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Federal Register

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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.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation that is utilized by the Rural Development Administration (RDA) in allocating program funds by State. A change is needed in the way RDA program funds are allocated by State to give a better nationwide distribution. This action is to inform the public of a change in the criteria used to calculate the program funds allocated by State.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720-9589.

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 exempt from those requirements because it has no adverse impact on RDA borrowers or other members of the public and it involves only internal Agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 553 with respect

to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

Intergovernmental Review

This action affects the following RDA programs listed in the Catalog of Federal Domestic Assistance and will be subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials:

- 10.760 Water and Waste Disposal Systems for Rural Communities
- 10.766 Community Facilities Loans
- 10.768 Business and Industrial Loans
- 10.769 Rural Business Enterprise Grants

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." RDA has determined that the 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, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion

The criteria utilized to distribute RDA program funds to States is being revised to better reflect the Agency's goals and objectives. This action will allow the Agency to take into consideration a State's percentage of the National nonmetropolitan unemployment figure in allocating program funds. This change will give a better distribution of program funds by taking into consideration the economic conditions in each State. This action will not have a major impact on the program funds each State will receive, however, it will give a more equitable balance in the allocation process.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 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; CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Section 1940.585 is amended by revising paragraph (b) to read as follows:

§ 1940.585 Community Facility Loans.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

- (i) State's percentage of national rural population—50 percent.
- (ii) State's percentage of national rural population with incomes below the poverty level—25 percent.
- (iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

* * * * *

3. Section 1940.586 is amended by revising paragraph (b) to read as follows:

§ 1940.586 Water and Waste Disposal Loans.

* * * * *

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

- (i) State's percentage of national rural population—50 percent.
- (ii) State's percentage of national rural population with incomes below the poverty level—25 percent.
- (iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census

data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

4. Section 1940.587 is amended by revising paragraph (b) to read as follows:

§ 1940.587 Water and Waste Disposal grants.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

- (i) State's percentage of national rural population—50 percent.
- (ii) State's percentage of national rural population with incomes below the poverty level—25 percent.
- (iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

5. Section 1940.588 is amended by revising paragraph (b) to read as follows:

§ 1940.588 Business and Industrial guaranteed loans.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

- (i) State's percentage of national rural population—50 percent.
- (ii) State's percentage of national rural population with incomes below the poverty level—25 percent.
- (iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is

multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

6. Section 1940.589 is amended by revising paragraph (b) to read as follows:

§ 1940.589 Rural Business Enterprise Grants.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

- (i) State's percentage of national rural population—50 percent.
- (ii) State's inverse percentage of nonmetropolitan per capita income—25 percent.
- (iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

7. Section 1940.591 is amended by revising paragraph (b) to read as follows:

§ 1940.591 Community Program Guaranteed loans.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

- (i) State's percentage of national rural population—50 percent.
- (ii) State's percentage of national rural population with incomes below the poverty level—25 percent.
- (iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

Dated: October 14, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93-25900 Filed 10-21-93; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 93-ASW-7]

Change of Time of Designation and Using Agency for Restricted Areas R-3801A, B, and C, Camp Claiborne, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation and changes the using agency for Restricted Areas R-3801A, B, and C, Camp Claiborne, LA. The U.S. Air Force has determined that there is no longer a requirement for these restricted areas to retain a "continuous" time of designation. This action lessens the burden on the public by reducing the basic time of designation from 168 hours per week to 70 hours per week, with the provision to activate the areas at other times by Notice to Airman (NOTAM) when required.

EFFECTIVE DATE: 0901 u.t.c., January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the time of designation for Restricted Areas R-3801A, R-3801B, and R-3801C, Camp Claiborne, LA, from "continuous" to "0800-2200 local time, Monday-Friday; other times by NOTAM." Following a review of the Claiborne Bombing Range, the U.S. Air Force has determined that it has a continuing requirement for the restricted areas; however, the current "continuous" time of designation is no longer needed.

Furthermore, the former using agency for the range, the 23rd Fighter Wing, at England Air Force Base (AFB), LA, has been relocated, and England AFB closed as part of the Base Closure and Realignment process. In conjunction with that process, management responsibility for the operation of R-3801A, B, and C, was transferred to the 917 Fighter Wing, Barksdale AFB, LA, which has been the primary user of the range since 1973.

This action also amends the description of R-3801A, R-3801B, and R-3801C, to reflect the current using agency. This action reduces the time of designation and updates the assigned using agency, but does not change the existing boundaries of, or the types of activities currently conducted with R-3801A, B, and C. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.38 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

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

Environmental Review

This action reduces the time of designation for Restricted Areas R-3801A, R-3801B, and R-3801C, but does not expand the boundaries or altitudes, or change the activities currently conducted within the areas. No FAA action will be required to regulate the flow of nonparticipating aircraft as a result of this action. Therefore, the FAA has determined that this action is consistent with existing environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise

include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.38 [Amended]

2. In each designation in § 73.38 listed below remove the word "continuous" for the time of designation and add, in its place, the words "0800-2200 local time, Monday-Friday; other times by NOTAM" and also remove the words "Commander, England AFB, LA" for the using agency and add, in their place, the words "U.S. Air Force, 917 Fighter Wing, Barksdale AFB, LA."

- (a) R-3801A Camp Claiborne, LA.
- (b) R-3801B Camp Claiborne, LA.
- (c) R-3801C Camp Claiborne, LA.

Issued in Washington, DC, on October 12, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-26064 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27480; Amdt. No. 1568]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

For Purchase—

Individual SIAP copies may be obtained from:

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

By Subscription—

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance

dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control Approaches, Standard Instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on October 15, 1993.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

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

2. Part 97 is amended to read as follows:

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

Effective	State	City	Airport	FDC No.	SIAP
9/16/93	NY	Islip	Long Island Mac Arthur	FDC 3/5526	NDB Rwy 6 Amdt 20... This corrects NOTAM published in TL 93-21
9/17/93	NC	Roxboro	Person County	FDC 3/5247	NDB Rwy 6 Amdt 2...
9/23/93	AR	Little Rock	Adams Field	FDC 3/5334	ILS Rwy 22L Amdt 1...
9/23/93	IL	Chicago	Lansing Muni	FDC 3/5331	VOR-A Amdt 4...
9/23/93	MS	Natchez	Hardy-Anders Field Natch-ez-Adams County.	FDC 3/5323	NDB Rwy 17 Amdt 4...
9/23/93	MS	Natchez	Hardy-Anders Field Natch-ez-Adams County.	FDC 3/5326	VOR Rwy 17 Amdt 10A...
9/23/93	NM	Albuquerque	Albuquerque Intl	FDC 3/5333	VOR Rwy 8/TAC/ Amdt 18A...
9/28/93	VA	Chesapeake	Chesapeake Muni	FDC 3/5411	NDB Rwy 5 Amdt 1...
9/28/93	VA	Fredericksburg	Shannon	FDC 3/5408	NDB Rwy 23 Orig...
9/28/93	VA	Newport News	Newport News/Williamsburg Intl	FDC 3/5407	NDB Rwy 7 Amdt 3...
9/28/93	VA	Newport News	Newport News/Williamsburg Intl	FDC 3/5409	NDB Rwy 30 Amdt 3...
9/28/93	VA	Newport News	Newport News/Williamsburg Intl	FDC 3/5410	Loc BC Rwy 25 Amdt 13...
9/30/93	MD	Baltimore	Baltimore-Washington Intl	FDC 3/5444	Procedures...

Effective	State	City	Airport	FDC No.	SIAP
9/30/93	MI	Detroit	Detroit Metropolitan Wayne County	FDC 3/5437	Radar-1 Amdt 22...
9/30/93	MI	Menominee	Menominee-Marquette Twin County	FDC 3/5448	NDB Rwy 3 Amdt 2...
9/30/93	MI	Menominee	Menominee-Marquette Twin County	FDC 3/5449	ILS Rwy 3 Amdt 2...
9/30/93	MI	Menominee	Menominee-Marquette Twin County	FDC 3/5451	VOR-A Amdt 2...
10/01/93	OH	Alliance	Miller	FDC 3/5462	VOR-A Amdt 8A...
10/04/93	SC	Sumter	Sumter Muni	FDC 3/5505	NDB Rwy 22 Amdt 2B...
10/06/93	MI	Menominee	Menominee-Marquette Twin County	FDC 3/5533	RNAV Rwy 21 Amdt 1...

[FR Doc. 93-26060 Filed 10-21-93; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8494]

RIN 1545-AP13

Minimum Funding Requirements—Plan Restoration

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the final regulations under section 412 of the Internal Revenue Code of 1986. These regulations govern the application of the minimum funding requirements of section 412 to pension plans that are being or have been terminated pursuant to section 4041(c) or 4042 of the Employee Retirement Income Security Act of 1974 (ERISA) and are restored to their sponsoring employers by order of the Pension Benefit Guaranty Corporation (PBGC) pursuant to section 4047 of ERISA. The regulations provide taxpayers with guidance necessary to determine the amount that must be contributed to a restored plan in order to satisfy the minimum funding requirements of section 412.

EFFECTIVE DATE: These regulations are effective on October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Roach at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1990, a notice of proposed rulemaking by cross-reference to temporary regulations was published in the *Federal Register* (55 FR 42728). On the same day, temporary regulations were published in the *Federal Register* (55 FR 42704). These temporary regulations supplement the existing

regulations on the minimum funding requirements under section 412 of the Internal Revenue Code of 1986 (Code). The temporary regulations provide guidance on the proper application of the minimum funding requirements to plans that have been or are being restored to their sponsoring employers by order of the PBGC as authorized under section 4047 of ERISA.

Written comments were received from the public on the proposed regulations incorporated by cross-reference in the notice of proposed rulemaking, and on July 19, 1991, the Internal Revenue Service held a public hearing concerning these proposed regulations. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

1. Overview

Section 4047 of ERISA authorizes the PBGC to restore a terminated pension plan to its sponsoring employer whenever the PBGC determines that this action is appropriate and consistent with its duties under Title IV of ERISA. The statutory provisions of section 4047 grant broad authority to the PBGC to take any actions necessary to restore terminated plans in situations where it determines the action to be necessary and appropriate. The legislative history further demonstrates specific Congressional intent to confer broad authority on the PBGC to control the details of plan restorations.

This regulation provides rules for applying the minimum funding provisions of section 412 of the Code to a plan that has been terminated and restored under section 4047 of ERISA. The application of the minimum funding standards of section 412 of the Code to a restored pension plan presents unique problems because a restored plan is being or has been terminated and administered as a terminated plan during the time from the date of termination of the plan to the date of the restoration (or its implementation). During the period between the dates of termination and restoration (or its

implementation), Schedule B of Form 5500 will not have been completed by the plan actuary, nor will contributions have been made to the plan. When the PBGC acts to restore the plan, the funding standard account required by section 412 of the Code must be reestablished and maintained for all subsequent plan years.

The restoration of a terminated plan under section 4047 of ERISA retroactively reinstates benefit accruals under the plan because the statute provides for restoration of the plan to its pre-termination status. Because the plan will have been underfunded upon plan termination and because the plan sponsor will ordinarily not have made any contributions to the plan while it was being administered as a terminated plan, the plan is likely to be even more underfunded on restoration. This underfunding will be significantly increased if the plan has been administered as a terminated plan for an extended period of time.

2. Explanation of Provisions

Restoration Funding Method

These regulations create a special funding method, known as the restoration method, which adapts the underlying funding method used by the plan to the special circumstances that exist when the PBGC restores a terminated pension plan to the plan sponsor pursuant to section 4047 of ERISA. The regulations require the use of the restoration method by plans that have been or are being terminated and restored under title IV of ERISA.

The restoration method rules contained in these regulations give the PBGC flexibility in determining the timing and amount of the contributions to be made to fund plan liabilities arising prior to the first valuation date after the restoration of the plan by providing for the funding of a restored plan under a restoration payment schedule order issued by the PBGC that specifies the timing and amount of contributions to amortize plan liabilities arising prior to the first valuation date after restoration. The regulations also contain minimum standards designed to

assure that plan funding does not become worse while the restoration payment schedule order is in effect, and that the employer makes systematic progress toward funding the outstanding liabilities of the plan while it is being funded under a restoration payment schedule order. The final regulations adopt these provisions essentially as proposed with minor clarifications in response to comments.

Certification by the PBGC

The final regulations retain the requirement that when the PBGC issues a restoration payment schedule order, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of the deferrals permitted under the regulations), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

Requirement That Restored Plan Must Use Restoration Method

Under the final regulations, as in the proposed regulations, a plan that is being or has been terminated and restored, must use the restoration method until the initial restoration amortization base has been fully amortized. Use of the restoration method continues to be permitted without securing prior approval from the Commissioner.

Initial Restoration Amortization Base

Section 1.412(c)(1)-3(b) of the regulations describes a special amortization base, known as the initial restoration amortization base, that consists of the unfunded liability of the plan as of the valuation for the plan year in which the initial post restoration valuation date falls, based upon the assets and liabilities restored by the PBGC. The regulation prescribes procedures for the amortization of this base over not more than 30 years in accordance with a restoration payment schedule order issued by the PBGC under § 1.412(c)(1)-3(c).

The outstanding balance of the initial restoration amortization base must be calculated each year in conformity with the usual actuarial practice applicable to other amortization bases established under section 412(b) of the Internal

Revenue Code. In determining the outstanding balance of this base, however, the calculation must be based upon the charges under the restoration payment schedule. Under the regulations, the PBGC may grant a deferral of the payment required under the restoration payment schedule for a particular year, under the conditions and in the manner provided in the regulations.

Charges and Credits to Funding Standard Account

The normal operation of the funding standard account, and the other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this plan restoration regulation § 1.412(c)(1)-3. If the actuarial assumptions and methods used in calculating the assets and liabilities of the plan are changed consistent with the requirements of section 412(c)(3), the plan administrator must notify the PBGC of the changes so that the PBGC can make any appropriate changes to the restoration payment schedule.

Some commentators on the proposed regulations requested clarification of the relationship between the payments in the restoration payment schedule order and the charges and credits to the funding standard account of the plan. Paragraph (d) of the regulation has been corrected to state that each annual payment under the restoration payment schedule shall be charged against the funding standard account of the plan for the plan year to which that payment is attributed in the restoration payment schedule. A sentence has been added to paragraph (d) stating that if the restoration payment schedule requires payments before the end of the plan year, the annual charge to the funding standard account is equal to the sum of the periodic payments for the plan year accumulated with interest at the valuation rate to the last day of the plan year.

Section 412(l) Calculations Under the Restoration Method

When a plan is under the restoration method, the deficit reduction contribution under section 412(l)(2) of the Internal Revenue Code is composed of the unfunded section 412(l) restoration liability amount plus the unfunded new liability amount. The regulation provides rules allowing the PBGC to prescribe the timing and amounts of the annual installments to amortize the unfunded section 412(l) restoration liability over a period of not more than 30 years.

Deferral by PBGC of Scheduled Charges

Paragraph (c)(4) of the regulation authorizes the PBGC to grant a deferral of the charges required under a restoration payment schedule if the PBGC determines that the plan sponsor and its controlled group members are unable to make the scheduled restoration payments without experiencing temporary substantial business hardship. The PBGC may grant no more than five deferrals during the restoration payment period and no more than three of these deferrals may be granted during the first ten years of that period. In response to comments received on the proposed regulation, the final regulation has been clarified to state that the deferrals granted under this authority override the minimum annual charges and the interim amortization requirements otherwise applicable.

Modification of Restoration Payment Schedule Order by PBGC

The PBGC retains the authority to modify the restoration payment schedule at any time during the period of up to 30 years that the schedule is effective. Any modification must, however, comply with the requirements of the regulation, including the minimum payment requirements and the requirement that the 30-year period not be extended. In addition, the PBGC must conduct a funding review of the plan at least once a year, and may conduct a funding review at any time it deems appropriate. As part of the required annual funding review, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of the deferrals allowed under the regulations), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

Effect on Other Laws

Pursuant to the Reorganization Plan No. 4 of 1978, satisfaction of the restoration method requirements set forth in these regulations will be treated as satisfaction of the minimum funding requirements under section 302 of subtitle B of title I of the Employee Retirement Income Security Act of 1974

(ERISA). Failure to make a payment required to avoid a deficiency in the funding standard account under the restoration method may be treated by the Secretary of Labor as a failure to meet the minimum funding standard under ERISA section 302 for purposes of the notice required under ERISA section 101(d).

Effective date

These regulations are effective on October 22, 1993. They continue and make permanent the authority of the PBGC to issue restoration payment schedule orders contained in § 1.412(c)(1)-3T, published as TD 8317, 55 FR 42704 (1990). Under the temporary regulations, the PBGC has been authorized to issue restoration payment schedule orders to the sponsoring employers of restored plans, provided that certain requirements are satisfied. All restoration payment schedule orders issued pursuant to the temporary regulations remain in force under these regulations unless and until modified or withdrawn by the PBGC.

Special Analyses

It has been determined that these rules do not constitute a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael Roach of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.412(c)(1)-3 is added to read as follows:

§ 1.412(c)(1)-3 Applying the minimum funding requirements to restored plans.

(a) *In general*—(1) *Restoration method.* The restoration method is a funding method that adapts the underlying funding method of section 412 in the case of certain plans that are or have been terminated and are later restored by the Pension Benefit Guaranty Corporation (PBGC). The normal operation of the funding standard account, and all other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this § 1.412(c)(1)-3. Under the restoration method, the PBGC shall determine a restoration payment schedule, extending over no more than 30 years, that replaces all charges and credits to the funding standard account attributable to pre-restoration amortization bases. The restoration payment schedule is determined on the basis of an actuarial valuation of the accrued liability of the plan on the initial post-restoration valuation date less the actuarial value of the plan assets on that date. The initial post-restoration valuation date is the date of the valuation that falls in the first plan year beginning on or after the date of the restoration order.

(2) *Applicability of restoration method.* A plan must use the restoration method if, and only if—

(i) The plan is being or has been terminated pursuant to section 4041(c) or section 4042 of the Employee Retirement Income Security Act of 1974 (ERISA); and

(ii) The plan has been restored by the PBGC pursuant to its authority under section 4047 of ERISA.

(b) *Computation and effect of the initial restoration amortization base—*

(1) *In general.* The initial restoration amortization base is determined under the underlying funding method used by the plan. When the plan uses a spread gain funding method that does not maintain an unfunded liability, the plan must change either to an immediate gain method that directly calculates an accrued liability or to a spread gain method that maintains an unfunded liability. A plan may adopt any cost method that satisfies this requirement and that is acceptable under section 412 and the regulations thereunder, provided that the plan administrator

follows the procedures established by the Commissioner for changes in funding methods. The initial restoration amortization base is determined using the valuation for the plan year in which the initial post-restoration valuation date falls. The initial restoration amortization base equals the accrued liability with respect to plan benefit liabilities returned by the PBGC less the value of the plan assets returned by the PBGC. The initial restoration amortization base replaces all prior amortization bases including those under section 412(b)(2) (B), (C), and (D) and under section 412(b)(3)(B). Any base resulting from a change in funding method, including a change required under this paragraph, is treated as a prior amortization base within the meaning of this paragraph (b). Any accumulated funding deficiency or credit balance in the funding standard account is set equal to zero when the initial restoration amortization base is established.

(2) *Example.* The following example illustrates the provisions of this paragraph (b):

Example. A pension plan uses the calendar year as its plan year, makes its annual periodic valuation as of January 1, and uses the unit credit actuarial cost method for funding purposes. The plan is in the process of being terminated. By order of the PBGC the plan is restored as of July 1, 1991. The initial post-restoration valuation date is January 1, 1992, and a restoration payment schedule order is issued on October 31, 1992. If, as of January 1, 1992, the accrued liability of the plan is \$1,000,000 and the value of the plan assets is \$200,000, the initial restoration amortization base is \$800,000.

(c) *Establishment of a restoration payment schedule—*(1) *Certification requirement.* When the PBGC establishes a restoration payment schedule, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

(2) *Requirements for restoration payment schedule—*(i) *Amortization of base over period of no more than 30 years.* The restoration payment schedule

must be prescribed in an order requiring the employer to make stated contributions to the plan sufficient to amortize the initial restoration amortization base over a period extending not more than 30 years after the initial post-restoration valuation date (the restoration payment period). Payments included in the restoration payment schedule order are charged to the funding standard account of the plan at the end of each plan year in accordance with paragraph (d) of this section. The restoration payment schedule must provide for total charges that are sufficient to amortize the entire amount of the initial restoration amortization base by the end of the restoration payment period. The scheduled charges need not be in level amounts, but the present value of the prescribed charges on the initial post-restoration valuation date, computed with interest at the valuation rate, must equal the initial restoration amortization base.

(ii) *Minimum annual charge.* The restoration payment schedule must prescribe annual charges that are sufficient to prevent the outstanding balance of the initial restoration amortization base from exceeding whichever of the following amounts is applicable—

(A) During the first 10 plan years on the restoration payment schedule, the amount of the initial restoration amortization base on the date the base was established; or

(B) During plan years 11 through 20 on the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the tenth plan year, as calculated under paragraph (c)(2)(iii) of this section; or

(C) During plan years 21 through the end of the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the twentieth plan year, as calculated under paragraph (c)(2)(iii) of this section.

(iii) *Interim amortization requirements.* The restoration payment schedule must provide for sufficient periodic charges so that the outstanding balance of the initial restoration amortization base at the end of the tenth plan year and at the end of the twentieth plan year of the restoration payment period will not be larger than the outstanding balance that would have remained at the end of the tenth plan year and at the end of the twentieth plan year, respectively, if the initial restoration amortization base had been amortized in level annual amounts over

the restoration payment period at the valuation rate.

(3) *Amendments to the restoration payment schedule.* The order establishing the restoration payment schedule may be amended by the PBGC from time to time with respect to any remaining payments, provided that no amendment may extend the restoration payment period beyond 30 years from the initial post-restoration valuation date, and provided further that the restoration payment schedule, as amended, satisfies the requirements of paragraph (c)(2) of this section.

(4) *Deferral of minimum scheduled annual payment amounts—(i) Authority to grant deferral.* Not later than 2½ months following the end of the plan year, the PBGC may grant a deferral of the charges required in the restoration payment schedule for that plan year if the requirements in paragraph (c)(4)(ii) of this section are satisfied. The PBGC may require the plan sponsor and its controlled group members to provide security to the plan as a condition to granting a deferral.

(ii) *Determination of business hardship.* Before granting a deferral under this paragraph (c)(4), the PBGC must make a determination that the granting of the deferral is in the best interests of plan participants and the plan termination insurance system, and that the plan sponsor and its controlled group members are unable to make the scheduled restoration payments without experiencing temporary substantial business hardship. In making these determinations, the factors the PBGC shall consider, include, but are not limited to, the following—

(A) Whether the plan sponsor and its controlled group members are operating at an economic loss;

(B) Whether there is substantial unemployment or underemployment in the trades or businesses of the plan sponsor and its controlled group members;

(C) Whether the sales and profits of the industry or industries are depressed or declining; and

(D) Whether it is reasonable to expect that the plan termination insurance system will suffer a greater loss if the plan is terminated than if it is continued as a restored plan.

(iii) *Amount of deferral.* The amount of the deferral for any particular plan year may not exceed the lesser of the amount that would have been required to be contributed under the restoration payment schedule for that year or interest at the valuation rate on the outstanding balance of the initial restoration amortization base for that year. An amortization payment for a

deferral granted for a prior plan year may not be deferred. No deferral may extend the overall restoration payment period beyond 30 years.

(iv) *Modification of payment schedule.* The restoration payment schedule must be adjusted to reflect any deferral granted for a plan year in the manner prescribed in this paragraph (c). The charge otherwise specified in the schedule is reduced by the amount of any deferral. The charges under the restoration payment schedule for the subsequent plan years are increased by the amounts in paragraph (c)(4)(v) of this section.

(v) *Amortization of deferred amount.* The amount of any deferral granted by the PBGC for any plan year must be amortized in level amounts over five years or such shorter period as may be prescribed by the PBGC, at the valuation rate, beginning with the plan year following the year of the deferral.

(vi) *Number of deferrals permitted.* The PBGC may not grant more than five deferrals of the minimum scheduled payments as required by this section during the restoration payment period and no more than three of these deferrals may be granted during the first ten years of that period.

(vii) *Deferrals override minimum annual charges and interim amortization requirements.* In determining the minimum annual charge under paragraph (c)(2)(ii) of this section and in applying the interim amortization requirements of paragraph (c)(2)(iii) of this section, the unamortized balances of any deferrals granted by the PBGC under this paragraph shall be added to the outstanding balance of the initial restoration amortization base otherwise allowable.

(d) *Charging the scheduled restoration payments to the funding standard account.* In addition to any other charges and credits prescribed in the normal operation of the funding standard account under section 412, the amount of each payment specified in the restoration payment schedule shall be charged against the funding standard account of the plan for the plan year to which that payment is attributed in the restoration payment schedule. To the extent that the restoration payment schedule provides for payments before the end of the plan year, the annual charge to the funding standard account attributable to the restoration payment schedule is equal to the sum of the periodic payments for the plan year accumulated with interest at the valuation rate to the last day of the plan year.

(e) *Changes in actuarial assumptions or methods.* The plan administrator must notify the PBGC of any changes in the actuarial assumptions or methods used by the plan. Upon notification of any such change, the PBGC may make any changes to the restoration payment schedule that it deems appropriate.

(f) *Change to restoration method.* A plan that has been restored must use the restoration method until the initial restoration amortization base has been fully amortized. The use of this method does not require prior approval from the Commissioner. A plan using the restoration method must compute the charges to the funding standard account to amortize the initial restoration amortization base in accordance with the order of the PBGC and in accordance with this section.

(g) *Deficit reduction contribution—(1) Calculation of deficit reduction contribution.* For any plan using the restoration method, the deficit reduction contribution under section 412(l)(2) is equal to the sum of—

- (i) The unfunded section 412(l) restoration liability amount; plus
- (ii) The unfunded new liability amount.

(2) *Unfunded section 412(l) restoration liability amount.* The unfunded section 412(l) restoration liability amount is the amount necessary to amortize fully the unfunded section 412(l) restoration liability in installments, as prescribed by the PBGC, over not more than 30 years. The annual amount need not be level, but at all times the present value of the future amortization charges prescribed under the restoration payment schedule, at the current liability interest rate, must equal the outstanding balance of the unfunded section 412(l) restoration liability and the schedule must provide that at the end of no more than 30 years the entire amount of the unfunded section 412(l) restoration liability base will have been fully amortized. The schedule prescribed for amortization of the unfunded section 412(l) restoration liability must comply with the requirements imposed in paragraph (c) of this section on the restoration payment schedule, except as provided in paragraph (g)(7) of this section and except that the maximum permitted outstanding balance of the unfunded section 412(l) restoration liability at the end of the tenth plan year must not be greater than the outstanding balance of the section 412(l) restoration liability that would have remained at the end of the tenth plan year if the unfunded section 412(l) restoration liability had been amortized in level amounts over the restoration payment period at the

actual current liability interest rate for each year, increased by the current liability interest rate differential as defined under paragraph (g)(7) of this section. The unfunded section 412(l) restoration liability amount for the tenth plan year otherwise prescribed under the restoration payment schedule is increased by any outstanding current liability interest rate differential. By issuing an appropriate order, the PBGC may permit the outstanding current liability interest rate differential to be amortized over the tenth through the fourteenth plan years. If the PBGC permits the amortization of the outstanding current liability interest rate differential, then the unfunded section 412(l) restoration liability amount for each year to which an amortization payment is attributed under the order shall be increased by such payment. The outstanding balance otherwise required by paragraph (g)(2) of this section is increased by the outstanding balance, if any, of the base resulting from the amortization of the current liability interest rate differential. The PBGC may amend the amortization schedule for the unfunded section 412(l) restoration liability subject to the limits on amendments to the amortization schedule prescribed for the initial restoration amortization base.

(3) *Establishment of unfunded section 412(l) restoration liability.* In the plan year in which the initial post-restoration valuation date falls, the unfunded section 412(l) restoration liability is equal to the unfunded current liability of the plan.

(4) *Unfunded new liability amount.* In the case of a plan using the restoration method, the unfunded new liability amount is the applicable percentage, as defined in section 412(l)(4)(C), of the unfunded new liability determined under paragraph (g)(5) of this section.

(5) *Unfunded new liability.* The unfunded new liability of a plan using the restoration method is the excess, if any, of the unfunded current liability of the plan, within the meaning of section 412(l)(8)(A) for the plan year (determined without taking into account any unpredictable contingent event benefits, even if the event has occurred) over the outstanding balance of the unfunded section 412(l) restoration liability determined under paragraph (g)(3) of this section.

