) $.93 for Scenario I (air pump strategies)

(b) −$12.27 (MPI strategies)

The complete analysis, including the methodology used in the calculations, is contained in chapter V of the Regulatory Support Document.

The emission reduction benefits of this rule are estimated to be a 20–29 percent reduction in mobile source CO emissions at 20 °F. Averaging over all temperatures the rule is estimated to reduce annual CO emissions by 2.6–3.1 million tons by the year 2000 and 5.8–7.7 million tons after complete fleet turnover.

VII. Administrative Requirements

A. Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Since EPA has determined that this regulation is not major, an RIA has not been prepared. However, a regulatory support document indicating the environmental impact, economic impact, and cost-effectiveness study was prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and have been assigned control number 2060–0104.

Public reporting burden for this collection of information is estimated to be an average of 29 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street SW. (PM–223Y), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation will affect only manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

VIII. Legal Authority

EPA proposed the cold CO standards pursuant to its discretionary standard-setting authority under section 202(a) of the CAA. As discussed above, however, Congress added a new section 202(j) to the CAA in November of 1990 specifically requiring EPA to issue the cold CO standards contained in this final rule for LDVs and LDTs. As explained above, new section 202(j) provides the basis for the standards, their phase-in, and the useful life period.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, confidential business information, Incorporation by reference, labeling Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 21, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

2. Section 86.091–28 is amended by adding a new paragraph (e) to read as follows:

§ 86.091–28 Compliance with emission standards.

* * * * *

(e) Unless a manufacturer develops specific cold temperature deterioration factors, 68–86°F deterioration factors shall be used to determine compliance with cold temperature emission standards.

3. Section 86.094–2 is amended by adding the following definitions in alphabetical order to read as follows:

* * * * *

§ 86.094–2 Definitions.

* * * * *

Defeat device means an auxilary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the Federal emission test procedure;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

Element of design means any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.

* * * * *

Intermediate Temperature Cold Testing means testing done pursuant to the driving cycle and testing conditions contained in 40 CFR part 86, subpart C, at temperatures between 25°F (−4 °C) and 68 °F (20 °C).

* * * * *

4. Section 86.094–7 is amended by revising paragraph (h) and by adding a parenthetical at the end of the section to read as follows:

§ 86.094–7 Maintenance of records; submittal of information; right of entry.

* * * * *

(h) (1) The manufacturer (or contractor for the manufacturer, if applicable) of any model year 1994 through 1997 light-duty vehicle or light light-duty truck or model year 1994 through 1998 heavy light-duty truck that is certified shall establish, maintain, and retain the following adequately

organized and indexed records for each such vehicle:

(i) EPA engine family;

(ii) Vehicle identification number;

(iii) Model year and production date;

(iv) Shipment date;

(v) Purchaser; and

(vi) Purchase contract.

(2) In addition, the manufacturer (or contractor for the manufacturer, if applicable) of each certified engine family shall establish, maintain, and retain adequately organized records of the actual U.S. sales volume for the model year for each engine family. The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturer Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(3) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of eight (8) years from the due date for the applicable end-of-model year report. Records may be retained as hard copy or reduced to microfilm, ADP film, etc., depending on the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(6) *Voiding a certificate.* (i) EPA may void ab initio a certificate for a vehicle certified to Tier 0 certification standards for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(ii) EPA may void ab initio a certificate for a 1994 or 1995 model year light-duty vehicle or light-duty truck that is not certified in compliance with the cold temperature CO standard for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(iii) Any voiding ab initio of a certificate under § 86.094–7(c) and paragraph (h) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or under § 86.1014 for light-duty trucks and heavy-duty engines.

(Approved by the Office of Management and Budget under control number 2060–0104)

5–6. Section 86.094–8 is amended by revising paragraphs (b) through (h) and by adding paragraph (k) to read as follows:

§ 86.094–8 Emission standards for 1994 and later model year light-duty vehicles.

* * * * *

(b) Fuel evaporative emissions from 1994 and later model year light-duty vehicles shall not exceed (compliance with these standards is optional for 1994 model year methanol-fueled engines):

(1) *Hydrocarbons (for gasoline-fueled vehicles).* 2.0 grams per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* 2.0 grams carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1994 and later model year Otto-cycle or methanol-fueled diesel light-duty vehicle.

(d) through (f) [Reserved]. For guidance see § 86.090–8.

(g) Any 1994 and later model year light-duty vehicle that a manufacturer wishes to certify for sale shall meet the emission standards under both low- and high-altitude conditions as specified in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) The manufacturer may exempt 1994 and later model year vehicles from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under paragraph (h) of this section if the requirements of either paragraph (h)(1) (i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, C, is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, June 1990, Engine Power Test Code—Spark Ignition and Compression Ignition—Net Power Rating. 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 SAE International, 400 Commonwealth Drive, Warrendale, PA, 15096–0001. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC, 20460, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 miles per hour to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraphs (h)(1)(iii) (A) and (B) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph (h) if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (c) and (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt configuration(s) required under this paragraph (h)(2). As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a non-exempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding, or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (h) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

* * * * *

(k) *Cold Temperature Carbon Monoxide (CO) Standards.* (1) For gasoline-fueled light-duty vehicles, a minimum of the percentage shown in Table A94–16 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable cold temperature CO standard of 10.0 grams per mile for an intermediate useful life of 50,000 miles, as measured and calculated under the provisions set forth in subpart C of this part. This standard applies under both low and high altitude conditions. At the manufacturer's option, the manufacturer may combine the sales of gasoline-fueled light-duty vehicles and gasoline-fueled light-duty trucks in determining compliance with the required 1994 and 1995 model year phase-in percentages as included in Table A94–16.

(2) (i) Sales percentages for the purposes of determining compliance with paragraph (k)(1) of this section shall be based on total actual and, at the manufacturer's option, combined U.S. sales of light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(ii) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Table A94–16. Such petition shall be submitted within 30 days of the end of the model year the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(iii) The manufacturer may count towards the sales percentages those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year sold in the state of California or in jurisdictions which have adopted the California emission standards under section 177 of the Clean Air Act if those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks certified have been to meet the federally mandated cold CO standards. If this option is taken, all light-duty vehicles, light light-duty trucks, and heavy light-duty trucks sold in California and such jurisdictions shall be counted toward the total upon which the sales percentage is based. If this option is not taken, light-duty vehicles, light light-duty trucks, and heavy light-duty trucks sold in California or such jurisdictions are to be excluded from counting toward either the total upon which the sales percentage is based or the sales percentage itself.

(iv) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the implementation schedules of Table A94–16 for model years 1994 and 1995. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(v) The manufacturer must state at the time of applying for the Certificate, based on projected U.S. sales or projected production for U.S. sale, which engine families will be used to attain the required implementation schedule sales percentages.

* * * * *

7. Section 86.094–9 is amended by adding paragraph (k) to read as follows:

§ 86.094–9 Emission standards for 1994 and later model year light-duty trucks.

* * * * *

(k) *Cold Temperature Carbon Monoxide (CO) Standards*—(1) *Light light-duty trucks.* Exhaust emissions from 1994 and later model year gasoline-fueled light light-duty trucks with a loaded vehicle weight of 3,750 lbs or less

shall meet a cold temperature CO standard of 10.0 grams per mile and gasoline-fueled light light-duty trucks with a loaded vehicle weight of greater than 3,750 lbs shall meet a cold temperature CO standard of 12.5 grams per mile, both for an intermediate useful life of 50,000 miles and according to the implementation schedule in Table A94–16. This standard applies under both high and low altitude conditions. At the manufacturer's option, the manufacturer may combine the sales of gasoline-fueled light-duty vehicles, light-duty trucks, and heavy light-duty trucks in determining compliance with the required 1994 and 1995 model year phase-in percentages as included in Table A94–16.

TABLE A94–16.—IMPLEMENTATION SCHEDULE FOR COMBINED SALES OF LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS FOR COLD CO

Model year	Sales percentage
1994	40
1995	80
After 1995	100

(2) *Heavy light-duty trucks.* Exhaust emissions from 1994 and later model year gasoline-fueled heavy light-duty trucks shall meet a cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles and according to the implementation schedule in Table A94–16. This standard applies under both low and high altitude conditions. At the manufacturer's option, the manufacturer may combine the sales of gasoline-fueled light-duty vehicles, light light-duty trucks, and heavy light-duty trucks in determining compliance with the required 1994 and 1995 model year phase-in percentages as included in Table A94–16.

(3) (i) Sales percentages for the purposes of determining compliance with paragraphs (k)(1) and (k)(2) of this section shall be based on total actual and, at the manufacturer's option, combined U.S. sales of light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(ii) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Table A94–16. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume. Approval of the use of production data will be presumed unless otherwise notified by the Agency within 30 days of submittal of the petition.

(iii) The manufacturer may count towards the sales percentages those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks of the applicable model year sold in the state of California or in jurisdictions which have adopted the California emission standards under section 177 of the Clean Air Act if those light-duty vehicles, light light-duty trucks, and heavy light-duty trucks have been certified to meet the federally mandated cold CO standards. If this option is taken, all light-duty vehicles, light light-duty trucks and heavy light-duty trucks sold in California and such jurisdictions shall be counted toward the total upon which the sales percentage is based. If this option is not taken, light-duty vehicles, light light-duty trucks, and heavy light-duty trucks sold in California or such jurisdictions are to be excluded from counting toward either the total upon which the sales percentage is based or the sales percentage itself.

(iv) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the implementation schedules of Table A94–16 for model years 1994 and 1995. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(v) The manufacturer must state at the time of applying for the Certificate, based on projected U.S. sales or projected production for U.S. sale, which engine families will be used to attain the required implementation schedule sales percentages.

8. A new § 86.094–16 is added to read as follows:

§ 86.094–16 Prohibition of defeat devices.

(a) No new gasoline-fueled light-duty vehicle or light-duty truck shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purposes of investigating a potential defeat device.

(c) For cold temperature CO emission control, the Administrator will use a guideline to determine the appropriateness of the CO emission control at ambient temperatures between 25 °F (−4 °C) and 68 °F (20 °C). The guideline for CO emission congruity across the intermediate temperature range is the linear interpolation between the CO standard applicable at 25 °F (−4 °C) and the CO standard applicable at 68 °F (20 °C). For vehicles that exceed this CO emissions guideline upon intermediate temperature cold testing:

(1) If the CO emission level is greater than the 20 °F (−7 °C) emission standard, the vehicle will automatically be considered to be equipped with a defeat device without further investigation.

(2) If the CO emission level does not exceed the 20 °F emission standard, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section.

(d) For vehicle designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedure when the vehicle is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

(2) Information Submissions Required:

(i) The manufacturer will provide an explanation containing detailed information (including information which the Administrator may request to be submitted) regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure.

(ii) For purposes of investigations of possible cold temperature CO defeat devices under this paragraph (d), the manufacturer shall provide an explanation which must show, to the satisfaction of the Administrator, that CO emissions are reasonably controlled in reference to the linear guideline, across the intermediate temperature range.

(Approved by the Office of Management and Budget under the control number 2060–0104)

9. Section 86.094–21 is amended by revising paragraphs (a) through (b)(1) and (b)(5)(i)(C) through (b)(7) and by adding paragraph (g) to read as follows:

§ 86.094–21 Application for certification.

* * * * *

(a) A separate application for a Certificate of Conformity shall be made for each set of standards (or family emission limits, as appropriate) and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system, and fuel system components. This description will include:

(A) A detailed description of each Auxiliary Emission Control Device (AECD) to be installed in or on any vehicle (or engine) covered by the application.

(B) A detailed justification of each AECD (described in paragraph (b)(1)(i)(A) of this section) which results in a reduction in effectiveness of the emission control system. Such a justification may be disapproved by consideration of currently available technology, whereupon the application for certification may be disapproved under § 86.094–22(b) for the incorporation of a defeat device.

(C) The manufacturer must submit a Statement of Compliance in the application for certification which attests to the fact that they have assured themselves that the engine family is designed to be within the intermediate temperature cold testing defeat device guidance as described in § 86.094–16 of this subpart.

(*1*) This Statement of Compliance will be supported by a brief description of the vehicle's technological method of controlling CO emissions at intermediate temperatures.

(*2*) The manufacturer will determine a method (e.g., a test program, an engineering evaluation) which is adequate to support their Statement of Compliance. The manufacturer will support this Statement with a brief summary of the chosen method. Further details must be made available upon the Administrator's request.

(ii) (A) The manufacturer shall provide to the Administrator in the application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameter will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

* * * * *

(5) * * *

(i) * * *

(C) For engine families provided an alternative useful-life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(ii) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.090–2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(iii) (A) For each light-duty truck engine family and each heavy-duty engine family, a statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a Certificate of Conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(B) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty vehicles and light-duty trucks covered by a Certificate of Conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(iv) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(6) *Participation in Averaging Programs*—(i) *Particulate Averaging.* (A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks or the particulate averaging program for heavy-duty diesel engines, the application must list the family particulate emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile or one-hundredth of a gram per brake horsepower-hour for heavy-duty engines.

(C) The manufacturer may at any time during production elect to change the level of any family particulate emission limit(s) by submitting the new limit(s) to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.090–2 and § 86.091–28(b)(5)(i).

(ii) *Nox Averaging.* (A) If the manufacturer elects to participate in the NOx averaging program for light-duty trucks or the NOx averaging program for heavy-duty engines, the application must list the family NOx emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family NOx emission limits, accurate to one-tenth of a gram per mile or to one-tenth of a gram per brake horsepower-hour for heavy-duty engines.

(C) The manufacturer may at any time during production elect to change the level of any family NOx emission limit(s) by submitting the new limits to

the Administrator and by demonstrating compliance with the limit(s) as described in § 86.088–2 and § 86.091–28(b)(5)(ii).

(7)(i) For Otto-cycle heavy-duty engines, the application must state whether the engine family is being certified for use in all vehicles regardless of their Gross Vehicle Weight Rating (see § 86.091–10 (a)(1)(i) and (a)(3)(i)), or only for use in vehicles with a Gross Vehicle Weight Rating greater than 14,000 pounds.

(ii) If the engine family is being certified for use in all vehicles and is being certified to the emission standards applicable to Otto-cycle engines for use only in vehicles with a Gross Vehicle Weight Rating over 14,000 pounds under the provisions of paragraph (a)(3) of § 86.091–10, then the application must also attest that the engine family, together with all other engine families being certified under the provisions of paragraph (a)(3) of § 86.091–10, represent no more than 5 percent of model year sales of the manufacturer of all Otto-cycle heavy-duty engines for use in vehicles with Gross Vehicle Weight Ratings of up to 14,000 pounds.

* * * * *

(g) The manufacturer shall identify those families which will not comply with cold temperature carbon monoxide standards.

* * * * *

10. A new § 86.094–22 is added to read as follows:

§ 86.094–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.

(a) After a review of the application for certification and any other information which the Administrator may require, the Administrator may approve the application and select a test fleet in accordance with § 86.094–24.

(b) Disapproval of application. (1) The Administrator may disapprove in whole or in part an application for certification for reasons including incompleteness; inaccuracy; inappropriate proposed mileage (or service) accumulation procedures, test equipment, or fuel; or incorporation of defeat devices in vehicles (or on engines) described by the application.

(2) The issuance of a certificate of conformity does not exempt the covered vehicles from further evaluation or testing for defeat device purposes as described in § 86.094–16 of this subpart.

(c) Where any part of an application is rejected, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection. Within 30 days following receipt of such notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing and signed by an authorized representative of the manufacturer, and it shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(d) Approval of test procedures. (1) The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors for light-duty vehicles and light-duty trucks. The manufacturer shall submit the procedures as required in § 86.094–21(b)(4)(i) prior to the Administrator's selection of the test fleet under § 86.094–24(b)(1), and if such procedures will involve testing of durability data vehicles selected by the Administrator or elected by the manufacturer under § 86.094–24(c)(1), prior to initiation of such testing.

(2) Light-duty trucks and heavy-duty engines only. The Administrator does not approve the test procedures for establishing exhaust emission deterioration factors. The manufacturer shall submit these procedures and determinations as required in § 86.090–21(b)(4)(iii) prior to determining the deterioration factors.

(3) Heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines only. The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors. The test procedure will conform to the requirements in § 86.094–23(b)(3).

(e) Parameter adjustment requirements. When the Administrator selects emission data vehicles for the test fleet, he will at the same time determine those vehicle or engine parameters which will be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter and will then notify the manufacturer of his determinations.

(1) Determining parameters subject to adjustment. (i) Except as noted in paragraph (e)(1)(iv) of this section, the Administrator may determine to be subject to adjustment the idle fuel-air mixture parameter on Otto-cycle vehicles (or engines) (carbureted or fuel-injected); the choke valve action parameter(s) on carbureted, Otto-cycle vehicles (or engines); or any parameter on any vehicle (or engine) (Otto-cycle or diesel) which is physically capable of being adjusted, may significantly affect emissions, and was not present on the manufacturer's vehicles (or engines) in the previous model year in the same form and function.

(ii) The Administrator may, in addition, determine to be subject to adjustment any other parameters on any vehicle or engine which is physically capable of being adjusted and which may significantly affect emissions. However, the Administrator may do so only if he has previously notified the manufacturer that he might do so and has found, at the time he gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment, the Administrator will consider the likelihood that, for each of the parameters listed in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles (or engines). In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application, surveillance information from similar in-use vehicles (or engines), the difficulty and cost of gaining access to an adjustment, damage to the vehicle (or engine) if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle (or engine) performance characteristics including emission characteristics.

(iv) Manual chokes of heavy-duty engines only will not be considered a parameter subject to adjustment under the parameter adjustment requirements.

(2)(i) The Administrator shall determine a parameter to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or is sheared off after

adjustment at the factory and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour or for $20 (1978 U.S. dollars) or less.

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws.

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), the elongation of the adjustable member is limited by design or, in the case of a bendable member, the member is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 U.S. dollars).

(ii) The Administrator shall determine a physical limit or stop to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned, or crimped so as to prevent additional travel without breakage or need for repairs which take more than one-half hour or cost more than $20 (1978 U.S. dollars).

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (screwdriver, pliers, open-end or box wrenches, etc.) without incurring significant and costly damage to the vehicle (or engine) or control system or without taking more than one-half hour or costing more than $20 (1978 U.S. dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (e)(2)(i) and (e)(2)(ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (e)(2)(i) or (e)(2)(ii) of this section, the Administrator will consider the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood, the Administrator may consider such factors as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles (or engines); the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle (or engine) if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle (or engine) performance characteristics other than emission characteristics.

(3) The Administrator shall determine two physically adjustable ranges for each parameter subject to adjustment:

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator may include within the physically adjustable range applicable to testing under this subpart (certification testing) all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the preliminary application for certification.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability. The Administrator may also include the production tolerances on the location of these limits or stops when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under subpart G or K (Selective Enforcement Audit and Production Compliance Audit) of this part only the actual settings to which the parameter is adjusted during production.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located on the test vehicle (or engine).

(f) *Submittal of advance information.* (1) If the manufacturer submits the information specified in § 86.094–21(b)(1)(ii) in advance of its full preliminary application for certification, the Administrator shall review the information and make the determinations required in paragraph (e) of this section within 90 days of the manufacturer's submittal.

(2) The 90-day decision period is exclusive of the elapsed time during which EPA may request additional information from manufacturers regarding an adjustable parameter and the receipt of the manufacturers' response(s).

(g) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (e) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, and signed by an authorized representative of the manufacturer, and it shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

11. A new § 86.094–24 is added to read as follows:

§ 86.094–24 Test vehicles and engines.

(a) *General.* This paragraph (a) applies to the grouping of vehicles or engines into families.

(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)–(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled: L–6, 90°, V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port sizes and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraph (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled or methanol-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed in paragraph (a)(2) of this section, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics.

(i) Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multi-displacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirements of paragraphs (a)(8) through (a)(10) of this section.

(12) Those vehicles covered by an application for certification which are equipped with gasoline-fueled and methanol-fueled heavy-duty engines will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled or methanol-fueled heavy-duty vehicles to be classified in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For vehicles equipped with gasoline-fueled and methanol-fueled heavy-duty engines to be classified in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where vehicles equipped with gasoline-fueled or methanol-fueled heavy-duty engines are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) *Emission data*—(1) *Light-duty truck emissions data vehicles.* This paragraph (b)(1) applies to light-duty truck emission data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family groupings. Within each engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. If more than one vehicle meets this criteria, then within that vehicle grouping the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family, and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The additional vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family

are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission data vehicle (or other vehicles such as current or previous model year emission data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission data vehicles' protocol) to represent more than one selection under paragraph (b)(1)(i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1)(i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family.

(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with paragraphs (b)(1)(ii), (iii), and (iv) of this section; or

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high altitude emission testing as the manufacturer deems appropriate—

(*1*) That all light-duty vehicles not exempt under § 86.094–8(h) comply with the emission standards at high altitude; and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements and that all light-duty trucks sold at low altitude, which are not exempt under § 86.094–9(h), are capable of being modified to meet high-altitude standards.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (ii), and (iv) of this section.

(vii) Vehicles will be chosen to be operated and tested for evaporative emission data based upon evaporative emission family groupings as defined in paragraphs (a)(12), (a)(13), (a)14), and (a)(15) of this section.

(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions from within each evaporative family to be certified. This vehicle is selected from among the vehicles chosen using the exhaust emission data selection criteria for the engine family, unless evaporative testing has already been completed, as part of another engine family's testing, on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraphs (b)(1)(vii)(B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude; or

(B) In lieu of testing vehicles according to paragraph (b)(1)(viii)(A) of this section, a manufacturer may provide a statement in its application for certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate—

(*1*) That all light-duty vehicles not exempt under § 86.094–8(h) comply with the emission standards at high altitude; and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements and that all light-duty trucks sold at low-altitude, which are not exempt under § 86.094–9(h), are capable of being modified to meet high-altitude standards.

(ix) Vehicles selected for high altitude exhaust emission testing under paragraph (b)(1)(v)(A) of this section may be used to satisfy the evaporative emission testing requirements of paragraph (b)(1)(viii)(A) of this section.

(x) *Light-duty trucks only.* (A) The manufacturer may reconfigure any of the low-altitude emission data vehicles to represent the vehicle configuration required to be tested at high altitude.

(B) The manufacturer is not required to test the reconfigured vehicle at low altitude.

(xi) For cold temperature CO exhaust emission compliance for each engine family, the Administrator will select for testing the vehicle expected to emit the highest emissions from the vehicles selected in accordance with paragraphs (b)(1)(i), (ii), (iii), and (iv) of this section. This vehicle shall be tested by the manufacturer in accordance with the test procedures in subpart C of this part or with alternative procedures requested by the manufacturer and approved in advance by the Administrator.

(2) *Otto-cycle heavy-duty emission data engines.* This paragraph (b)(2) applies to Otto-cycle heavy-duty engines.

(i)–(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in the engine family as follows:

(A) The Administrator shall select one emission data engine first based on the largest displacement within the engine family. Then from those with the largest displacement the Administrator shall select, in the order listed, highest fuel flow at the speed of maximum rated torque, the engine with the most advanced spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraph (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission data engine (or other engine including current or previous model year emission data engines and development engines provided they meet the emission data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission data engines.* This paragraph (b)(3) applies to diesel heavy-duty emission data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission data engine (or other engine including current or previous model year emission data engines and development engines provided they meet the emission data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability data vehicles.* This paragraph (c)(1) applies to light-duty vehicle durability data vehicles.

(i) A durability data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administration as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* This paragraph (c)(2) applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(ii) [Reserved]

(3) *Heavy-duty engines.* This paragraph (c)(3) applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(ii) [Reserved]

(d) For purposes of testing under § 86.092–26 (a)(9) or (b)(11), the Administrator may require additional emission data vehicles (or emission data engines) and durability data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, Provided That the number of vehicles (or engines) selected shall not increase the size of either the emission data fleet or the durability data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) [Reserved]

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines utilizing the procedures contained in § 86.092–14 of this subpart for emission data vehicle selection and determination of deterioration factors. The deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission data or durability data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.094–23 has previously been submitted.

(g)(1) This paragraph (g) applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional equipment weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission data and durability data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence

emissions are: Air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission data vehicle or durability data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) *Alternative Durability Program durability data vehicles.* This paragraph (h) applies to light-duty vehicle and light-duty truck durability data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) To update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability data vehicle designs from within the engine family group. The production durability data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability data vehicle selected under paragraph (h)(1) of this section, and submitting data therefrom, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section:

12. Section 86.094–35 is amended revising paragraphs (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h), and by adding paragraph (a)(1)(iii)(k) to read as follows:

§ 86.094–35 Labeling.

* * * * *

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a Certificate of Conformity under § 86.091–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection

Agency regulations which apply to light-duty vehicles;

* * * * *

(K) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

* * * * *

(a)(2)(iii)(L) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided by this section.

(M) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(N) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For Otto-cycle engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm ^{3}/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19XX Model Year New Heavy-Duty Engines."

* * * * *

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a XXX heavy-duty engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.090–2.)

(K) *For Otto-cycle engines.* One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.091–10(a)(1)(i) or (iii), the statement: "This engine is certified for use in all heavy-duty vehicles."

(*2*) For gasoline-fueled engines certified under the provisions of § 86.091–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.091–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.091–10(a)(1)(ii) or (iv), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(L) For diesel engines which are included in the diesel heavy-duty particulate averaging program, the family particulate emission limit to which the engine is certified.

(M) For any heavy-duty engines which are included in the heavy-duty NOx averaging program, the family NOx emission limit to which the engine is certified.

(N) Engines granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(iv) The label may be made up of one or more pieces: *Provided,* That all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in this paragraph (a)(4) and paragraph (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and

(E) One of the following, as appropriate:

(*1*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles;

(*2*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to methanol-fueled heavy-duty vehicles;

(F) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

* * * * *

(d) * * *

(2) *Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* "This heavy-duty vehicle conforms to the U.S. EPA regulations applicable to 19XX Model Year Light-Duty Trucks under the special provision of 40 CFR 86.085–1(b) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S.

EPA regulations applicable to 19XX Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

(g) *Incomplete vehicle fuel tank capacity.* (1)(i) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.092–35(g)(2)."

(ii) Incomplete methanol-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Methanol-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.091–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{\text{T. Vol.}}{\text{Max. Vol.}} \right)$$

Where:

Cap_f = final amount of fuel tank vapor storage material, grams.

Cap_i = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

(h) *Notification of nonconformance penalty.* (1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113–87(b) shall have the following information printed on the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the production compliance audit (PCA).

(i) The statement: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is XXX." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112–87(a).)

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112–87(a), it shall provide the engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

* * * * *

13. Section 86.095–24 is amended by revising paragraphs(a) through (b)(1)(iv), (b)(2) through (h) and by adding paragraph (b)(1)(xi) to read as follows:

§ 86.095–24 Test vehicles and engines.

* * * * *

(a) *General.* (1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)—(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size and configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the

engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled or methanol-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8)(i) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multi-displacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group, engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirements of paragraphs (a)(8) through (a)(10) of this section.

(12) The vehicles covered by an application for certification equipped with gasoline-fueled and methanol-fueled heavy-duty engines will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled or methanol-fueled heavy-duty vehicles to be classified in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For vehicles equipped with gasoline-fueled and methanol-fueled heavy-duty engines to be classified in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where vehicles equipped with gasoline-fueled or methanol-fueled heavy-duty engines are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) *Emission data*—(1) *Light-duty truck emission-data vehicles.* This paragraph (b)(1) applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family groupings. Within each engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. Then within that vehicle the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family, and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission-data vehicle (or other vehicles such as including current or previous model year emission-data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission-data vehicles' protocol) to represent more than one selection under paragraphs (b)(1) (i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest

emissions of those vehicles remaining in the engine family.

* * * * *

(b)(1)(xi) For cold temperature CO exhaust emission compliance for each engine family, the Administrator will select for testing the vehicle expected to emit the highest emissions from the vehicles selected in accordance with paragraphs (b)(1) (i), (ii), (iii), and (iv) of this section. This vehicle shall be tested by the manufacturer in accordance with the test procedures in subpart C of this part or with alternative procedures requested by the manufacturer and approved in advance by the Administrator.

(2) *Otto-cycle heavy-duty emission-data engines.* This paragraph (b)(2) applies to Otto-cycle heavy-duty engines.

(i)–(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in the engine family as follows:

(A) The Administrator shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the Administrator shall select, in the order listed, highest fuel flow at the speed of maximum rated torque, the engine with the most advanced spark timing, no EGR or lowest EGR flow, and no air pump or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission-data engines.* This paragraph (b)(3) applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability-data vehicles.* This paragraph (c)(1) applies to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* This paragraph (c)(2) applies to vehicles, engines, subsystems, or components used to establish exhaust emission deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(ii) [Reserved]

(3) *Heavy-duty engines.* This paragraph (c)(3) applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(ii) [Reserved]

(d) For purposes of testing under § 86.092–26(a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, *Provided* that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) [Reserved]

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, heavy-

duty vehicles, and heavy-duty engines utilizing the procedures contained in § 86.092–14 of this subpart for emission-data vehicle selection and determination of deterioration factors. The deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission data or durability data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefore, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.091–23 has previously been submitted.

(g)(1) This paragraph (g) applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) Where it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option), no weight for that item will be added in computing the curb weight for any vehicle in that carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional equipment weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: Air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission-data vehicle or durability-data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) *Alternative Durability Program durability-data vehicles.* This paragraph (h) applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) To update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability-data vehicle selected under paragraph (h)(1) of this section, and submitting data therefrom, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

* * * * *

14. Section 86.095–35 is amended by revising paragraphs (a) introductory text through (a)(1)(iii)(E), (a)(2)((iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h) and by adding paragraphs (a)(1)(iii)(L) and (a)(2)(iii)(K) to read as follows:

§ 86.095–35 Labeling.