(6) *Offset of amortization charges.* The amounts charged to the funding standard account pursuant to the restoration payment schedule in order to amortize the initial restoration base, as described in paragraph (d) of this section, must be offset against the deficit reduction contribution in paragraph

(g)(1) of this section along with any other applicable amounts provided in section 412(l)(1)(A)(ii).

(7) *Interest rate differential.* During the first 10 plan years after the initial post-restoration valuation date, the restoration payment schedule must prescribe an unfunded section 412(l) restoration liability amount for each plan year that is sufficient to prevent the outstanding balance of the unfunded section 412(l) restoration liability from exceeding the initial amount of the unfunded section 412(l) restoration liability increased by the current liability interest rate differential. The current liability interest rate differential at any point during the first ten years of the restoration payment period is the excess, if any, of the outstanding balance of the unfunded section 412(l) restoration liability determined using the actual current liability interest rate for each year, taking into account the charges described in paragraph (d) of this section, over the outstanding balance of the unfunded section 412(l) restoration liability determined using the lowest, for each year, of the initial current liability interest rate, the current liability interest rate for the computation year, and the valuation interest rate, taking into account the charges described in paragraph (d) of this section.

(h) *Election of the alternative minimum funding standard.* A plan using the restoration method may not elect the alternative minimum funding standard under section 412(g).

(i) *Funding review by the PBGC.* The PBGC must review the funding of any plan using the restoration method at least once in each plan year. As a result of a funding review, the PBGC may amend the restoration payment schedule as provided in paragraph (c)(3) of this section. As part of the funding review, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the

pension insurance program that the restored plan not be reterminated.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: October 12, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93-25785 Filed 10-21-93; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2 and 10

[Docket No. 920671-3225]

RIN 0651-AA55

Changes in Signature and Filing Requirements for Correspondence Filed in the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent and trademark cases to: Specify the types of correspondence which will no longer require original signatures; provide for facsimile transmission of certain correspondence to the Office; discontinue use of the drop boxes at Crystal Plaza Building 3 and at the Department of Commerce Building in Washington, DC; and clarify other provisions with respect to practice before the Office.

EFFECTIVE DATE: November 22, 1993. These rules will be applicable to all correspondence filed with the Office on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305-9282, by facsimile transmission at (703) 305-8825, or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the *Federal Register* at 57 FR 36034 (August 12, 1992) and in the Patent and Trademark Office Official Gazette at 1142 Off. Gaz. Pat. Office 8-13 (Sept. 1, 1992), the Office proposed to amend the rules of practice in patent and trademark cases to simplify the manner in which correspondence may be transmitted to the Office and clarify other provisions with respect to practice before the Office. This rulemaking includes changes to expand those

situations where a party can use the Certificate of Mailing or Transmission procedure, and minor technical modifications in part 2 of title 37 of the Code of Federal Regulations which were not part of the proposed rulemaking.

Written comments were submitted by twenty-two law firms, five individuals, nine corporations, two organizations and three agencies. An oral hearing was not conducted.

The following includes a discussion of the rules being changed and the reasons for those changes, and an analysis of the comments received in response to the notice of proposed rulemaking.

Discussion of Specific Sections to be Changed or Added

(1) Types of Correspondence No Longer Requiring Original Signatures (Section 1.4)

Section 1.4 is amended to include a new paragraph (d) to specify that most correspondence filed in the Office, which requires a person's signature, may be an original, or a copy thereof. See §§ 1.4 (e) and (f) for types of correspondence where the original must be filed in the Office. The word original, as used in this rulemaking, is defined as correspondence which is personally signed in permanent ink by the person whose signature appears thereon. Where copies of correspondence are acceptable, photocopies or facsimile transmissions may be filed. For example, a photocopy or facsimile transmission of an original of an amendment, declaration, petition, issue fee transmittal form, authorization to charge a deposit account, etc., may be submitted in a patent or trademark application. Furthermore, where copies are permitted, second and further generation copies (i.e., copy of a copy) are acceptable. The original, if not submitted to the Office, should be retained as evidence of proper execution in the event that questions arise as to the authenticity of the signature reproduced on the photocopy or facsimile-transmitted correspondence. If a question of authenticity arises, the Office may require submission of the original.

Section 1.4(e) identifies types of correspondence in which an original must be submitted to the Office. Where an original is required, copies are not acceptable and will not be accorded a receipt date. Correspondence, as referred to in this section, includes application forms for registration to practice before the Office and data sheets for the register of patent attorneys and agents.

Section 1.4(f) provides that when a document that is required by statute to be certified must be filed (such as a certified copy of a foreign patent application, pursuant to 35 U.S.C. 119; a certified copy of an international application, pursuant to 35 U.S.C. 365; a certified copy of a foreign trademark registration, pursuant to 15 U.S.C. 1126(e); a certified copy of a final court order, pursuant to 15 U.S.C. 1119; or a certified copy of a U.S. trademark registration), a copy of the certification, including a photocopy or facsimile transmission, will not be acceptable. The requirement for an original certification does not apply to certifications such as required under §§ 1.8, 1.10, 1.60, 1.97(e) and 3.73(b), since these certifications are not required by statute.

(2) Identification of Applications (Section 1.5)

Section 1.5(a) is amended to make reference to the certificate procedure under § 1.8 consistent with the new title for § 1.8.

(3) Receipt of Correspondence (Section 1.6)

A descriptive heading is added to each paragraph of § 1.6 to identify the content of that paragraph.

The phrase "correspondence" is used in § 1.6 since the terms "papers", "letters" and "fees" all fall within the generic definition of "correspondence".

Section 1.6(a) is amended to clarify that correspondence transmitted by facsimile on weekends or Federal holidays within the District of Columbia, will be accorded the next business day as the date of receipt. Sections 1.6 (b) and (c) are amended to clarify that weekdays refer to any day except a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 1.6(c) is amended to delete reference to the box locations in the lobby of Crystal Plaza Building 3, Arlington, Virginia, and at the Department of Commerce Building in Washington, DC. The use of the drop boxes was discontinued on April 21, 1992, and the hours of operation for the attorney's window were extended to midnight, the same hours the drop boxes were available. The public can now deposit correspondence with the Office and obtain an acknowledgement of receipt after normal business hours. See "Changes in How Papers May be Filed in the Patent and Trademark Office," 1137 Off. Gaz. Pat. Office 7 (April 7, 1992).

Use of the drop boxes at Crystal Plaza Building 3 and Department of Commerce Building locations had

caused problems for both the public and the Office. Occasionally, it had been difficult to determine the dates of actual deposit of correspondence in the boxes. On occasion, Office employees and/or members of the public had been denied access to the drop box at the Department of Commerce by building security guards due to a special event taking place at the Department. Additionally, there were instances of correspondence being found outside of the drop boxes (e.g. on the floor of the main lobby of the Department of Commerce Building, on the guard's desk, on a nearby table, etc.). As a result, on occasion, the Office lacked confidence in assigning correct dates of receipt to correspondence deposited in the boxes at Crystal Plaza Building 3 and at the Department of Commerce Building. Given these difficulties, and the fact that the necessity for these boxes has been greatly diminished as a result of the facsimile transmission and certificate of mailing procedures, § 1.6(c) is amended by deleting reference to the drop boxes at Crystal Plaza Building 3 and the Department of Commerce Building.

A new § 1.6(d) is added to specify the types of correspondence which may be transmitted by facsimile and former § 1.6(d) is revised to be consistent with § 1.8(b) and redesignated as § 1.6(e). The widespread use of facsimile transmission and the resulting time saved in correspondence between applicants and the Office prompted the Office to establish a trial program to accept facsimile transmission of certain correspondence. The policy on "Filing of Certain Papers and Authorizations to Charge Deposit Accounts by Facsimile Transmissions" was published at 1096 Off. Gaz. Pat. Office 30 (November 15, 1988) and was supplemented in the notice "Filing of Certain Papers with the Board of Patent Appeals and Interferences by Facsimile Transmission" published at 1108 Off. Gaz. Pat. Office 15 (November 14, 1989). The policy on "Filing of Certain Trademark Papers and Authorizations to Charge Deposit Accounts by Facsimile Transmission" was published at 1123 Off. Gaz. TM. Office 18 (February 12, 1991). In light of the success of the trial program, a policy on acceptance of facsimile transmission is incorporated into § 1.6(d). The situations where transmission of correspondence by facsimile is permitted have been increased over those permissible under the trial program outlined above. The situations where transmissions by facsimile remain prohibited are identified in § 1.6(d)(1)-(9). Prohibitions cover situations where originals are

required as specified in §§ 1.4(e) and (f), and situations where accepting a facsimile transmission would be unduly burdensome on the Office. As a courtesy, the Office will attempt to notify senders whenever correspondence is sent to the Office by facsimile transmission that falls within one of these prohibitions. Senders are cautioned against submitting correspondence by facsimile transmission which is not permitted under § 1.6(d) since such correspondence will not be accorded a receipt date.

This final rulemaking expands the acceptability of facsimile transmissions to certain patent interference proceedings, not included in the proposed rulemaking, to reflect the practice set forth at 1108 Off. Gaz. Pat. Office 15 (November 14, 1989).

Under § 1.6(d)(4) as adopted in this final rulemaking, drawings submitted under §§ 1.81, 1.83-1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52 or 2.72 may not be filed by facsimile in patent and trademark applications. The experience of the Office is that the quality of the drawings received by facsimile transmission is generally not sufficient to comply with the drawing requirements set forth in these rules. However, applicants may submit by facsimile transmission proposed drawing corrections for approval by the Office.

In trademark proceedings, the facsimile transmission of specimens in response to an Office action will be permitted. Facsimile-transmitted specimens must be legible in order to be accepted and examined as specimens.

The date of receipt accorded to any correspondence permitted to be sent by facsimile transmission is the date the complete transmission is received by an Office facsimile unit, unless the transmission is completed on a Saturday, Sunday, or Federal holiday within the District of Columbia. Correspondence for which transmission was completed on a Saturday, Sunday, or Federal holiday within the District of Columbia, will be accorded a receipt date on the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia. For example, a facsimile transmission to the Office from California starting on a Friday at 8:45 p.m. Pacific time and taking 20 minutes, would be completed at 9:05 p.m. Pacific time. The complete transmission would be received in the Office around 12:05 a.m. Eastern time on Saturday. The receipt date accorded to the correspondence is the date of the following business day, which in this case, would be Monday (assuming that

Monday was not a Federal holiday within the District of Columbia).

The following lists itemize types of correspondence which may not be filed by facsimile transmission and, if submitted by facsimile, will not be accorded a date of receipt:

Correspondence Relative to Patents and Patent Applications Where Filing by Facsimile Transmission is Not Permitted

- (1) A document that is required by statute to be certified;
- (2) A national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date;
- (3) Drawings submitted under §§ 1.81, 1.83-1.85, 1.152, 1.165, 1.174, or 1.437;
- (4) Correspondence in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail";
- (5) Agreements between parties to an interference under 35 U.S.C. 135(c);
- (6) Correspondence to be filed in an interference proceeding which consists of a preliminary statement under § 1.621; a transcript of a deposition under § 1.676 or of interrogatories, cross-interrogatories, or recorded answers under § 1.684(c); or an evidentiary record and exhibits under § 1.653;
- (7) Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1-5.8 of this chapter and directly related to the secrecy order content of the application;
- (8) An international application for patent;
- (9) A copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.494(b) or § 1.495(b);
- (10) a Request for reexamination under § 1.510.

Correspondence Relative to Trademark Registrations and Trademark Applications Where Filing by Facsimile Transmission is Not Permitted

- (1) The filing of a trademark application;
- (2) Drawings submitted under §§ 2.51, 2.52, or 2.72;
- (3) An affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c);
- (4) An application for renewal of a registration under section 9 of the Trademark Act, 15 U.S.C. 1059;
- (5) A petition to cancel a registration of a mark under section 14, subsection (1) or (2) of the Trademark Act, 15 U.S.C. 1064;
- (6) In an application under section 1(b) of the Trademark Act, 15 U.S.C.

1051(b), the filing of an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c); or the filing of a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1);

(7) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e); and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act, U.S.C. 1057(e);

(8) Correspondence to be filed with the Trademark Trial and Appeal Board, except the notice of ex parte appeal.

Correspondence Relative to Practitioner Registrations, Investigations, and Disciplinary Proceedings Where Filing by Facsimile Transmission is Not Permitted

Correspondence requiring a person's signature and relating to:

(1) Registration to practice before the Patent and Trademark Office in patent cases;

(2) Enrollment and disciplinary investigations; or

(3) Disciplinary proceedings.

(4) Certificate of Mailing or Transmission Procedure (Section 1.8)

The title of § 1.8 is changed from Certificate of Mailing to Certificate of Mailing or Transmission so as to include facsimile transmissions.

Section 1.8(a) prescribes procedures for the use of a certificate of mailing or transmission to file papers or fees in the Office by first class mail or by facsimile transmission. The description of the Certificate of Mailing or Transmission practice is set forth in § 1.8(a)(1), and the list of exceptions to the certificate practice is found in § 1.8(a)(2). The phrase "papers or fees" in § 1.8(a) is changed to "correspondence" since both "papers" and "fees" fall within the generic definition of "correspondence". Paragraphs (a) and (b) of § 1.8 are amended to include correspondence transmitted by facsimile. In the event that correspondence is filed by facsimile transmission, it is recommended that the sending facsimile machine generate a report confirming transmission for each transmission session. This report should be retained by the applicant, along with the correspondence used as the original, as evidence of content and date of transmission. Paragraph (a)(2) of § 1.8 is amended to include separate headings for correspondence which relate to patents, trademarks and disciplinary proceedings. The sequence of some of the paragraphs found in § 1.8(a)(2) has been changed in order to have those paragraphs listed under the

appropriate heading. The ability to use the Certificate of Mailing or Transmission procedures has been expanded to the filing of an affidavit under section 15, subsection (3) of the Trademark Act, 15 U.S.C. 1065(3), the filing of a notice of election to proceed by civil action in an inter partes proceeding under 35 U.S.C. 141 or 15 U.S.C. 1071(a)(1), in response to another party's appeal to the Court of Appeals for the Federal Circuit, the filing of a notice and reasons of appeal under 35 U.S.C. 142 or a notice of appeal under 15 U.S.C. 1071(a)(2), and the filing of a statement under 42 U.S.C. 2182 or 42 U.S.C. 2457(c).

Paragraph (a)(2)(vi) of § 1.8 is redesignated as paragraph (a)(2)(x) and amended to refer to section 14(1) or 14(2) of the Trademark Act, 15 U.S.C. 1064, to conform with the numbering of the Trademark Law Revision Act of 1988. Other sections of paragraph (a)(2) of § 1.8 are amended to identify the types of correspondence which will not receive the benefit of a certificate of mailing or transmission.

Paragraph (b) of § 1.8 outlines procedures to be followed to document the timely filing of correspondence in accordance with § 1.8(a) where such correspondence is not received by the Office. The phrase "correspondence or fees" in § 1.8(b) is changed to "correspondence" since "fees" fall within the generic definition of "correspondence". Before adoption of this final rule, § 1.8(b) required that the party forwarding the correspondence or fee include a declaration, under §§ 1.68 or 2.20 of this chapter, attesting to the previous timely mailing or transmission. In order to be consistent with other sections in parts 1 and 2 of this chapter, the practice under § 1.8(b) is amended to permit a practitioner, as defined in § 10.1(r), to submit a statement rather than an oath or declaration under § 1.68 or 2.20 of this chapter.

New paragraph (c) of § 1.8 is added to explicitly provide for a requirement for additional evidence relating to the mailing or transmission of correspondence in accordance with paragraph (a) of this section. The Office may invoke this requirement when it is deemed appropriate to establish an actual date of mailing or transmission. See, e.g., *In re Klein*, 6 USPQ2d 1547 (Comm'r Pat. 1987), *aff'd sub. nom. Klein v. Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), *aff'd*, 866 F.2d 412, 9 USPQ2d 1558 (Fed. Cir.), *cert. denied*, 490 U.S. 1091 (1989).

(5) Time for Appeal or Civil Action (Section 1.304)

In section 1.304, paragraphs (a) and (c) are amended to delete a statement that use of the certificate procedure under § 1.8 is prohibited so as to be consistent with changes to § 1.8. Also, a cross reference to § 1.658 in paragraph (a) is clarified.

(6) Submission of Maintenance Fees (Section 1.366)

Section 1.366(b) is amended by deleting the words "of mailing" to conform with the new title for § 1.8.

(7) Filing Date of Application for Extension of Patent Term (Section 1.741)

Section 1.741(a) is amended to conform with the new title for the certificate procedure under § 1.8.

(8) Appeal to Court and Civil Action (Section 2.145)

Sections 2.145(c)(3) and 2.145(d)(1) are amended to conform with the revised list of types of correspondence excluded from the certificate of mailing or transmission procedure set out in § 1.8. Formerly, the notice of election to proceed by civil action in an inter partes proceeding under 35 U.S.C. 141 or section 21(a)(1) of the Trademark Act, 15 U.S.C. 1071(a)(1), and the filing of notice and reasons of appeal under 35 U.S.C. 142 or a notice of appeal under section 21(a)(2) of the Trademark Act, 15 U.S.C. 1071(a)(2), were specifically excluded, under §§ 1.8(a)(2) (viii) and (ix), respectively, from the certificate of mailing procedure. Since these notices are no longer excluded under amended § 1.8(a)(2), §§ 2.145(c)(3) and 2.145(d)(1) are amended to conform with § 1.8 by deleting the last sentence which provided that the certificate of mailing procedure was not available.

(9) Reconsideration of Affidavit or Declaration (Section 2.165)

Section 2.165(a)(1) is amended to refer to the new title for the certificate procedure under § 1.8 of this chapter.

(10) Signature and Certificate of Practitioner (Section 10.18)

Section 10.18 is modified to clarify signature requirements for correspondence signed by practitioners. The reference to § 1.4 of this chapter will make it apparent that copies, including photocopies or facsimile transmissions, of correspondence signed by practitioners will be accepted under appropriate circumstances.

(11) Misconduct (Section 10.23(c))

Section 10.23(c) is amended to refer to the new title for the certificate procedure under § 1.8 of this chapter.

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment: In order to clarify how the Office will treat a copy of a paper, one comment suggested changing the second sentence in proposed § 1.4(d) to indicate that, except as provided in §§ 1.4(e) and (f), a copy would be treated by the Office as if the original had been filed.

Response: While the suggested language was not adopted, the rule was modified to clarify that, except as provided in §§ 1.4(e) and (f), an original or a copy thereof may be filed. The rules as stated in this final rulemaking are clear that, where an original is not required, a paper filed will be treated in the same way regardless of whether it is an original or a copy.

Comment: Five comments objected to a perceived requirement in § 1.4(d) that the color of ink used for signing a paper be different from the printing on the paper.

Response: Proposed § 1.4(d) did not require that the color of ink used for signing a paper be different from the printing on the paper. The suggested use of different colors of ink is a preferred procedure for distinguishing between an original and a copy. However, in order to avoid further confusion, the suggestion that a different color of ink be used has been deleted.

Comment: One comment recommended that the issue of signature authenticity end upon issuance of a patent in order to reduce the need to keep files in storage for long periods of time and to remove the burden on applicants of having to retrieve files from storage.

Response: Once a patent issues, the Office is not likely to inquire into any matters related to signature authenticity of correspondence filed in that patent application. Nevertheless, on rare occasions, a question of signature authenticity might arise after the issuance of a patent. Applicants must therefore make their own decisions as to how long to retain originals.

Comment: Two comments questioned the justification for proposed § 1.4(e) requiring originals to be submitted in international patent applications.

Response: Section 1.4(e), as adopted, does not prohibit the filing of

photocopies in an international patent application. With regard to facsimile transmissions, Patent Cooperation Treaty (PCT) Rule 92.4, as revised on July 1, 1992, permits the filing by facsimile of certain correspondence related to an international patent application. However, as indicated in §§ 1.6(d)(3), 1.8(a)(2)(iv) and 1.8(a)(2)(vi), the filing by facsimile is not permitted in the following situations relative to international applications for patent: (1) the filing of an international application for patent and (2) the filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in §§ 1.494(b) or 1.495(b).

Applicants are cautioned, however, that the Certificate of Mailing or Transmission provisions of § 1.8 do not apply to correspondence filed in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority, regardless of whether the correspondence was filed by mail or facsimile transmission. See § 1.8(a)(2)(5).

Comment: One comment suggested that, in applications filed under § 1.60, the certification that the application and papers being filed are true copies of those filed in the parent application should be excluded from the original signature requirement.

Response: Filing of copies of statements under § 1.60 as well as certifications under §§ 1.8, 1.10, 1.97(e) and 3.73(b) will be permitted. The certified documents referred to in § 1.4(f) are those which are required to be certified by statute (e.g., certified documents under 35 U.S.C. 119).

Comment: One comment questioned whether routine papers could be photocopied with a practitioner's signature thereon with appropriate information being filled in later by another person.

Response: Section 10.18(a) states that the signature of a practitioner, on correspondence filed, constitutes a certificate that the correspondence has been read by the practitioner.

Accordingly, the photocopying of papers with a practitioner's signature thereon and subsequently having appropriate information filled in by another person, is not authorized or permitted under the rules.

Comment: One comment questioned whether a docket clerk could use a signature stamp of a registered attorney on a transmittal letter.

Response: Section 10.18(a) states that correspondence filed by a practitioner must be personally signed by that

practitioner. Accordingly, use of a signature stamp of a registered attorney by a docket clerk would not be permitted.

Comment: Two comments suggested that the facsimile transmission practice be further liberalized to permit scanned-in signatures to be affixed to facsimile or electronically transmitted correspondence. The personal, handwritten signature would be affixed on a copy of the transmitted correspondence which would be kept by the applicant or his or her representative.

Response: The Office is actively considering acceptance of electronically filed applications and papers related thereto. See "Electronic Filing of Patent and Trademark Applications" published at 57 FR 56537 (November 30, 1992) and 1145 Off. Gaz. Pat. Office 378 (December 22, 1992). Until an acceptable program is established, every paper, requiring a signature, filed in the Office, regardless of the manner in which it was transmitted, will have to be a paper which was signed by, the person whose signature appears thereon, or be a copy thereof. Scanned signatures affixed to papers which were not personally signed will not be permitted at this time.

Comment: One comment indicated that proposed § 1.5(a) appeared to be contrary to PCT Article 27(1) in that it added the additional requirement not set forth in the PCT of requiring correspondence concerning an international application to identify the international application number.

Response: PCT Rule 92.1 requires any paper relating to an international application to identify the international application to which it relates. In order to ensure prompt and proper association of correspondence with the intended application file, it is essential to use the application number on all papers. The practice (which was not a new one added in this rulemaking) is a mere implementation of the requirement in PCT Rule 92.1 and is not contrary to PCT Article 27(1) as no additional requirement is being placed on applicants.

Comment: Two comments recommended an increase from two weeks to 30 days or one month in the period provided in § 1.5(a) for resubmission of correspondence.

Response: The two-week period provided in § 1.5(a) is to enable applicants to provide the necessary identifying data where such data was not provided during the original submission. This is intended to permit immediate resubmission and no additional time is deemed to be

necessary. Extending this period to 30 days would unnecessarily delay prosecution of applications.

Comment: Section 1.5(a) suggests that all letters directed to the Office concerning applications for patents should also state "Patent Application". One comment suggested that § 1.5(a) be amended to replace the restrictive reference to a "Patent Application" to read "identifying the correspondence as relating to a patent application".

Response: In order to make it easier for Office employees handling incoming correspondence to direct mail, § 1.5(a) recommends that letters relating to a patent application should state "Patent Application". The suggestion in the comment was not adopted since uniformity in the reference to "Patent Application" is desirable. Furthermore, this suggested labeling is not a requirement as evidenced by the use of the word "should" rather than "must".

Comment: Section 1.5(a) states that "No correspondence relating to an application should be filed prior to when notification of the application number is received from the Patent and Trademark Office". One comment suggested that the phrase "notification of the application number" was not adequately defined as it was not clear if applicants had to wait for the official filing receipt before information disclosure statements or other papers could be filed.

Response: The phrase "notification of the application number" as used in § 1.5(a) includes any manner in which an applicant becomes aware of the application number. The phrase is purposely broad and is not limited to the mailing of an official filing receipt. Rather, it includes a return post card which has an application number stamped thereon. The reasoning behind the statement in § 1.5(a) that no correspondence should be filed prior to notification of the application number is that correspondence received without an application number is difficult to match with the appropriate file. Further defining the phrase "notification of the application number" in § 1.5(a) is not warranted.

Comment: One comment suggested defining a business day as Monday through Friday, except for Federal holidays in the District of Columbia.

Response: It is not clear which section the comment was directed to, but § 1.6 indicates that no correspondence will be received by the Office on Saturdays, Sundays or Federal holidays within the District of Columbia. Since the language has not created problems in the past, the suggestion will not be adopted.

Comment: Two comments suggested amending § 1.6(c) to indicate the hours of operation in the "walk-up window".

Response: Specifying in the regulations the hours of operation of the "walk-up window" is unnecessary. The hours of operation have been published in Official Gazette announcements and if those hours are changed in the future, the new schedule will be published. Should the hours of operation of the "walk-up window" be changed due to unforeseen circumstances (i.e., snow emergency, etc.), a sign will be posted at the "walk-up window" giving an alternate location to deposit correspondence for the Office.

Comment: Two comments requested that the Office reconsider and withdraw the proposal to eliminate the mail drop box at the guard's desk at the Department of Commerce Building in Washington, DC.

Response: As indicated in the notice of proposed rulemaking, members of the public were occasionally denied access to the drop box at the Department of Commerce. Additionally, the Office lacked confidence in assigning correct dates of receipt to correspondence deposited in the box as a result of instances when correspondence was found outside of the drop box. Further, since there are many ways to file papers with the Office (i.e., certificate of mailing or transmission, Express Mail, facsimile transmission, longer hours at the "walk-up window"), there is no need to maintain an off-site drop box.

Comment: One comment suggested that the Office publish phone numbers for facsimile machines at various locations, (i.e., Publishing Division, various examining groups, etc.), in order to enable the public to direct their transmissions to a particular location, rather than a central location.

Response: The suggestion has been adopted. See "Patent and Trademark Office (PTO) Information Contacts", 1149 Off. Gaz. Pat. Office 67 (April 27, 1993). The Office will publish in the Official Gazette periodic updates of this list.

Comment: Three comments advocated a further expansion of the facsimile transmission practice to permit transmission of any paper which did not require an original signature. According to the comment, it was difficult to understand why the Office would not permit facsimile transmission of certain papers directly to the Office, but would accept those same papers if transmitted by facsimile to a third party who then hand-delivered the papers to the Office.

Response: The only papers, not requiring an original signature or certification, which the Office will not

accept by facsimile transmission are those which, for various reasons, would cause an undue burden on the Office. For example, papers submitted for the purpose of obtaining an application filing date are often rather voluminous, difficult to collate and would create inefficiencies in tying up the Office facsimile machines for long periods of time. In addition, there is a time and content criticality to papers filed for the purpose of obtaining a filing date which is not shared by other types of papers. Another example would be drawings submitted under §§ 1.81, 1.83-1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52, or 2.72. Experience has shown that the quality of drawings received by facsimile transmission would typically result in an objection by the Official Draftsman. Disputes might arise at that point as to whether the cause of the poor quality was applicant's transmitting unit or the receiving unit of the Office. Hence, the Office will continue to prohibit facsimile transmission of certain papers as specified in § 1.6(d).

Comment: Section 1.6(d) states that the receipt date accorded to a paper transmitted by facsimile will be the date on which the complete transmission is received in the Office. Three comments objected to this language by arguing that this practice discriminated against West Coast practitioners and gave an advantage to East Coast practitioners because the West Coast practitioners had only until 9 p.m. to complete a transmission in order to receive the benefit of that day's filing.

Response: The facsimile transmission practice is similar to regular mail practice. Thus, a West Coast practitioner depositing correspondence with the local postal service without a certificate of mailing will receive as a receipt date the date on which the Office receives the correspondence, rather than the date on which the correspondence was deposited. Similarly, a paper transmitted by facsimile will be accorded, as the date of receipt, the date on which the complete transmission was received in the Office, unless the date of receipt is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case, the date of receipt will be the next business day.

The certificate practice provided in § 1.8, on the other hand, permits the sender to indicate on the correspondence the date of mailing or transmission from the sender's perspective, which date would then be effective to meet a deadline set for response. Use of the certificate of mail or transmission is applicable to correspondence submitted by mail and

correspondence transmitted by facsimile. If transmitted by facsimile, the person signing the certificate certifies the expectation that the transmission would be initiated before midnight, local time.