* * * * *

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a Certificate of Conformity under § 86.091–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

* * * * *

(L) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(2) * * *

(iii) * * *

(K) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided by this section.

(L) [Reserved]

(M) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(N) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: "Important Engine Information.";

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For Otto-cycle engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19XX Model Year New Heavy-Duty Engines.";

* * * * *

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a XXX heavy-duty engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.902–2.);

(K) *For Otto-cycle engines.* One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.091–10 (a)(1)(i) or (iii), the statement: "This engine is certified for use in all heavy-duty vehicles.";

(*2*) For gasoline-fueled engines certified under the provisions of § 86.091–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.091–10(a)(3)(i).";

(*3*) For engines certified to the emission standards under § 86.091–10(a)(1) (ii) or (iv), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs.";

(L) For diesel engines which are included in the diesel heavy-duty particulate averaging program, the family particulate emission limit to which the engine is certified;

(M) For any heavy-duty engines which are included in the heavy-duty NO_x averaging program, the family NO_x emission limit to which the engine is certified;

(N) Engines granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(iv) The label may be made up of one or more pieces: Provided, That all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1)

of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and

(E) One of the following, as appropriate:

(*1*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles;

(*2*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to methanol-fueled heavy-duty vehicles;

(F) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

* * * * *

(d) * * *

(2) *Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* "This heavy-duty vehicle conforms to the U.S. EPA regulations applicable to 19XX Model Year Light-Duty Trucks under the special provision of 40 CFR 86.085–1(b) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19XX Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

(g) *Incomplete vehicle fuel tank capacity.* (1)(i) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.092–35(g)(2)."

(ii) Incomplete methanol-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Methanol-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed XXX gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.091–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{\text{T. Vol.}}{\text{Max. Vol.}} \right)$$

Where:

Cap_f = final amount of fuel tank vapor storage material, grams.

Cap_i = initial amount of fuel tank vapor storage material, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

(h) *Notification of nonconformance penalty.* (1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113–87(b) shall have the following information printed on the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the PCA. This statement shall read: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is XXX." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112–87(a).)

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112–87(a), it shall provide the

engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

* * * * *

15. Section 86.096–8 is amended by revising paragraphs (b) through (h) and by adding paragraph (k) to read as follows:

§ 86.096–8 Emission standards for 1996 and later model year light duty vehicles.

* * * * *

(b) Fuel evaporative emissions from 1996 and later model year light-duty vehicles shall not exceed (compliance with these standards is optional for 1994 and 1995 model year methanol-fueled engines):

(1) *Hydrocarbons (for gasoline-fueled vehicles).* 2.0 grams per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* 2.0 grams carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1994 and later model year Otto-cycle or methanol-fueled diesel light-duty vehicle.

(d) through (f) [Reserved].

(g) Any 1994 and later model year light-duty vehicle that a manufacturer wishes to certify for sale shall meet the emission standards under both low- and high-altitude conditions as specified in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) The manufacturer may exempt 1994 and later model year vehicles from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under paragraph (h) of this section if the requirements of either paragraph (h)(1)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, C is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, June 1990, Engine Power Test Code—Spark Ignition and Compression Ignition—Net Power Rating. 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 SAE International, 400 Commonwealth Drive, Warrendale, PA, 15096–0001. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC, 20460, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 miles per hour to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraphs (h)(1)(iii) (A) and (B) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (c) and paragraph (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt

configuration(s) required under this paragraph (h)(2). As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a non-exempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding, or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (h) of this section will be considered a violation of Section 203(a)(1) of the Clean Air Act.

* * * * *

(k) *Cold Temperature Carbon Monoxide (CO) Standards. Light light-duty trucks.* Exhaust emissions from 1996 and later model year gasoline-fueled light-duty vehicles shall not exceed the cold temperature CO standard of 10.0 grams per mile for an intermediate useful life of 50,000 miles, as measured and calculated under the provisions set forth in Subpart C of this part. This standard applies under both low and high altitude conditions.

* * * * *

16. Section 86.097–9 is amended by adding paragraph (k) to read as follows:

§ 86.097–9 Emission standards for 1997 and later model year light-duty trucks.

* * * * *

(k)(1) *Cold Temperature Carbon Monoxide (CO) Standards—Light light-duty trucks.* Exhaust emissions from 1997 and later model year light light-duty trucks with a loaded vehicle weight of 3,750 lbs or less shall not exceed the cold temperature CO standard of 10.0 grams per mile and light light-duty trucks with a loaded vehicle weight of greater than 3,750 lbs shall not exceed a cold temperature CO standard of 12.5 grams per mile, both for an intermediate useful life of 50,000 miles and as measured and calculated under the provisions set forth in subpart C of this part. This standard applies under both low and high altitude conditions.

(2) *Heavy light-duty trucks.* Exhaust emissions from 1997 and later model year heavy light-duty trucks shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles, as measured and calculated under the provisions set forth in subpart C of this part. This standard applies under both low and high altitude conditions.

* * * * *

17. A new subpart C is added to Part 86 to read as follows:

Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-Duty Vehicles and New Light-Duty Trucks; Cold Temperature Test Procedures

Sec.

Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-Duty Vehicles and New Light-Duty Trucks; Cold Temperature Test Procedures

§ 86.201–94 General applicability.

(a) This subpart describes procedures for determining the cold temperature carbon monoxide (CO) emission from 1994 and later model year new gasoline-fueled light-duty vehicles and light-duty trucks.

(b) All of the provisions of this subpart are applicable to testing conducted at a nominal temperature of 20°F (−7°C).

(c) The provisions that are specially applicable to testing at temperatures between 25°F (−4°C) and 68°F (20°C) are specified in § 86.246–94 of this subpart.

§ 86.202–94 Definitions.

The definitions in subpart A of this part apply to this subpart.

§ 86.203–94 Abbreviations.

The abbreviations in subpart A of this part apply to this subpart.

§ 86.204–94 Section numbering; construction.

(a) In the section number, the two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

(b) *Example.* Section 86.204–94 applies to the 1994 and subsequent model years until superseded. If a § 86.204–96 is promulgated it would take effect beginning with the 1996 model year; § 86.204–94 would apply to model years 1994 through 1995.

§ 86.205–94 Introduction; structure of this subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform gaseous exhaust emission tests on gasoline-fueled light-duty vehicles and light-duty trucks. Subpart A of this part sets forth testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model years.

(c) Three topics are addressed in this subpart. Sections 86.206 through 86.215

set forth specifications and equipment requirements; §§ 86.216 through 86.226 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.227 through 86.245.

§ 86.206–94 Equipment required; overview.

This subpart contains procedures for exhaust emission tests on gasoline-fueled light-duty vehicles and light-duty trucks. Equipment required and specifications are as follows:

(a) *Exhaust emission tests.* Exhaust from gasoline-fueled vehicles is tested for gaseous emissions using the Constant Volume Sampler (CVS) concept (§ 86.209). Equipment necessary and specifications appear in §§ 86.208 through 86.214.

(b) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust emission testing for gasoline-fueled vehicles are specified in § 86.213. Analytical gases are specified in § 86.214. The EPA Urban Dynamometer Driving Schedule (UDDS) for use in gasoline-fueled emission tests is specified in § 86.215 and appendix I to this part.

§ 86.207–94 [Reserved]

§ 86.208–94 Dynamometer.

(a) For testing that is conducted by the Administrator, the dynamometer shall have a single roll with a nominal diameter of 48 inches (1.22 meters), an electrical power absorption unit for simulation of road load power, flywheels or other means for simulating the inertia weight as specified in § 86.229, and a roll or shaft revolution counter or other means for determining distance driven.

(b) For certification testing that is conducted by the manufacturer, a dynamometer with different characteristics may be used provided cold CO emissions are not decreased.

§ 86.209–94 Exhaust gas sampling system; gasoline-fueled vehicles.

The provisions of § 86.109–90 apply to this subpart.

§ 86.210–94 [Reserved]

§ 86.211–94 Exhaust gas analytical system.

The provisions of § 86.111 apply to this subpart, except that the NO_x analyzer is optional.

§ 86.212–94 [Reserved]

§ 86.213–94 Fuel specifications.

Gasoline having the following specifications will be used by the Administrator. Gasoline having the specifications set forth in the table in this section, or substantially equivalent specifications approved by the Administrator, may be used by the manufacturer except that the octane specification does not apply. In lieu of using gasoline having these specifications, the manufacturer may, for certification testing, use gasoline having the specifications specified in § 86.113–90 provided the cold CO emissions are not decreased. Documentation showing that cold CO emissions are not decreased shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

TABLE.—COLD CO FUEL SPECIFICATIONS

Item	ASTM test	Cold CO low octane value or range	Cold CO high octane [1] value or range
(RON + MON)/2, min	D2699	87.8±.3	92.3±0.5
Sensitivity, min	D2699	7.5	7.5
Distillation range:			
IBP, °F	D86	76–96	76–96
10% point, °F	D86	98–118	105–125
50% point, °F	D86	179–214	195–225
90% point, °F	D86	316–346	316–346
EP, max, °F	D86	413	413
Sulfur, wt. %	D3120	0.035±0.015	0.020±0.015
Phosphorous, g/U.S gal, max	D3231	0.005	0.005
Lead, g/gal, max		0.01	0.01
RVP, psi	D4953	11.5±.3	11.5± 3
Hydrocarbon composition	D1319		
Olefins, vol. pct		12.5±5.0	10.0±5.0
Aromatics, vol. pct		26.4±4.0	32.0±4.0
Saturates		Remainder	Remainder

[1] Gasoline having these specifications may be used for vehicles which are designed for the use of high-octane premium fuel.

§ 86.214–94 Analytical gases.

The provisions of § 86.114–94 apply to this subpart.

§ 86.215–94 EPA urban dynamometer driving schedule.

The provisions of § 86.115–78 apply to this subpart.

§ 86.216–94 Calibrations, frequency and overview.

The provisions of § 86.116–94 apply to this subpart.

§ 86.217–94 [Reserved]

§ 86.218–94 Dynamometer calibration.

The provisions of § 86.118–78 apply to this subpart.

§ 86.219–94 CVS calibration.

The provisions of § 86.119–90 apply to this subpart.

§ 86.220–94 [Reserved]

§ 86.221–94 Hydrocarbon analyzer calibration.

The provisions of § 86.121–90 apply to this subpart.

§ 86.222–94 Carbon monoxide analyzer calibration.

The provisions of § 86.122–78 apply to this subpart.

§ 86.223–94 Oxides of nitrogen analyzer calibration.

The provisions of § 86.123–78 apply to this subpart if NO_x measurements are optionally made.

§ 86.224–94 Carbon dioxide analyzer calibration.

The provisions of § 86.124–78 apply to this subpart.

§ 86.225–94 [Reserved]

§ 86.226–94 Calibration of other equipment.

The provisions of § 86.126 apply to this subpart.

§ 86.227–94 Test procedures; overview.

The provisions of § 86.127–94 (a), (b), and (e) apply to this subpart.

§ 86.228–94 Transmissions.

The provisions of § 86.128–79 apply to this subpart.

§ 86.229–94 Road load force, test weight, and inertia weight class determination.

(a) Flywheels, electrical forces, or other means of simulating test weight as shown in the table in this paragraph shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used. Light-duty vehicles over 5750 lbs. loaded vehicle weight shall be tested at a 5,500 lb. equivalent test weight.

Loaded vehicle weight (pounds)	Equivalent test weight (pounds)	Inertia weight class (pounds)
Up–1,062	1,000	1,000
1,063–1,187	1,125	1,000
1,188–1,312	1,250	1,250
1,313–1,437	1,375	1,250
1,438–1,562	1,500	1,500
1,563–1,687	1,625	1,500
1,688–1,812	1,750	1,750
1,813–1,937	1,875	1,750
1,938–2,062	2,000	2,000
2,063–2,187	2,125	2,000
2,188–2,312	2,250	2,250
2,313–2,437	2,375	2,250
2,438–2,562	2,500	2,500
2,563–2,687	2,625	2,500
2,688–2,812	2,750	2,750
2,813–2,937	2,875	2,750
2,938–3,062	3,000	3,000
3,063–3,187	3,125	3,000
3,188–3,312	3,250	3,000
3,313–3,437	3,375	3,500
3,438–3,562	3,500	3,500
3,563–3,687	3,625	3,500
3,688–3,812	3,750	3,500
3,813–3,937	3,875	4,000
3,938–4,125	4,000	4,000
4,126–4,375	4,250	4,000
4,376–4,625	4,500	4,500
4,626–4,875	4,750	4,500
4,876–5,125	5,000	5,000
5,126–5,375	5,250	5,000
5,376–5,750	5,500	5,500
5,751–6,250	6,000	6,000
6,251–6,750	6,500	6,500
6,751–7,250	7,000	7,000
7,251–7,750	7,500	7,500
7,751–8,250	8,000	8,000
8,251–8,750	8,500	8,500
8,751–9,250	9,000	9,000
9,251–9,750	9,500	9,500
9,751–10,000	10,000	10,000

(b) A dynamometer which meets the specifications of § 86.208–94(a) shall be adjusted to simulate the operation of a vehicle on the road at 20 °F (−7 °C). Such adjustment may be based on a determination of the road load force profile at 20 °F (−7 °C). Alternatively, the adjustment may be based on a 10 percent decrease in the target coastdown time that is used for FTP testing.

§ 86.230–94 Test sequence: general requirements.

(a) *Sequence steps.* Figure C94–1 shows the steps encountered as the test vehicle undergoes the procedures subsequently described, to determine conformity with the standards set forth.

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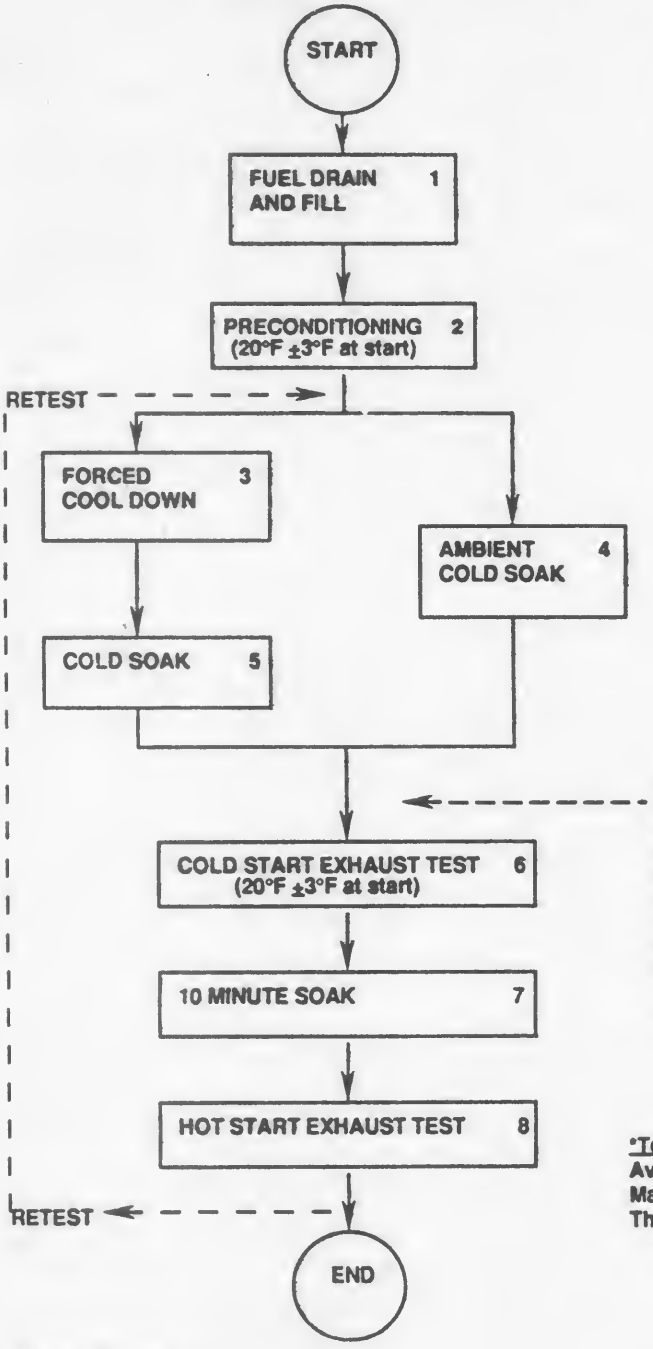
Figure C94-1

Cold CO Test Procedure



STEP	NOTE
1	Winter grade fuel (Optional use of FTP fuel by manufacturer)
2*	Full UDDS (Optional use of higher temp by manufacturer)
3	• No time specifications • Uniform vehicle cooling • Oil Temp. at 20°F ±3°F
4*	12-36 hours
5*	1 hour minimum
6*	Full UDDS
7	On dynamometer
8*	Partial UDDS (505 sec.)

NOTE: If vehicle leaves 20° soak area to transfer to 20° test area and passes through a warm area (>25°F) it must be restabilized in the test cell for six times the period it was exposed to the warmer temperature.

*Temperature Specifications

Average	20°F ±5°F
Maximum excursions	10°F min., 30°F max.
Three-minute excursions	15°F min., 25°F max.

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(b) *Driving schedule.* The Urban Dynamometer Driving Schedule (UDDS) test procedure (see § 86.115 and Appendix I to this part) is used for vehicle preconditioning and testing.

(c) *Ambient temperature level.* (1) Ambient temperature levels encountered by the test vehicle shall average 20 °F±5 °F (−7 °C±2.8 °C) and shall not be less than 10 °F (−14 °C) nor more than 30 °F (−1 °C) during vehicle preconditioning, except for preconditioning performed in accordance with § 86.232(a)(7), and during all emission testing.

(2) The ambient temperature reported shall be a simple average of the test cell temperatures measured at constant intervals no more than one minute apart. Before the driving cycle may begin, the test cell temperature shall be 20 °F±3 °F (−7 °C±1.7 °C) when measured in accordance with paragraph (e)(2) of this section. The temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes during the test.

(d) *Vehicle positioning.* The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

(e) *Engine compartment cooling.* (1) Fixed speed air cooling of the engine compartment with the compartment cover open shall be utilized during testing that is conducted by the Administrator and, optionally for certification testing, by the manufacturer. If a separate movable fan is used, it shall be squarely positioned within 12 inches (30.5 centimeters) of the front of vehicles with front engine compartments. In the case of vehicles with rear engine compartments (or if special designs make the normal front engine positioning impractical), the cooling fan shall be placed in a position to provide sufficient air to maintain vehicle cooling. The fan capacity shall normally not exceed 5,300 cfm (2.50 cubic meters per second). If, however, the manufacturer showed (as provided in § 86.135–94(b)) that additional cooling is necessary, the fan capacity may be increased or additional fans used if approved in advance by the Administrator. The cooling air temperature shall be measured at the inlet to the fan.

(2) In lieu of using a separate fan, an air handling system that is integral with the test cell may be used provided comparable air movement is obtained. The cooling air temperature shall be measured in the center of a vertical plane that is located approximately 2 feet in front of the vehicle.

(3) The manufacturer may use, for certification testing, alternative engine compartment cooling fans or systems, including those which provide a variable air flow, if the manufacturer has determined that comparable results are obtained.

(f) *Heater and defroster usage.* The heater and defroster may be used at any temperature and fan settings.

§ 86.231–94 Vehicle preparation.

The provisions of § 86.131–90 apply to this subpart.

§ 86.232–94 Vehicle preconditioning.

(a) The vehicle shall be moved to the test area and the following operations performed:

(1) The fuel tank(s) shall be filled to approximately the prescribed "tank fuel volume" with the test fuel specified § 86.213. If the existing fuel in the fuel tank(s) does not meet the specifications contained in § 86.213, the existing fuel must be drained prior to the fuel fill. The test fuel shall be at a temperature less than or equal to 60 °F. For the operations in this paragraph (a)(1), the evaporative emission control system shall neither be abnormally purged nor abnormally loaded.

(2) For operation on a 48-inch (1.22 metre) diameter single roll dynamometer, the drive wheel tires shall be inflated to the pressure recommended by the tire manufacturer. For operation on a twin-roll dynamometer, the drive wheel tires may be inflated to a gauge pressure of 40 psi (276 kPa). The drive wheel tire pressures shall be reported with the test results.

(3) The fuel in the vehicle shall be stabilized at 20 F°±10 °F (−7 °C±5.6 °C) prior to the start of the driving cycle except when vehicle peconditioning is performed in accordance with paragraph (a)(7) of this section.

(4) The vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one UDDS cycle.

(5) For those unusual circumstances where additional preconditioning is desired by the manufacturer, such preconditioning may be allowed with the advance approval of the Administrator.

(6) The Administrator may also choose to conduct additional preconditioning. The additional preconditioning shall consist of one or more driving cycles of the UDDS, as described in paragraph (a)(4) of this section.

(7) The manufacturer may, for certification testing, precondition vehicles at temperatures above 20 °F (−7 °C) and with temperature tolerances greater than those specified in § 86.230(a) if the manufacturer has determined that such preconditioning does not decrease CO emissions during the testing specified in § 86.237.

(b) Within five minutes of completion of preconditioning, the vehicle shall be shut off. During this five minute period, the vehicle shall not experience ambient temperatures less than 10 °F (−12 °C) nor more than 30 °F (−1 °C).

(c) One of the following two methods shall be utilized to stabilize the vehicle before the emissions test:

(1) *Storing at cold temperatures.* The vehicle shall be stored for not less than 12 hours nor for more than 36 hours prior to the cold start exhaust test. The ambient temperature (dry bulb) during this period shall be maintained at an average temperature of 20 °F±5 °F (−7 °C±2.8 °C) during each hour of this period and shall not be less than 10 °F (−12 °C) nor more than 30 °F (−1 °C). The ambient temperature reported shall be a simple average of the test cell temperature measured at constant intervals no more than one minute apart. In addition, the temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes.

(2) *Force-cooling or warming.* (i) The vehicle shall be stored for no more than 36 hours prior to cooling or warming for the cold start exhaust test. The vehicle shall not be stored at ambient temperatures which exceed 86 °F (30 °C) during this period.

(ii) Vehicle cooling may be accomplished by either force-cooling or force-warming the vehicle to the test temperature. If cooling is augmented by fans, the fans shall be placed in a vertical position for maximum drive train and engine cooling, not primarily oil pan cooling. Fans shall not be placed under the vehicle.

(iii) The ambient temperature need only be stringently controlled after the vehicle has been cooled to 20 °F±3 °F (−7 °C±1.7 °C), as determined by a representative bulk oil temperature. A representative bulk oil temperature is the temperature of the oil measured near the middle of the oil, not at the surface or at the bottom of the oil pan. If two or more diverse locations in the oil are monitored, they must all meet the temperature requirements.

(iv) The vehicle must be stored for at least one hour after it has been cooled to 20 °F±3 °F (−7 °C±1.7 °C) prior to the cold start exhaust test. The ambient temperature (dry bulb) during this period shall average 20 °F±5 °F (−7 °C±2.8 °C) and shall not be less than 10 °F (−12 °C) nor more than 30 °F (−1 °C). In addition, the temperature may not exceed 25 °F (−4 °C) or fall below 15 °F

(−9 °C) for more than three consecutive minutes.

(d) If the vehicle is stabilized at 20 °F (−7 °C) in a separate area and is moved through a warm area to the test cell, the vehicle must be restabilized in the test cell for at least six times the period the vehicle is exposed to warmer temperatures. The ambient temperature (dry bulb) during this period shall average 20 °F±5 °F (−7 °C±2.8 °C) and shall not be less than 10 °F (−12 °C) nor more than 30 °F (−1 °C). In addition, the temperature may not exceed 25 °F (−4 °C) or fall below 15 °F (−9 °C) for more than three consecutive minutes. The maximum time for moving a vehicle through a warm area shall be 10 minutes.

§ 86.233–94 [Reserved]

§ 86.234–94 [Reserved]

§ 86.235–94 Dynamometer procedure.

(a) *Overview.* The emission sampling is completed over two test sequences, a "cold" start test after a minimum 12-hour and a maximum 36-hour soak according to the provisions of § 86.232 and a "hot" start test following the "cold" start test by 10 minutes. Engine startup, operation over the UDDS, and engine shut-down make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with ambient air and a continuously proportional sample is collected for analysis during each phase. The composite samples collected in bags are analyzed for hydrocarbons, carbon monoxide, carbon dioxide, and, optionally, other pollutants. A parallel sample of the dilution air is similarly analyzed for carbon monoxide and, optionally, hydrocarbons, carbon dioxide, and oxides of nitrogen.

(b) As long as an emission sample is not taken, practice runs over the prescribed driving schedule may be performed at test point for the purpose of finding the minimum throttle action to maintain the proper speed-time relationship or to permit sampling system adjustment.

(c) Humidity should be set low enough to prevent condensation on the dynamometer rolls.

(d) The dynamometer shall be warmed as recommended by the dynamometer manufacturer and using procedures or control methods that assure stability of the residual frictional horsepower.

(e) The time between dynamometer warming and the start of the emission test shall be no longer than 10 minutes if the dynamometer bearings are not independently heated. If the dynamometer bearings are independently heated, the emission test shall begin no longer than 20 minutes after dynamometer warming.

(f) If the dynamometer horsepower must be adjusted manually, it shall be set within one hour prior to the exhaust emission test phase. The test vehicle shall not be used to make the adjustment. Dynamometers using automatic control of preselectable power settings may be set anytime prior to the beginning of the emission test.

(g) The driving distance, as measured by counting the number of dynamometer roll or shaft revolutions, shall be determined for the transient cold start, stabilized cold start, and transient hot start phases of the test.

(h) Four-wheel drive vehicles will be tested in a two-wheel drive mode of operation. Full-time four-wheel drive vehicles will have one set of drive wheels temporarily disengaged by the vehicle manufacturer. Four-wheel drive vehicles which can be manually shifted to a two-wheel drive mode will be tested in the normal on-highway two-wheel drive mode of operation.

§ 86.236–94 Engine starting and restarting.

The provisions of § 86.136 apply to this subpart.

§ 86.237–94 Dynamometer test run, gaseous emissions.

(a) The complete dynamometer test consists of a cold start drive of approximately 7.5 miles (12.1 kilometers) and a hot start drive of approximately 3.6 miles (5.8 kilometers).

(b) If the preconditioned vehicle is not already on the dynamometer, it shall be pushed into position.

(c) The vehicle is allowed to stand on the dynamometer during the ten minute time period between the cold and hot start test. The cold start test is divided into two periods. The first period, representing the cold start "transient" phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the "stabilized" phase, consists of the remainder of the driving schedule, including engine shutdown. The hot start test is identical to the first part or transient phase of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(d) The provisions of § 86.137(b) apply to this subpart.

§ 86.238–94 [Reserved]

§ 86.239–94 [Reserved]

§ 86.240–94 Exhaust sample analysis.

The provisions of § 86.140 apply to this subpart.

§ 86.241–94 [Reserved]

§ 86.242–94 Records required.

The provisions of § 86.142–90 apply to this subpart.

§ 86.243–94 [Reserved]

§ 86.244–94 Calculations; exhaust emissions.

The provisions of § 86.144–94 apply to this subpart, except that NO_x measurements are optional. Should NO_x measurements be calculated, note that the humidity correction factor is not valid at colder temperatures.

§ 86.245–94 [Reserved]

§ 86.246–94 Intermediate temperature testing.

(a) This section is applicable to tests which are conducted at an intermediate temperature as defined in § 86.094–2.

(b) For testing during ambient temperatures of less than 50 °F (10 °C), the test procedure is identical to the test procedure that is used for testing at 20 °F (−7 °C) contained in 40 CFR part 86, subpart C.

(c) For testing at temperatures of 50 °F (10 °C) or higher, the FTP shall be used.

18. Section 86.608–90 is amended by revising paragraph (a) introductory text, (a)(1), and by adding a new paragraph (a)(3) to read as follows:

§ 86.608–90 Test procedures.

(a) The prescribed test procedures are contained in subpart B and/or subpart C of this part 86. For purposes of Selective Enforcement Audit testing, the manufacturer shall not perform any of the test procedures in subpart B of this part relating to evaporative emission testing, except as specified in paragraph (a)(2) of this section.

(1) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those in subpart B and/or subpart C of this part for any motor vehicle which he determines is not susceptible to satisfactory testing using the procedures in subpart B and/or subpart C of this part. The Administrator may, based on advance application by a manufacturer, approve optional test procedures for use in Selective Enforcement Audit testing.

* * * * *

(3) The following exceptions to the test procedures in subpart C of this part are applicable to Selective Enforcement Audit testing:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.231(a), and may drain the test fuel from other than the lowest point of the fuel tank as specified in § 86.231(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.240, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.242 since the records required therein are provided under other provisions of subpart G of this part.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 kPa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 kPa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph § 86.608(d) and report this action in accordance with paragraph § 86.609(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except if approved in advance by the Administrator, to comply with paragraph (a)(3)(i) of this section.

* * * * *

19. Section 86.701–94 is revised to read as follows:

§ 86.701–94 General applicability.

The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines. The provisions of subpart B of this part apply to this subpart for compliance with emissions subject to FTP standards. For cold CO standards, the provisions of subpart C of this part apply to this subpart.

20. Section 86.708–94 is amended by revising paragraph (b) to read as follows:

§ 86.708–94 In-use emission standards for 1994 and later model year light-duty vehicles.

* * * * *

(b) The provisions of § 86.090–8(b) through (h) of subpart A of this part apply to this section. The provisions of § 86.096–8(i) through (k) of subpart A of this part apply to this section.

21. Section 86.709–94 is amended by revising paragraph (b) to read as follows:

§ 86.709–94 In use emission standards for 1994 and later model year light-duty trucks.