By way of example, a West Coast practitioner preparing a response on the last day of the period for response would have to use the § 1.8 certificate of mailing procedure or the § 1.10 Express Mail procedure, for the response to be considered timely, if the correspondence was sent by way of the U.S. Postal Service. If the practitioner chose to send the correspondence by facsimile on the last day for response and the transmission was started before 9 p.m. Pacific time, but was completed after 9 p.m. Pacific time, the Office would accord that correspondence a receipt date as of the next business day, which would be after the period for response expired because the Office would have received the correspondence after midnight Eastern time of the last day for response. However, if the practitioner affixed a certificate of transmission to the correspondence sent by facsimile transmission, indicating that the correspondence was being transmitted on the last day in the period for response, then the correspondence would be considered timely filed.

As another example, a transmission started before midnight, Pacific time, on the last day for response and having a certificate of transmission affixed thereto, would be considered timely filed even though the transmission was completed after midnight, Pacific time and was received in the Office the day after the deadline for response.

Comment: One comment suggested replacing "drawings" in § 1.6(d)(4) with "formal drawings" for clarity.

Response: The suggestion has not been adopted because the phrase "formal drawings" does not find support or antecedent basis in sections referred to in § 1.6(d)(4).

Comment: One comment objected to the perceived requirement for a certificate of transmission in order for a facsimile-transmitted document to be accorded a date of receipt.

Response: The receipt date accorded to correspondence eligible for facsimile transmission, whether containing a certificate of transmission or not, will be the date of receipt in the Office of the complete transmission (unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the date accorded will be the next business day). The certificate of transmission, if used, is for purposes of establishing timely filing if the

correspondence is transmitted within the period for response but is (1) received in the Office after expiration of the period for response, or (2) lost or (3) not received by the Office.

Comment: One comment requested clarification as to what constituted a "complete transmission" as used in § 1.6(d).

Response: The context in which the phrase "complete transmission" was used in § 1.6(d) was to indicate that the transmission was finished. For example, if page 1 of a ten-page facsimile transmission is received in the Office at 11:55 p.m. on a Tuesday and page 10 of that transmission is received at 12:05 a.m. Wednesday, the receipt date accorded to that correspondence will be the date of that Wednesday. (This example assumes that Wednesday is not a Federal holiday within the District of Columbia).

Comment: One comment questioned whether a confirmation in the sender's facsimile machine that the entire facsimile was received constituted sufficient proof that a transmission was complete.

Response: A confirmation by the sender's facsimile machine is evidence that a transmission was made. As such, the confirmation will be considered together with any other evidence presented when questions of filing by facsimile transmission arise. It is therefore suggested that a certificate of transmission be used to enable the sender to rely on the procedures set forth in § 1.8(b).

Comment: One comment requested clarification as to what constituted an incomplete, faulty or illegible facsimile. Also, if an incomplete transmission was sent near the end of the period for response, will the sender be able to rely on the date the facsimile was initially transmitted, or would the sender have to rely on § 1.137 to revive the application if it became abandoned?

Response: If an incomplete, faulty or illegible facsimile transmission is received, that correspondence will be treated by the Office in the same manner that a comparably incomplete, faulty or illegible piece of correspondence would be treated if the correspondence were hand-delivered or mailed to the Office. Whether the application would be held abandoned upon receipt of an incomplete facsimile transmission or whether an opportunity would be provided to complete the transmission will be decided on a case-by-case basis using the same standards that are currently used—for example, for incomplete responses to Office actions, see § 1.135(c).

Comment: One comment indicated that the proposed practice of not accepting papers related to international applications if transmitted by facsimile and the indication that papers transmitted by facsimile, when prohibited, may be disposed of is contrary to PCT practice wherein PCT expressly provides for facsimile transmission of such papers and when not acceptable, an opportunity to correct is provided.

Response: PCT does not mandate acceptance of facsimile transmissions; it merely authorizes their acceptance. See PCT Rule 92.4(h). Additionally, as indicated above, the suggestion that the Office permit facsimile transmission of correspondence relative to an already filed international application has been adopted to a large extent.

There is no provision in PCT to provide an opportunity for correction when correspondence is filed by facsimile in spite of a refusal by a national Office to accept that type of correspondence by facsimile. As with national applications, the Office will attempt to notify senders whenever a facsimile transmission received is of a type which the Office has not agreed to accept by facsimile. Senders are cautioned against submitting such correspondence by facsimile transmission since the correspondence will not be accorded a filing date or date of receipt in the Office.

Comment: One comment suggested changing the phrase "Certificate of Transfer" in § 1.8 to "Certificate of Transmittal" or "Certificate of Sending" because "transfer" typically implies transfer of ownership interest in patents or trademarks.

Response: While each phrase has its own advantages and drawbacks, the suggestion will not be adopted. Nevertheless, in order to avoid confusion, this rulemaking leaves the old "Certificate of Mailing" intact, while adding "or Transmission" to include correspondence filed by facsimile transmission.

Comment: In the notice of proposed rulemaking, it was recommended that the facsimile machine transmission report be retained by the sender along with the correspondence used as the original, as evidence of content and date of transfer. One comment indicated that the correspondence used as the original can only be retained using the older stand-alone type of facsimile machine, since there is no such physical document with the newer in-computer facsimile cards.

Response: Section 1.4(d)(2) provides for submission of copies, e.g., by facsimile, of originals as defined in

§ 1.4(d)(1). Section 1.4(d)(2) does not provide for transmission of unsigned correspondence from a computer. While § 1.4(d)(2) does not require the sender to retain the original, there may be occasions when the sender will have to document the date and content of a document previously filed by facsimile transmission. The recommendation made in the notice of proposed rulemaking will apply to any situation where a paper document served as the original from which a facsimile was transmitted. If a facsimile transmission by using a computer is desired, a paper copy of the document to be transmitted may be printed out, signed and retained by the sender as evidence of content of the document transmitted. Once signed, if filing of a copy is permitted, the document could be scanned into the computer and facsimile transmitted to the Office.

Comment: In proposed § 1.8(a)(1) published in the *Federal Register*, paragraphs (i) and (ii) were joined with the alternative "or" to indicate that correspondence could be filed by being deposited with the U.S. Postal Service or transmitted by facsimile. This same section was published in the *Official Gazette*, by having paragraphs (i) and (ii) joined with the connective "and". Numerous comments, received apparently from individuals who saw the proposed rules in the *Official Gazette*, objected to the requirement that, in order to receive benefits under § 1.8, correspondence transmitted by facsimile also had to be mailed.

Response: Section 1.8(a)(1) as published in the *Federal Register* was correct, while the version published in the *Official Gazette* contained a typographical error. Hence, §§ 1.8(a)(1)(i) (A) and (B), as adopted in this rulemaking, make clear that the certificate of mailing or transmission practice will be applicable to correspondence mailed or sent by facsimile. The Office discourages the practice of having the same papers submitted by both methods as this practice would result in unnecessary duplication of papers and processing requirements.

Comment: One comment indicated that since all facsimile transmissions include the date and time of the actual facsimile transmission, the Office should not require a certificate of transmission, in order to get the benefit of an earlier filing date under § 1.8(a), when correspondence is transmitted by facsimile.

Response: The Office is concerned that some older machines may not print the date and time of the actual transmission. Furthermore, even on the

new machines the date and time printed by the sending unit may not always be correct, particularly after a temporary electrical disconnection, change in time, etc. Hence, for purposes of being considered timely filed, if the sender wishes to obtain the benefits of a date earlier than the date the complete transmission is received in the Office, the correspondence must include a certification in accordance with § 1.8(a).

A suggested format for a Certificate of Mailing and a Certificate of Transmission under § 1.8, to be included with the correspondence, is reproduced below:

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner of Patents and Trademarks
Washington, DC 20231
on _____

Date _____
Signature _____
Typed or printed name of person signing certificate _____

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office:

on _____
Date _____
Signature _____
Typed or printed name of person signing certificate _____

Other Considerations

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12812 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to incorporate existing Office policy into the regulations, permit the filing of certain correspondence without an original signature and permit the filing of certain correspondence by facsimile transmission.

The Office has determined that these rule changes are not major rules under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions because

most of the changes reduce procedural burdens. There will be no significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that these changes have no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain collection-of-information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which have previously been approved by the Office of Management and Budget under Control Nos. 0651-0009 and 0651-0011. The public reporting burden for these collections of information for Certificates of Mailing or Transmission is estimated to average 0.1 hours each, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of these collections of information, including suggestions for reducing the burden, to Abraham HersHKovitz, Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Act Projects 0651-0009 and 0651-0011).

List of Subjects

37 CFR Part 1

Administrative practice and procedure; Freedom of information, inventions and patents, Reporting and record keeping requirements.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts Inventions and patents, Lawyers.

For the reasons set out in the preamble, and pursuant to the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 6, parts 1, 2 and 10 of title 37 of the Code of Federal Regulations are amended as set forth below:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. In Section 1.4, the heading is revised and paragraphs (d) through (f) are added to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(d) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in a patent or trademark application, reexamination proceeding, patent or trademark interference proceeding, patent file or trademark registration file, trademark opposition proceeding, trademark cancellation proceeding, or trademark concurrent use proceeding, which requires a person's signature, must either:

(1) Be an original, that is, have an original signature personally signed in permanent ink by that person; or

(2) Be a copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Patent and Trademark Office may require submission of the original.

(e) Correspondence requiring a person's signature and relating to registration to practice before the Patent and Trademark Office in patent cases, enrollment and disciplinary investigations, or disciplinary proceedings must be submitted with an original signature personally signed in permanent ink by that person.

(f) When a document that is required by statute to be certified must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.

3. Section 1.5(a) is revised to read as follows:

§ 1.5 Identification of application, patent or registration.

(a) No correspondence relating to an application should be filed prior to when notification of the application number is received from the Patent and Trademark Office. When a letter directed to the Patent and Trademark Office concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number, e.g., 07/123,456), or the serial number and filing date assigned to

that application by the Patent and Trademark Office, or the international application number of the international application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied with a cover letter which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mail date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the Certificate of Mailing or Transmission procedure under § 1.8 or the Express Mail procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. If for some reason returned correspondence is resubmitted with proper identification later than two weeks after the return mailing by the Patent and Trademark Office, the resubmitted correspondence will be accepted but given its date of receipt. In addition to the application number, all letters directed to the Patent and Trademark Office concerning applications for patent should also state "PATENT APPLICATION," the name of the applicant, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

4. Section 1.6 is revised to read as follows:

§ 1.6 Receipt of correspondence.

(a) *Date of receipt and Express Mail date of deposit.* Correspondence received in the Patent and Trademark Office is stamped with the date of receipt except as follows:

(1) No correspondence is received in the Patent and Trademark Office on Saturdays, Sundays or Federal holidays within the District of Columbia;

(2) Correspondence filed in accordance with § 1.10 will be stamped with the date of deposit as "Express

Mail" with the United States Postal Service unless the date of deposit is a Saturday, Sunday, or Federal holiday within the District of Columbia in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia;

(3) Correspondence transmitted by facsimile to the Patent and Trademark Office will be stamped with the date on which the complete transmission is received in the Patent and Trademark Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

(b) *Patent and Trademark Office Post Office pouch.* Mail placed in the Patent and Trademark Office pouch up to midnight on any day, except Saturdays, Sundays and Federal holidays within the District of Columbia, by the post office at Washington, DC, serving the Patent and Trademark Office, is considered as having been received in the Patent and Trademark Office on the day it was so placed in the pouch by the U.S. Postal Service.

(c) *Correspondence delivered by hand.* In addition to being mailed, correspondence may be delivered by hand during hours the Office is open to receive correspondence.

(d) *Facsimile transmission.* Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 1.6(a)(3). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the Patent and Trademark Office. The application number of a patent or trademark application, the control number of a reexamination proceeding, the interference number of an interference proceeding, the patent number of a patent, or the registration number of a trademark should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

(1) Correspondence as specified in § 1.4(e), requiring an original signature;

(2) Certified documents as specified in § 1.4(f);

(3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2) (i) through (iv), (vi) through (xi) and (xiii);

(4) Drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52, or 2.72;

(5) A request for reexamination under § 1.510;

(6) Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1 through 5.8 of this chapter and directly related to the secrecy order content of the application;

(7) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e); and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e);

(8) Correspondence to be filed with the Trademark Trial and Appeal Board, except the notice of *ex parte* appeal;

(9) Correspondence to be filed in an interference proceeding which consists of a preliminary statement under § 1.621; a transcript of a deposition under § 1.676 or of interrogatories, cross-interrogatories, or recorded answers under § 1.684(c); or an evidentiary record and exhibits under § 1.653.

(e) Interruptions in U.S. Postal Service.

If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service. Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter.

5. Section 1.8 is revised to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed.

The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Deposited with the U.S. Postal Service with sufficient postage as first class mail addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on, the following:

(i) Relative to Patents and Patent Applications—

(A) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date;

(B) The filing of correspondence in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail";

(C) The filing of agreements between parties to an interference under 35 U.S.C. 135(c);

(D) The filing of an international application for patent;

(E) The filing of correspondence in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority;

(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.494(b) or § 1.495(b).

(ii) Relative to Trademark Registrations and Trademark Applications—

(A) The filing of a trademark application;

(B) The filing of an affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c);

(C) The filing of an application for renewal of a registration under section 9 of the Trademark Act, 15 U.S.C. 1059;

(D) The filing of a petition to cancel a registration of a mark under section 14, subsection (1) or (2) of the Trademark Act, 15 U.S.C. 1064;

(E) In an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c); or the filing of a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1);

(F) In an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of a request under section 1(d)(2) of the Trademark Act, 15 U.S.C. 1051(d)(2), for an extension of time to file a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1).

(iii) Relative to Disciplinary Proceedings

(A) Correspondence filed in connection with a disciplinary proceeding under part 10 of this chapter.

(B) Reserved.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

6. Section 1.304 paragraphs (a) and (c) are revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a) (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for

commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for consideration or modification of the decision is filed within the time period provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences, the time for filing a cross-appeal or cross-action expires:

- (i) 14 days after service of the notice of appeal or the summons and complaint, or
 - (ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.
- (2) The time periods set forth in this section are not subject to the provisions of §§ 1.136, 1.550(c) or 1.645 (a) or (b).
- (3) The Commissioner may extend the time for filing an appeal or commencing a civil action:

- (i) For good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or
- (ii) Upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.

(c) If a defeated party to an interference has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under 35 U.S.C. 141 electing to have all further proceedings conducted under 35 U.S.C. 146 (§ 1.303(c)), the time for filing a civil action thereafter is specified in 35 U.S.C. 141. The time for filing a cross-action expires 14 days after service of the summons and complaint.

(7) Section 1.366(b) is revised to read as follows:

§ 1.366 Submission of maintenance fees.

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid and may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362(d), (e) or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a

delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The certificate procedures of either § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

* * * * *

8. Section 1.741, paragraph (a) is revised to read as follows:

§ 1.741 Filing date of application.

(a) The filing date of an application for extension of patent term is the date on which a complete application is received in the Patent and Trademark Office or filed pursuant to the "Certificate of Mailing or Transmission" provisions of 37 CFR 1.8 or "Express Mail" provisions of 37 CFR 1.10.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

9. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

10. Section 2.145 is amended by revising paragraphs (c)(3) and (d)(1) to read as follows:

§ 2.145 Appeal to court and civil action.

* * * * *

(c) * * *

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Commissioner within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119.

* * * * *

(d) *Time for appeal or civil action.*

(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (paragraph (b) of this section), or for commencing a civil action (paragraph (c) of this section), is two months from the date of the

decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a request for rehearing or reconsideration or modification of the decision is filed within the time specified in §§ 2.127(b), 2.129(c) or 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In inter partes cases, the time for filing a cross-action or a notice of a cross-appeal expires

(i) 14 days after service of the notice of appeal or the summons and complaint; or

(ii) Two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, whichever is later.

* * * * *

11. Section 2.165(a)(1) is revised to read as follows:

§ 2.165 Reconsideration of affidavit or declaration.

(a)(1) If the affidavit or declaration filed pursuant to § 2.162 is insufficient or defective, the affidavit or declaration will be refused and the registrant will be notified of the reason. Reconsideration of the refusal may be requested within six months from the date of the mailing of the action. The request for reconsideration must state the grounds for the request. A supplemental or substitute affidavit or declaration required by section 8 of the Act of 1946 cannot be considered unless it is filed before the expiration of six years from the date of the registration or from the date of publication under section 12(c) of the Act. The "Certificate of Mailing or Transmission" procedure provided by § 1.8 does not apply to affidavits or declarations or to supplemental or substitute affidavits or declarations filed under section 8(a) or (b) of the Act, but the certificate by "Express Mail" procedure provided by § 1.10 does apply thereto.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

12. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

13. Section 10.18 is revised to read as follows:

§ 10.18 Signature and certificate of practitioner.

(a) Except where a copy, including a photocopy or facsimile transmission, of

a personally signed piece of correspondence is permitted to be filed pursuant to § 1.4 of this chapter, every piece of correspondence filed by a practitioner on behalf of himself or herself or representing an applicant or a party to a proceeding in the Patent and Trademark Office must bear an original signature personally signed in permanent ink by such practitioner except for correspondence which is required to be signed by the applicant or party. The signature of a practitioner on correspondence filed by the practitioner, regardless of whether the correspondence has an original signature or is a copy, including a photocopy or facsimile transmission, of correspondence bearing an original signature, constitutes a certificate that:

- (1) The correspondence has been read by the practitioner;
- (2) The filing of the correspondence is authorized;
- (3) To the best of practitioner's knowledge, information, and belief, there is good ground to support the correspondence, including any allegations of improper conduct contained or alleged therein; and
- (4) The correspondence is not interposed for delay.

(b) Any practitioner knowingly violating the provisions of this section is subject to disciplinary action. See § 10.23(c)(15).

14. Section 10.23, paragraph (c)(9), is revised to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * * * *
 (9) Knowingly misusing a "Certificate of Mailing or Transmission" under § 1.8 of this chapter or a certificate of "Express Mail" under § 1.10 of this chapter.

* * * * *

Dated: October 15, 1993.
Bruce A. Lehman,
*Assistant Secretary of Commerce and
 Commissioner of Patents and Trademarks.*
 [FR Doc. 93-25864 Filed 10-21-93; 8:45 am]
 BILLING CODE 3510-16-M

37 CFR Parts 1, 5, and 10

[Docket No. 920779-3226]

RIN 0651-AA34

Miscellaneous Changes in Patent Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of

practice in patent cases to: Expand the authority to sign a terminal disclaimer in a patent application or a disclaimer in a patent; eliminate some formal requirements for an appeal brief for an appellant appearing without counsel; prohibit fee extensions of time to file reply briefs and requests for oral hearing; clarify the requirements for claiming foreign priority; specify the manner in which the fee deficiency is computed when applicants seek to correct an error in claiming small entity status; and correct errors in published regulations.

EFFECTIVE DATE: June 3, 1994. The time periods and extension of time provisions of §§ 1.193 and 1.194 for filing reply briefs and requests for oral hearing will be applicable where the examiner's answer was mailed on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305-9282, or by facsimile transmission at (703) 305-8825, or by mail marked to his attention and addressed to: Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the *Federal Register* at 57 FR 43412 (September 21, 1992) and in the *Patent and Trademark Office Official Gazette* at 1143 Off. Gaz. Pat. Office 33-40 (October 13, 1992), the Office proposed to amend several rules of practice in patent and trademark cases. This rulemaking includes changes in § 1.9(d) which were not part of the proposed rules. The changes in § 1.9(d) were made in order to update the information pertaining to establishing small entity status as a small business. No substantive changes have been made in § 1.9(d). The proposed rule requiring that the specification of a design application describe the nature and intended use of the article being claimed has been withdrawn. Additionally, the proposed rule prohibiting a fee extension of time to file corrected drawings after allowance has been withdrawn.

Written comments were submitted by 13 firms, one association and one individual. An oral hearing was not conducted.

The following includes a discussion of the rules being changed and the reasons for those changes and an analysis of the comments received in response to the notice of proposed rulemaking.

Discussion of Specific Sections To Be Changed or Added

(1) Definitions (Section 1.9)

Section 1.9(d) is amended in order to update the information therein regarding the regulations of the Small Business Administration (SBA). The SBA's rule for defining a small business has been modified. Section 1.9(d) will no longer repeat the SBA rule in its entirety. Rather, § 1.9(d), as adopted, contains a short summary of the SBA definitions. The size limit of 500 employees (including those of its affiliates) for a small business concern has not been changed. Information on size standards for a small business concern may be obtained from the Small Business Administration by calling (202) 205-6618, or by writing to: Small Business Administration, Size Standards Staff, 409 Third Street, SW., Washington, DC 20416.

(2) Copies of Papers (Section 1.13)

Section 1.13(a) is amended to clarify that the paragraph pertains to non-certified copies, and that copies of patents, trademark registrations and other papers within the jurisdiction of the Office, as opposed to being within the jurisdiction of another agency, may be obtained from the Office upon payment of the fee therefor.

Section 1.13(b) is amended to clarify that certified copies of the above items may be obtained from the Office upon payment of the fee for a certified copy.

(3) Patent Applications Preserved in Secrecy (Section 1.14)

Section 1.14(b) is amended to correct a typographical error in that the second and third sentences of this section were inadvertently deleted during an earlier revision of this section. See 50 FR 9378 (March 7, 1985) and 1053 Off. Gaz. Pat. Office 10-26 (April 2, 1985). Section 1.14(b) is amended by restoring the deleted sentences and by changing, in the first sentence, the plural "applicants" to the singular "applicant".

(4) Effect on Fees of Failure To Establish Status, or Change Status, as a Small Entity (Section 1.28)

Section 1.28(c) is amended to reflect Office practice in calculating fee deficiencies when fees have been improperly paid as a small entity. The Office receives deficiency payments that differ based on varying interpretations of § 1.28(c). Some simply double the small entity fee in effect when the fee was originally paid in error in the small entity amount, while others compute the difference between the fee already

paid and the other than small entity fee level in effect at the time the deficiency is paid. The Office requires payments to be based on fee levels in effect at the time the other than small entity fee is paid.

Since 1989, fee levels have been adjusted annually. In view of these adjustments, there are frequently situations where the fee amount has changed since it was originally paid erroneously at the small entity rate. Calculation of deficiency amounts based on fee levels in effect at the time the deficiency is paid conforms with the general concept that fees to be paid are those in effect at the time of receipt of the fees. Section 1.28(c) is amended to reflect this practice of calculating the amount of the deficiency based on the § 029 fee level in effect at the time of the deficiency payment.

(5) Claim for Foreign Priority (Section 1.55)

Section 1.55(a) is amended to incorporate the limitations of 35 U.S.C. 119, which provides that the claim for priority and the appropriate copy of the foreign application must be filed before the patent is granted. Additionally, some applicants did not realize that submission of priority papers after payment of the issue fee, but before the grant of the patent, required the filing of a petition to accept submission of priority papers after payment of the issue fee. After a patent is granted, applicants may still be able to establish priority benefits by filing a reissue application to correct the failure to perfect the claim for priority. *Brenner v. State of Israel*, 400 F.2d 789, 158 USPQ 584 (D.C. Cir. 1968). Section 1.55(a) lists separately those instances when priority documents must be filed prior to payment of the issue fee to receive the benefit of the filing date of a prior foreign application. Furthermore, § 1.55(a) is amended to clarify when a verified English language translation of a priority application not in the English language must be filed and to require a statement from the translator that the translation of the priority document is accurate. *Krenitsky v. Utagawa*, 215 USPQ 713 (Comm'r Pat. 1981).

(6) Claiming Benefit of Earlier Filing Date and Cross References to Other Applications (Section 1.78)

Section 1.78(a) is amended to correct a typographical error. In the reference to the fee in § 1.21(l), the letter (l) should have appeared instead of the numeral (1). Section 1.78(a) is further amended to be consistent with § 1.5(a), by permitting the identification of the prior

application by application number or serial number and filing date.

(7) Prohibition of Fee Extensions of Time (Section 1.136(a))

Section 1.136(a) is amended by adding two additional situations in which applicants would no longer be able to use fee extensions. Section 1.136(a) is rearranged so that referenced sections appear in numerical order. The new prohibitions will apply to situations where the request to extend the time is: (1) To permit filing reply briefs under § 1.193(b); and (2) to permit filing requests for oral hearing under § 1.194(b) before the Board of Patent Appeals and Interferences (Board). Fee extensions of time to file reply briefs or requests for oral hearing delay transfer of jurisdiction of the appeal to the Board and unnecessarily delay final disposition of the appeal.

The Office has considered changing the practice to require payment of the fee and filing the request for an extension of time before the period set for response expires in the situations addressed in this rulemaking, but did not adopt that approach because of the complexity that it would introduce into the system.

Under the previous rules, applicants could request a maximum four-month extension of time under § 1.136(a) to file reply briefs or request oral hearings. Since the backlog of cases awaiting a decision by the Board has been reduced, these extension requests have resulted in unnecessary delays in transmitting appeals to the Board and increased pendency of applications. The periods specified in §§ 1.193(b) and 1.194(b), as adopted, are considered sufficient to file a reply brief or request an oral hearing. Extensions of time for cause may be available under § 1.136(b). Therefore, § 1.136(a) is amended to prohibit fee extensions of time to file a reply brief or request an oral hearing.

(8) Appeal to the Board of Patent Appeals and Interferences (Section 1.191)

Section 1.191(d) is amended to be consistent with the changes to § 1.136(a).

(9) Appellant's Brief (Section 1.192)

Sections 1.192(a) and (d) are amended by moving the last sentence of current § 1.192(d) to § 1.192(a) to highlight that the Board may refuse consideration of any arguments or authorities not included in the brief.

Section 1.192(c) is amended to eliminate some of the formal requirements for an appeal brief for a pro se appellant, that is, an appellant

appearing without counsel. An appellant appearing without counsel means there is no attorney or agent of record in the application or reexamination proceeding, the brief was not prepared by a registered practitioner, and the brief was not signed by a registered practitioner. Paragraph (c) is amended to allow a pro se appellant's brief to be accepted provided it is at least in substantial compliance with the requirements of subparagraphs (1), (2), (6) and (7) of paragraph (c). If a pro se appellant's brief is accepted, it will be presumed that a rejected group of claims stand or fall together unless an argument is included in the brief that presents reasons as to why appellant considers one or more claims in the rejected group of claims to be separately patentable from the other claims in the group.

(10) Examiner's Answer (Section 1.193)

Section 1.193(b) is amended to clarify the consequence of failure to file a reply brief in response to an expressly stated new ground of rejection made in an examiner's answer. The failure to file a reply brief will result in dismissal of the appeal as to the claims made subject to the expressly stated new ground of rejection. If the dismissal of the appeal applies to all claims in the application, the application will be abandoned. Additionally, this section is amended to change the period for filing a reply brief to two months from the date of the examiner's answer, regardless of whether the examiner's answer includes a new ground of rejection. The change to two months will avoid confusion in those cases in which there is a disagreement as to whether the examiner's answer in fact states a new ground of rejection and will provide an adequate period of time to file a reply brief without the need to request an extension of time. Finally, this section is amended to be consistent with the changes to § 1.136(a).

(11) Oral Hearing (Section 1.194)

Section 1.194(b) is amended to be consistent with the changes to § 1.136(a). Under the previous rule, if a new ground of rejection was made in an examiner's answer, two months were permitted for filing a reply brief and, if a reply brief was filed, an applicant was permitted three months after the date of filing a reply brief to file a request for an oral hearing. In order to provide a more consistent approach vis-a-vis time periods for filing reply briefs and requests for oral hearing and to permit earlier decisions of issues on appeal, the period for filing a request for oral hearing has been changed to two (2)

months from the date of an examiner's answer, regardless of whether the examiner's answer includes a new ground of rejection. This period should be sufficient to request an oral hearing without the need to request an extension of time.

(12) Decision by the Board of Patent Appeals and Interferences (Section 1.196)

Section 1.196(f) is amended to refer to § 1.550(c) for extensions of time in reexamination proceedings.

(13) Action Following Decision (Section 1.197)

Section 1.197(b) is amended to refer to § 1.550(c) for extensions of time in reexamination proceedings.

(14) Amendments After Allowance (Section 1.312)

Section 1.312(b) is amended to clarify that the fee required for a petition under this section is that specified in § 1.17(i)(1).

(15) Statutory Disclaimers, Including Terminal Disclaimers (Section 1.321)

The title of § 1.321 is amended to clarify that this section applies to terminal disclaimers, as well as to statutory disclaimers in general. Section 1.321 is further amended to permit the signing of a disclaimer in a patent by the patentee, or an attorney or agent of record, whereas, persons permitted to sign a disclaimer in a patent application will be any person specified in § 1.33(a)(1)-(4). The person signing the disclaimer must state the present extent of the disclaiming party's (i.e., patentee's or assignee's) interest in the patent or patent application. Naturally, a disclaimer signed on behalf of a party who no longer has an ownership interest in the patent or patent application cannot be accepted since 35 U.S.C. 253 requires a disclaimer to be signed by the owner of the whole or any sectional interest in the patent or patent application.

Section 253 of title 35 of the United States Code states that disclaimer of any complete claim in a patent may be made by the patentee. Furthermore, any terminal part of the patent granted or to be granted may be disclaimed by the patentee, or applicant, respectively. It was the recent policy of the Office to accept disclaimers only if signed by the owner of record. This policy was too restrictive in that it precluded authorized patent practitioners from signing disclaimers. Furthermore, it was often difficult to ascertain whether the person signing was in fact an officer of the entity owning rights to the

application. Accordingly, the rules as adopted, permit an attorney or agent of record to sign terminal disclaimers.

If the patent or patent application is assigned to an organization, such as a corporation, partnership, university, Government agency, or similar entity, and the disclaimer is signed by the assignee, the assignee must comply with § 3.73(b). See "Taking Action in a Patent Matter Before the Office by the Assignee Under 37 CFR 3.73", at 1150 Off. Gaz. Pat. Office 62 (May 25, 1993). However, the rules, as adopted, permit an attorney or agent of record to sign a terminal disclaimer without the need to comply with § 3.73(b). Paragraph (a) of this section is further amended to refer only to disclaimers filed in patents. The Office does not record a disclaimer of part of a claim or claims. Hence, paragraph (a) of this section is amended to indicate that a disclaimer which does not disclaim a complete claim or claims will be refused recordation, rather than "may be refused recordation" as the rule read previously.

Paragraph (b) of this section is amended to refer only to terminal disclaimers filed in a patent application. Section 1.321(b) is also amended to include a reminder that the disclaimer is binding upon the grantee and its successors or assigns.

Paragraph (c) of this section incorporates the language of former paragraph (b) of this section concerning terminal disclaimers to obviate a double patenting rejection. This paragraph also includes reference to terminal disclaimers filed in reexamination proceedings for the same purpose.

(16) Publication of Notice of Proposed Amendments (Section 1.352(a))

Section 1.352(a) is amended to delete the language "and in other cases whether practicable" so that the Office may engage in expedited rulemaking when publication of a notice of proposed amendments to regulations is not required by law.

(17) Time for Payment of Maintenance Fees (Section 1.362)

Section 1.362 is amended to clarify applicability and due dates for payment of maintenance fees. Paragraph (c)(3) of § 1.362 indicates that the actual filing date of a continuing application determines applicability of maintenance fees, while paragraph (c)(4) indicates that in the case of a reissue application, the filing date of the original non-reissue application determines applicability of maintenance fees. Some patentees and patent practitioners expressed confusion with respect to applicability of maintenance fees in the

case of a continuing application of a reissue application. Uncertainty has been expressed as to whether this type of application would fall within paragraph (c)(3) or (c)(4). The amendment to § 1.362(c)(4) clarifies that a continuing reissue application of a reissue application is subject to maintenance fees only if the original (non-reissue) patent would be subject to such fees.

These amendments also remove any confusion that may have existed with regard to the due dates for payment of maintenance fees in reissued patents by adding § 1.362(h) to specify that the due dates for payment of maintenance fees in such reissued patents are computed from the date of grant of the original (non-reissue) patent. The due dates for payment of maintenance fees in a reissued patent are computed from the date of grant of the original (non-reissue) patent. Note the distinction between a continuing reissue application of a reissue application, and a regular continuing application of a reissue application as discussed in *In re Bauman*, 683 F.2d 405, 214 USPQ 585 (CCPA 1982).

In a notice entitled "Revision of Patent and Trademark Fees" published in the *Federal Register* at 56 FR 65142 (December 13, 1991), the Office announced an amendment to its rules of practice. Included in that notice was a change to paragraph (e) of § 1.362 which was not intended. See 56 FR at 65146. The portion of paragraph (e) which was not intended to be amended is changed back to its earlier version.

(18) Request by Applicant for Interference With Patent (Section 1.607)

Section 1.607(a)(5)(i) is amended to correct a typographical error in the spelling of the word "count".

(19) Export of Technical data (Section 5.19)

Section 5.19(a) is amended to correct the citations set forth in the rule and to update the name of the office in the Department of Commerce.

(20) Sharing legal fees (Section 10.48)

Section 10.48(b) is amended to correct a typographical error in the spelling of the word "deceased".

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment: One comment inquired as to why the phrase by "serial number

and filing date" was used in § 1.78(a), whereas the phrase "application fumber (consisting of the series code and serial number, e.g., 07/123,456), or the serial number and filing date" was used in § 1.5(a).

Response: The inconsistency has been removed by having section 1.78(a) changed to use terminology consistent with § 1.5(a).

Comment: A number of comments directed to § 1.85(c) expressed concern that applications would become abandoned as a result of the proposal that fee extensions of time under § 1.136(a) could not be obtained for filing corrected drawings.

Response: The proposal that fee extensions of time under § 1.136(a) not be permitted for filing corrected drawings has been withdrawn.

Comment: Regarding § 1.85(c), one comment recommended that the Notice of Draftsman's Patent Drawing Review (PTOL-948) include separate boxes for each drawing objection (e.g., a separate box for each of "pale," "rough," "blurred," and "jagged"); that drafting personnel be better trained to more completely communicate the objection to any particular drawing; and that the Notice of Allowability indicate for which specific figure formal drawings are required.

Response: The proposed rule change to § 1.85(c) has been withdrawn. Questions concerning the Notice of Draftsman's Patent Drawing Review may be referred to the Official Draftsman at (703) 305-8335, and questions concerning any requirement on a Notice of Allowability should be directed to the examiner.

Comment: Regarding §§ 1.153 and 1.154, a number of comments objected to the proposed requirement that the specification of a design application contain a statement of the nature and intended use of the article claimed.

Response: The proposed rule change regarding §§ 1.153 and 1.154 has been withdrawn. The Office will continue its current practice of mailing a request for information where the nature or intended use of the article is not evident in the application file.

Comment: Regarding § 1.153, one comment stated that the language of the proposed rule is unclear as to whether an abstract is required. The comment recommended that the Office should require an abstract and require it to provide the necessary information.

Response: As discussed above, the proposed rule change regarding §§ 1.153 and 1.154 has been withdrawn. The present rules do not require an Abstract. Suggestions concerning this issue may

be directed to the Director of Examining Group 2900.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment opposed the elimination of fee extensions in the filing of reply briefs and requests for oral hearings, as one month, while often a sufficient time to file a reply brief, is insufficient where counsel must communicate with a patent department or foreign applicants, especially where there is a delay between the time the Office mails the communication and it is received by counsel.

Response: The period for filing a reply brief or request for oral hearing has been changed to two months from the date of the examiner's answer. The period was extended to two months in this rulemaking, as adopted, to provide appellants adequate time to take appropriate action, and to provide a uniform period in the rules to file a reply brief or request an oral hearing. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment opposed the elimination of fee extensions in the filing of reply briefs and requests for oral hearings, as a one-month period for response is insufficient for sole practitioners and persons who do not maintain offices for the sole purpose of responding to Office communications.

Response: As discussed above, the period for filing a reply brief or request for oral hearing has been changed to two months from the date of the examiner's answer. This two-month period should be an adequate period of time for filing a reply brief or a request for an oral hearing. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment deemed it reasonable and necessary that the Board have at its disposal all possible arguments. The refusal to enter a reply brief was characterized as an impediment to a decision based upon a complete record. Additionally, the comment argued that the refusal to enter a reply brief would result in attempts to enter the arguments under another guise, such as during oral argument or by filing a memorandum of oral argument.

Response: An appellant should present all arguments for patentability in the appeal brief. A reply brief should not be necessary to present a complete record, and would be inappropriate except in those cases where the examiner has introduced a new point of

argument or new ground of rejection in the examiner's answer.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment noted that fee extensions for filing reply briefs and requests for oral hearings do not create any more of a delay in the final disposition of an appeal than a fee extension for filing the Notice of Appeal or the brief in support of the appeal.

Response: The comment reflects a misunderstanding of the appeal process and the handling of applications in which an appeal has been filed. Under the existing rules before this rulemaking, appellants were able, with the maximum four-month fee extension, to file reply briefs or request oral hearings up to six months after an examiner's answer. As a result, appeals otherwise ready for a decision were either held in the examining group for that period of time before transmittal to the Board or when transmitted to the Board earlier, were occasionally acted upon by a Board panel before the reply briefs or requests for oral hearing were filed, requiring the Board to vacate its decision. As the backlog of appeals awaiting a decision by the Board has been reduced, retaining applications in the examining group has resulted in unnecessarily prolonging the pendency of applications. Under the rules as adopted, appellants are generally given more time (two months instead of one month) to file a reply brief or request an oral hearing, and the Office minimizes the delay necessary before transmitting the appeal to the Board for decision.

Comment: Regarding § 1.193(b), one comment stated that an appeal should not be dismissed for failure to file a reply brief to a new ground of rejection made in the examiner's answer, unless the examiner's answer expressly states that there is a new ground of rejection. The comment suggests that this rule should recite "If the examiner's answer expressly states a new ground of rejection is being made * * *."

Response: The proposal has been adopted to the extent that the final rule, as adopted, states "If the examiner's answer expressly states that it includes a new ground of rejection, appellant must file a reply thereto within two months from the date of such answer to avoid dismissal of the appeal as to the claims subject to the new ground of rejection."

Comment: Regarding § 1.193(b), one comment recommended that appellants should be given three months to respond to a new ground of rejection in an examiner's answer, as the current two-month time period is inadequate, and this period would be equal to the

period given for response to rejections under § 1.106.

Response: This recommendation is not adopted. The Office experience has shown that the two-month period from the date of an examiner's answer has been an adequate period of time for filing a reply brief in response to a new ground of rejection. Also, it is desirable to set a uniform period of time in the rules to file a reply brief. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: One comment recommended that appellants should be permitted to obtain fee extensions where the examiner's answer includes a new ground of rejection.

Response: This recommendation is not adopted. As indicated above, fee extensions for filing reply briefs have resulted in unnecessarily prolonging the pendency of applications. Extensions of time for cause under § 1.136(b) will be available for those rare situations when an extension is necessary.

Comment: Regarding §§ 1.193(b) and 1.194(b), one comment suggested that the rule be modified to permit the filing of a request for an oral hearing concurrently with a reply brief as one cannot appropriately determine the necessity for an oral hearing until a reply brief is drafted.

Response: Under the proposed rules, the time period for filing a request for an oral hearing was the later of one month from the date of an examiner's answer, or the date of filing a timely reply brief. Under the rules as adopted, an appellant has two months from the date of the examiner's answer to file a reply brief and request an oral hearing. Therefore, a request for oral hearing may be filed concurrently with a reply brief.

Comment: Regarding § 1.312, one comment recommended that amendments under § 1.312 be processed expeditiously, as the current system for the processing of such amendments is inadequate.

Response: Examiners are instructed to act promptly on all amendments under § 1.312. Any problems should be brought to the attention of the Group Director.

Other Considerations

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that

these rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these changes is to permit persons other than the assignee of a patent application or patent to sign certain disclaimers, incorporate existing Office policy into the regulations and eliminate the opportunity to pay for extensions of time in certain situations where the extensions substantially interfere with the efficient operation of the Office.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain collection-of-information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which has previously been approved by the Office of Management and Budget under Control No. 0651-0011. Public reporting burden for these collections of information is estimated to average 0.1 hours each for fee extensions of time under § 1.136(a), and 0.2 hours each for disclaimers under § 1.321, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to Abraham Herskovitz, Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Act Project No. 0651-0031).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements.

37 CFR Part 5

Classified information, Exports, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set out in the preamble, parts 1, 5 and 10 of title 37 of the Code of Federal Regulations are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.9, paragraph (d) is revised to read as follows:

§ 1.9 Definitions.

(d) A small business concern as used in this chapter means any business concern as defined by the regulations of the Small Business Administration in 13 CFR 121.1301 through 121.1305, which define a small business concern as one whose number of employees, including those of its affiliates, does not exceed 500 persons and which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section. Questions related to size standards for a small business concern may be directed to: Small Business Administration, Size Standards Staff, 409 Third Street, SW., Washington, DC 20416.

3. Section 1.13 is revised to read as follows:

§ 1.13 Copies and certified copies.

(a) Non-certified copies of patents and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the Patent and Trademark Office and open to the

public, will be furnished by the Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) Certified copies of the patents and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name attested by an officer of the Patent and Trademark Office authorized by the Commissioner, upon payment of the fee for the certified copy.

4. Section 1.14, paragraph (b) is revised to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application in which the applicant has filed an authorization to open the complete application to the public, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Complete applications (§ 1.51(a)) which are abandoned may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

* * * * *

5. Section 1.28, paragraph (c) is revised to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Patent and Trademark Office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused (1) if any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or (2) if any deficiency between the amount paid and the amount due is paid more than three months after the date the error occurred and the payment is accompanied by a statement explaining

how the error in good faith occurred and how and when the error was discovered. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full.

* * * * *

6. Section 1.55, paragraph (a) is revised to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119 and 172. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required § 1.63. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be filed:

- (1) In the case of an interference (§ 1.630);
- (2) When necessary to overcome the date of a reference relied upon by the examiner;
- (3) When specifically required by the examiner; and
- (4) In all cases, before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by a petition requesting entry and by the fee set forth in § 1.17(i)(1). If the certified copy filed is not in the English language, a translation need not be filed except in the case of an interference; or when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner, in which event an English language translation must be filed together with a statement that the translation of the certified copy is accurate. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

* * * * *

7. Section 1.78, paragraph (a) is revised to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a)(1) An application may claim an invention disclosed in a prior filed copending national application or international application designating the United States of America. In order for an application to claim the benefit of a prior filed copending national application, the prior application must

name as an inventor at least one inventor named in the later filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, the prior application must be

- (i) Complete as set forth in § 1.51; or
- (ii) Entitled to a filing date set forth in § 1.53(b) and include the basic filing fee set forth in § 1.16; or
- (iii) Entitled to a filing date as set forth § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(d).

(2) Any application claiming the benefit of a prior filed copending national or international application must contain or be amended to contain in the first sentence of the specification following the title a reference to such prior application, identifying it by application number (consisting of the series code and serial number), or serial number and filing date or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(b)).

* * * * *

8. Section 1.136, paragraph (a) is revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

- (a)(1) If an applicant is required to respond within a nonstatutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in § 1.17 are filed prior to or with the response, unless:
 - (i) Applicant is notified otherwise in an Office action,
 - (ii) The response is a reply brief submitted pursuant to § 1.193(b),
 - (iii) The response is a request for an oral hearing submitted pursuant to § 1.194(b),
 - (iv) The response is to a decision by the Board of Patent Appeals and Interferences pursuant to §§ 1.196, 1.197 or 1.304, or
 - (v) The application is involved in an interference declared pursuant to § 1.611.
- (2) The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is

determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action. See § 1.550(c) for extension of time in reexamination proceedings and § 1.645 for extension of time in interference proceedings.

9. Section 1.191, paragraph (d) is revised to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(d) The time periods set forth in §§ 1.191 and 1.192 are subject to the provisions of § 1.136 for patent applications and § 1.550(c) for reexamination proceedings. The time periods set forth in §§ 1.193, 1.194, 1.196 and 1.197 are subject to the provisions of § 1.136(b) for patent applications or § 1.550(c) for reexamination proceedings. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

10. Section 1.192, paragraphs (a), (c) introductory text, and (d) are revised to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.

(b) * * *

(c) The brief shall contain the following items under appropriate headings and in the order here indicated unless there is no attorney or agent of record in the application or reexamination proceeding, the brief was not prepared by a registered practitioner, and the brief was not

signed by a registered practitioner, wherein the brief will be accepted as complying with this paragraph provided it is at least in substantial compliance with the requirements of paragraphs (c)(1), (2), (6) and (7):

(d) If a brief is filed which does not comply with the requirements of paragraph (c) of this section, the appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will be dismissed.

11. Section 1.193, paragraph (b) is revised to read as follows:

§ 1.193 Examiner's answer.

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within two months from the date of such answer. The new points of argument shall be specifically identified in the reply brief. If the examiner determines that the reply brief is not directed only to new points of argument raised in the examiner's answer, the examiner may refuse entry of the reply brief and will so notify the appellant. If the examiner's answer expressly states that it includes a new ground of rejection, appellant must file a reply thereto within two months from the date of such answer to avoid dismissal of the appeal as to the claims subject to the new ground of rejection; such reply may be accompanied by any amendment or material appropriate to the new ground. See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

12. Section 1.194, paragraph (b) is revised to read as follows:

§ 1.194 Oral hearing.

(b) If appellant desires an oral hearing, appellant must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within two months after the date of the examiner's answer. If appellant requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. See

§ 1.136(b) for extensions of time for requesting an oral hearing in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

13. Section 1.196, paragraph (f) is revised to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

(f) See § 1.136(b) for extensions of time to take action under this section in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

14. Section 1.197, paragraph (b) is revised to read as follows:

§ 1.197 Action following decision.

(b) A single request for reconsideration or modification of the decision may be made if filed within one month from the date of the original decision, unless the original decision is so modified by the decision on reconsideration as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for reconsideration shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. See § 1.136(b) for extensions of time for seeking reconsideration in a patent application and § 1.550(c) for extensions of time in a reexamination proceeding.

15. Section 1.312, paragraph (b) is revised to read as follows:

§ 1.312 Amendments after allowance.

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i)(1) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

16. Section 1.321 is revised to read as follows:

§ 1.321 Statutory disclaimers, including terminal disclaimers.

(a) A patentee owning the whole or any sectional interest in a patent may disclaim any complete claim or claims in a patent. In like manner any patentee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted. Such disclaimer is binding upon the grantee and its successors or assigns. A notice of the disclaimer is published in the

Official Gazette and attached to the printed copies of the specification. The disclaimer, to be recorded in the Patent and Trademark Office, must:

- (1) Be signed by the patentee, or an attorney or agent of record;
- (2) Identify the patent and complete claim or claims, or term being disclaimed. A disclaimer which is not a disclaimer of a complete claim or claims, or term will be refused recordation;

(3) State the present extent of patentee's ownership interest in the patent; and

(4) Be accompanied by the fee set forth in § 1.20(d).

(b) An applicant or assignee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of a patent to be granted. Such terminal disclaimer is binding upon the grantee and its successors or assigns. The terminal disclaimer, to be recorded in the Patent and Trademark Office, must:

- (1) Be signed:
 - (i) By the applicant, or
 - (ii) If there is an assignee of record of an undivided part interest, by the applicant and such assignee, or
 - (iii) If there is an assignee of record of the entire interest, by such assignee, or
 - (iv) By an attorney or agent of record;
- (2) Specify the portion of the term of the patent being disclaimed;
- (3) State the present extent of applicant's or assignee's ownership interest in the patent to be granted; and
- (4) Be accompanied by the fee set forth in § 1.20(d).

(c) A terminal disclaimer, when filed to obviate a double patenting rejection in a patent application or in a reexamination proceeding, must:

- (1) Comply with the provisions of paragraphs (b)(2) through (b)(4) of this section;
- (2) Be signed in accordance with paragraph (b)(1) of this section if filed in a patent application, or in accordance with paragraph (a)(1) of this section if filed in a reexamination proceeding; and
- (3) Include a provision that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection.

(17) Section 1.352 is amended by revising paragraph (a) to read as follows:

§ 1.352 Publication of notice of proposed amendments.

(a) Whenever required by law, notice of proposed amendments to the regulations in this part will be

published in the *Official Gazette* and in the *Federal Register*. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof.

* * * * *
 18. Section 1.362 is amended by revising paragraphs (c) (4) and (e) and adding paragraph (h) to read as follows:

§ 1.362 Time for payment of maintenance fees.

* * * * *
 (c) * * * * *
 (4) For a reissue application, including a continuing reissue application claiming the benefit of a reissue application under 35 U.S.C. 120, United States filing date of the original non-reissue application on which the patent reissued is based.

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:

- (1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee.
- (2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second maintenance fee, and
- (3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.

* * * * *
 (h) The periods specified in §§ 1.362 (d) and (e) with respect to a reissue application, including a continuing reissue application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based.

19. Section 1.607, paragraph (a)(5)(i) is revised to read as follows:

§ 1.607 Request by applicant for interference with patent.

(a) * * * * *
 (5) * * * * *
 (i) Identified as corresponding to the count, and
 * * * * *

PART 5—CLASSIFIED INFORMATION, EXPORTS, FOREIGN RELATIONS, INVENTIONS AND PATENTS

20. The authority citation for 37 CFR part 5 continues to read as follows:

Authority: 35 U.S.C. 6, 41, 181-188, as amended by the Patent Law Foreign Filing

Amendments Act of 1988, Pub. L. 100-418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*, and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

21. Section 5.19, paragraph (a) is revised to read as follows:

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 770.10(j)) established by the U.S. Department of Commerce, Bureau of Export Administration, Office of Export Licensing, a validated export license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (37 CFR 5.11 through 5.33) of the Patent and Trademark Office.
 * * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

22. The authority citation for 37 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

23. Section 10.48, paragraph (b) is revised to read as follows:

§ 10.48 Sharing legal fees.

(b) A practitioner who undertakes to complete unfinished legal business of a deceased practitioner may pay to the estate of the deceased practitioner that proportion of the total compensation which fairly represents the services rendered by the deceased practitioner.
 * * * * *

Dated: October 15, 1993.

Bruce A. Lehman,
Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.
 [FR Doc. 93-25865 Filed 10-21-93; 8:45 am]
 BILLING CODE 3510-16-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM94-1 and MC93-2; Order No. 993]

Amendments to Domestic Mail Classification Schedule: Definition of Pre-barcode Mail, 1992

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the August 2, 1993, decision by the Governors of the Postal Service approving the Commission's Docket No. MC93-2 recommended decision, the Commission is publishing the changes made in the Domestic Mail Classification Schedule (DMCS). As a result of the Docket No. MC93-2 proceeding, a number of changes were made in the classification provisions for postal services with regard to the definition of the barcode necessary to qualify for discounts.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Acting Legal Advisor, 1333 H Street, NW., suite 300, Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On November 9, 1992, the Postal Service initiated a proceeding, pursuant to Chapter 36 of Title 39 of the United States Code, requesting a recommended decision on proposed changes in the requirements for letter mail qualifying for a pre-barcode discount. The Commission invited interested parties to comment and participate in the proceeding. 57 FR 54866 (November 20, 1992). Eighteen intervenors and the Commission's Office of the Consumer Advocate participated. The Commission held formal, on-the-record hearings, receiving testimony from eight witnesses. In addition to participating in oral argument, interested parties submitted briefs and reply briefs.

The changes allow the Postal Service to specify a delivery point barcode, which represents no more than 11 digits (not including "correction" digits), for mailers to qualify for the pre-barcode discount in first-, second- and third-class rates. Previously, mailers could qualify for the pre-barcode discount by using barcodes representing the ZIP+4 Code.

The amendments to the DMCS which are published in this order reflect the Governors' decision of August 2, 1993. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which led to the publication of the DMCS in the Federal Register, these additions are published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3662-3624, 3661, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

2. Appendix A to subpart C to part 3001 is amended by revising 100.0204, 100.0214, 100.031, 100.043, 100.047, 100.100, 200.095, 300.0232, 300.0235 and 300.0236 to read as follows:

Appendix A to Subpart C—Postal Service Rates and Charges

* * * * *

100.0204 Pre-barcoded Presorted Mail

Pre-barcoded presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to three- or five-digit ZIP Codes or both, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service, and which meets the preparation requirements in section 100.047.

* * * * *

100.0214 Pre-barcoded Rate Category Post Cards

A pre-barcoded rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed at the pre-barcoded rate for post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. Pre-barcoded rate category post cards must:

- i. Bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service.
- ii. Be presented in mailings of 500 or more pieces.
- iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:
 - (1) Length not greater than 6 inches;
 - (2) Width not greater than 4-1/4 inches; or,
 - (3) Thickness not greater than 0.0095 inch and uniform.

iv. Meet addressing specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Meet barcoding specifications and other preparation requirements prescribed by the Postal Service.

vi. Have postage paid in a manner not requiring cancellation.

* * * * *

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c or 100.021b or section 100.0214 for ZIP+4 and pre-barcoded rate category cards may be mailed only under sections 100.020, 100.0201, 100.0203, and 100.0204, as appropriate.

* * * * *

100.043 Postal and post cards, including ZIP+4 and pre-barcoded rate category post cards, with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

* * * * *

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, 100.0204, 100.0205, 100.0206, 100.0211, and 100.023 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates must be properly prepared and presorted as prescribed by the Postal Service.

* * * * *

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP+4 rate category mail and pre-barcoded presorted mail.

* * * * *

200.095 Copies of any automation compatible second-class mail which bear a proper ZIP+4 code, or which bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service qualify for the applicable ZIP+4 or pre-barcoding discounts as set forth in Rate Schedules 200, 201, 202, and 203.

* * * * *

300.0232 Basic Sortation, Pre-barcoded Mail. Basic sortation pre-barcoded mail is mail mailed under section 300.0230 which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other

preparation requirements prescribed by the Postal Service.

* * * * *

300.0235 Three-Digit Presort Level, Pre-barcode Mail. Three-digit presort level, pre-barcode mail is mail mailed under section 300.0233 which is presorted to three digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service.

* * * * *

300.0236 Five-Digit Presort Level, Pre-barcode Mail. Five-digit presort level, pre-barcode mail is mail mailed under section 300.0233 which is presorted to five digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications, and other preparation requirements prescribed by the Postal Service.

Issued by the Commission on October 18, 1993.

Charles L. Clapp,

Secretary.

[FR Doc. 93-25964 Filed 10-21-93; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH-43-1-5911; FRL-4784-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving and disapproving specific portions of a requested site-specific State Implementation Plan (SIP) revision to Ohio's ozone SIP for the Columbus Coated Fabrics (CCF) facility in Franklin County, Ohio. The EPA's action responds to a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act. At the time of application to the State, Franklin County was designated as a nonattainment area for ozone. Franklin County was redesignated as an attainment area effective December 12, 1985, and remained in attainment until January 6, 1992, when it was redesignated as marginal nonattainment for ozone. The revision request is for an extended compliance schedule and an alternative emission reduction plan (bubble) with monthly averaging for 15

vinyl coating lines, and a permanent relaxation from Ohio's Rule 3745-21-09(H) for 11 U-frame vinyl coating lines at the CCF facility. In this action, the EPA is disapproving the revision for the 15 vinyl coating lines from the initial compliance date, April 1, 1982, until December 12, 1985, and from January 6, 1992, on, because the revision does not meet the requirements of EPA's compliance date extension policy and averaging time policy for nonattainment areas. The EPA is approving the revision for the 15 vinyl coating lines from December 12, 1985, to January 6, 1992, because it does meet the requirements of EPA's emissions trading policy for attainment areas. Finally, the EPA is approving the relaxation for the 11 U-frame vinyl coating lines as alternative reasonably available control technology (RACT), from April 1, 1982, to January 6, 1992. The EPA is disapproving the revision for the SIP relaxation from January 6, 1992, on, because relaxation from SIP requirements in an ozone nonattainment area is prohibited by the Clean Air Act as amended in 1990 (CAA).

EFFECTIVE DATE: This final rulemaking becomes effective on November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Bush, Air Enforcement Branch, Regulation Development Section (AE-17), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353-6684.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On June 24, 1985, the Ohio Environmental Protection Agency (OEPA) submitted to the EPA a request to revise Ohio's ozone SIP for the Columbus Coated Fabrics (CCF) facility located in Columbus, Ohio. This revision request was for a compliance date extension and a volatile organic compound (VOC) bubble with monthly averaging for 15 vinyl coating lines and a permanent SIP relaxation for 11 "U-frame" vinyl coating lines. CCF is located in Franklin County, currently classified as a marginal nonattainment area for ozone. In 1982, when CCF first applied to the OEPA for the revision, Franklin County was classified as a nonattainment area for ozone. Franklin County was redesignated as an attainment area for ozone effective December 12, 1985, and remained in attainment status until it was redesignated to its current nonattainment status effective January 6, 1992.

On April 12, 1993, the EPA published a Notice of Proposed Rulemaking (58 FR

19075) approving and disapproving specific portions of the requested revision, based on the ozone designation of Franklin County. The public comment period was open through May 12, 1993. The only comments on the proposed rulemaking were received from the law firm of Sidley & Austin, attorneys for CCF. The first comments were received on May 12, 1993, along with a request for extension of the public comment period. A 30-day extension was granted, closing on June 14, 1993. On June 30, 1993, Sidley & Austin contacted the EPA by telephone and requested another extension because they felt that they received notice of the first extension too late to adequately prepare data to support their initial comments. The EPA agreed to consider any data or comments received by July 6, 1993, and further data and comments were received from Sidley & Austin on July 6, 1993.