* * * * *

(b) The provision of § 86.090–8(b) through (k) of subpart A of this part apply to this section.

22. Section 86.709–99 is amended by revising paragraph (b) to read as follows:

§ 86.709–99 In-use emission standards for 1999 and later model year light-duty trucks.

* * * * *

(b) The provisions of § 86.097–9(b), (c), and (g) through (k) of subpart A of this part apply to this section.

23. Section 86.1005–90 is amended by removing the period at the end of paragraph (a)(1)(ii) and adding a semicolon in its place and by revising paragraphs (a)(1)(iii) and (a)(2)(vi)(c) to read as follows:

§ 86.1005–90 Maintenance of records; submittal of information.

(a) * * *

(1) * * *

(iii) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative and particulate emission testing), § 86.206, and § 86.1506–84 of this subpart; and

* * * * *

(2) * * *

(vi) * * *

(C) If testing gasoline-fueled or methanol-fueled Ottocycle light-duty trucks, the record requirements specified in § 86.142 (excluding all references to diesel vehicles), § 86.242, and § 86.1542; and

* * * * *

24. Section 86.1008–90 is amended by revising paragraph (a)(2) and adding a new paragraph (a)(5) to read as follows:

§ 86.1008–90 Test procedures.

(a) * * *

(2) For light-duty trucks, the prescribed test procedure is the Federal Test Procedure as described in subparts B, P, and/or C of this part. The manufacturer shall not perform the evaporative emission test procedures contained in subpart B of this part. The Administrator may, based on advance application by a manufacturer, approve optional test procedures for use in Selective Enforcement Audit testing.

* * * * *

(5) When testing light-duty trucks, the following exceptions to the test procedures in subpart C of this part are applicable:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank as specified in § 86.231(a) and may drain the test fuel from other than the lowest point of the fuel tank as specified in § 86.231(b) provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.240, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.242 since the records required therein are provided under other provisions of subpart K of this part.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing.

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 kPa) in the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure sources. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 kPa) in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph § 86.1008(d) and report this action in accordance with paragraph § 86.1009(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission

control system by component addition, deletion, or substitution, except if approved in advance by the Administrator to comply with paragraph (a)(5)(i) of this section.

* * * * *

25. Section 86.1009–84 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 86.1009–84 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in § 86.1008–94(a). Round these results, in accordance with the American Society for Testing and Materials (ASTM) E29–67, Reapproved 1973, Standard Recommended Practice for Indicating Which Places of Figures Are to be Considered Significant in Specified Limiting Values. 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 ASTM, 1916 Race Street, Philadelphia, PA, 19103. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington DC, 20460, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. Results should be rounded to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

* * * * *

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to subpart B, C, D, N, or P of this part are calculated by either adding or multiplying, as specified in subpart A of this part for the applicable engine family control system combination, the appropriate deterioration factor to the final test results for each vehicle or engine.

* * * * *

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Friday
July 17, 1992

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 921

National Estuarine Research Reserve System Program Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 910927-1227]

National Estuarine Research Reserve System Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The proposed rule would revise the existing interim-final rules for selecting, designating, operating, and funding national estuarine research reserves to bring them into accord with requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (title VI, subtitle C, Pub. L. 101–508) and to adopt some of the revisions suggested by comments received on the interim-final rule. Comments are invited.

DATES: Comments will be considered if submitted on or before August 31, 1992.

ADDRESSES: Send comments to: Mr. William J. Harrigan, Acting Chief; Sanctuaries and Reserves Division; Office of Ocean and Coastal Resource Management, NOS/NOAA; 1825 Connecticut Avenue NW.; suite 714; Washington, DC 20235, (202) 606–4122.

FOR FURTHER INFORMATION CONTACT: June Cradick at (202) 606–4016.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of proposed rulemaking is issued under the authority of section 315(a) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461 (the Act). The National Estuarine Reserve Research System has been operating under interim-final regulations published July 23, 1990 (55 FR 29940).

II. Background

On July 23, 1990 (55 FR 29940) NOAA published interim final regulations for continued implementation of the National Estuarine Reserve Research System Program pursuant to section 315 of the Act, 16 U.S.C. 1461. Written comments were accepted until September 21, 1990. On November 5, 1990 Public Law 101–508 was passed reauthorizing the Program. Several changes to the regulations were required as a result of the 1990 reauthorization. In addition, for the reasons stated below, some of the revisions suggested in the comments received on the interim final rules are here proposed. A summary of the significant proposed changes to the interim-final regulations is presented below.

When implemented, these regulations will establish the Program's mission and goals and revise procedures for selecting, designating and operating national estuarine research reserves.

III. Changing the Name of the Program

The name of the Program was changed from the National Estuarine Reserve Research System to the National Estuarine Research Reserve System by section 6214 of Public Law 101–508. The proposed revisions to the regulations would revise the Program name accordingly when it appears in the regulations.

IV. Revision of the Procedures for Selecting, Designating, and Operating National Estuarine Research Reserves

(A) Revision of Match Requirements

The Coastal Zone Act Reauthorization Amendments of 1990 (Amendments) effectively reduced from 50% to 30% state, and, where applicable, private party match requirements for the following financial assistance award types: operations, research, monitoring, facility construction and education/interpretation. The Amendments also provide for 100 percent Federal support for educational-interpretive activities that benefit the entire System. Match requirements for site selection and land acquisition remain at 50%. The proposed revisions would make the regulations conform.

(B) Definitions

The proposed revisions would add a definition for the term "state agency".

(C) Increase in Acquisition Support

The Amendments increase the maximum amount of Federal financial assistance that can be awarded for the acquisition of land and waters, or interests therein, for any one National Estuarine Research Reserve from $4,000,000 to $5,000,000.

(D) Change in Development Support

The proposed regulations would revise the regulations to allow costs associated with the development of research, monitoring and education programs to be included as supplemental development costs and to eliminate the ceiling of $1,500,000 on financial assistance which can be provided for development assistance directly associated with facility construction.

(E) Simplification of Operational Support

The proposed regulations would reduce state and Federal paperwork burdens by combining support for routine monitoring and education activities with the annual non-competitive operations and management award. Competitive awards for special monitoring, research and education projects would continue as a separate activity.

(F) Clarification of Site Selection

The proposed regulations would clarify the process to be followed by a coastal state which proposes to reactivate an inactive site previously approved by NOAA for development as an estuarine sanctuary or research reserve.

(G) Resource Manipulation

The regulations recognize the possibility that in reserve buffer areas long-term uses may have existed (*e.g.* hunting and fishing) prior to designation which should be allowed to continue.

(H) Performance Evaluation

The Amendments emphasize the importance of public participation in the performance evaluation process. They also establish interim sanctions, including partial or full withdrawal of financial assistance, and establish a process for instituting such sanctions. The proposed revisions would make the regulations conform.

V. Other Actions Associated With the Rulemaking

[A] Classification Under Executive Order 12291. NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

These rules amend existing procedures for identifying, designating, and managing national estuarine research reserves in accordance with the Coastal Zone Act Reauthorization Amendments of 1990. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

[B] Regulatory Flexibility Act Analysis. A Regulatory Flexibility Analysis is not required for this rulemaking. The regulations set forth procedures for identifying and designating national estuarine research reserves, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Public Law 96–354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses. Accordingly, the General Counsel of the Department of Commerce has certified to the Chief Counsel of the Small Business Administration that these revisions, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities.

[C] Paperwork Reduction Act of 1980. This rule contains collection of information requirements subject to Public Law 96–511, the Paperwork Reduction Act (PRA), which have already been approved by the Office of Management and Budget (approval number 0648–0121). Public reporting burden for the collections of information contained in this rule is estimated to average 2,012 hours per response for management plans and related documentation, 1.25 hours for performance reports, and 15 hours for annual reports and work plans. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to Richard Roberts, room 724, Department of Commerce, 6010 Executive Blvd., Rockville, Maryland 20852, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. ATTN: Desk Officer for NOAA.

[D] Executive Order 12612. These proposed rules do not contain policies which have sufficient Federalism implications to warrant preparation of a Federalism Assessment pursuant to Executive Order 12612. However, the provisions of the rules setting forth what a state must do or agree to do in order to qualify for the various types of Federal financial assistance available under the rules have been reviewed to ensure that the rules grant the states the maximum administrative discretion possible in the administration of the National Estuarine Research Reserve System policies embodied in the qualification requirements. In formulating those policies, the NOAA worked with affected states to develop their own policies with respect to the use of National Estuarine Research Reserves. To the maximum extent possible consistent with the NOAA's responsibility to ensure that the objectives of the National Estuarine Research Reserve System provisions of the Coastal Zone Management Act are achieved, the rules refrain from establishing uniform national standards. Extensive consultations with state officials and organizations have been held regarding the financial assistance qualifications imposed. Details regarding awards of financial assistance have been discussed above under the heading "Revision of the Procedures for Selecting, Designating and Operating National Estuarine Research Reserves" and are not repeated here.

[E] National Environmental Policy Act. NOAA has concluded that publication of these interim-final rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Environmental impact statements, Grants programs—Natural resources, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.420, National Estuarine Research Reserve Research System; Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: July 2, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set forth in the preamble, it is proposed that 15 CFR part 921 be revised as follows:

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

Subpart A—General

Sec.

Authority: Section 315, Public Law 92–583, as amended; 86 Stat. 1280 (16 U.S.C. 1461).

Subpart A—General

§ 921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Research Reserve Program is the establishment and management, through Federal-state cooperation, of a national system (National Estuarine Research Reserve System or System) of estuarine research reserves (National Estuarine Research Reserves or Reserves) representative of the various regions and estuarine types in the United States. Estuarine research reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program are to:

(1) Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

(c) National Estuarine Research Reserves shall be open to the public to the extent permitted under state and Federal law. Multiple uses are allowed to the degree compatible with each reserve's overall purpose as provided in the management plan (see § 921.13) and consistent with paragraphs (a) and (b), of this section. Use levels are set by the state where the reserve is located and analyzed in the management plan. The research reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access and use may be restricted to certain areas or components within a research reserve.

(d) Habitat manipulation for research purposes is allowed consistent with the following limitations. Manipulative research activities must be specified in the management plan, be consistent with the mission and goals of the program (see paragraphs (a) and (b) of this section) and the goals and objectives set forth in the reserve's management plan, and be limited in nature and extent to the minimum manipulative activity necessary to accomplish the stated research objective. Manipulative research activities with a significant or long-term impact on reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Manipulative research activities which can reasonably be expected to have a significant adverse impact on the estuarine resources and habitat of a reserve, such that the activities themselves or their resulting short and long-term consequences compromise the representative character and integrity of a reserve, are prohibited. Habitat manipulation for resource management purposes is prohibited except as specifically approved by NOAA as:

(1) A restoration activity consistent with paragraph (e) of this section; or

(2) as an activity necessary for the protection of public health or the preservation of other sensitive resources which have been listed or are eligible for protection under relevant Federal or state authority (*e.g.*, threatened/endangered species or significant historical or cultural resources) or if the manipulative activity is a long-term (*i.e.*, has occurred prior to designation) pre-existing use (*e.g.*, use of a buffer area for hunting and/or fishing club activities). If habitat manipulation is determined to be necessary for the protection of public health, the preservation of sensitive resources, or if the manipulation is a long-term preexisting use in a buffer area, then these activities shall be specified in the Reserve Management Plan in accordance with § 921.13(a)(10) and shall be limited to the reasonable alternative which has the least adverse and shortest term impact on the representative and ecological integrity of the reserve.

(e) Under the Act an area may be designated as an estuarine reserve only if the area is a representative estuarine ecosystem that is suitable for long-term research. Many estuarine areas have undergone some ecological change as a result of human activities (*e.g.*, hydrological changes, intentional/unintentional species composition changes—introduced and exotic species). In those areas proposed or designated as national estuarine research reserves, such changes may have diminished the representative character and integrity of the site. Although restoration of degraded areas is not a primary purpose of the System, such activities may be permitted to improve the representative character and integrity of a reserve. Restoration activities must be carefully planned and approved by NOAA through the Reserve Management Plan. Historical research may be necessary to determine the "natural" representative state of an estuarine area (*i.e.*, an estuarine ecosystem minimally affected by human activity or influence). Frequently, restoration of a degraded estuarine area will provide an excellent opportunity for management oriented research.

(f) NOAA may provide financial assistance to coastal states, not to exceed, per Reserve, 50 percent of all actual costs or $5 million whichever amount is less, to assist in the acquisition of land and waters, or interests therein. NOAA may provide financial assistance to coastal states not to exceed 70 percent of all actual costs for the management and operation of, the development and construction of facilities, and the conduct of educational or interpretive activities concerning reserves (see Subpart I). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 70 percent of all actual costs, to support research and monitoring within a reserve. Predesignation, acquisition and development, operation and management, special research and monitoring, and special education and interpretation awards are available under the National Estuarine Research Reserve Program. Predesignation awards are for site selection/feasibility, draft management plan preparation and conduct of basic characterization studies. Acquisition and development awards are intended primarily for acquisition of interests in land, facility construction and to develop and/or upgrade research, monitoring and education programs. Operation and management awards provide funds to assist in implementing, operating and managing the administrative, and basic research, monitoring and education programs, outlined in the research reserve management plan. Special research and monitoring awards provide funds to conduct estuarine research and monitoring projects within the System. Special educational and interpretive awards provide funds to conduct estuarine educational and interpretive projects within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations may be included within National Estuarine Research Reserves only if the managing entity commits to long-term management consistent with paragraphs (d) and (e) of this section in the reserve management plan. Federal lands already in protected status may not comprise the key land and water areas of a research reserve (see § 921.11(c)(3)).

(h) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the National Estuarine Research Reserve System. As part of this role, NOAA will ensure that information and ideas from one reserve are made available to others in the system. The network will enable reserves to exchange information and research data with each other, with

universities engaged in estuarine research, and with Federal, state, and local agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

§ 921.2 Definitions.

(a) *Act* means the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(b) *Under Secretary* means the Under Secretary of Commerce for Oceans and Atmosphere, or designee.

(c) *Coastal state* means a state of the United States, in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of these regulations the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) *State agency* means an instrumentality of a coastal state to whom the coastal state has delegated the authority and responsibility for the creation and/or management/operation of a national estuarine research reserve. Factors indicative of this authority may include the power to receive and expend funds on behalf of the reserve, acquire and sell or convey real and personal property interests, adopt rules for the protection of the reserve, enforce rules applicable to the reserve, or develop and implement research and education programs for the reserve. For the purposes of these regulations, the terms "coastal state" and "State agency" shall be synonymous.

(e) *Estuary* means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas with measurable freshwater influence and having unimpaired connections with the open sea, and estuary-type areas of the Great Lakes and their connecting waters. (See 16 U.S.C. 1453(7)).

(f) *National Estuarine Research Reserve* means an area that is a representative estuarine ecosystem suitable for long-term research, which may include all of the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)) and meets the requirements of 16 U.S.C. 1461(b). This includes those areas designated as national estuarine sanctuaries or reserves under section 315 of the Act prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 and each area subsequently designated as a national estuarine research reserve.