II. Public Comment/EPA Response

The following evaluation summarizes the EPA's proposed action on each portion of the requested revisions, Sidley & Austin's comments on the proposed actions, and the EPA's responses to the comments. A more detailed discussion of the State submittal and the rationale for the EPA's proposed actions based on the CAA and EPA policy appears in EPA technical support documents dated August 29, 1984; November 29, 1985; January 10, 1986; October 29, 1986; and June 15, 1992.

A. Compliance Date Extension Request

1. Proposed Action

A compliance date extension to December 31, 1985, was requested for both the 3 lines complying by add-on controls and the 12 remaining lines. The State did not adequately research the compliance status of other similar sources to determine if achieving compliance by the original deadline was reasonable, as required by EPA's Compliance Date Extension Policy (53 FR 45103). Therefore, the revision for a compliance date extension for the 15 vinyl coating lines was proposed for disapproval for the timeframe that Franklin County was designated nonattainment.

2. Comments on Proposed Disapproval and EPA Response

a. Comment 1. The EPA's Compliance Date Extension Policy provides that "reasonable efforts to determine and adequately document the availability of complying coatings or other kinds of control" include not only researching

similar facilities in the State, but also consulting the EPA or other States for information and contacting suppliers available to the source. The purpose of these requirements is to ensure that a source is attempting to comply. There is ample evidence in the file already that CCF has attempted to comply, so approval of the compliance date extension is required by law.

b. *EPA response.* The purpose of the Compliance Date Extension Policy is to ensure: (1) that an "extension will not interfere with timely attainment * * * and maintenance of the ozone standard, and where relevant, 'reasonable further progress' (RFP) towards timely attainment," and (2) that an extension is "consistent with the requirement that nonattainment area SIPs provide for 'implementation of all reasonably available control measures as expeditiously as practicable' * * *." While the EPA believes that item (1) above was satisfied by the State submittal, item (2) calls for an adequate assessment of reasonably available control measures, including the research described in Comment 1. Notwithstanding the good intentions of CCF, there is nothing in the State submittal that indicates that the State made an effort to contact other States, the EPA, or coating and control equipment suppliers available to CCF for information on complying coatings or other kinds of control; therefore, an adequate assessment of reasonably available control measures was not performed, and the Compliance Date Extension Policy has not been satisfied.

B. Bubble Request

1. Proposed Action

A bubble was requested for 12 of the 15 vinyl coating lines. The EPA determined that the requested revision is consistent with the bubble principles contained in the EPA's Emissions Trading Policy Statement (ETPS) both for the periods when Franklin County was designated nonattainment for ozone and when it was designated attainment. However, compliance with the requested bubble is based on monthly averaging for the 12 lines, and although the revision conforms to the ETPS, it does not conform to EPA's Long-Term Averaging Time Policy or to the Compliance Date Extension Policy, as they apply to nonattainment areas. The monthly averaging time and compliance date extension requests are not separable from the bubble request, and, therefore, the bubble was proposed for disapproval for the periods when Franklin County is/was designated nonattainment.

2. Comments on Proposed Disapproval and EPA Response

a. *Comment 1.* CCF needs monthly averaging because its products require a variety of coatings with different VOC contents. CCF currently has no data for the early 1980's, but the facts regarding its operations during the 1980's support the use of monthly averaging, including the fact that coatings being used now have lower solvent content than coatings that were used in the early 1980's, and that in the early 1980's, only 16% of CCF's bubble sources used water-based coatings, whereas 40% used water-based coatings from 1989 to 1991. For these reasons, CCF believes that data from the early 1980's, if available, would have shown monthly averaging to be the shortest practicable averaging period.

b. *EPA Response.* The use of a variety of coatings with different VOC contents is a common practice in coating industries, and this alone does not justify extended averaging. Neither the submittal nor the comments contain data that demonstrate that CCF is in a situation unique among coating operations, which would support monthly averaging. Appropriate support of monthly averaging must include data which reflect operating conditions during Franklin County's nonattainment periods, i.e., from April 1, 1982, until December 12, 1985, and from January 6, 1992, on. The commenter has stated that no data are available from the early 1980's. However, an accurate picture of the current operations is more relevant. The raw data submitted during the public comment period are from 1989 through 1991; no 1992 data were submitted, and no explanation was given for such non-submittal. Therefore, while the 1989-1991 data may well reflect operating conditions after January 6, 1992, documentation of such conditions is necessary (e.g., production data or a detailed description of the bubble sources in operation, past and present). In addition, the raw data submitted do not appear sufficient to allow a meaningful analysis: There are no legends with the tables defining the column headings, and there is no information relating the coatings used to the individual bubble sources. It is the responsibility of the commenter to provide a coherent analysis of the data.

Adequate documentation supporting any extended averaging time would demonstrate the necessity of the requested averaging time and the infeasibility of a shorter time-frame. An acceptable demonstration of the infeasibility of anything less than a 30 day averaging time might include

calculations of 29 day averages over 2 years which are representative of operations during the nonattainment periods, that show an inability to comply with RACT using 29 day averaging. These calculations would be accompanied by a description of the changes in coating usage that would be necessary to bring the 29 day average within acceptable RACT limits and an explanation of the infeasibility of such changes. An acceptable demonstration must also include verification that coatings with the lowest feasible VOC content are being used.

Regarding the changes in VOC content of the coatings used at CCF since application for the bubble, the trend in coating technology has been toward water-based and high solids coatings. Neither the submittal nor the comments demonstrate a relationship between the fact that CCF has kept current with coating technology and a need for monthly averaging.

c. *Comment 2.* Upon review of the 1989 to 1991 data, CCF has determined that the data support a minimum 10 day averaging time, and the data reflect current operating conditions. CCF would accept approval of the bubble with the condition of a 10 day averaging time. The holding in *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984), does not prevent the EPA from approving the bubble on the condition of establishment of a 10 day averaging time because: (1) A 10 day average is not more stringent than the original SIP requirement of daily averaging, (2) if the EPA can approve part of a SIP revision request to prevent weakening of the SIP, surely it can conditionally approve part of a revision request to decrease weakening of the SIP that would be caused by the revision, (3) even if 10 day averaging is more stringent, there is no tangible effect on CCF, (4) with a conditional approval, the EPA is not revising the SIP, but merely stating conditions, and the OEPA would actually revise the SIP, and (5) CCF does not object to a 10 day averaging time, and CCF believes that the OEPA would not object to it.

d. *EPA response.* The SIP revision submitted by the OEPA requests monthly averaging, which the EPA recommends for disapproval as discussed above in the response to Comment 1. Under section 110(k)(4) of the CAA, the EPA cannot conditionally approve an alternate, hypothetical revision that the State has made no commitment to adopt. If the OEPA were to submit a SIP revision request for 10 day averaging, including adequate and appropriate data (see EPA Response to Comment 1) supporting 10 day

averaging, the EPA would give such a request a full review. Regarding the comments on the *Bethlehem Steel* holding, the EPA agrees that the *Bethlehem Steel* case may not be an impediment to approval of a 10 day averaging time, but *Bethlehem Steel* does not authorize the EPA to create and approve substitute provisions that are not contained in the State's submittal. Therefore, the *Bethlehem Steel* issues raised by the commenter do not support approval of the State's request, since, as stated above, there is no SIP revision request for 10 day averaging before the EPA.

e. Comment 3. The bubble is not dependent on the request for extension of the compliance date, but CCF will consider withdrawing the request for the compliance date extension if the EPA would then approve the bubble.

f. EPA response. The State submittal states that the bubble sources are to be in compliance with the requested bubble by December 31, 1985, which is an extension of the compliance date; therefore, while the bubble request may not be "dependent" on the request for a compliance date extension, the extension request is certainly part of the bubble request. The OEPA may withdraw the request for the compliance date extension at any time. Nonetheless, if the compliance date extension request were to be withdrawn, the bubble request is still not approvable for the nonattainment time frames because of the issues relating to the monthly averaging time.

C. SIP Relaxation Request

1. Proposed Action

The request for a permanent SIP relaxation for the 11 U-frame vinyl coating lines was proposed for approval for the period from April 1, 1982, to January 6, 1992. However, the EPA proposed to disapprove this requested revision as RACT from January 6, 1992, on, because relaxation from the SIP without offsetting reductions in an ozone nonattainment area is prohibited by the General Savings Clause of the CAA.

2. Comments on Proposed Disapproval and EPA Response

a. Comment 1. The EPA, in its proposed rulemaking, concluded that this relaxation request "is approvable for the period between November 18, 1983, [sic] and January 6, 1992;" therefore, the "requirement in effect" on November 15, 1990, is the relaxed emission limit, the "requirement in effect" does not change pre- and post-enactment, and there is no "relaxation."

b. EPA response. Until the April 12, 1993, Notice of Proposed Rulemaking, no part of this SIP revision request had completed any portion of the Federal rulemaking process. Therefore, as of November 15, 1990, the relaxation request was not approved, and the "requirement in effect" (i.e., the limit in the SIP) was (and is now) Ohio Administrative Code Rule 3745-21-09(H), limiting the VOC content of the coatings to 4.8 lb per gallon of coating. Approval of a higher emission limit at any time after November 15, 1990, would constitute a "relaxation."

EPA notes that, as part of its VOC RACT "Catchups" package required by the CAA, the OEPA has adopted a site-specific rule for CCF, which includes a VOC content limit of 3.2 lb VOC per gallon of coating for coatings used on 7 U-frame vinyl coating lines and an in-line vinyl coating line; therefore, 6.1 lb VOC per gallon of coating is obviously not RACT for U-frame vinyl coating lines.

c. Comment 2. There is no evidence that Congress intended the General Savings Clause to be applied retroactively to approvable SIP revision requests submitted pre-enactment. The disapproval is solely due to the EPA's delay in acting on this request.

d. EPA response. The EPA proposed to disapprove the relaxation for the period from January 6, 1992, on, which is after November 15, 1990, the effective date of the General Savings Clause. Therefore, the EPA is not applying the General Savings Clause retroactively. See also EPA's Response to Comment 1 above.

e. Comment 3. If the EPA maintains that the General Savings Clause prohibits approval of the relaxation request after January 6, 1992, CCF requests the opportunity to demonstrate that the appropriate offsets exist for compliance with the offset requirements of the General Savings Clause.

f. EPA response. CCF has had the opportunity to make such a demonstration during the initial public comment period (April 12, 1993, to May 12, 1993), during the extension of the public comment period (May 12, 1993 to June 14, 1993), and during the period granted to CCF's attorneys, Sidley & Austin, for submittal of further data for the EPA consideration (June 14, 1993, through July 6, 1993). Despite such ample opportunity, the EPA has received no demonstration that the offset provisions of the General Saving Clause would be satisfied by the requested revision. However, the OEPA can resubmit a SIP revision request which includes a demonstration of sufficient offsets.

III. Rulemaking Action

None of the comments were found to justify changes from proposed to final action on this SIP revision request. Accordingly: (1) The requested revision for the 15 vinyl coating lines (the bubble and the compliance date extension) is approved for the period from December 12, 1985, to January 6, 1992, because it meets the EPA's emissions trading policy for attainment areas, and it was adequately demonstrated, using methodology conforming to the EPA policy in effect at that time, that emissions allowed by this SIP revision should not have interfered with maintenance of the ozone standard in Franklin County; (2) the requested revision for the 15 vinyl coating lines is disapproved for the period from April 1, 1982, to December 12, 1985, and from January 6, 1992, on, because it does not meet the EPA's compliance date extension policy and monthly averaging policy for nonattainment areas; and (3) the requested revision for the 11 U-frame vinyl coating lines (the SIP relaxation) is approved for the period from April 1, 1982, to January 6, 1992, and disapproved from January 6, 1992, on, because relaxation from the SIP in an ozone nonattainment area is prohibited by the CAA.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

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

enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

This disapproval affects only one source, Columbus Coated Fabrics. Therefore it does not have a significant impact on a substantial number of small entities. Furthermore, as explained in this notice, the request does not meet the requirements of the CAA and EPA cannot approve the request. Therefore, EPA has no option but to disapprove the submittal.

The EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of Clean Air Act Amendments of 1990 enacted on November 15, 1990. The Agency has determined that a portion of this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: September 22, 1993.

David A. Ullrich,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(94) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(94) On June 24, 1985, the Ohio Environmental Protection Agency submitted revisions to its ozone control State Implementation Plan which would establish a volatile organic compounds (VOC) bubble and alternative VOC reasonably available control technology for vinyl and U-frame vinyl coating lines at Columbus Coated Fabrics in Franklin County, Ohio.

(i) Incorporation by reference.

(A) Condition Number 8 (which references special Terms and Conditions Numbers 1 through 7) within each of 15 State of Ohio Environmental Protection Agency Permits and Variances to Operate an Air Contaminant Source, Application Numbers 0125040031 K001 through 0125040031 K015 for Columbus Coated Fabrics. The date of issuance is November 2, 1983. These permits and

variances are approved for the period 12/12/85 to 1/6/92.

(B) Condition Number 8 (which references special Terms and Conditions Numbers 1 through 4) within each of 11 State of Ohio Environmental Protection Agency Variances to Operate an Air Contaminant Source, Application Numbers 0125040031 K016 through 0125040031 K026 for Columbus Coated Fabrics. The date of issuance is November 2, 1983. These variances are approved for the period 4/1/82 to 1/6/92.

(C) State of Ohio Environmental Protection Agency Orders to Modify Variances to Operate modifying Special Condition Number 1 of Ohio Environmental Protection Agency Variances to Operate an Air Contaminant Source, Application Numbers 0125040031 K016 through 0125040031 K026 for Columbus Coated Fabrics. The date of issuance is May 21, 1985. These orders are approved for the period 4/1/82 to 1/6/92.

[FR Doc. 93-26018 Filed 10-21-93; 8:45 am]

BILLING CODE 6560-60-P

40 CFR Part 52

[KY-065-5615; FRL-4784-5]

Approval and Promulgation of Implementation Plans Kentucky: Approval of Revisions to the Jefferson County Portion of the State Implementation Plan Regulating Volatile Organic Compounds

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 12, 1992, the Commonwealth of Kentucky, through the Natural Resources and Environmental Protection Cabinet, submitted revisions to its State Implementation Plan (SIP). The submittal included revisions to Appendix N of the Kentucky SIP, relating to the control of Volatile Organic Compounds (VOCs) in Jefferson County. The revisions corrected most of the deficiencies between EPA's requirements and the Commonwealth's SIP or pending SIP submittal. These deficiencies were identified in the November 9, 1987, letter from Winston A. Smith, Director of Air, Pesticides & Toxics Management Division, to Robert T. Offutt, Secretary-Treasurer, Jefferson County Air Pollution Control District.

Subsequently, the SIP call letter for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988,

required the Commonwealth to correct these deficiencies.

EFFECTIVE DATE: This action will be effective December 20, 1993. Unless notice is received by November 22, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by the Commonwealth of Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency, Attn: Jerry Kurtzweg, ANR 443, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347-2864.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), EPA designated Jefferson County, Kentucky, as nonattainment for ozone. The Commonwealth was subsequently required to revise its ozone SIP for Jefferson County. Kentucky officially submitted Appendix N, the portion of the SIP for Jefferson County, to the EPA on June 6, 1979. On January 25, 1980, the EPA announced final approval of the Kentucky ozone SIP.

The approved control strategy did not result in attainment of the National Ambient Air Quality Standard (NAAQS) for ozone by December 31, 1987. Consequently, Greer C. Tidwell, Region IV Regional Administrator, sent a letter to Wallace G. Wilkinson, Governor of Kentucky, on May 26, 1988. This letter, pursuant to section 110(a)(2)(H) of the 1977 Clean Air Act, notified Kentucky that the SIP was substantially inadequate to achieve the NAAQS for ozone in Jefferson County and called upon the Commonwealth to revise the SIP. The Clean Air Act (CAA) was amended on November 15, 1990, Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for ozone. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the

RACT fix-ups requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT regulations as required under pre-amendment guidance.¹ The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Jefferson County nonattainment area is classified as moderate.² Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991, deadline.

Kentucky failed to meet the May 15, 1991, deadline date and EPA notified the Commonwealth on June 25, 1991, that a finding of failure to submit had been made. This finding of failure to submit was published (56 FR 54554) October 22, 1991. The finding triggered the 18-month time clock for mandatory application of sanctions under section 179(a), the Administrator's discretionary authority to impose sanctions under section 110(m), and the 2-year time clock for promulgation of Federal VOC regulations for these areas as required by section 110(c)(1). The 18-month period prior to application of mandatory sanctions ended on April 22, 1993.

The Commonwealth submitted SIP revisions to EPA on February 12, 1992, meeting most of the RACT fix-up requirements. Based on the following analysis, EPA is approving these submitted revisions to Appendix N of the Kentucky SIP. On March 4, 1993, Kentucky submitted SIP revisions which addressed the remaining RACT fix-up deficiencies other than emissions trading. This submittal stopped the 18-month sanctions clock and the revisions will be addressed under a separate Federal Register notice.

"Coating Line"—The definition has been revised to clarify that coating lines without an oven and/or flashoff area are included. Additionally, definition 2.4.7 viii and 2.4.7 ix have been removed because a compliance section has been added within regulations that contained this definition. This definition has been revised within the following regulations:

¹ Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Technology Guidelines (CTGs).

² Jefferson County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694 (November 6, 1991).

- 6.16 Standard of Performance for Existing Large Appliance Surface Coating Operations;
- 6.19 Standard of Performance for Existing Metal Furniture Surface Coating Operations;
- 6.30 Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling;
- 6.31 Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations;
- 6.35 Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations;
- 7.16 Standard of Performance for New Large Appliance Surface Coating Operations;
- 7.19 Standard of Performance for New Metal Furniture Surface Coating Operations;
- 7.52 Standard of Performance for New Fabric, Vinyl and Paper Surface Coating Operations;
- 7.58 Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling;
- 7.59 Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.

"True Vapor Pressure"—The revised definition specifies true vapor pressure to be determined in accordance with the method described in the American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," Second Edition, February 1990. This definition has been revised within the following regulations:

- 6.13 Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds;
- 7.12 Standards of Performance for New Storage Vessels for Volatile Organic Compounds.

Applicability—The applicability requirements have been revised to state, "Any source that is ever subject to the provisions of this regulation will always be subject to these provisions, unless the source changes its process to one not covered by this regulation." The revision of Section 1.0 Applicability, has been incorporated within the following regulations:

- 6.13, 6.16, 6.19, 6.30, 6.31, 6.35, 7.12, 7.16, 7.19, 7.52, 7.58, 7.59;
- 6.12 Standard of Performance for Existing Asphalt Paving Operations;
- 6.18 Standards of Performance for Existing Solvent Metal Cleaning Equipment;
- 6.23 Standard of Performance for Existing Dry Cleaning Facilities;
- 6.29 Standard of Performance for Existing Graphic Arts Facilities

Using Rotogravure and Flexography;

- 6.33 Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations;
- 6.34 Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants;
- 7.11 Standard of Performance for New Asphalt Paving Operations;
- 7.18 Standards of Performance for New Solvent Metal Cleaning Equipment;
- 7.23 Standard of Performance for New Perchloroethylene Dry Cleaning Facilities;
- 7.57 Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography;
- 7.60 Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations;
- 7.61 Standard of Performance for New Pneumatic Rubber Tire Manufacturing Plants.

Compliance—The compliance section for the following regulations has been revised to state that EPA Reference Method 24 shall be the method for determining the amount of VOCs in coatings:

6.16, 6.19, 6.30, 6.31, 6.35, 7.16, 7.19, 7.52, 7.58, 7.59.

The compliance section for the following regulations has been revised to state that the VOC content and density of rotogravure publication inks shall be determined by EPA Reference Method 24A:

6.29, 6.30, 7.57.

The compliance section for the following regulations has been revised to state that control system capture efficiency shall be measured according to methods specified in Regulation 1.05, Section 2:

6.16, 6.19, 6.29, 6.31, 6.35, 7.16, 7.19, 7.52, 7.57, 7.59.

The compliance section for the following regulations has been revised to state that the following methods of analysis have been deleted: (i) ASTM D 1644-75 Method A, (ii) ASTM D 1465-60(74), (iii) ASTM D 2369-73, and (iv) Federal Standard 141 a, Method 4082.1. This revision of Section 4.0 Compliance, has been incorporated within the following regulations: 6.16, 6.19, 6.29, 6.30, 6.31, 6.35.

Exemptions—The calculation to compute the Daily-Weighted Average VOC Content was added to the exemption section. Also, language was added stating that no surface coating line shall operate when the Daily-Weighted Average VOC Content exceeds

emission limits. These changes are in the following regulations:

6.16, 6.19, 6.30, 6.31, 6.35, 7.16, 7.19, 7.52, 7.58, 7.59.

Recordkeeping Requirements—This new section details all recordkeeping required to document compliance. Subsequent sections within regulations containing a Recordkeeping Section have been renumbered. The following Regulations have added a Recordkeeping Section:

6.12, 6.16, 6.29, 6.30, 6.31, 6.35, 7.11, 7.19, 7.52, 7.57, 7.58, 7.59.

Compliance Time Table—Section 6.0 has been eliminated because the final compliance date for all existing sources has passed. Language has been added to the applicability section to identify affected facilities. Subsequent sections within regulations eliminating this section have been renumbered. The following regulations have eliminated 6.0 Compliance Time Table:

6.13, 6.16, 6.18, 6.19, 6.29, 6.30, 6.31, 6.33, 6.34, 6.35;

6.32 Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.

Deviations—This section was struck. Deviations from the regulations due to economic or technological circumstances are no longer permissible. The following regulations have eliminated the aforementioned section:

6.33, 6.34, 6.35.

Regulation 1.02 Definitions—The definition of "organic compound" has been added and the definitions of "outside air," "lowest achievable emission rate," and "volatile organic compound" have been updated. The definition of "volatile organic compound" was updated to exclude a list of compounds which the Administrator has determined do not participate in atmospheric photochemical reactions.

Regulation 1.08 Administrative Procedures

Section 1.0 Public Hearings—Subsections 1.1.1 and 1.1.3 were amended to require a public hearing before adoption of any order for any source or person, and before adoption of a new regulation of the District.

Section 2.0 Compliance Plans and Schedules—Subsection 2.2.7 adds a requirement that all compliance plans and/or schedules inconsistent with any provision of the Kentucky SIP for the attainment and maintenance of NAAQS must be approved by the EPA as a revision to the SIP. Subsection 2.3 details additional agents required to

sign applications for compliance schedules. Subsection 2.5 was revised to add "in its judgement" for clarification purposes.

Section 3.0 Procedures at Public Hearings—Subsection 3.6 now states that the board no longer has to act on a matter from a public hearing during the next scheduled board meeting.

Section 4.0 Variance Procedures—Subsection 4.6 was revised to state that variances final for Kentucky purposes must be approved by the EPA to be considered federally approved and enforceable.

Section 8.0 Appeals to the Board—Subsection 8.1 was revised to change "appeal" to "written appeal." Subsection 8.4 was revised to update proceedings for an evidentiary hearing.

Regulation 6.13 Standard of Performance for Existing Storage Vessels for Volatile Compounds

Section 1.0 Applicability—This regulation now applies to all affected facilities in existence or having a construction permit prior to September 1, 1976, in lieu of April 9, 1976.

Section 5.0 Monitoring of Operations—Procedures to measure and inspect secondary seal gap, and record the types and true pressures of volatile petroleum liquids stored have been added to the section.

Regulation 6.16 Standard of Performance for Existing Large Appliance Surface Coating Operations

Section 5.0 Exemptions—The regulation has been updated to state that exempt solvents are excluded when determining VOC content. Subsection 5.2 was revised to strike the arithmetic average method to determine exemptions from this regulation.

Regulation 6.18 Standards of Performance for Existing Solvent Metal Cleaning Equipment

Section 2.0 Definitions—The definition of "Freeboard height" has been updated to include vapor conveyorized degreasers and cold conveyorized degreasers.

Section 5.0 Open Top Vapor Degreasers—Subsections 5.1.3.1 and 5.1.3.3 were revised to further clarify a rule and to correct a spelling error.

Regulation 6.23 Standard of Performance for Existing Dry Cleaning Facilities

Section 4.0 Compliance—Subsection 4.3 was revised to state that all of the EPA Guideline Series document, Measurement of Volatile Organic Compounds, EPA-2-780-041, is to be

used to determine the amount of solvent in filter and distillation wastes.

Regulation 6.29 Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography

Section 2.0 Definitions—The definition of "Printing line" was revised to clarify that it is not necessary to have an oven or flashoff area in order to be included in this definition.

Section 5.0 Exemption—This section was revised to exempt inks that meet an emission limit of 0.5 lb VOC/lb solids.

Section 6.0 Deviation—The section was revised to state that deviations from standards and limitations now require federal approval pursuant to Regulation 1.08, Section 4.0.

Regulation 6.30 Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling

Section 5.0 Exemptions—The VOC limits in subsections 5.1–5.3 were revised so that conversions from metric units to English units would be more consistent.

Regulation 6.31 Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations

Section 2.0 Definitions—Definition 2.2 was revised to change "Air or forced air-dried items" to "Air-dried coatings" with an updated definition for the latter. The definition 2.4 "Clear coat" was added. Definition 2.7 "Heat sensitive material" was revised to mean materials that cannot be exposed to temperatures greater than 93 degrees C, 200 degrees F in lieu of 82 degrees C, 180 degrees F. Definition 2.8.7 was revised to include any industrial category which coats metal parts or products under Standard Industrial Classification Code of Major Group 33, 35, 36, 37, 38, and 39.

Section 5.0 Exemptions—The section was revised to exclude exempt solvents when tabulating VOC content.

Regulation 6.32 Standard of Performance for Leaks From Existing Petroleum Refinery Equipment

Section 2.0 Definitions—Definitions 2.4 "Gas service" and 2.6 "Liquid service" have been revised and are now defined as "equipment that processes, transfers, or contains a volatile organic compound or mixture of volatile organic compounds in the gaseous (liquid in the case of definition 2.6) phase."

Regulation 6.33 Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations

Section 2.0 Definitions—Definition 2.1 "Affected facility," was revised to include all sources of VOC at any pharmaceutical manufacturing facility as determined by the Control Technology Guideline (CTG) of Pharmaceutical Manufacture. Definition 2.2 "Production equipment exhaust system," was added and it is defined as a device that collects and directs out of the work area VOC fugitive emissions. Definition 2.3 "Reactor," was added and is defined as a vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions. Definition 2.4 "Separation operation," was added and is defined as a process that separates a mixture of compounds and solvents into two or more components. Definition 2.5 "Synthesized pharmaceutical manufacturing" was added and is defined as manufacture of pharmaceutical products and intermediates by chemical syntheses. The definitions "Extraction", "Fermentation", and "Formulation and packaging" were eliminated.

Regulation 6.34 Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants

Section 2.0 Definitions—Definition 2.2 "Bead dipping," was added and is defined as the dipping of an assembled tire bead into a solvent based cement. Definition 2.3 "Green tire," was added and means an assembled, uncured tire. Definition 2.4 "Green tire spraying" was added and is defined as a treatment to the inside and/or the outside of a green tire to facilitate the curing process. Definition 2.5 "Manufacture of pneumatic rubber tires," was changed to "Pneumatic rubber tire manufacture" and retains a similar definition. Definition 2.6 "Tread end cementing," was added and is defined as the application of a solvent-based cement to one or both ends of the tread or combined tread-sidewalls component. Definition 2.7 "Undertread cementing" was added and is defined as the application of a solvent-based cement to a continuous strip of tread or combined tread/sidewall component. The definition "Pneumatic rubber tire" was eliminated.

Section 3.0 Standard for Volatile Organic Compounds—New emission standards have been added for Undertread Cementing, Tread End Cementing, Bead Dipping, and Green

Tire Spraying. The emission standards are consistent with the federal CTG.

Regulation 6.35 Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations

Section 2.0 Definitions—The definition of "Vinyl coating" has been revised to state that vinyl coating does not include the application of vinyl plastisol.

Section 5.0 Exemptions—Subsections 5.1 and 5.2 have been revised to state that exempt solvents are no longer included when determining VOC compound content.

7.11 Standard of Performance for New Asphalt Paving Operations

Section 7.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to the provisions of 40 CFR part 60 subpart I, adopted by reference in District Regulation 7.02.

7.12 Standard of Performance for New Storage Vessels for Volatile Organic Compounds

Section 5.0 Monitoring of Operations—Subsections 5.3 and 5.4 detail additional records required to be maintained.

Section 8.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to provisions of 40 CFR part 60, subpart K, adopted by reference in District Regulation 7.02.

7.16 Standard of Performance for New Large Appliance Surface Coating Operations

Section 7.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to all the provisions of 40 CFR part 60, subpart SS, adopted by reference in District Regulation 7.02.

7.18 Standards of Performance for New Solvent Metal Cleaning Equipment

Section 2.0 Definitions 2.4—The definition of "Freeboard height" has been revised to include vapor conveyORIZED degreasers and cold conveyORIZED degreasers.

7.19 Standard of Performance for New Metal Furniture Surface Coating Operations

Section 7.0 Additional Applicable Regulation(s)—This section was added to state that any source subject to this regulation will also be subject to all of the provisions of 40 CFR part 60,

subpart EE, adopted by reference in District Regulation 7.02.

7.52 Standard of Performance for New Fabric, Vinyl and Paper Surface Coating Operations

Section 2.0 Definitions—The definition of "Vinyl coating" has been revised to state that vinyl coating does not include the application of vinyl plastisol.

Section 4.0 Compliance—Subsection 4.1 has been revised to require a new affected facility to comply with requirements on start-up.

7.56 Standard of Performance for Leaks From New Petroleum Refinery Equipment

Section 2.0 Definitions—The definition of "Gas service" has been added and it is defined as equipment that contains a VOC in the gaseous phase.

Section 7.0 Additional Regulations—This section was added to state that any source subject to this regulation will also be subject to all of the provisions of 40 CFR part 60, subpart GG, adopted by reference on District Regulation 7.02.

7.57 Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography

Section 2.0 Definitions—The definition of "Printing line" has been revised to state that it is not necessary to have an oven or flashoff area in order to be included in this definition.

Section 5.0 Exemption—Subsection 5.2—This section was added to exempt inks which meet an emission limit of 0.5 lb VOC/lb solids.

Section 6.0 Deviations—This section was revised to state that deviations will require federal approval in a manner pursuant to Regulation 1.08, section 4.0.

Section 8.0 Additional Applicable Regulations(s)—This section was added to state that any source subject to this regulation will also be subject to all of the provisions of 40 CFR part 60, Subpart QQ, adopted by reference in District Regulation 7.02.

7.59 Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations

Section 2.0 Definitions—The definitions of "Air-Dried coatings" and "Clear coat" have been added. The definition of "Miscellaneous metal parts and products" has been revised to include any metal parts or products under the SIC codes 33, 34, 35, 36, 37, 38, and 39.

Section 5.0 Exemptions—Subsections 5.1.1, 5.1.2, and 5.1.4 were revised to

exclude exempt solvents when tabulating VOC content.

7.60 Standard of Performance for New Synthesized Pharmaceutical Manufacturing Operations

Section 2.0 Definitions—Definition 2.1 "Affected facility" was revised to include all sources of VOC at any pharmaceutical manufacturing facility as determined by Appendix B of the CTG of Pharmaceutical Manufacture. Definition 2.2 "Production equipment exhaust system" was added and is defined as a device for collecting and directing out of the work area VOC fugitive emissions. Definition 2.3 "Reactor" was added and is defined as a vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions. Definition 2.4 "Synthesized pharmaceutical manufacturing" was added and is defined as a process that separates a mixture of compounds and solvents into two or more components. Definition 2.5 "Synthesized pharmaceutical manufacturing" means manufacture of pharmaceutical products and intermediates by chemical syntheses. The definitions of "Extraction", "Fermentation", and "Formulation and packaging" were eliminated.

7.61 Standard of Performance for New Pneumatic Rubber Tire Manufacturing Plants

Section 2.0 Definitions—Definition 2.2 "Bead dipping" was added and is defined as the dipping of an assembled tire bead into a solvent based cement. Definition 2.3 "Green tire" was added and means an assembled, uncured tire. Definition 2.4 "Green tire spraying" was added and is defined as a treatment to the inside and/or the outside of a green tire to facilitate the curing process. Definition 2.5 "Manufacture of pneumatic rubber tires" was changed to "Pneumatic rubber tire manufacture" and retains the same definition. Definition 2.6 "Tread end cementing" was added and is defined as the application of a solvent-based cement to one or both ends of the tread or combined tread-sidewalls component. Definition 2.7 "Undertread cementing" was added and is defined as the application of a solvent-based cement to a continuous strip of tread or combined tread/sidewall component. The definition "Pneumatic rubber tire" was eliminated.

3.0 Standard for Volatile Organic Compounds—Emission standards have been revised for Undertread Cementing, Tread End Cementing, Bead Dipping, and Green Tire Spraying. The revised

standards are consistent with the federal CTG.

The above referenced regulations of the Jefferson County portion of the Commonwealth of Kentucky SIP are being approved. The revisions to the regulations correct most of the deficiencies between EPA's requirements and the Commonwealth's SIP. These deficiencies were identified in the November 9, 1987, letter from Winston A. Smith, Director of Air, Pesticides & Toxics Management Division to Robert T. Offutt, Secretary-Treasurer, Jefferson County Air Pollution Control District. Subsequently, the SIP call letter for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988, required the Commonwealth to correct these deficiencies.

On March 4, 1993, Kentucky submitted revised regulations which addressed the remaining RACT fix-up deficiencies other than emissions trading. This submittal stopped the 18-month sanctions clock and the revisions will be addressed under a separate Federal Register notice.

Final Action

EPA is today approving the above referenced revision to the Jefferson County portion of the Kentucky SIP. These revisions are consistent with EPA guidelines. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on December 20, 1993. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted, Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In the amended Act, Congress codified the requirement that States with areas classified as marginal or above, revise their SIPs for these classified ozone nonattainment areas so that the SIPs conform with EPA's pre-amendment guidance.³

³ Among other things, the pre-amendment guidance consists of the Post-87 Policy, 52 FR 45044 (Nov. 24, 1987) the Blue Book, "Issues Relating to VOC Regulation Cutpoints, Deficiencies,

Section 182(a)(2)(A) established a deadline of May 15, 1991, for submittal of these RACT fix-ups.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604.

Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not for profit enterprises, and government entities with jurisdiction over populations less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA

certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

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

Dated: August 26, 1993.

Patrick M Tobin,
Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c) (68) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the Commonwealth of Kentucky State Implementation Plan (SIP) concerning Jefferson County Volatile Organic Compounds were submitted on February 12, 1992 by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Revisions to the following Jefferson County Regulations were effective May 15, 1991.

(1) Regulation 1.02 Definitions: (45), (61), (62), and (91).

(2) Regulation 1.08 Administrative Procedures: Subsections 1.1.1, 1.1.3, 2.2.7, 2.3, and 2.5, Section 3.0 closing paragraph, and Subsections 4.6, 8.1 and 8.4.

(3) Regulation 6.12 Standard of Performance for Existing Asphalt Paving Operations: Sections 1.0 and 5.0.

(4) Regulation 6.13 Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds.

(5) Regulation 6.16 Standard of Performance for Existing Large Appliance Surface Coating Operations.

(6) Regulation 6.18 Standards of Performance for Existing Solvent Metal Cleaning Equipment.

(7) Regulation 6.19 Standard of Performance for Existing Metal Furniture Surface Coating Operations.

(8) Regulation 6.23 Standard of Performance for Existing Dry Cleaning Facilities: Section 1.0 and Subsection 4.3.

(9) Regulation 6.29 Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography.

(10) Regulation 6.30 Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling.

(11) Regulation 6.31 Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations.

(12) Regulation 6.32 Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.

(13) Regulation 6.33 Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations.

(14) Regulation 6.34 Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants.

(15) Regulation 6.35 Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations.

(16) Regulation 7.11 Standard of Performance for New Asphalt Paving Operations: Sections 1.0, 6.0, and 7.0.

(17) Regulation 7.12 Standard of Performance for New Storage Vessels for Volatile Organic Compounds: Section 1.0, Subsections 2.10, 5.3.2, 5.3.3, and 5.4, and Section 8.0.

(18) Regulation 7.16 Standard of Performance for New Large Appliance Surface Coating Operations: Section 1.0, Subsections 2.3, 4.2, 4.4, 5.3 and 5.4, and Sections 6.0 and 7.0.

(19) Regulation 7.18 Standards of Performance for New Solvent Metal Cleaning Equipment: Section 1.0 and Subsection 2.4.

(20) Regulation 7.19 Standard of Performance for New Metal Furniture Surface Coating Operations: Section 1.0, Subsections 2.3, 4.3, 4.5.1, 5.2, and Sections 6.0 and 7.0.

(21) Regulation 7.23 Standard of Performance for New Perchloroethylene Dry Cleaning Facilities: Section 1.0 and Subsection 4.5.

(22) Regulation 7.52 Standard of Performance for New Fabric, Vinyl, and Paper Surface Coating Operations: Section 1.0, Subsections 2.3, 2.12, 4.1, 4.3, 4.5.1, and 5.3, and Section 6.0.

and Deviations, Clarification to Appendix D of November 24, 1987 *Federal Register Notice* and the existing CTGs.

(23) Regulation 7.56 Standard of Performance for Leaks from New Petroleum Refinery Equipment: Subsection 2.4 and 2.6, and Section 7.0.

(24) Regulation 7.57 Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography: Section 1.0, Subsections 2.8, 4.2, 4.4.1, and 5.2, and Sections 6.0, 7.0, and 8.0.

(25) Regulation 7.58 Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling: Section 1.0, Subsection 2.5, 4.4.1, and 5.4, and Section 6.0.

(26) Regulation 7.59 Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations: Section 1.0, Subsections 2.2, 2.4, 2.5, 2.8.7, 4.3, 4.5.1, 5.1.1, 5.1.2, 5.1.4, 5.2, and 5.4, and Sections 6.0 and 7.0.

(27) Regulation 7.60 Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations: Section 1.0 and Section 2.0.

(28) Regulation 7.61 Standard of Performance for New Pneumatic Rubber Tire Manufacturing Plants: Section 1.0, Subsections 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7, and Section 3.0.

(ii) Other material.

(A) Letter dated February 12, 1992, from the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet.

3. Section 52.934 is added to read as follows:

§ 52.934 VOC rule deficiency correction.

Section 1.02, 1.08, 6.12, 6.13, 6.16, 6.18, 6.19, 6.23, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, 6.35, 7.11, 7.12, 7.16, 7.18, 7.19, 7.23, 7.52, 7.56, 7.57, 7.58, 7.59, 7.60 and 7.61 of the Jefferson County portion of the Commonwealth of Kentucky SIP are being approved. The Commonwealth submitted these regulations to EPA for approval on February 12, 1992. These sections were intended to correct deficiencies cited in a letter calling for the Commonwealth to revise its SIP for ozone from Greer C. Tidwell, the EPA Regional Administrator, to Governor Wallace G. Wilkinson on May 26, 1988 and clarified in a letter from Winston A. Smith, Air, Pesticides & Toxics Management Division Director, to William C. Eddins, Director of the Commonwealth of Kentucky Division for Air Quality.

(a) Deficiencies in the following regulations, however, have not been corrected:

(1) 1.05 Compliance with Emission Standards and Maintenance Requirements;

(2) 1.06 Source Self-Monitoring and Reporting;

(3) 1.12 Emissions Trading;

(4) 6.17 Standard of Performance for Existing Automobile and [Light Duty] Truck Surface Coating Operations;

(5) 6.36 Standard of Performance for Existing Metal Parts and Products Surface Coating Operations at Auto and Truck Manufacturing Plants; and

(6) 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control).

(b) The above deficiencies must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guideline relating to the deficiencies before the SIP for ozone can be fully approved.

[FR Doc. 93-26020 Filed 10-21-93; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 670, 671 and 672

Conservation of Antarctic Animals and Plants; Waste Regulation; Enforcement and Hearing Procedures

AGENCY: National Science Foundation (NSF).

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published on Thursday, June 29, 1993, (58 FR 34713). The regulations govern waste management and waste disposal in Antarctica.

EFFECTIVE DATE: August 15, 1993.

FOR FURTHER INFORMATION CONTACT: Miriam M. Leder, Office of the General Counsel at 202-357-9435.

SUPPLEMENTARY INFORMATION: The final regulations are being technically revised to conform to Federal Register requirements and to correct a numbering error. Accordingly, the publication on Thursday, June 29, 1993, of final regulations that were the subject of FR Doc 93-15113 (58 FR 34713), is corrected as follows:

Paragraph 1. On page 34718, in the third column, in amendatory instruction 2, line 4, the number "672.22" is corrected to read "672.23".

Paragraph 2. The date identified on page 34713, column two, as the Effective Date is corrected to read "August 15, 1993", although the regulations themselves shall not apply to nongovernmental activities until after March 1, 1994, and the provisions of 45 CFR 671.4 shall not apply to governmental activities covered by

permit applications submitted no later than August 15, 1993, until NSF takes final action on those applications.

Dated: October 18, 1993.

Anita Eisenstadt,

Acting General Counsel, National Science Foundation.

[FR Doc. 93-26022 Filed 10-21-93; 8:45 am]

BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-166; RM-8242]

Radio Broadcasting Services; Rexburg, Idaho and Afton, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C1 for Channel 251C3 at Rexburg, Idaho, and modifies the construction permit for Station KRXX-FM to specify operation on Channel 251C1; it also substitutes Channel 254A for Channel 252A at Afton, Wyoming, and modifies the license for Station KRSV(FM) to specify operation on Channel 254A at the request of Communicast Consultants, Inc. See 58 FR 34555, June 28, 1993. Channel 251C1 can be allotted to Rexburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.2 kilometers (20 miles) south of the community. Channel 254A can be allotted to Afton at the authorized transmitter site of Station KRSV(FM). The coordinates for Channel 251C1 at Rexburg are North Latitude 43-32-34 and West Longitude 111-53-07. The coordinates for Channel 254A at Afton are North Latitude 42-51-02 and West Longitude 110-58-46. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-166, adopted September 29, 1993, and released October 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

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 Idaho, is amended by removing Channel 251C3 and adding Channel 251C1 at Rexburg.

§ 73.202 [Amended]

3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 252A and adding Channel 254A at Afton.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93-25965 Filed 10-21-93; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[APD 2800.12A CHGE 48]

General Services Administration Acquisition Regulation; Multiple Award Schedule Contractors' Submission and Distribution of Authorized GSA Schedule Pricelists

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to incorporate the new clause, Submission and Distribution of Authorized GSA Schedule Pricelists and Alternates. The pricelist is similar to a firm's commercial catalog, and serves the same function as a marketing tool, but it is tailored specifically for Federal agency customers.

An on-line electronic data base has been developed for the MAS program. The data base allows electronic (computer) access to MAS contract information, including contractor pricelists, for agency users. The new clause continues the present requirement for contractor submission and distribution of paper copies of the

pricelists; it also requires submission of the authorized GSA Schedule Pricelist on an electronic media, for inclusion on the data base.

EFFECTIVE DATE: October 26, 1993.

FOR FURTHER INFORMATION CONTACT:

Les Davison, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the *Federal Register* on November 16, 1992 (57 FR 54036). Public comments were received from the Computer and Business Equipment Manufacturers Association (CBEMA) and Information Technology Association of America (ITAA). Comments received were fully considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this final rule.

C. Regulatory Flexibility Act

The rule is not expected to have an economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act.

An initial regulatory flexibility analysis was prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis were available for public comment. No comments were received on the impact of the rule on small business. The final regulatory flexibility analysis indicates that the rule will affect contractors, including small businesses, that are awarded contracts under GSA's Multiple Award Schedule program. Over the years, approximately seventy percent of MAS contractors have been small businesses. Based on the number of MAS contracts awarded in 1991, it is estimated that 2,300 small businesses will be impacted by the new rule. The final regulatory analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the final regulatory analysis are available from the office identified above.

D. Paperwork Reduction Act

The "Submission and Distribution of Authorized GSA Schedule Pricelists" clause contains an information collection requirement which has been approved by OMB under section

3504(h) of the Paperwork Reduction Act and has been assigned OMB Control Number 3090-0258. The title of the information collection is, "GSAR 538, Submission and Distribution of Authorized GSA Schedule Pricelists."

The GSAR clause provides for submission and distribution of paper pricelists, as well as the submission of the same pricelist on an electronic medium to the contracting officer. Contractors also distribute pricelists to Federal agency users of schedules consistent with the standard commercial practice of sending pricelists to potential customers. The authorized GSA schedule pricelists are used by Government agencies to evaluate and consider particular items for acquisition, and to place and administer orders. The estimated annual burden for submission and distribution of paper pricelists is 40 hours per contractor (130,000 total hours). Twenty-five percent of current MAS contractors are estimated to already have their pricelists on an electronic database. For those, the additional burden of submitting an electronic pricelist is estimated at 2 hours. For other contractors, the estimated burden to submit an electronic pricelist is 20 hours. For electronic submission, then, the estimated annual burden is 48,584 hours.

In total, the estimated additional annual burden for paper submission, paper distribution, and electronic submission for 3250 MAS contractors is 178,584 hours.

Any comments concerning the accuracy of the burden may be directed to the Director, Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., room 4006, Washington, DC 20405 and to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR parts 538 and 552

Government procurement.

Accordingly, 48 CFR parts 538 and 552 are amended to read as follows:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 538—GSA SCHEDULE CONTRACTING

2. Section 538.203-71 is amended by adding paragraph (c) to read as follows:

538.203-71 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 552.238-74, Submission and Distribution of Authorized GSA Schedule Pricelists, in solicitations and contracts awarded under the multiple award schedule program. When GSA is not prepared to accept electronic submissions for a particular schedule, the contracting officer is authorized to modify the clause by deleting subparagraph (c)(1)(ii) and (c)(3) and modifying subparagraph (c)(1) to eliminate "(i)" and the word "and" at the end of subparagraph (i).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 552.238-74 is added to read as follows:

552.238-74 Submission and distribution of authorized GSA schedule pricelists.

As prescribed in 538.203-71(c), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED GSA SCHEDULE PRICELISTS (SEP 1993)

(a) Definition. For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: "the list of Federal addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its Federal government customers"].

(b) The Contracting Officer will return one copy of the Authorized GSA Schedule Pricelist to the Contractor with the notification of contract award. The Contractor shall not print or distribute the pricelist without written approval from the Contracting Officer. NOTE: Approval by the Contracting Officer shall not absolve the contractor from responsibility for the accuracy of the pricelist.

(c)(1) The Contractor shall provide to the GSA Contracting Officer:

- (i) Two paper copies of Authorized GSA Schedule Pricelist; and
- (ii) The Authorized GSA Schedule Pricelist on a common-use electronic medium.

The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

- (i) One paper copy of the Authorized GSA Schedule Price List; or
- (ii) A self-addressed, postage-paid envelope or postcard to be returned by addressee that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the on-line Multiple Award Schedule electronic data base.

(d) The Contractor shall make all of the distributions required in paragraph (c) at least 15 calendar days before the beginning

of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(e) During the period of the contract, the contractor shall provide one copy of its Authorized GSA Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of Clause)

Dated: October 5, 1993.

Richard H. Hopf, III,
Associate Administrator for Acquisition
Policy.

[FR Doc. 93-25947 Filed 10-21-93; 8:45 am]

BILLING CODE 0820-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS-123; Amdt. 192-70]

RIN 2137-AB64

Leakage Surveys on Distribution Lines Located Outside Business Districts

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires operators of distribution lines located outside business districts to use leak detectors to carry out required leakage surveys. Instead of using leak detectors, some operators survey for leaks by looking for dead or dying vegetation, a less reliable method. The rule will provide greater assurance that operators identify all hazardous leaks during required leakage surveys.

Also, where electrical surveys for corrosion are impractical on cathodically unprotected metallic distribution lines located outside business districts, operators commonly use leakage survey data to determine whether the lines are corroding. However, under the present leakage survey standard, those data may be too old for purposes of evaluating lines for corrosion at 3-year intervals. Thus, the final rule assures that leakage survey data no more than 3 years old are used to evaluate lines for corrosion.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392, regarding the subject matter of this final rule, or the Dockets Unit, (202) 366-5046, regarding copies of this final rule document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

A string of accidents due to corrosion and other causes occurred on residential service lines operated by the Kansas Power and Light Company (KPL) in Kansas and Missouri during a 7-month period of 1988 and 1989. Overall, four persons were killed and 16 were injured, with property damage exceeding \$740,000. The service lines were mostly steel lines installed by contractors of the operator's customers before issuance of the gas pipeline safety standards in 49 CFR part 192.

The lines had been checked for leaks through vegetation surveys carried out by KPL's meter readers, but KPL had never used gas detectors to survey the lines for leaks. Responding to the accidents, KPL conducted a comprehensive gas detector survey that revealed 2,156 leaks in 55,213 house service lines. KPL considered 303 of these leaks to need immediate repair.

After the KPL accidents, the National Transportation Safety Board (NTSB) recommended the following to RSPA:

- Amend the provisions of 49 CFR part 192 that allow alternatives to the use of electric surveys for identifying areas of active corrosion to require that any alternative must provide data equivalent, both in timeliness and quality, to that obtained using electrical surveys. (P-90-17)

- Amend 49 CFR part 192 to disallow the use of vegetation-type surveys for complying with any leakage survey requirement. (P-90-18)

In addition, the National Association of Pipeline Safety Representatives (NAPSR), an organization of State pipeline inspectors, has recommended that operators use gas detectors in leakage surveys on distribution lines. NAPSR believes that vegetation surveys are too imprecise to assure safety in residential areas.

Vegetation surveys are based on the assumption that a high proportion of natural gas in the subsurface environment displaces air in the soil. Lack of air inhibits the growth of vegetation, producing an effect visible on the ground. Hence, observation of dead or dying vegetation is used to infer the existence of an underground gas leak. While the vegetation survey is a well-established technique, it suffers from a number of weaknesses. At various times of the year, primarily because of seasonal, weather, or climatical conditions, the growth of vegetation is insufficient to support a proper vegetation survey. In addition, vegetation is noticeably affected only after gas has leaked at a significant rate

for a significant time. Thus, vegetation surveys may not discover incipient leaks; and very small, or "pinhole," leaks may not be discovered unless they increase in size.

In contrast, leakage surveys using portable gas detector equipment can be done at any time of the year. Although the sensitivity of available gas detectors varies, all equipment can detect the presence of natural gas in the atmosphere without the aid of human judgment. Consequently, the uncertainty associated with vegetation surveys is eliminated with gas detector surveys. Whenever a trained technician does a gas detector survey, the operator can assume with reasonable certainty that all hazardous leaks will be found.

Notice of Proposed Rulemaking

Because of the KPL accidents and the NTSB and NAPSR recommendations, RSPA proposed to strengthen the rule that governs leakage surveys of gas distribution lines in residential areas (§ 192.723(b)(2)). In a notice of proposed rulemaking (NPRM) published October 23, 1991 (56 FR 54816), RSPA proposed to require that operators use gas detection equipment in leakage surveys under § 192.723(b)(2). (Operators who survey their lines for leaks more often than once every 5 years, the minimum frequency under § 192.723(b)(2), could continue to use vegetation surveys for those additional leakage surveys.) At the same time, RSPA proposed to clarify § 192.723(b)(2) and make it consistent with § 192.723(b)(1) by replacing the phrase, "outside of the principal business areas," with "outside business districts."

Another proposed amendment of § 192.723(b)(2) concerned cathodically unprotected metallic distribution lines that must be evaluated for corrosion under § 192.465(e). Operators must evaluate these pipelines at least every 3 years to determine whether areas of active corrosion exist on the lines. Areas of active corrosion must be determined by electrical survey, or if an electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

It is common practice for operators to rely on leakage surveys as an alternative to electrical surveys in complying with § 192.465(e). RSPA's concern is that when only 5-year-old data collected under § 192.723(b)(2) are used for this purpose, corrosion may go unchecked on distribution lines in residential areas longer than the 3 years that § 192.465(e) allows. Therefore, RSPA proposed to amend § 192.723(b)(2) to require that when electrical surveys are impractical

on cathodically unprotected distribution lines that are subject to § 192.465(e), leakage surveys must be done at least every 3 years.

Disposition of Comments

The 56 organizations that filed comments on the NPRM are categorized as follows:

Federal agency—2: NTSB, U.S. Environmental Protection Agency (EPA)
State pipeline agency—6: Oregon, Kansas, Iowa, Massachusetts, Kentucky, Maryland
Trade association—3: American Gas Association (AGA), NY Gas Group, Oil Heat Task Force
Professional association—1: Gas Piping Technology Committee
Leak survey business—1: Southern Cross
Consultant—1: ConReg Associates
Distribution operator—42: Alagasco; ARKLA; Atlanta Gas Light Company; Atmos Energy Corporation; Boston Gas Company; The Brooklyn Union Gas Company; Citizens Gas and Coke Utility; Colorado Springs Utilities; The Columbia Distribution Companies; Consolidated Edison Company of N.Y., Inc.; Consumers Power Company; The East Ohio Gas Company; Entex; Equitable Resources, Inc.; Hope Gas, Inc.; Iowa-Illinois Gas and Electric Company; Laclede Gas Company; Louisiana Gas Service Company; Minnegasco; Mississippi Valley Gas Company; Montana-Dakota Utilities Co.; Mountain Fuel Supply Company; National Fuel Gas Distribution Corporation; Natural Gas Pipeline Company of America; New York State Electric and Gas Corporation; Northern Indiana Public Service Company; Northern Illinois Gas; Northern Minnesota Utilities; Northwest Natural Gas Company; Okaloosa County Gas District; Oklahoma Natural Gas Company; Pacific Gas and Electric Company; The Peoples Gas Light and Coke Company; Peoples Gas System, Inc.; The Peoples Natural Gas Company; Philadelphia Electric Company; Public Service Company of Colorado; Southern California Gas Company; Southwest Gas Corporation; Washington Gas; Willmut Gas & Oil Company; Wisconsin Natural Gas Co.

Gas Detector v. Vegetation Survey

Some 50 commenters addressed the issue of whether operators should be required to use gas detectors in leakage surveys of distribution systems outside business districts. Of these commenters, 16, including NTSB, Oregon, Kansas, Massachusetts, Maryland, NY Gas Group, Oil Heat Task Force, and 9 distribution operators, voiced general support for the proposal. Another 17 commenters, all distribution operators, supported the proposal because they now use gas detectors, either hydrogen flame ionization equipment or combustible gas indicators, or both, in their surveys.

Two distribution operators supported the proposal, but preferred that the final rule use the term "instrumented leak

detection equipment" instead of "gas detector." They said this change would allow the use of sonics for leakage surveys, a technology that does not rely on actual detection of gas. This comment is important because RSPA does not want the final rule to deter the use of advancements in leakage survey technology. In addition, § 192.706, governing leakage surveys of transmission lines, requires the use of "leak detector equipment." To be consistent with § 192.706, final § 192.723(b)(2) uses the term "leakage survey with leak detector equipment" instead of "gas detector survey." For consistency, we also replaced "gas detector survey" in § 192.723(b)(1) with "leakage survey with leak detector equipment."

Three other distribution operators supported the proposal, but suggested we limit the final rule to buried pipe. They saw no need to include interior piping under the leakage survey requirement, stating that leaks inside buildings are readily detectable without gas detectors. However, existing § 192.723(b)(2) requires leakage surveys on interior piping that is subject to part 192. Although the NPRM did not propose to alter this requirement, RSPA does not agree that there is no need for leakage surveys on interior piping. Many people have a diminished sense of smell, and conceivably could not readily smell odorized gas escaping from a pinhole leak. Periodic interior leakage surveys protect against accidents caused by otherwise undetected leaks.

Several commenters thought the term "business district" should be defined in the final rule. Two of these commenters referred to the definition in the *Guide for Gas Transmission and Distribution Piping Systems*. One asked that we define the term to distinguish older innercity business areas from newer commercial developments. RSPA did not adopt these comments because the term "business district" has been used in § 192.723(b)(1) since the rule's inception without significant compliance difficulties.

Two commenters thought we should define "gas detector survey." As discussed above, the final rule uses "leakage survey with leak detector equipment" instead of "gas detector survey." RSPA believes this alternative term is clear and needs no definition.

Another commenter disliked the term "gas detector survey" because it would allow use of combustible gas indicators, a method the commenter said is not as effective as hydrogen flame ionization equipment. The NPRM did not propose to standardize the equipment operators

may use in conducting leakage surveys. Rather, the purpose of the proposal was to disallow the use of vegetation surveys to meet leakage survey requirements. So any kind of equipment capable of detecting leaks in gas distribution systems may be used under the final rule.

Several commenters opposed the gas detector proposal because they favored the continued use of vegetation surveys to meet leakage survey requirements. One said that vegetation surveys are 35% effective on a single pass (compared to 85 percent for hydrogen flame ionization equipment), 5 times faster than hydrogen flame ionization equipment, and 20 percent as expensive. This commenter said vegetation surveys are reliable if run by trained personnel at frequent intervals (2 or 3 times as often as hydrogen flame ionization). Two other commenters argued that an abundance of vegetation is available for efficient scheduling and running of effective vegetation surveys. One of these commenters also said a recent trial survey with gas detectors produced only 5% more leaks than a vegetation survey, and they were of low priority.