§ 921.3 National Estuarine Research Reserve System Biogeographic Classification Scheme and Estuarine Typologies.

(a) National Estuarine Research Reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Research Reserve System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix I of this part, contains 29 regions. Figure 1 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in appendix II of this part.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act, and to the Marine Protection, Research and Sanctuaries Act.

(a) The National Estuarine Research Reserve System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal management programs under section 306 of the Act, is eligible for an award under the National Estuarine Research Reserve Program (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal management program, the designation of a national estuarine research reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program as provided by section 1456(c)(1) of the Act, and implementing regulations at 15 CFR part 930, subpart C. In accordance with section 1456(c)(1) of the Act and the applicable regulations NOAA will be responsible for certifying that designation of the reserve is consistent with the state's approved coastal management program. The state must concur with, or object to, the certification. It is recommended that the lead state agency for reserve designation consult, at the earliest practicable time, with the appropriate state officials concerning the consistency of a proposed national estuarine research reserve.

(c) The National Estuarine Research Reserve Program will be administered in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1445), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect or restore such areas for their conservation, recreational, ecological, historical, research, educational or esthetic values. National marine sanctuaries and estuarine research reserves may not overlap, but may be adjacent.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.

(a) A coastal state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan (DMP) and environmental impact statement (EIS)), and the conduct of limited basic characterization studies. The total Federal share of this assistance may not exceed $100,000. Federal financial assistance for preacquisition activities under §§ 921.11 and 921.12 is subject to the total $5 million for which each reserve is eligible for land acquisition. In the case of a biogeographic region (see appendix I of this part) shared by two or more coastal states, each state is eligible for Federal financial assistance to establish a separate national estuarine research reserve within their respective portion of the shared biogeographic region. Financial assistance application procedures are specified in Subpart I.

(b) In developing a research reserve program, a state may choose to develop a multiple-site research reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site research reserve allows the state to develop complementary research and educational programs within the individual components of its multi-site research reserve. Multiple-site research

reserves are treated as one reserve in terms of financial assistance and development of an overall management framework and plan. Each individual site of a proposed multiple-site research reserve shall be evaluated both separately under § 921.11(c) and collectively as part of the site selection process. A coastal state may propose to establish a multiple-site research reserve at the time of the initial site selection, or at any point in the development or operation of the estuarine research reserve. If the state decides to develop a multiple-site national estuarine research reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33(b). However, a state may not propose to add one or more sites to an already designated research reserve if the operation and management of such research reserve has been found deficient and uncorrected or the research conducted is not consistent with the Estuarine Research Guidelines referenced in § 921.51. In addition, Federal funds for the acquisition of a multiple-site research reserve remain limited to $5,000,000 (see § 921.20). The funding for operation of a multiple-site research reserve is limited to the maximum allowed for any one reserve per year (see § 921.32(c)) and preacquisition funds are limited to $100,000 per reserve.

§ 921.11 Site selection and feasibility.

(a) A coastal state may use Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in Subpart I of this part, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Research Reserve System. NOAA will give priority consideration to proposals to establish reserves in biogeographic regions or subregions or incorporating types that are not represented in the system. (See the biogeographic classification scheme and typology set forth in § 921.3 and appendices I and II of this part);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be an estuarine ecosystem minimally affected by human activity or influence (see § 921.1(e)).

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Research reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the reserve. Generally, reserve boundaries will encompass two areas: Key land and water areas (or "core area") and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term "key land and water areas" refers to that core area within the reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the reserve for research on natural processes. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are "key" to a particular reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the reserve. The term "buffer zone" refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National Estuarine Research Reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. However, NOAA will not approve a site for potential national estuarine research reserve status that is dependent primarily upon the inclusion of currently protected Federal lands in order to meet the requirements for research reserve status (such as key land and water areas). Such lands generally will be included within a research reserve to serve as a buffer or for other ancillary purposes; and may be included, subject to NOAA approval, as a limited portion of the core area;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas as well as approved coastal and estuarine management plans; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowners, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential national estuarine research reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the vicinity of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal newspaper at least 15 days prior to the date of the meeting and by NOAA in the Federal Register.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site reserve) must contain a description of the proposed site(s) in relationship to each of the site selection principles (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site(s) based on the biogeographical scheme/typology discussed in § 921.3 and set forth in appendices I and II of this part;

(2) A description of the proposed site(s) and its (their) major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief statement of the reasons why a site was not preferred; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the site is located.

(f) A state proposing to reactivate an inactive site, previously approved by NOAA for development as an estuarine sanctuary or reserve, may apply for those funds remaining, if any, provided for site selection and feasibility (§ 921.11(a)) to determine the feasibility of reactivation. This feasibility study must comply with the requirements set forth in § 921.11(c)–(e).

§ 921.12 Post site selection.

(a) At the time of the coastal state's request for NOAA approval of a proposed site, the state may submit a request for funds to develop the draft management plan and for preparation of the EIS. At this time, the state may also submit a request for the remainder of the predesignation funds to perform a limited basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA necessary for providing EIS information to NOAA. The state's request for these post site selection funds must be accompanied by the information specified in subpart I and, for draft management plan development and EIS information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in research reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the reserve.

(b) The state is eligible to use the funds referenced in § 921.12(a) after the proposed site is approved by NOAA under the terms of § 921.11.

§ 921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and application for funds submitted pursuant to § 921.12, the state may begin draft management plan development and the collection of information necessary for the preparation by NOAA of an EIS. The state shall develop a draft management plan, including an MOU. The plan shall set out in detail:

(1) Research reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative plan including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the research reserve;

(6) A construction plan, including a proposed construction schedule, general descriptions of proposed developments and general cost estimates. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. A categorical exclusion, environmental assessment, or EIS may be required prior to construction;

(7) An acquisition plan identifying the ecologically key land and water areas of the research reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate long-term state control over these areas sufficient to provide protection for reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed research reserve boundaries, including land already in the public domain; the method(s) of acquisition which the state proposes to use—acquisition (including less-than-fee simple options) to establish adequate long-term state control; an estimate of the fair market value of any property interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(i) Determine, with appropriate justification, the minimum level of control(s) required [e.g., management agreement, regulation, less-than-fee simple property interest (e.g., conservation easement), fee simple property acquisition, or a combination of these approaches] This does not preclude the future necessity of increasing the level of state control;

(ii) Identify the level of existing state control(s);

(iii) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i) of this section;

(iv) Examine all reasonable alternatives for attaining the level of control identified in paragraph (a)(7)(iii) of this section, and perform a cost analysis of each; and

(v) Rank, in order of cost, the methods (including acquisition) identified in paragraph (a)(7)(iv) of this section.

An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.*, acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.*, monitoring, enforcement, adjudication, management and coordination). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan;

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any

restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions;

(10) If applicable, a resource manipulation plan, describing those portions of the reserve buffer in which long-term preexisting (prior to designation) manipulation (*e.g.*, use of a buffer area for hunting and/or fishing club activities), for reasons not related to research or restoration is occurring. The plan shall explain in detail the nature of such activities, shall justify why such manipulation should be permitted to continue within the reserve buffer; and shall describe possible effects of this manipulation on key land and water areas and their resources;

(11) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the national estuarine research reserve, and expressing a long-term commitment by the state to maintain and manage the research reserve in accordance with section 315 of the Act, 16 U.S.C. 1461, and applicable regulations. In conjunction with the MOU, and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the national estuarine research reserve. If other MOUs are necessary (such as with a Federal agency, another state agency or private organization), drafts of such MOUs must be included in the plan. All necessary MOU's shall be signed prior to research reserve designation; and

(12) If the state has a federally approved coastal management program, a certification that the national estuarine research reserve is consistent to the maximum extent practicable with that program. See §§ 921.4(b) and 921.30(b).

(b) Regarding the preparation of an EIS under the National Environmental Policy Act on a national estuarine research reserve proposal, the state and NOAA shall collect all necessary information concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, the state will draft and provide NOAA with a preliminary EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state and NOAA shall hold a scoping meeting (pursuant to NEPA) in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the meeting. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a **Federal Register** notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the draft EIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media by the state and in the **Federal Register** by NOAA. After a 45-day comment period, a final EIS will be prepared by the state and NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§ 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a coastal state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After research reserve designation, a state is eligible for a supplemental acquisition and development award(s) in accordance with § 921.31. In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, for program development, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine research reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient prior to designation in:

(1) Acquiring a fee simple or less-than-fee simple real property interest in land and water areas to be included in the research reserve boundaries (see § 921.13(a)(7); § 921.30(d));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Up to the point of research reserve designation, initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, preparing the final management plan, hiring a reserve manager and other staff as necessary and for other management-related activities. Application procedures are specified in subpart I of this part.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such activities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a)–(c) of this section,

construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the research reserve receives formal designation (see § 921.30). This requirement has been adopted to ensure that substantial progress in establishing adequate state control over key land and water areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the research reserve, the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the award granted pursuant to Section 315 of the Act, 16 U.S.C. 1461 or other NOAA approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]; and

(2) In the event that the property is no longer included as part of the research reserve, or if the designation of the research reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property; and

(iii) Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by Department of Commerce Regulations at 15 CFR part 24, and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs at 15 CFR part 11.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-than-fee-simple interests acquired in whole or part with Federal funds.

(g) Federal funds or non-Federal matching share funds shall not be spent to acquire a real property interest in which the state will own the land concurrently with another entity unless the property interest has been identified as a part of an acquisition strategy pursuant to § 921.13(7) which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the **Federal Register**. The state shall be responsible for having a similar notice published in the local newspaper(s).

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.

(a) The Under Secretary may designate an area proposed for designation by the Governor of the state in which it is located, as a National Estuarine Research Reserve if the Under Secretary finds:

(1) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(2) Key land and water areas of the proposed research reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(3) Designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(4) A final management plan has been approved by NOAA;

(5) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the area as a National Estuarine Research Reserve;

(6) All MOU's necessary for reserve management (i.e., with relevant Federal, state, and local agencies and/or private organizations) have been signed; and

(7) The coastal state in which the area is located has complied with the requirements of subpart B of this part.

(b) NOAA will determine whether the designation of a national estuarine research reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to section 307(c)(1) of the Act, 16 U.S.C. 1456, and 15 CFR part 930, subpart C. See § 921.4(b). The results of this consistency determination will be published in the **Federal Register** when the notice of designation is published. See § 921.30(c).

(c) NOAA will publish the notice of designation of a National Estuarine Research Reserve in the **Federal Register**. The state shall be responsible for having a similar notice published in the local media.

(d) The term "state control" in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Acquisition of less-than-fee simple interests (*e.g.*, conservation easements) and utilization of existing state regulatory measures are encouraged where the state can demonstrate that these interests and measures assure adequate long-term state control consistent with the purposes of the research reserve (see also § 921.13(a)(7); § 921.21(g)). Should the state later elect to purchase an interest in such lands using NOAA funds, adequate justification as to the need for such acquisition must be provided to NOAA.

§ 921.31 Supplemental acquisition and development awards.

After national estuarine research reserve designation, and as specified in the approved management plan, a coastal state may request a supplemental acquisition and/or development award(s) for acquiring additional property interests identified in the management plan as necessary to

strengthen protection of key land and water areas and to enhance long-term protection of the area for research and education, for facility and exhibit construction, for restorative activities identified in the approved management plan, for administrative purposes related to acquisition and/or facility construction and to develop and/or upgrade research, monitoring and education/interpretive programs. Federal financial assistance provided to a national estuarine research reserve for supplemental development costs directly associated with facility construction (*i.e.*, major construction activities) may not exceed 70 percent of the total project cost. NOAA must make a specific determination that the construction activity will not be detrimental to the environment. Supplemental acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 per centum of the cost of the lands, waters, and interests therein or $5,000,000, whichever amount is less. In the case of a biogeographic region (see appendix I of this part) shared by two or more states, each state is eligible independently for Federal financial assistance to establish a separate national estuarine research reserve within their respective portion of the shared biogeographic region. Application procedures are specified in subpart I of this part. Land acquisition must follow the procedures specified in § 921.13(a)(7), § 921.21 (e) and (f) and § 921.81.

§ 921.32 Operation and Management: Implementation of the Management Plan.

(a) After the reserve is formally designated, a coastal state is eligible to receive Federal funds to assist the state in the operation and management of the reserve including the management of research, monitoring, education, and interpretive programs. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the reserve.

(b) State operation and management of the reserves shall be consistent with the mission, and shall further the goals of the National Estuarine Research Reserve Program (see § 921.1).

(c) Federal funds are available for the operation and management of the reserve. Federal funds provided pursuant to this section may not exceed 70% of the total cost of operating and managing the reserve for any one year. In the case of a biogeographic region (see appendix I of this part) shared by two or more states, each state is eligible for Federal financial assistance to establish a separate reserve within their respective portion of the shared biogeographic region (see § 921.10).

(d) Operation and management funds are subject to the following limitations:

(1) Eligible coastal state agencies may apply for up to the maximum share available per reserve for that fiscal year. Share amounts will be announced annually by letter from the Sanctuary and Reserves Division to all participating states. This letter will be provided as soon as practicable following approval of the Federal budget for that fiscal year.

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities.

§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

(a) Changes in the boundary of reserve and major changes to the final management plan, including state laws or regulations promulgated specifically for the reserve, may be made only after written approval by NOAA. NOAA may require public notice, including notice in the **Federal Register** and an opportunity for public comment before approving a boundary or management plan change. Changes in the boundary of a reserve involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, a categorical exclusion, an environmental assessment and possibly an environmental impact statement may be required. NOAA will place a notice in the **Federal Register** of any proposed changes in research reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of § 921.4(b) and § 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site national estuarine research reserve after the initial acquisition and development award for a single site has been made. NOAA will publish notice of the proposed new site including an invitation for comments from the public in the **Federal Register.** The state shall be responsible for publishing an equivalent notice in the local newspaper(s). An EIS, if required, shall be prepared in accordance with section § 921.13 and shall include an administrative framework for the multiple-site research reserve and a description of the complementary research and educational programs within the research reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site(s), that an environmental assessment is sufficient to establish a multiple-site research reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site research reserve and the additional component's relationship to the original site(s).

(c) The state shall revise the management plan for a reserve at least every five years, or more often if necessary. Management plan revisions are subject to paragraph (a) of this section.

(d) NOAA will approve boundary changes, amendments to management plans, or the addition of multiple-site components, by notice in the **Federal Register.** If necessary NOAA will revise the designation document (findings) for the site.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.

(a) The Assistant Administrator shall conduct, in accordance with sections 312 and 315 of the Act and procedures set forth in 15 CFR part 928, ongoing oversight and evaluations of reserves. Interim sanctions may be imposed in accordance with regulations promulgated under 15 CFR part 928.

(b) The Assistant Administrator may consider the following indicators of non-adherence in determining whether to invoke interim sanctions:

(1) Inadequate implementation of required staff roles in administration, research, education/interpretation, and surveillance and enforcement. Indicators of inadequate implementation could include: No reserve Manager, or no staff or insufficient staff to carry out the required functions.