RSPA does not find these arguments persuasive. The above statistics themselves show that vegetation surveys are less effective than leak detector equipment on a single pass over distribution lines, even when using trained personnel. Also, the savings in time and money seem to be offset by the need to run vegetation surveys more often for results as reliable as with gas detectors. This need for more frequent surveys is not compatible with the 5-year minimum frequency specified by § 192.723(b)(2). Further, while vegetation is essential for vegetation surveys, abundant vegetation does not overcome these drawbacks: leaks must be inferred rather than detected, and incipient leaks need time before they visually affect vegetation. The fact that a commenter found only minor additional leaks with leak detector equipment is fortunate but not necessarily typical, as the KPL experience shows. Moreover, undetected minor leaks can grow to become hazardous.

One commenter argued against the mandatory use of gas detectors by asserting that most leaks are reported through odorization of gas. Only 10 percent or less are found by leakage surveys the commenter said. Even so, public safety demands that operators use reliable means to discover leaks not reported through odorization. Gas detectors, unquestionably, are more reliable than vegetation surveys. And

our analysis shows that gas detectors can be used to meet the present leakage survey rule at minimal additional cost. Thus, RSPA believes that disallowing the use of vegetation surveys to meet that rule is reasonable.

AGA opposed the proposal on the ground that one company's results are inadequate justification to change § 192.723(b)(2). AGA also saw only minimal potential benefits from mandatory gas detector surveys, because since 1984 there have been only 57 distribution incidents caused by corrosion, with 6 deaths, 39 injuries, and \$2.35 million of property damage. However, RSPA notes that the KPL accidents were not the sole justification for proposing to change § 192.723(b)(2). The NPRM was also based on an analysis of the effectiveness of vegetation surveys, on recommendations by NTSB and NAPSRS, and the fact that Kansas, Missouri, and other states have required operators to use gas detectors in residential leakage surveys. Moreover, corrosion is not the only cause of leaks on distribution lines located outside business districts. Outside force damage to pipe is a major cause of leaks, as are pipeline construction and material defects. These other causes of leaks add to the corrosion-related benefits of leakage surveys. As with corrosion, leaks from these other causes can result long after the damage or defect occurs, creating an opportunity for the operator to discover the leak during a leakage survey.

One commenter asked that RSPA exempt lines in unoccupied rural areas where steep terrain and high vegetation growth limit the effectiveness of gas detector surveys. Although leakage surveys with gas detectors may take longer in areas of steep terrain and high vegetation, RSPA does not have evidence that such surveys are less effective in those areas. Considering the allowable interval between required surveys (5 years), RSPA feels operators have ample time to survey lines in those areas with leak detection equipment. The final rule does not have the suggested exemption.

Corrosion Evaluation by Leakage Survey

Forty-two commenters addressed the issue of whether cathodically unprotected pipe subject to the 3-year electrical survey requirement of § 192.465(e) should be surveyed for leaks at least every 3 years if electrical surveys are impractical. Of these commenters, 16, including NTSB, Southern Cross, Kansas, Iowa, Massachusetts, Oil Heat Task Force, and 10 distribution operators, expressed general support for the proposal.

Another 7 of the 42, all distribution operators, said they supported the proposal because they now survey their unprotected lines for leaks at 3-year intervals.

Four distribution operators supported the proposal, but suggested that the proposed frequency (intervals not exceeding 3 years) be changed to read "at intervals within 3 calendar years, but not exceeding 39 months." They said this change would be consistent with other part 192 requirements for periodic inspections by allowing time to cope with extreme weather conditions. RSPA agrees that in scheduling leakage surveys to comply with the rule, operators will have to consider the weather. However, 3 years should be ample time within which to schedule and conduct a survey in good weather. None of the present part 192 standards that prescribe inspections every 3 years allow more than 36 months between inspections (e.g., § 192.465(e)).

Three commenters, including AGA, opposed the proposal on the ground that every 3 years is too frequent to check for leaks, given the low corrosion accident rate. They suggested we extend the 3-year electrical survey minimum frequency to 5 years to match the minimum leak survey frequency. This change, they said, would reduce compliance cost with no adverse safety impact. RSPA did not adopt this approach, because it would weaken the existing rule on monitoring unprotected metallic pipelines for corrosion (§ 192.465(e)). This rule was established to hold down the corrosion accident rate on distribution lines. The low corrosion accident rate that has been attained with this rule is not a sufficient reason to slacken the minimum frequency of corrosion monitoring.

Four distribution operators opposed the proposal because they felt the use of 5-year old leak survey data has not caused a safety problem. One of these commenters pointed out that under § 192.465(e), the use of leak history data as an alternative to electrical surveys includes data from sources besides leak surveys, such as reports from the public. Another of these commenters thought the existing § 192.723(b)(2) is satisfactory because it requires surveys "as frequently as necessary." Similarly, another of the four said the use of improved leak survey techniques and reliance on corrosion and leak history are sufficient measures under § 192.465(e) to insure pipeline integrity, without more frequent surveys.

RSPA did not change the final rule as a result of these comments. The available safety data are insufficient to substantiate the commenters' assertion

that using 5-year old data to meet a 3-year monitoring rule has not caused a safety problem. In the absence of such information, since pipeline corrosion continues to pose a serious threat to public safety, it is reasonable to require that unprotected pipelines be evaluated for corrosion on the basis of current data. Admittedly, the other considerations the commenters mentioned compensate to some degree for the use of out-of-date leak survey data. However, in our opinion, they do not overcome the need for leak survey data that reflect the state of corrosion activity within the prescribed period of evaluation.

Five operators opposed the proposal because of the scattered nature of unprotected parts of their distribution systems. For cost effective leakage surveys, these commenters said they would have to survey areas of their systems at 3-year intervals regardless of whether the areas contain protected or unprotected lines. It would be too impractical, they said, to survey unprotected lines selectively at 3-year intervals and the remainder at 5-year intervals. One operator suggested that changing the 5-year survey requirement to 6 years would alleviate this problem.

In response to these operators, RSPA notes that under § 192.465(a), protected lines must be monitored at least annually, while under § 192.465(e), operators have as long as 3 years to monitor unprotected lines. Thus, distribution systems with both protected and unprotected pipelines are already subject to different intervals for corrosion monitoring. In RSPA's experience, operators have not had significant trouble in applying these different monitoring intervals to separate parts of their systems. Since the proposed 3-year leakage survey is merely a means of carrying out the 3-year corrosion monitoring requirement on unprotected pipelines, RSPA does not believe it would add to the operators' present burden of compliance with § 192.465(e). Therefore, RSPA was not persuaded to alter the final rule because of the alleged impracticality of surveying different parts of a system at different rates. Moreover, the prescribed intervals under final § 192.723(b)(2) are maximum times between surveys. Operators who find it more convenient to survey separate parts of their systems at compatible frequencies, such as 2 and 4 years, or at the same frequency, such as every 3 years, may do so, provided the prescribed intervals are not exceeded.

Specific Comments Requested

In the NPRM, RSPA announced that it was reconsidering the need for more frequent leakage surveys on all distribution lines outside business districts. In that regard, we requested comments on the following topics to help us decide whether to propose a 1-year minimum frequency for leakage surveys on unprotected lines and a 3-year minimum frequency on all other lines.

(1) The need to increase from every 5 years to every 3 years the minimum frequency of leakage surveys on distribution lines of any material located outside business districts.

Only four commenters supported the notion of increasing from every 5 years to every 3 years the minimum frequency required for leak surveys on portions of distribution systems outside business districts. The Oil Heat Task Force favored more frequent surveys on the ground that total reported leaks are high, and more frequent surveys would positively affect the environment by reducing methane emissions. However, EPA advised that preliminary results of a Gas Research Institute study commissioned under the Clean Air Act show that system-wide leak rates are low. AGA argued that the Oil Heat Task Force merely wants to increase the cost of gas to enlarge the market for oil.

NTSB asserted that 5 years is too long between checks for leaks on flammable gas systems in view of aging systems. The agency suggested RSPA study incident data to learn the correlation between leak rate and age, type of pipe, and other characteristics. NTSB then said leak survey frequency should be set according to these correlations. One other commenter also said leak survey frequency should be based on age, material, leak history, and soil characteristics.

AGA opposed the idea of an increased frequency, saying an increase is not likely to have a beneficial effect given the low leak rate from corrosion since 1984. AGA foresaw minimal benefits but a significant increase in costs.

The large majority of commenters on this issue opposed the increase, saying it is not justified and would not be cost beneficial. Numerous commenters said a minimum 5-year frequency is sufficient for cathodically protected steel pipe and plastic pipe, because these pipes experience relatively few leaks. Another commenter who opposed an increase argued that gas detectors eliminate the need for more surveys. Still another commenter noted that effective cathodic protection and odorization programs make more frequent surveys

unnecessary. One commenter who expressed opposition said its existing leak survey and replacement program was satisfactory, while another commenter stated its opposition succinctly: expensive, impractical, and unnecessary.

One commenter who argued a minimum 3-year rate was unjustified noted that the KPL incidents involved old, customer-owned, unprotected lines that had been vegetation surveyed by meter readers. This commenter said the KPL evidence showed a need for gas detector surveys, but not more frequent surveys. More frequent surveys, this commenter said, should be tied to high leak rates, as from corrosion, deteriorating couplings, or construction defects. Another commenter similarly said that a frequency of more than 5 years should be based on need.

(2) The need to conduct leakage surveys at least annually on cathodically unprotected metallic distribution lines that lie outside business districts and on which electrical surveys are impractical.

The Oil Heat Task Force supported the notion of annual surveys on unprotected steel lines because of what the commenter considered a large number of leaks annually across the nation.

Three other commenters supported annual surveys to help combat the effects of corrosion on old unprotected lines and prevent multiple leaks from existing for up to 5 years between surveys. An additional commenter supported the increase because it surveys annually now.

One commenter supported annual surveys, but only in areas of high leakage.

Most who commented on the issue were opposed to the suggested increase in leak survey frequency, saying it lacked corresponding safety benefits. Many said it's too impractical to schedule more frequent surveys on unprotected parts of a system, since cathodic protection can vary by area or street. In some cases, these commenters said, unprotected services are randomly scattered over a city. The suggested increase would cause whole areas or systems to be surveyed annually without sufficient cause.

One commenter who saw no benefit said older systems are the source of corrosion leaks. These systems, the commenter said, have already been surveyed many times and possible areas of corrosion are protected or replaced.

Two other commenters who opposed the increase said there would be no corresponding benefits because

corrosion incidents can occur shortly after a survey.

(3) *How would such an increase (in survey frequency) affect the present costs of conducting leakage surveys on distribution lines in small and large systems?*

About 15 commenters gave estimates ranging from \$140,000 to \$4 million a year per operator if the 5 year frequency were increased to 3 years. The range of estimated cost increases for surveying unprotected lines annually was from \$66,000 to \$19 million a year per operator. These estimates covered the costs of equipment, personnel, and training.

(4) *[What] benefits would result from such rules. Information concerning accidents that operators might have avoided had they surveyed pipelines for leaks more frequently would be helpful.*

Only a few commenters responded to this inquiry. None saw any benefit to increasing the survey frequencies. Some of the reasons were: Low corrosion accident rate; lack of corrosion accidents and system difference from KPL situation; know of no accidents that would have been avoided had survey been every 3 instead of every 5 years; most lines plastic, little likelihood of accident avoidance through increased leak survey frequency.

Conclusion

Based on our review of the information submitted, we have concluded that the number of accidents that might be prevented by surveying at the proposed increased frequencies is uncertain. In addition, the current safety data for the nation's population of gas distribution lines are not sufficient to determine if a correlation exists between leak rates and pipe age, material, or other characteristics. Also, state pipeline safety agencies commonly impose more frequent survey requirements on individual distribution lines that are found to pose an unusual risk. Under these circumstances and given the need to learn the effect of the final rule on leak rates, we are not at present considering any further amendment of the leak survey frequency rule.

Advisory Committee

As part of this rulemaking proceeding, RSPA obtained advice from the Technical Pipeline Safety Standards Committee (TPSSC) on the technical feasibility, reasonableness, and practicability of the proposed rule. The TPSSC is a statutory advisory committee comprised of 15 members, representing the natural gas industry, government, and the general public.

The TPSSC met in Washington, DC on March 11, 1992, and discussed the NPRM. The TPSSC voted for the proposed rule 10 to 1, with 1 member abstaining. A suggested revision concerning a typographical error in the text of the proposed rule has been corrected. The transcript and report of the meeting are available in the docket.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures

RSPA has concluded that the amendment to § 192.723(b)(2) is not a significant rule under Executive Order 12866. Also, it is not a significant regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

RSPA believes that the final rule will add minimally to the average compliance expense of the present rule. With respect to requiring the use of leak detectors, first, operators of gas distribution systems already have the equipment. They use portable gas detectors in business districts and to check enclosed spaces for gas leaks. Second, in leakage surveys outside business districts, most operators already use gas detectors for mains, because they generally lie beneath paved areas where vegetation surveys are inappropriate. Also, for service lines in these areas, many operators are voluntarily using gas detectors instead of vegetation surveys, and some State laws require operators subject to State jurisdiction to do so. Third, gas detector equipment is easy to use. Personnel that operators have trained to do vegetation surveys will need only slight, if any, additional training to use the equipment. Finally, although the survey process will take longer with leak detectors, any resulting additional costs will be mitigated by the period between surveys (maximum interval is 5 years) and the ability to conduct surveys with leak detectors any time of the year.

The benefits of requiring the use of leak detectors in leakage surveys are prevention of deaths, injuries, and property damage that might otherwise occur when hazardous gas leaks go undetected in residential neighborhoods. As an example of these potential benefits, the NPRM discussed the results of leak detector surveys in Kansas City, Missouri. Following a string of residential accidents in which four persons were killed and 16 were injured, with property damage exceeding \$740,000, the local gas company conducted leakage surveys with leak detector equipment. Until then the company had relied on

vegetation surveys by meter readers to discover previously undetected gas leaks. The leak detector surveys revealed a large number of previously undetected hazardous leaks. For instance, during one period, leak detector surveys revealed 2,156 leaks in 55,213 house service lines, of which the gas company considered 303 leaks to need immediate repair. Had these leak detector surveys been conducted earlier, many of the Kansas City accidents might have been prevented by timely repair of the leaking lines. The final rule should achieve similar benefits nationwide where operators are not using leak detector equipment to conduct leakage surveys.

With respect to surveys of certain unprotected metallic lines at 3-year intervals, the final rule will merely assure that when operators use leakage data to evaluate these lines for corrosion the data are not less timely than what § 192.465(e) intends for that purpose. RSPA did not attribute any additional compliance costs to this aspect of the final rule because the use of timely data is an inherent requirement of the existing § 192.465(e).

RSPA believes the final rule does not warrant a more detailed evaluation of its impact. The comments on the NPRM and the advice of the TPSSC are consistent with this view.

Regulatory Flexibility Act

Based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that it will not have a significant economic impact on a substantial number of small entities.

E.O. 12612

RSPA has analyzed this final rule under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. In § 192.723(b)(1), the words "A gas detector survey" are removed and the words "A leakage survey with leak

detector equipment" are added in their place.

3. Section 192.723(b)(2) is revised to read as follows:

§ 192.723 Distribution systems: Leakage surveys and procedures.

(b) * * *

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at intervals not exceeding 5 years. However, for cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, survey intervals may not exceed 3 years.

Issued in Washington, DC, on October 14, 1993.

Rose A. McMurray,

Acting Administrator for Research and Special Programs Administration.

[FR Doc. 93-25980 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-90-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; ID 101893A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 22, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1993 initial specifications of groundfish (58 FR 8703, February 17, 1993) and later augmented from the reserve (58 FR 44136, August 19, 1993) to a total of

13,900 metric tons (mt). The directed fishery for Pacific ocean perch was closed on April 22, 1993 (58 FR 21951, April 26, 1993); the closure was rescinded on August 9, 1993 (58 FR 42031, August 6, 1993); and the fishery was again closed on August 19 (58 FR 44465, August 23, 1993). NMFS has determined that as of October 9, 1,575 mt remain unharvested.

The Regional Director, Alaska Region, NMFS, has determined that the 1993 TAC for Pacific ocean perch in the AI has not been reached. Therefore, NMFS is rescinding the August 19, 1993, closure and is re-opening directed fishing for Pacific ocean perch in the AI, effective at 12 noon, A.l.t., October 22, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1601 *et seq.*

Dated: October 19, 1993.

Richard H. Schaefer,

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

[FR Doc. 93-26077 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 58, No. 203

Friday, October 22, 1993

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

Agricultural Marketing Service

7 CFR Part 1096

[DA-93-31]

Milk in the Greater Louisiana Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain portions of a provision of the Greater Louisiana Federal milk marketing order (Order 96), beginning November 1993 and continuing through May 1995. The proposed action would allow a plant that qualified as a pool plant under Order 96 to retain its pool status regardless of whether a greater proportion of its route disposition is made in another order marketing area in succeeding months. The suspension was requested by Mid-America Dairymen, Inc. (Mid-America), on behalf of Southern Milk Sales (SMS). The proponent contends the proposed action is necessary to assure that producer milk which historically has been associated with the market will continue to be pooled under the order. **DATES:** Comments are due no later than November 8, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: 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 would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action."

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

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) (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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request 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.

Notice is hereby given that, pursuant to the provisions of the Act, suspension of the following provisions of the order regulating the handling of milk in the Greater Louisiana marketing area is being considered for the months of November 1993 through May 1995:

In § 1096.7(d)(3), the words "until the third consecutive month in which a greater proportion of such route

disposition is made in such other marketing area".

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 15th day after publication of this notice in the *Federal Register*. The filing period is limited to fifteen days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend for the months of November 1993 through May 1995 certain portions of the pool plant definition which require that plants having greater route disposition in another marketing area for three consecutive months be considered as pool plants under the other order.

According to Mid-America, SMS historically has pooled milk on the Greater Louisiana marketing order through sales to Guth Dairy, a pool distributing plant located in Lake Charles, Louisiana. Mid-America stated that Guth Dairy recently was awarded school milk contracts in Houston, Texas. As a result, Mid-America claimed that a greater portion of the plant's packaged milk sales could be distributed in the Texas marketing order, causing the plant to switch regulation from Order 96 to the Texas marketing order.

Mid-America pointed out that for the twelve-month period ending August 1993 the Texas order blend price at Lake Charles averaged 63 cents per hundredweight less than the Greater Louisiana Federal order blend price at Lake Charles. The proponent stressed that producers supplying milk to Guth Dairy and pooled on the Greater Louisiana order could not continue to afford to supply milk to Guth Dairy if Guth Dairy became regulated under the Texas order. Likewise, Guth Dairy could not afford to pay 63 cents more to producers to compete with other

handlers in the Greater Louisiana marketing area for a supply of milk.

List of Subjects in 7 CFR Part 1096

Milk marketing orders.

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.

Dated: October 15, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93-25981 Filed 10-21-93; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 21, 30, 31, 32, 35, 40 and 61

Meeting to Discuss Upcoming Regulations and Revisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of Agreement States to discuss the provisions of proposed revisions of its regulations in several different areas. The revisions are needed to clarify and enhance certain requirements designed to protect the safety of the public and radiation workers. The revisions are also needed to clarify some existing definitions and to incorporate additional definitions in order to bring NRC regulations more in line with regulations used by other organizations that regulate similar byproduct and source material.

DATES: The public meeting will be held on Monday, October 25, 1993 from 8 a.m. to 12 noon.

ADDRESSES: The meeting is to be held at the Fiesta Inn, 2100 South Priest Drive, Tempe, Arizona, Telephone (1-800-528-6481).

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504-2327.

SUPPLEMENTARY INFORMATION: the regulations in 10 CFR part 21 address the reporting of Defects and Non-Compliance. The recent comprehensive revision of 10 CFR part 21 incorporates requirements for materials licensees of the NRC and the Agreement States. The regulations in 10 CFR part 20 regarding the Clean Air Act will be discussed. A proposed rulemaking regarding 10 CFR

parts 20 and 35 will clarify the requirements for Unintended Radiation Exposures to an Embryo, Fetus or Breast Fed Child. Revisions 10 CFR parts 30, 40, and 70, Decommissioning Funding will require facilities to be decontaminated and decommissioned with licensee controlled funds. Revisions to 10 CFR part 40 will clarify numerous definitions, exemptions and general licenses for many source material facilities. Revisions to 10 CFR parts 30, 40, and 70 will establish a low-level waste shipment manifest information and reporting system. Further revisions to 10 CFR parts 30, 40, and 70 will address Financial Assurance for Institutional Control at Low-Level Waste Sites. The addition of land ownership requirements for low-level waste sites in 10 CFR part 61 will be discussed.

The workshop will be chaired by Mr. Richard L. Bangart, Director, Office of State Programs, U.S. Nuclear Regulatory Commission. The public meeting will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the public meeting will be available for inspection and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555 on or about November 15, 1993.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants, i.e., participating representatives of each Agreement State and participating NRC staff will be entertained as time permits; and
2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 18th day of October, 1993.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 93-26031 Filed 10-21-93; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 93-ASW-6]

Proposed Change of Time of Designation to Restricted Areas R-6302C and D, Fort Hood; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the time of designation for Restricted Areas R-6302C and R-6302D, Fort Hood, TX, to more accurately reflect current user requirements for the airspace. This action is proposed as a result of a Special Use Airspace Review conducted by the FAA at Fort Hood, TX, in May 1993.

DATES: Comments must be received on or before December 8, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 93-ASW-6, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193-0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7130.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ASW-6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light

of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to amend the time of designation of Restricted Area R-6302C and R-6302D at Fort Hood, TX. In May 1993, the FAA conducted an on-site evaluation of the special use airspace at Fort Hood, TX. The review team concluded that the published time of designation for R-6302C and R-6302D should be amended to more accurately reflect current user requirements. As proposed, the time of designation for R-6302C would be changed from the current "By NOTAM 2 hours in advance" to more specific times "0700-1900 local time, Monday-Friday; other times by NOTAM." This change would more clearly indicate the primary hours of use for the restricted area, while retaining the provision to activate the restricted area on a "By NOTAM" basis when required. In addition, the time of designation for R-6302D would be changed from "0600-2100 local time, daily; other times by NOTAM" to "0700-1900 local time, Monday-Friday; other times by NOTAM." This would result in a reduction by 21 hours per week from the currently published basic time of designation for R-6302D, while retaining the provision to activate R-6302D "By NOTAM" when necessary. These changes would enhance airspace management, and more clearly indicate to the public the times when the restricted areas may be expected to be in use for military purposes. This proposal would not alter the dimensions of, or activities conducted within, R-6302C and R-6302D. Section 73.63 or

part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

Environmental Review

This proposed action will be reviewed for environmental impact prior to an FAA decision on the matter.

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

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.63 [Amended]

R-6302C Fort Hood, TX [Amended]

By removing the words "By NOTAM 2 hours in advance" and substituting the words "0700-1900 local time, Monday-Friday; other times by NOTAM."

R-6302D Fort Hood, TX [Amended]

By removing the words "0600-2100 local time, daily; other times by NOTAM" and substituting the words "0700-1900 local time, Monday-Friday; other times by NOTAM."

Issued in Washington, DC, on October 13, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-26063 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AD63

Testing Modifications to the Disability Determination Procedures

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We propose to add new rules which would establish authority to test models that modify the disability determination procedures we follow under titles II and XVI of the Social Security Act (the Act). These models will provide us with information so we can determine their effectiveness in improving the disability process. The intended result is to enable us to make recommendations for national implementation of improvements identified by the tests. These proposed regulations only refer to the changes to the disability procedures we may test. Unless specified, all other regulations related to the disability determination procedures remain unchanged.

DATES: To be sure that your comments are considered, we must receive them no later than November 22, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Alternatively, you may submit comments by telefax to (410) 966-0869. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to establish the authority to test model projects designed to improve the initial disability determination process. These models will test, on a limited basis, the effect of: having disability specialists in field offices of the Social Security Administration (SSA) request and

evaluate medical evidence before sending the claim to the State agency; expanding the authority of the disability specialist in SSA field offices to make presumptive disability findings in claims for supplemental security income (SSI) benefits based on disability under title XVI; providing a claimant with an opportunity for a face-to-face interview with a decisionmaker earlier in the disability adjudication process; giving the decisionmaker authority to make initial or reconsideration determinations without requiring the medical consultant to sign the disability determination; having the reconsideration determination made by a Federal disability reconsideration officer who will schedule a face-to-face interview with the claimant when a reconsideration determination is requested; and eliminating the reconsideration step from the administrative review process in claims for Social Security or SSI based on disability.

In recent years, various studies have been conducted on how to improve the disability determination process. One such project was the personal appearance demonstration (PAD) project, which we conducted pursuant to section 6 of Public Law (Pub. L.) 98-460, the Social Security Disability Benefits Reform Act of 1984. Although we were not able to gain statistically valid results from that project, we did gain valuable operating knowledge and experience. Specifically, we learned from the PAD that we need to monitor more closely and follow up more closely on the operations in the field offices and State agencies so that the study or test outcomes and results will be valid and reliable. By doing this in connection with the proposed models, we will be able to choose the best processes for making disability determinations and recommend specific changes on a national basis.

The models described below are designed to test enhancement of our current goals which are to:

- Provide assistance to the disability applicant by making the filing of a disability claim simpler, more responsive and more compassionate;
- Promote fairness in each disability determination by ensuring that each disability applicant is given an opportunity to provide all the necessary information to complete the claim and is aware of his/her rights under the program; and
- Ensure that the Agency's determination is both inclusive and equitable.

We expect the number of disability claims will increase in the next few

years independent of the models discussed below. We do not know whether this increase will be permanent or temporary. We will continue to closely monitor the workload situation and take appropriate management action as necessary.

For the long term, we want to obtain information about alternatives to our current procedures to see if they enable us to have better decisionmaking earlier in the process.

The five models described in the proposed rules are designed to test modifications to certain aspects of the disability determination process both before and after the initial determination. We are affording the public an opportunity to comment on them, and before issuing final rules on the testing of any of the proposed models, we will give full consideration to all of the significant comments we receive.

Provisions of the Regulations

In the proposed regulations, we describe five models which would modify the disability determination procedures we follow under titles II and XVI of the Act. The disability process models that we test may be conducted in as many as five States. The individuals who participate in the tests will be randomly assigned to a test group or control group in each site where the test are conducted.

The first model, the disability specialist model, would measure the effects of having disability specialists in SSA field offices request and evaluate existing medical evidence. Disability specialists are claims representatives in our field offices who would be given special disability program training similar to the training that State agency disability examiners receive. They would review the claim before it is sent to the State agency, request and evaluate existing medical evidence and, if appropriate, arrange for a consultative examination. With respect to applications for SSI benefits based on disability, they would, where appropriate, make presumptive disability findings based on the authority existing in §§ 416.933 and 416.934, without the limitations imposed by Social Security Ruling (SSR) 80-36.

The second model, the claims intake and determination model, would measure the effects of having the applicant interviewed by a decisionmaker when a claim for disability benefits is filed. The decisionmaker would have the authority to make the initial disability determination. Medical consultants

would assist the decisionmaker and would be available for consultation throughout this process. The applicant would be offered the opportunity to have the interview conducted face-to-face. The decisionmaker may either be a State agency disability examiner or a Federal employee. Videoconferencing may be used in some instances, in one or more sites, to conduct face-to-face interviews in this model.

The third model, the face-to-face pre-denial interview model, would measure the effects of having a State agency provide an applicant with the opportunity for a face-to-face interview before an initial determination denying the claim is made. If the applicant requests the interview, it would be conducted by a State agency disability examiner who would make the initial disability determination. Medical consultants would assist the disability examiner and would be available for consultation throughout this process. In addition, videoconferencing may be used in some instances in one or more sites to conduct the face-to-face interview.

The fourth model, the face-to-face reconsideration model, would measure the effects of having a face-to-face interview conducted by a Federal disability reconsideration officer who would make the reconsideration determination.

The fifth model, the reconsideration elimination model, would measure the effects of eliminating the reconsideration step of the administrative review process. The outcomes of the tests we conduct would be measured from intake through the administrative law judge (ALJ) hearing in the current administrative review process. The proposed regulations describe the models and explain the procedures and a claimant's rights in connection with the face-to-face interview conducted under the third and fourth models.

Existing Procedures

Under our existing procedures, the claimant often talks in person to an SSA field office employee when the claim for benefits is filed. The field office employee prepares the necessary claims intake forms and records observations about the claimant. Currently, field office employees are not trained to read and evaluate medical reports. Although field office employees review applications for SSI benefits based on disability and make presumptive disability and presumptive blindness findings, they make such findings only in the situations set out in § 416.934 of our regulations, SSR 80-36 and

§ 416.933 of our regulations insofar as it involves SSI claims based on an infection with the human immunodeficiency virus (See 58 FR 36059 (July 2, 1993)). The field office employee also sends the claims information and evidence provided by the claimant to the State agency.

Under existing procedures, an initial determination as to whether a claimant is disabled is made by a State agency on the basis of the evidence in the claimant's case file. This evidence may include, but is not limited to, written medical reports and observations of the claimant prepared by an SSA employee at the field office when the claim is filed. The claimant can give us, or we can obtain, information such as reports from doctors, hospitals, employers or others that would be pertinent to the disability determination.