(2) Inadequate implementation of the required research plan, including the monitoring design. Indicators of inadequate implementation could include: Not carrying out research or monitoring that is required by the plan, or carrying out research or monitoring that is inconsistent with the plan.

(3) Inadequate implementation of the required education/interpretation plan. Indicators of inadequate implementation could include: Not carrying out education or interpretation that is required by the plan, or carrying out education/interpretation that is inconsistent with the plan.

(4) Inadequate implementation of public access to the reserve. Indicators of inadequate implementation of public access could include: Not providing necessary access, giving full consideration to the need to keep some areas off limits to the public in order to protect fragile resources.

(5) Inadequate implementation of facility development plan. Indicators of inadequate implementation could include: Not taking action to propose and budget for necessary facilities, or not undertaking necessary construction in a timely manner when funds are available.

(6) Inadequate implementation of acquisition plan. Indicators of inadequate implementation could include: Not pursuing an aggressive acquisition program with all available funds for that purpose, not requesting promptly additional funds when necessary, and evidence that adequate long-term state control has not been established over some core or buffer areas, thus jeopardizing the ability to protect the reserve site and resources from offsite impacts.

(7) Inadequate implementation of reserve protection plan. Indicators of inadequate implementation could include: Evidence of non-compliance with reserve restrictions, insufficient surveillance and enforcement to assure that restrictions on use of the reserve are adhered to, or evidence that reserve resources are being damaged or destroyed as a result of the above.

(8) Failure to carry out the terms of the signed Memorandum of Understanding (MOU) between the state and NOAA, which establishes a long-term state commitment to maintain and manage the reserve in accordance with section 315 of the Act. Indicators of failure could include: State action to allow incompatible uses of state-controlled lands or waters in the reserve, failure of the state to bear its fair share of costs associated with long-term operation and management of the reserve, or failure to initiate timely updates of the MOU when necessary.

§ 921.41 Withdrawal of designation.

The Assistant Administrator may withdraw designation of an estuarine area as a National Estuarine Research Reserve pursuant to and in accordance with the procedures of section 312 and 315 of the Act and regulations promulgated thereunder.

Subpart F—Special Research Projects

§ 921.50 General.

(a) To stimulate high quality research within designated national estuarine research reserves, NOAA may provide financial support for research projects which are consistent with the Estuarine Research Guidelines referenced in § 921.51. Research awards may be awarded under this subpart to only those designated research reserves with approved final management plans. Although research may be conducted within the immediate watershed of the research reserve, the majority of research activities of any single research project funded under this subpart must be conducted within reserve boundaries. Funds provided under this subpart are primarily used to support management-related research projects that will enhance scientific understanding of the research reserve ecosystem, provide information needed by reserve managers and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Special research projects may be oriented to specific research reserves; however, research projects that would benefit more than one research reserve in the National Estuarine Reserve Research System are encouraged.

(b) Funds provided under this subpart are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the **Federal Register**. Special research project funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

§ 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Research Reserve System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) A summary of the Estuarine Research Guidelines is published in the **Federal Register** as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines are reviewed annually by NOAA. This review will include an opportunity for comment by the estuarine research community.

§ 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Research Reserve System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that make use of the National Estuarine Research Reserve System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Research Reserve System when such agencies conduct estuarine research.

Subpart G—Special Monitoring Projects

§ 921.60 General.

(a) To provide a systematic basis for developing a high quality estuarine resource and ecosystem information base for National Estuarine Research Reserves and, as a result, for the System, NOAA may provide financial support for basic monitoring programs as part of operations and management under § 921.32. Monitoring funds are used to support three major phases of a monitoring program; studies necessary for comprehensive site description/characterization, development of a site profile, and implementation of a monitoring program.

(b) Additional monitoring funds may be available on a competitive basis to the state agency responsible for reserve management or a qualified public or private person or entity designated by the reserve for special monitoring projects. However, if the applicant is other than the managing entity of a research reserve (coastal state), that applicant must submit as a part of the application a letter from the reserve manager indicating formal support of the application by the managing entity of the reserve. Funds provided under this subpart for special monitoring projects are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Monitoring projects funded under this subpart must focus on the resources within the boundaries of the research reserve and must be consistent with the applicable sections of the Estuarine Research Guidelines referenced in § 921.51. Portions of the project may occur within the immediate watershed of the reserve beyond the site

boundaries. However, the monitoring proposal must demonstrate why this is necessary for the success of the project.

Subpart H—Special Interpretation and Education Projects

§ 921.70 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund special interpretive and educational projects in addition to those activities provided for in operations and management under § 921.32. Special interpretive and educational awards may be awarded under this subpart to only those designated research reserves with approved final management plans.

(b) Funds provided under this subpart may be available on a competitive basis to any state agency. However, if the applicant is other than the managing entity of a research reserve, that applicant must submit as a part of the application a letter from the reserve manager indicating formal support of the application by the managing entity of the reserve. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Applicants for education/interpretive projects that NOAA determines benefit the entire national estuarine research reserve system may receive Federal assistance of up to 100% of project costs.

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisition and development, operation and management, and special education and interpretation projects under subpart H. Any coastal state or public or private person may apply for Federal financial assistance awards for special estuarine research or monitoring projects under subpart G. The announcement of opportunities to conduct research in the reserve system appears on an annual basis in the Federal Register. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Universal Building South, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. The Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in subpart B of this part (predesignation), subpart C of this part, and § 921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report, a detailed construction plan, a site plan, a budget and categorical exclusion check list or environmental assessment. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

§ 921.81 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistance agreement, these regulations, and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) General guidelines for the non-Federal share are contained in Department of Commerce Regulations at 15 CFR part 24 and OMB Circular A–110. Copies of Circular A–110 can be obtained from the Sanctuaries and Reserves Division; 1825 Connecticut Avenue, NW., suite 714; Washington, DC 20235. The following may be used in satisfying the matching requirement:

(1) Site Selection and Post Site Selection Awards. Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) Acquisition and Development Awards. Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the research reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal Government as that necessary for the protection and management of the national estuarine research reserve. Appraisals must be performed according to Federal appraisal standards as detailed in Department of Commerce regulations at 15 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs in 15 CFR part 11. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state, pursuant to 15 CFR part 11, may also be used as match. Land, including submerged lands already in the state's possession, may be used as match to establish a national estuarine research reserve. The value of match for these state lands will be calculated by determining the value of the benefits forgone by the state, in the use of the land, as a result of new restrictions that may be imposed by reserve designation. The appraisal of the benefits forgone must be made by an independent appraiser in accordance with Federal appraisal standards pursuant to 15 CFR part 24 and 15 CFR part 11. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount

required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the national estuarine research reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) Operation and Management Awards. Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to operations and management), except land, are allowable.

(4) Research, Monitoring, Education and Interpretive Awards. Cash and in-kind contributions (directly benefiting and specifically identifiable to the scope of work), except land, are allowable.

§ 921.82 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

Appendix I to Part 921—Biogeographic Classification Scheme

Acadian

1. Northern Gulf of Maine (Eastport to the Sheepscot River).
2. Southern Gulf of Maine (Sheepscot River to Cape Cod).

Virginian

3. Southern New England (Cape Cod to Sandy Hook).
4. Middle Atlantic (Sandy Hook to Cape Hatteras).
5. Chesapeake Bay.

Carolinian

6. North Carolinas (Cape Hatteras to Santee River).
7. South Atlantic (Santee River to St. John's River).
8. East Florida (St. John's River to Cape Canaveral).

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south).
10. West Florida (Ft. Jefferson to Cedar Key).

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay).
12. Mississippi Delta (Mobile Bay to Galveston).
13. Western Gulf (Galveston to Mexican border).

Californian

14. Southern California (Mexican border to Point Conception).
15. Central California (Point Conception to Cape Mendocino).
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River).
18. Washington Coast (Columbia River to Vancouver Island).
19. Puget Sound.

Great Lakes

20. Lake Superior (including St. Mary's River).
21. Lakes Michigan and Huron (including Straits of Mackinac, St. Clair River, and Lake St. Clair).
22. Lake Erie (including Detroit River and Niagara Falls).
23. Lake Ontario (including St. Lawrence River).

Fjord

24. Southern Alaska (Prince of Wales Island to Cook Inlet).
25. Aleutian Islands (Cook Inlet to Bristol Bay).

Sub-Arctic

26. Northern Alaska (Bristol Bay to Damarcation Point).

Insular

27 Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

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RINE RESERVE RESEARCH SYSTEM
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Appendix II to Part 921—Typology of National Estuarine Research Reserves

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine reserves. Priority will be given to important ecosystem types as yet unrepresented in the reserve system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

Class I—Ecosystem Types

Group I—Sharelands

A. Maritime Forest-Woodland

This type of ecosystem consists of single-stemmed species that have developed under the influence of salt spray. It can be found on coastal uplands or recent features such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern Coniferous Forest Biome: This is an area of predominantly evergreens such as the sitka spruce (*Picea*), grand fir (*Abies*), and white cedar (*Thuja*), with poor development of the shrub and herb leyera, but high annual productivity and pronounced seasonal periodicity.

2. Moist Temperate (Mesothermal) Coniferous Forest Biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate Deciduous Forest Biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the pine edible forest of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved Evergreen Subtropical Forest Biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarind, strangler fig, gumbo limbo, and palms.

B. Coast Shrublands

This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems a few centimeters to several meters above the ground developing under the influence of salt spray and occasionai sand ourial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern Areas: Characterized by *Hudsonia*, various erinaceous species, and thickets of *Myricu*, *Prunus*, and *Roso*.

2. Southeast Areas: Floral dominants include *Myrica*, *Baccharis*, and *Ilex*.

3. Western Areas: *Adenostomo*, *Arcotyphylas*, and *Eucalyptus* are the dominant floral species.

C. Coastal Grasslands

This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (2 to 4 feet tall), such as *Ammophila*, *Agropyron*, and *Calamovilfa*, tall grasses (5 to 8 feet tall), such as *Spartino*, and trees such as willow (*Salix* sp.), cherry (*Prunus* sp.), and cottonwood (*Pupulus deltoides*). This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: *Elymus;*
2. Northeast/West: *Ammaphila;*
3. Southeast/Gulf: *Uniola;* and
4. Mid-Atlantic/Gulf: *Spartino potens.*

D. Coastal Tundra

This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as *Empetrum nigrum* and *Betula nana*, the lichens *Cetraria* and *Clodonia*, and herbaceous plants such as *Potentilla tridentata* and *Rubus chamaemorus*. Common species on the coastal beach ridges of the high arctic desert include *Dryos intergrifolia* and *Saxifrage oppositifolio*.

This area can be divided into two main subdivisions:

1. Low Tundra: Characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. High Tundra: A bare area except for a scanty growth of lichens and grasses, with underlaying ice wedges forming raised polygonal areas.

E. Coastal Cliffs

This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transitian Areas

A. Coastal Marshes

These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) Tidal, which is periodically flooded by either salt or brackish water; (b) nontidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serves important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal Swamps

These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. Coastal Mangroves

This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by variety of salt-tolerant trees, such as the red mangrove (*Rhizaphara mangle*), black mangrove (*Avicennia nitida*), and the white mangrove (*Laguncularia rocemosa*). It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. Intertidal Beaches

This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (*Emerita*), amphipods (*Gammeridae*), ghost crabs (*Ocypode*), and bivalve mollusks such as the coquina (*Donox*) and surf clams (*Spisula and Mactra*).

E. Intertidal Mud and Sand Flats

These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflaggellates, filamentous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell *Donox*, the scallop *Pecten*, tellin shells *Tellino*, the heart urchin *Echinocardium*, the lug worm *Arenicola*, sand dollar *Dendraster*, and the sea pansy *Renilla*. In mud, faunal dominants adapted to low oxygen levels include the terebellid *Amphitrite*, the boring clam *Playdon*, the deep sea scallop *Placapecten*, the quahog *Mercenario*, the echiurid worm *Urechis*, the mud snail *Nassarius*, and the sea cucumber *Thyone*.

F. Intertidal Algal Beds

These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern Latitude Rocky Shores: It is in this region that the community structure is best developed. The dominant algal species include *Chondrus* at the low tide level, *Fucus* and *Ascophyllum* at the mid-tidal level, and *Laminaria* and other kelplike algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern Latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentour green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and Subtropical Latitudes: The intertidal in this region is very reduced and contains numerous clacareous algae such as *Porolithon* and *Lithothamnion*, as well and green algae with calcareous particles such as *Holimeda*, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. Subtidal Hardbottoms

This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as kelp, may also be found.

B. Subtidal Softbottoms

Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a divers population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal Plants

This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass *Zostera marina* predominates. In the South Atlantic and Gulf coast areas, *Thalassia* and *Diplanthera* predominate. The grasses in both areas support a number of epiphytic organisms.

CLASS II—Physical Characteristics

Group I—Geologic

A. Basin Type

Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. Exposed Coast: Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area, making them chief stabilizers of the ocean shorefront.

2. Sheltered Coast: Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters—abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects of pollution being more severe in this area than in exposed coastal areas.

3. Bay: Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced, the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. Embayment: A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. Tidal River: The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. Lagoon: Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. Perched Coastal Wetlands: Unique to Pacific islands, this wetland type, found above sea level in volcanic crater remnants, forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. Example: Aunu'u Island, American Samoa.

8. Anchialine Systems: These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs, have only a subsurface connection in the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthis algae such as Rhizoclonium, the mineral encrusting Schiuzothrix, and the vascular plant Ruppia maritima. Characteristic fauna, which exhibit a high degree of endemicity, include the mollusks Theodoxus neglectus and T. cariosus. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin Structure

Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. Coastal plains estuary: Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular, forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries, an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord: Estuaries that form in elongated, steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume, river discharge is small. But many fjords have restricted tidal ranges at their mouths, due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800 m to 1200 m, while sill depths usually range from 40 m to 150 m.

3. Bar-bounded Estuary: These result from the development of an offshore barrier, such as a beach strand, a line of barrier islands, reef formations, a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars or barrier islands, broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent sea level rises.

4. Tectonic Estuary: These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding or movement of the earth's bedrock, often with a large inflow of freshwater.

5. Volcanic Estuary: These coastal bodies of open water, a result of volcanic processes, are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic origin.

C. Inlet Type

Inlets in various forms are an integral part of the estuarine environment, as they regulate, to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea. There are four major types of inlets:

1. Unrestricted: An estuary with a wide, unrestricted inlet typically has slow currents, no significant turbulence, and receives the full effect of ocean waves and local disturbances which serve to modify the

shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. Restricted: Restrictions of estuaries can exist in many forms: Bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the substrate, turbidity, and biota of the estuary.

3. Permanent: Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea.

4. Temporary (Intermittent): Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea, and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom Composition

The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. Sand: Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shore and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head of the estuary. In the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. Mud: At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silts, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. Rock: Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. Oyster shell: Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. Circulation

Circulation patterns are the result of combined influences of freshwater inflow, tidal action, wind and oceanic forces, and serve many functions: nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. Stratified: This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. Non-stratified: Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. Lagoonal: An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation, whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. Tides

This is the most important ecological factor in an estuary, as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of their cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as datum. The tides, although complex, fall into three main categories:

1. Diurnal: This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. Semidiurnal: This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. Wind/Storm Tides: This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. Freshwater

According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land, being high below hills and sloping into valleys.

Group III—Chemical

A. Salinity

This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand—ppt).

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

B. pH Regime:

This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid: Waters with a pH of less than 5.5.

2. Circumneutral: A condition where the pH ranges from 5.5 to 7.4.

3. Alkaline: Waters with a pH greater than 7.4.

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federal register

Friday
July 17, 1992

Part VII

The President

Proclamation 6458—Captive Nations Week, 1992

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

Presidential Documents

Title 3—

The President

Proclamation 6458 of July 15, 1992

Captive Nations Week, 1992

By the President of the United States of America

A Proclamation

When Americans first observed Captive Nations Week in 1959, repressive communist regimes had overtaken nations from Central and Eastern Europe to mainland China and overshadowed many others with the very real threat of expansionism. Three years earlier, forces of the Soviet Union had brutally suppressed a popular movement for freedom in Hungary; some 16 years before that, the Soviets had invaded Poland and achieved the forcible annexation of Lithuania, Latvia, and Estonia. In 1959, the United Nations had only recently ended its efforts to thwart communist expansionism below the 38th parallel in Korea, and a communist-led insurgency had already begun to threaten South Vietnam. At a time when millions of people were enslaved by Soviet domination or subjugated by proxy, at a time when countless others were terrorized by the threat of communist aggression and subversion, Americans paused during Captive Nations Week to reaffirm our commitment to liberty and self-government and to express our solidarity with all those peoples seeking freedom, independence, and security.

Today, 33 years after our first observance of Captive Nations Week, millions of people who suffered under Soviet domination and communist rule are free. The Iron Curtain and its most despised symbol, the Berlin Wall, have fallen—toppled by courageous individuals who would no longer stand the denial of their fundamental human rights. Today we celebrate the existence of a free and unified Germany, as well as the independence of the Baltic States, Central European countries, and 12 new states that replaced the U.S.S.R. In Afghanistan and Angola, where bloody civil war against Soviet-supported, Marxist-Leninist regimes left thousands dead and millions of others homeless, chances of achieving lasting peace have reached their highest level in years.

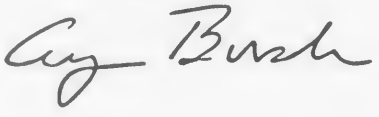
As we celebrate the hope of peace and freedom in these and other once-captive nations, we also remember the many courageous, freedom-loving men and women who resisted tyranny and oppression—often at great personal cost. These include the thousands of dissenters who risked imprisonment, exile, and death in order to demand rights that we Americans enjoy: freedom of religion, speech, and assembly, as well as the right to a fair trial and to protection against unreasonable searches and seizures. They include prisoners of the gulag who remained devoted to liberty despite suffering hunger, torture, and long periods of solitary confinement; and they include selfless religious leaders such as Father Jerzy Popieluszko of Poland, Cardinal Josef Mindszenty of Hungary, and Cardinal Josyf Slipyj of Ukraine, who inspired countless others by their unshakeable belief in the God-given rights and dignity of the human person. From broadcasters at the Voice of America and Radio Free Europe/Radio Liberty, who pierced the Iron Curtain with words of hope and truth, to freedom-fighters in Nicaragua and other Latin American countries who led popular resistance to local despots and to political and military interference from Cuba and the Soviet Union—the men and women whom we remember this week never lost their faith in freedom and in the inevitable triumph of liberty and justice.

As we recall all those who labored and sacrificed to hasten the demise of imperial communism and to liberate the world's captive nations, we must also remember those peoples who remain subject to regimes that continue to deny basic human rights in stark violation of both the letter and the spirit of international human rights agreements, as well as fundamental standards of morality. The United States will continue to speak out against egregious human rights violations in Cuba and elsewhere, and we shall continue to warn the world's newly emerging democracies against another kind of subjugation: the tyranny of ethnic hatred and nationalist rivalries. History has shown how these evils can produce their own form of captivity: a vicious cycle of violence, political repression, and economic stagnation and loss. As this observance of Captive Nations Week reminds us, freedom and peace are precious blessings that require the faith, the will, and the wherewithal to preserve and strengthen them.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 12, 1992, as Captive Nations Week. I call on all Americans to observe this week with appropriate ceremonies and activities in celebration of the growth of liberty and democracy around the world and in recognition of the need for continued vigilance and resolve in the defense of human rights.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord nineteen hundred and ninety two, and of the Independence of the United States of America the two hundred and seventeenth.



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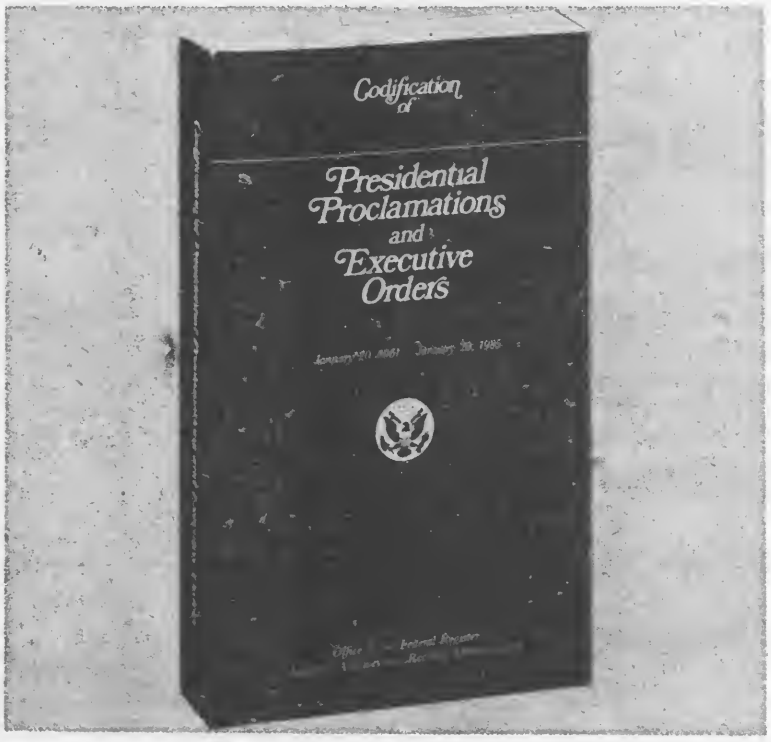

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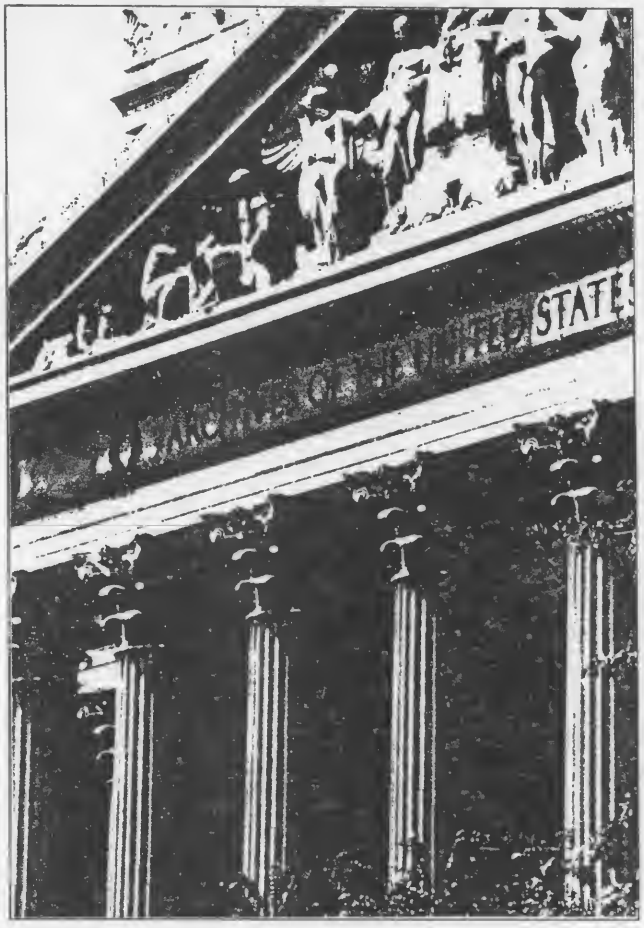

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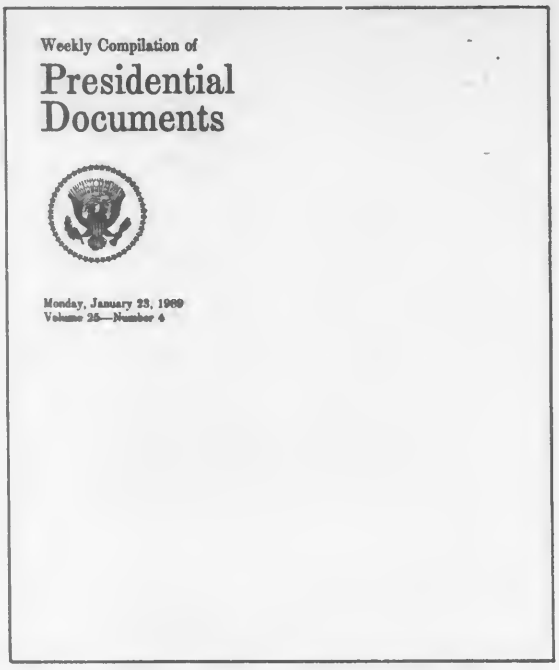

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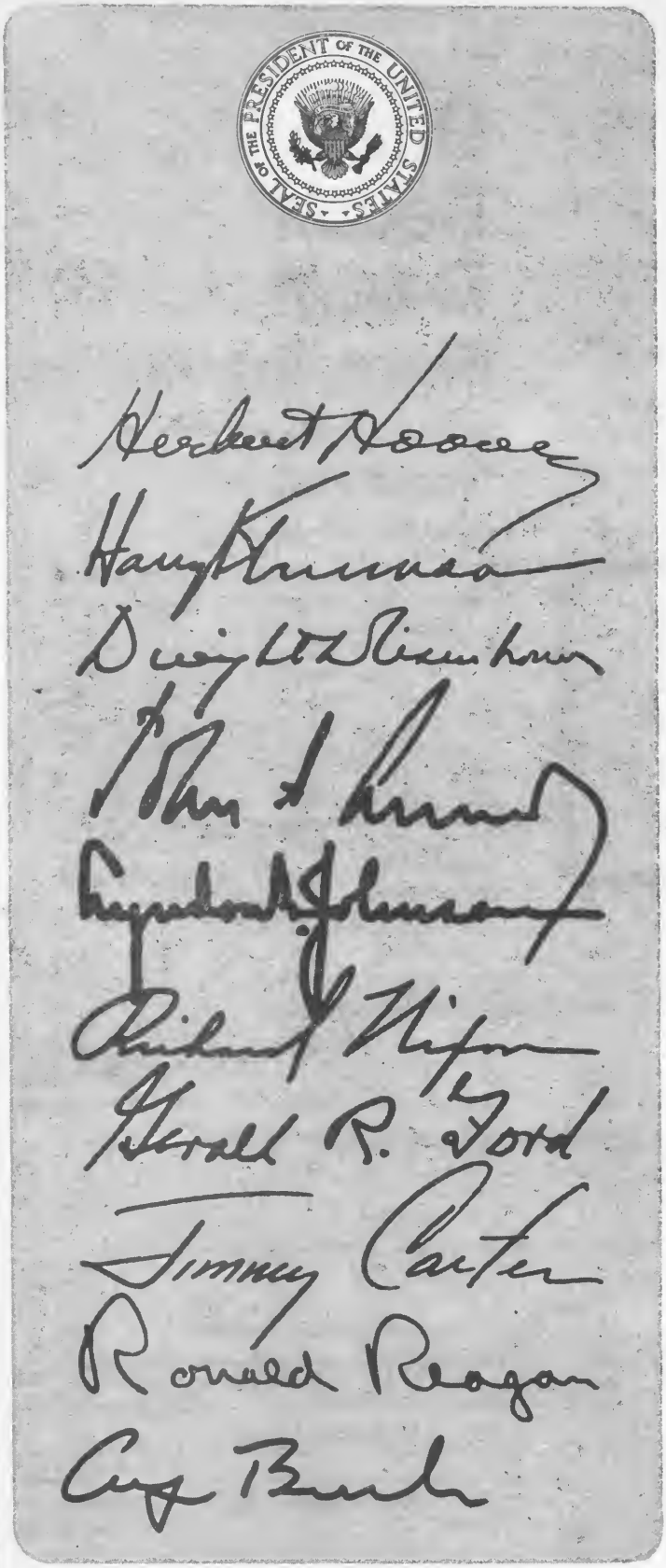

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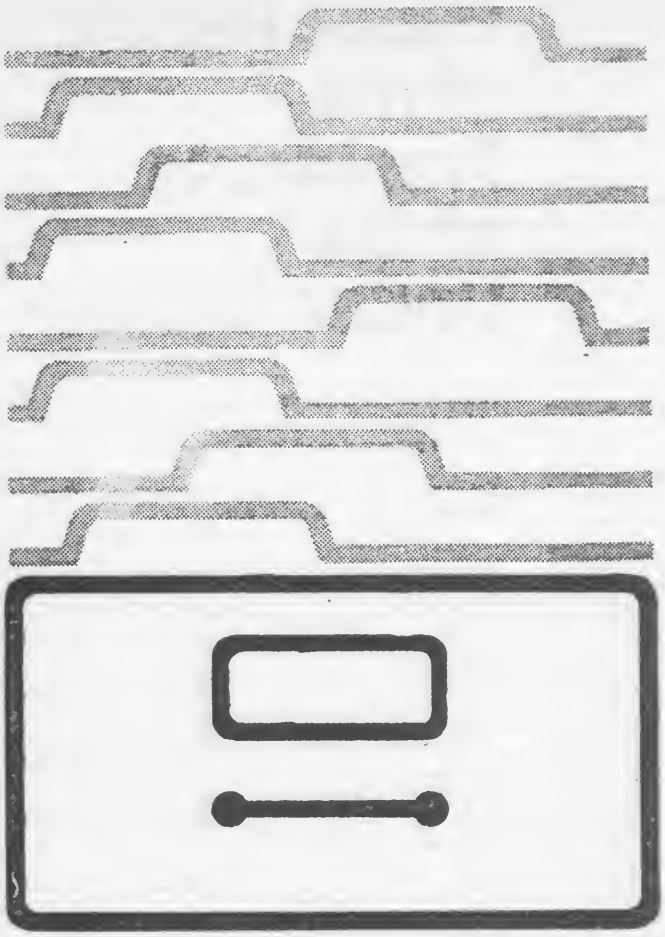

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