The initial determination of whether a person is disabled under title II or title XVI is made by a State agency under sections 221 and 1633 of the Act and the regulations at 20 CFR part 404, subpart Q, and part 416, subpart J. The State agency decisionmaking team consists of a disability examiner who is not a physician, and a medical consultant who is a physician or psychologist. The disability examiner is qualified to interpret and evaluate medical reports and other evidence relating to a person's physical and mental impairments, and, as necessary, to determine the claimant's capacity for performing substantial gainful activity, as defined in §§ 404.1572 and 416.972. The State agency has the authority to make a presumptive disability or presumptive blindness finding in any SSI case in which the evidence, though not sufficient to make a formal determination of disability or blindness, is sufficient to find there is a high degree of probability that the claimant is disabled or blind.

The State agency disability examiner evaluates the available evidence in the claimant's case file and obtains any additional evidence necessary, including medical evidence from the claimant's own sources, reports from the physicians who examined the claimant at the State agency's request and non-medical evidence. The State agency decisionmaking team then makes the initial determination with the disability examiner and medical consultant being co-decisionmakers. When the State agency makes the initial determination about the claimant's entitlement to or eligibility for benefits, a notice is sent to the claimant to inform him or her of the determination. The notice includes information about the claimant's appeal rights. The claimant may appeal by

requesting a reconsideration determination.

Reconsideration is the first step in the administrative review process. It consists of a review by a disability examiner and medical consultant who were not the decisionmakers who made the initial determination. The reconsideration determination is based on all the evidence in the case file and any new evidence submitted. When the reconsideration determination is made, the claimant is notified of the determination. The notice advises the claimant that if he or she is dissatisfied with the determination, he or she may request a hearing before an ALJ. At the hearing, the claimant is given the opportunity to testify about his or her medical condition, submit additional evidence, and introduce witnesses, if any, on his or her own behalf. Following the decision, the claimant may request Appeals Council review, if he or she disagrees with the hearing decision.

Tests of Modifications to the Disability Determination Procedures

The first model, the disability specialist model, is designed to test whether the claims intake process would be improved by giving selected SSA field office personnel more authority to obtain and evaluate more medical evidence and, in SSI cases, to make presumptive disability findings. This model is intended to allow us to see if giving the State agency this additional information would improve our overall processing times.

The field office personnel who would participate in a test of this model would be specially trained as disability specialists. The training would enable them to request and evaluate the claimant's medical records, and, if appropriate, arrange for a consultative examination. Another result of this training would be to give the disability specialists the ability to make a presumptive disability or presumptive blindness finding in a greater number of SSI cases.

The second model, the claims intake and determination model, would measure the effects of having the applicant interviewed by a decisionmaker when a claim for disability benefits is filed. Physicians and psychologists (medical consultants) would be available for consultation with the decisionmaker, but the decisionmaker would have authority to request, review, and evaluate evidence and make the disability determination without having the medical consultant sign the disability determination forms. The applicant would be offered the opportunity to have the interview

conducted face-to-face. The decisionmaker may either be a State agency disability examiner or a Federal employee. Videoconferencing may be used in some instances, in one or more sites, to conduct face-to-face interviews in this model.

The third model, the face-to-face pre-denial interview model, is designed to test the effect of face-to-face pre-denial interviews conducted by State agency disability examiners. In this model, prior to releasing the initial determination denying the claim, the State agency would notify the claimant that he or she has the opportunity for a face-to-face interview with the State agency disability examiner. A notice would be mailed to the claimant at least 20 days before the date of the interview unless the claimant waives (in writing) his/her right to the 20-day advance notice. In this model, the claimant should not waive his/her right to the 20-day advance notice if the claimant needs time to get ready for the interview. If the claimant does waive his/her right to the 20-day advance notice, an interview would be scheduled for the claimant as soon as possible and a notice of the time and place of the interview would be mailed to the claimant. In this instance, the notice would be mailed at least 10 days before the date of the interview. In this model, claimants who waive the right to appear at the face-to-face interview, or do not appear for a scheduled interview, and do not submit additional evidence, or do not respond within a specified period to our attempts to communicate with them, would receive an initial determination denying their claim and notice that they may appeal to an ALJ. If a claimant shows that there was good cause for failing to take one of these actions, we would provide another opportunity for a face-to-face interview. At any time in the process when a determination fully favorable to a claimant can be made, it would be. Physicians or psychologists (medical consultants) would be available for consultations with the disability examiner both before and after the face-to-face interview. Since the physician/psychologist involvement would be as a consultant, the State agency disability examiner would make the initial determination after the interview without having the medical consultant sign the disability determination form.

The fourth model, the face-to-face Federal reconsideration model, would test whether the disability process is improved by a face-to-face reconsideration interview between the claimant and a Federal decisionmaker. In response to a claimant's request for

reconsideration of a less than fully favorable initial disability determination, we would schedule a face-to-face interview for the claimant with a Federal disability reconsideration officer who would make the reconsideration determination. The Federal disability reconsideration officer would consult with a medical consultant when it is necessary before making the reconsideration determination.

Prior to the date of the face-to-face interview with the claimant, the Federal disability reconsideration officer would review the file. If this review results in the need for additional information, it would be requested before the face-to-face interview is to occur. If the claimant submits additional evidence prior to the date of the interview, it would also be considered. If the review indicates that a fully favorable determination can be made it would be made and the interview would be canceled. Otherwise, a face-to-face interview would remain scheduled. The claimant would be mailed a notice of the time and place of the interview at least 20 days before the date of the interview unless the claimant waives (in writing) his/her right to the 20-day advance notice. In this model, the claimant should not waive his/her right to the 20-day advance notice if the claimant needs time to get ready for the interview. If the claimant does waive his/her right to the 20-day advance notice, an interview would be scheduled for the claimant as soon as possible and a notice of the time and place of the interview would be mailed to the claimant. In this instance, the notice would be mailed at least 10 days before the date of the interview. If the claimant is unable to travel or has some other reason why he or she cannot attend the interview, the Federal disability reconsideration officer would change the time or place if there is good cause under the standards in § 404.936 (c) and (d) or § 416.1436 (c) and (d), as appropriate.

Claimants may waive the right to appear for the face-to-face interview. If the claimant does not appear at the interview, the Federal disability reconsideration officer would prepare and issue a reconsidered determination based on the information in the case file. If the claimant submits additional evidence, even though he or she waives the face-to-face interview, that evidence would be considered by the Federal disability reconsideration officer when he or she makes the reconsidered determination. Written notice of the determination would be sent to the

claimant with a copy of the determination.

In both the third and fourth models, the claimant would have the opportunity to waive our advance notice of the interview date and the right to request reimbursement for travel if the distance travelled to the interview site exceeds 75 miles.

The fifth model, the reconsideration elimination model, is designed to test whether the disability process is improved by the elimination of the reconsideration step. If a claimant is not satisfied with the initial determination, he or she may request a hearing before an ALJ. The procedures we currently follow when review by an ALJ is requested would be followed in this model.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

Data collection involved in the evaluation of any of the models would necessitate new reporting or recordkeeping requirements which would need clearance by the Office of Management and Budget (OMB). These requirements are still being developed. When specifics have been determined, a request for clearance will be forwarded to OMB as required by the Paperwork Reduction Act of 1980.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Reporting and recordkeeping requirements, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Lawrence H. Thompson,
Principal Deputy Commissioner of Social Security.

Approved: September 2, 1993.

Donna E. Shalala,
Secretary of Health and Human Services.

For the reasons set out in the preamble, parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

1. The authority citation for 20 CFR part 404, subpart J, continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)–(h), and (j), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405(a), (b), (d)–(h), and (j), 421(d), and 1302.

2. Section 404.906 is revised to read as follows:

§ 404.906 Testing modifications to the disability determination procedures.

(a) *Applicability and scope.* Notwithstanding any other provision in this part or part 422, we are establishing the procedures set out in this section to test modifications to our disability determination process. These modifications will enable us to test either individually or in one or more combinations, the effect of: Having disability specialists in our field offices request and evaluate medical evidence before it is forwarded to the State agency; providing persons who have applied for benefits based on disability with the opportunity for a face-to-face interview with a decisionmaker earlier in the disability determination process; having a single decisionmaker make initial or reconsideration determinations in those claims; having the disability reconsideration determination made by a Federal disability reconsideration officer who will schedule a face-to-face interview with the claimant; and having a claimant who is dissatisfied with the initial determination request a hearing before an administrative law judge rather than a reconsideration determination. The models which we test will be designed to provide us with current information regarding the effect of the procedural modifications we test and enable us to decide whether and to

what degree the disability determination process would be improved, if they were implemented on a national level.

(b) *Procedures for cases included in the tests.* The individuals who participate in the tests will be selected randomly and assigned to a test group or control group in each test State. The disability specialist model and the claims intake and determination model are described in paragraphs (b) (1) and (2) of this section, respectively. The other three models are described in paragraphs (b) (3), (4) and (5) of this section. We may test the models described in this section separately, or we may test either of the models described in paragraphs (b) (1) or (2) in conjunction with one or more of the models described in paragraphs (b) (3), (4), or (5) of this section.

(1) In the disability specialist model, the initial claims intake process will be modified by having specially trained SSA field office personnel review the claim before forwarding it to the State agency. These field office personnel will be specially trained as disability specialists. They will request and evaluate existing medical evidence, and if appropriate, arrange for a consultative examination.

(2) In the claims intake and determination model, when you file a claim for disability benefits, you will be interviewed by a decisionmaker who has the authority to assess your residual functional capacity and to make the determination of disability. Physicians and psychologists (medical consultants) will be available for consultation with the decisionmaker. Although the medical consultant will be available for consultation after the interview, the decisionmaker will have authority to make the disability determination without having the medical consultant sign the disability determination forms. You will be offered the opportunity for your interview to be conducted face-to-face. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model. The decisionmaker who interviews you may either be a State agency disability examiner or a Federal employee. The decisionmaker will be able to request, review, and evaluate all evidence necessary to make a determination of disability.

(3) In the face-to-face predenial interview model, we will modify the initial determination process. If you are selected to participate in a test of this model, we will provide you with the opportunity to have a face-to-face interview with a State agency disability examiner before the State agency makes an initial determination denying your

claim. If the disability examiner finds that the evidence in your file requires an initial determination denying your claim, the State agency will mail a written notice to you. The notice will tell you that, before the State agency makes a formal determination about whether you are disabled, you may have an interview with the State agency disability examiner. You must request an interview within 30 days after the date you receive the notice. If you make a late request for an interview but show in writing that you had good cause under the standards in § 404.911 for missing the deadline, the disability examiner will extend the deadline. This notice will also explain that we will notify you of the date of the interview at least 20 days before the date of the interview unless you waive (in writing) your right to the advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. If you waive your right to appear for the face-to-face interview or if you do not appear for a scheduled interview and do not submit additional evidence, or if you do not respond before the date of the interview to our attempts to communicate with you, you will receive an initial determination. A written notice of that determination will be mailed to you and will state the reasons for the determination and its effect, and will inform you of your right to a hearing before an administrative law judge. If you request an interview, the disability examiner will mail a notice to you informing you of the time and place of your interview. The notice will be mailed to you at least 20 days before the date of the interview, unless you have waived (in writing) your right to the 20-day advance notice. At any time in the process when a fully favorable determination can be made, it will be. Physicians and psychologists (medical consultants) will be available for consultation with the disability examiner. Although the medical consultant will also be available for consultation after the face-to-face predenial interview, the State agency disability examiner will have authority to make the initial disability determination without having the medical consultant sign the disability determination on the forms we provide to the State agency (see § 404.1615). The

State agency disability examiner will also have the authority to assess your residual functional capacity. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The disability examiner will change the time or place if there is good cause for doing so under the standards in § 404.936 (c) and (d). If you attend the interview, or if you do not attend the interview but you submit additional evidence, the State agency disability examiner will make an initial determination based on the evidence in your file, including the evidence obtained at the interview, or any additional evidence you submit. If your initial determination is less than fully favorable following the interview and/or after you submit additional evidence, you will be notified that you may request a hearing before an administrative law judge if the issue you want reviewed is based on the medical factors involved in the initial determination. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model.

(i) *Your rights.* In connection with your interview—

(A) You may request that we or the State agency assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart R of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 404.999a through 404.999d incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(4) In the face-to-face Federal reconsideration model, we will modify the reconsideration step of review by scheduling individuals selected to participate in the model for a face-to-face interview with a Federal decisionmaker, called a Federal disability reconsideration officer. In response to your request for

reconsideration of a less than fully favorable initial disability determination (see § 404.907), we will schedule a face-to-face interview for you with a Federal disability reconsideration officer. We will notify you that you will be notified of the date of the interview at least 20 days before the interview unless you waive (in writing) your right to advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. You may also waive your right to appear at the interview. If you waive your right to appear at the interview, or if you do not appear at the interview, the Federal disability reconsideration officer will make a reconsidered determination based on the evidence in your case file. The Federal disability reconsideration officer will have the authority to make the disability determination without having the medical consultant sign the disability determination form. The Federal disability reconsideration officer will also have the authority to assess your residual functional capacity. Physicians and psychologists (medical consultants) will be available for consultation with the Federal disability reconsideration officer. Prior to the date of your face-to-face interview, the Federal disability reconsideration officer will review your file. If you have submitted additional evidence, it will be considered. If this review results in the need for additional information, it will be requested before the face-to-face interview is to occur. If the additional information is received prior to the date of the interview, it will, as soon as possible, be reviewed with the other information in your file by the Federal disability reconsideration officer. If a fully favorable determination can be made at that time, it will be made, the scheduled interview will be canceled, and you will be so notified. If a fully favorable determination cannot be made, the face-to-face interview will not be canceled. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The Federal disability reconsideration officer will change the time or place if there is good cause for doing so under the standards

in § 404.936 (c) and (d). If you attend the interview, the Federal disability reconsideration officer will make a reconsideration determination based on the evidence in your file, including evidence obtained at the interview or any additional evidence you submit or we requested prior to the interview.

(i) *Your rights.* In connection with your interview—

(A) You may request that we assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart R of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 404.999a–404.999d incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(5) In the reconsideration elimination model, we will modify the initial disability determination process by eliminating the reconsideration step of the administrative review process. If you receive an initial disability determination that is less than fully favorable, you will be notified that you may request a hearing before an administrative law judge. If you request a hearing before an administrative law judge, we will apply our usual procedures contained in subpart J of this part.

(c) *Authority and purpose.* Any tests we conduct will be under the authority given the Secretary by sections 205(a) and 1102 of the Act to promulgate reasonable and proper rules and regulations and to establish appropriate procedures for administering the Social Security program. The purpose of the tests of any of the models described above is to enable SSA to make recommendations for national implementation of improvements to the disability process.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for 20 CFR part 416, subpart N continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. Section 416.1406 is revised to read as follows:

§ 416.1406 Testing modifications to the disability determination procedures.

(a) *Applicability and scope.*

Notwithstanding any other provision in this part or part 422, we are establishing the procedures set out in this section to test modifications to our disability determination process. These modifications will enable us to test either individually or in one or more combinations, the effect of: Having disability specialists in our field offices request and evaluate medical evidence before it is forwarded to the State agency and make presumptive disability or presumptive blindness findings pursuant to §§ 416.933 and 416.934, without the limitations in Social Security Ruling (SSR) 80–36; providing persons who have applied for benefits based on disability with the opportunity for a face-to-face interview with a decisionmaker earlier in the disability determination process; having a single decisionmaker make initial or reconsideration determinations in those claims; having the disability reconsideration determination made by a Federal disability reconsideration officer who will conduct a face-to-face interview with the claimant; and having a claimant who is dissatisfied with the initial determination request a hearing before an administrative law judge rather than a reconsideration determination. The models we test will be designed to provide us with current information regarding the effect of the procedural modifications we test and enable us to decide whether and to what degree the disability determination process would be improved, if they were implemented on a national level.

(b) *Procedures for cases included in the tests.* The individuals who participate in the tests will be selected randomly and assigned to a test group or control group in each State. The disability specialist model and the claims intake and determination model are described in paragraphs (b) (1) and (2) of this section, respectively. The other three models are described in paragraphs (b) (3), (4) and (5) of this section. We may test the models described in this section separately, or we may test either of the models described in paragraphs (b) (1) or (2) in conjunction with one or more of the models described in paragraphs (b) (3), (4), or (5) of this section.

(1) In the disability specialist model, the initial claims intake process will be modified by having specially trained SSA field office personnel review the claim before forwarding it to the State agency. These field office personnel will be specially trained as disability specialists. They will request and evaluate existing medical evidence, and if appropriate, arrange for a consultative examination. They will also make a presumptive disability or presumptive blindness finding pursuant to §§ 416.933 and 416.934, without the limitations imposed by SSR 80-36.

(2) In the claims intake and determination model, when you file a claim for SSI payments based on disability, you will be interviewed by a decisionmaker who has the authority to assess your residual functional capacity and to make the determination of disability. Physicians and psychologists (medical consultants) will be available for consultation with the decisionmaker. Although the medical consultant will be available for consultation after the interview, the decisionmaker will have authority to make the disability determination without having the medical consultant sign the disability determination forms. You will be offered the opportunity for your interview to be conducted face-to-face. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model. The decisionmaker who interviews you may either be a State agency disability examiner or a Federal employee. The decisionmaker will be able to request, review, and evaluate all evidence necessary to make a determination of disability.

(3) In the face-to-face predenial interview model, we will modify the initial determination process. If you are selected to participate in a test of this model, we will provide you with the opportunity to have a face-to-face interview with a State agency disability examiner before the State agency makes an initial determination denying your claim. If the disability examiner finds that the evidence in your file requires an initial determination denying your claim, the State agency will mail a written notice to you. The notice will tell you that before the State agency makes a formal determination about whether you are disabled, you may have an interview with the State agency disability examiner. You must request an interview within 30 days after the date you receive the notice. If you make a late request for an interview but show in writing that you had good cause under the standards in § 416.1411 for missing the deadline, the disability

examiner will extend the deadline. This notice will also explain that we will notify you of the date of the interview at least 20 days before the date of the interview unless you waive (in writing) your right to the advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. If you waive your right to appear for the face-to-face interview or if you do not appear for a scheduled interview and do not submit additional evidence, or if you do not respond before the date of the interview to our attempts to communicate with you, you will receive an initial determination. A written notice of that determination will be mailed to you and will state the reasons for the determination and its effect, and will inform you of your right to a hearing before an administrative law judge. If you request an interview, the disability examiner will mail a notice to you informing you of the time and place of your interview. The notice will be mailed to you at least 20 days before the date of the interview, unless you have waived (in writing) your right to the 20-day advance notice. At any time in the process when a fully favorable determination can be made, it will be. Physicians and psychologists (medical consultants) will be available for consultation with the disability examiner. Although the medical consultant will also be available for consultation after the face-to-face predenial interview, the State agency disability examiner will have authority to make the initial disability determination without having the medical consultant sign the disability determination forms we provide to the State agency (see § 416.1015). The State agency disability examiner will also have the authority to assess your residual functional capacity. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The disability examiner will change the time or place if there is good cause for doing so under the standards in § 416.1436 (c) and (d). If you attend the interview, or if you do not attend the interview but you submit additional evidence, the State agency disability

examiner will make an initial determination based on the evidence in your file, including the evidence obtained at the interview, or any additional evidence you submit. If your initial determination is less than fully favorable following the interview and/or after you submit additional evidence, you will be notified that you may request a hearing before an administrative law judge if the issue you want reviewed is based on the medical factors involved in the initial determination. In some instances, in one or more sites, videoconferencing may be used to conduct face-to-face interviews in this model.

(i) *Your rights.* In connection with your interview—

(A) You may request that we or the State agency assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart O of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 416.1495 through 416.1499 incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(4) In the face-to-face Federal reconsideration model, we will modify the reconsideration step of review by scheduling individuals selected to participate in the model for a face-to-face interview with a Federal decisionmaker, called a Federal disability reconsideration officer. In response to your request for reconsideration of a less than fully favorable initial disability determination (see § 416.1407), we will schedule a face-to-face interview for you with a Federal disability reconsideration officer. We will notify you that you will be notified of the date of the interview at least 20 days before the interview unless you waive (in writing) your right to advance notice. You should not waive your right to the 20-day advance notice if you need time to get ready for the interview. If you do waive your right to the 20-day advance notice, an interview will be scheduled for you as soon as possible and a notice of the time

and place of your interview will be mailed to you. In this instance, the notice will be mailed to you at least 10 days before the date of the interview. You may also waive your right to appear at the interview. If you waive your right to appear at the interview, or if you do not appear at the interview, the Federal disability reconsideration officer will make a reconsidered determination based on the evidence in your case file. The Federal disability reconsideration officer will have the authority to make the disability determination without having the medical consultant sign the disability determination form. The Federal disability reconsideration officer will also have the authority to assess your residual functional capacity. Physicians and psychologists (medical consultants) will be available for consultation with the Federal disability reconsideration officer. Prior to the date of your face-to-face interview, the Federal disability reconsideration officer will review your file. If you have submitted additional evidence, it will be considered. If this review results in the need for additional information, it will be requested before the face-to-face interview is to occur. If the additional information is received prior to the date of the interview, it will, as soon as possible, be reviewed with the other information in your file by the Federal disability reconsideration officer. If a fully favorable determination can be made at that time, it will be made, the scheduled interview will be canceled, and you will be so notified. If a fully favorable determination cannot be made, the face-to-face interview will not be canceled. If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date before the date of the interview that the time or place be changed. The Federal disability reconsideration officer will change the time or place if there is good cause for doing so under the standards in § 416.1436 (c) and (d). If you attend the interview, the Federal disability reconsideration officer will make a reconsideration determination based on the evidence in your file, including evidence obtained at the interview or any additional evidence you submit or we requested prior to the interview.

(i) *Your rights.* In connection with your interview—

(A) You may request that we assist you in obtaining pertinent evidence about your disability;

(B) You may have a representative, appointed under subpart O of this part, at your interview, or you may represent yourself;

(C) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(D) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(E) You, your representative, and your witnesses may be eligible for reimbursement of travel expenses under §§ 416.1495 through 416.1499 incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(ii) [Reserved]

(5) In the reconsideration elimination model, we will modify the initial disability determination process by eliminating the reconsideration step of the administrative review process. If you receive an initial disability determination that is less than fully favorable, you will be notified that you may request a hearing before an administrative law judge. If you request a hearing before an administrative law judge, we will apply our usual procedures contained in subpart N of this part.

(c) *Authority and purpose.* Any tests we conduct will be under the authority given the Secretary by sections 1102 and 1631(d)(1) of the Act to promulgate reasonable and proper rules and regulations and to establish appropriate procedures for administering the Supplemental Security Income program. The purpose of the tests of any of the models described above is to enable SSA to make recommendations for national implementation of improvements to the disability process.

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BILLING CODE 4190-29-P

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 93N-0289, 93N-289C, 93N-289F, 93N-289A, 93N-289O, and 93N-289Z]

RIN 0905-AD96

Food Labeling; Health Claims for Dietary Supplements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of October 14, 1993 (58 FR 53296). The document proposed not to authorize health claims relating to an

association between fiber and cancer, fiber and heart disease, antioxidant vitamins and cancer, *omega-3* fatty acids and coronary heart disease, and zinc and immune function in the elderly on the label or in the labeling of dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances. The document was published with some inadvertent editorial errors. This document corrects those errors.

DATES: Written comments by December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Judith W. Riggins, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831.

In FR Doc. 93-25029, appearing on page 53296, in the Federal Register of October 14, 1993, the following corrections are made:

1. On page 53296, in the first column, "[Docket No. 93N-0289]" is corrected to read "[Docket Nos. 93N-0289, 93N-289C, 93N-289F, 93N-289A, 93N-289O, and 93N-289Z]".

2. On page 53305, in the first column, under section "IX.", in the second paragraph, after the third sentence, a sentence is added to read as follows: * * *. "Comments relating to an association between fiber and cancer should be directed to docket number 93N-289C; comments relating to an association between fiber and heart disease should be directed to docket number 93N-289F; comments relating to an association between antioxidant vitamins and cancer should be directed to docket number 93N-289A; comments relating to an association between *omega-3* fatty acids and coronary heart disease should be directed to docket number 93N-289O; and comments relating to an association between zinc and immune function in the elderly should be directed to docket number 93N-289Z." * * *

Dated: October 18, 1993.

Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 93-26151 Filed 10-20-93; 12:15 pm]

BILLING CODE 4190-01-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing the receipt of additional information pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would establish shrub density standards and working definitions applicable to all lands.

This document sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. November 8, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, the additional information, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director; Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, Wyoming 82601-1918. Telephone: (307) 261-5776.

Dennis Hemmer, Director; Wyoming Department of Environmental Quality; Herschler Building; 122 West 25th Street; Cheyenne, Wyoming 82002. Telephone: (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261-5776

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 Federal Register (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated January 6, 1993, (Administrative Record No. WY-21-1) Wyoming submitted the shrub density rules as a proposed amendment to its permanent program pursuant to SMCRA. The Wyoming proposed amendment is a State response designed to establish a shrub density standard applicable to all lands (excluding cropland and pastureland) used jointly by livestock and wildlife. The changes to the regulatory rule package are also reflected in changes made to Appendix A, Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations.

OSM published a notice in the March 22, 1993 Federal Register (58 FR 15318) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended April 21, 1993. During this public comment period (March 21, 1993 through April 21, 1993), Wyoming submitted additional information regarding shrub density legislation, Enrolled Act No. 86 [Senate File No. 39] (Administrative Record No. WY-21-21). This proposed legislation amended W.S. 35-11-103(e) by creating new paragraphs (xxviii) through (xxx); modifying the paragraph at W.S. 35-11-402(b); and creating a new subsection (c) at W.S. 35-11-402.

OSM published a notice in the April 30, 1993 Federal Register (58 FR 26079) announcing receipt of this additional information, reopening and extending the comment period, and providing an opportunity for a public hearing.

OSM sent an issue letter to the Wyoming, on August 17, 1993, that allowed the State an opportunity to submit draft proposed rule changes, policy statements, clarifying opinions, or other evidence that the proposed rules are no less effective than the Federal regulations and no less stringent than SMCRA (Administrative Record No. WY-21-50). By letter dated October

7, 1993, (Administrative Record No. WY-21-51) Wyoming submitted additional information in response to OSM's issue letter. Wyoming's submittal includes a table identifying the proposed statutes and rules that are in conflict with each other and those that complement one and other, and discussions on some of the concerns in the issue letter.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentator's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 19, 1993.

Raymond L. Lowrie,
Assistant Director, Western Support Center.
[FR Doc. 93-26081 Filed 10-21-93; 8:45 am]
BILLING CODE 4310-05-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1252, 1254, and 1260

RIN 3095-AA53

Public Use of Records and Donated Historical Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) is proposing to update and clarify its regulations relating to public use of records and donated historical materials

that have been transferred to NARA. Most of the changes proposed in this regulation merely clarify existing practices and will have no significant impact upon the public. Changes in research room rules, such as requiring a picture identification when applying for a research card and prohibiting ink pens and chewing gum in rooms where original records are present, are intended to provide greater protection for the historically valuable holdings of NARA. Included in this proposed rule are two information collections for which OMB approval is being requested under the provisions of the Paperwork Reduction Act.

DATES: Comments must be received by December 20, 1994.

ADDRESSES: Comments on the proposed rule and information collections should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

Copies of the proposed information collection forms and supporting documentation may be obtained from the Policy and Program Analysis Division (NAA), Room 409, National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408 (telephone 202-501-5110). A copy of any comments on the information collections should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 202-501-5110.

SUPPLEMENTARY INFORMATION: *Information collections under the Paperwork Reduction Act.*

This proposed rule contains information collections in § 1254.4 (application for researcher identification card) and § 1254.92 (request to microfilm records). OMB approval of these collections has been requested. Copies of the information collections and supporting documentation are available from the address shown in the preamble. A brief description of each information collection is provided below:

Application for researcher identification card. This form is completed by individuals who wish to use original records at the National Archives facilities in the Washington, DC, area, regional archives, and Presidential libraries. Upon completion of the form, the researcher is given a researcher identification card which is valid for two years at the National

Archives and regional archives and for one year at the Presidential library at which the card is issued. NARA estimates that completion of the form requires 5 minutes. There are approximately 27,500 respondents per year, for an annual reporting burden of 2,292 hours.

Request to microfilm records. Micropublishers who want to microfilm archival records and donated historical materials for the purpose of producing a microfilm publication must submit a narrative request to NARA that provides detailed information about the project, as specified in § 1254.92. The information is used by NARA to determine whether the proposed project meets the criteria in § 1254.94, to ensure that the project will not cause damage to the records being filmed, and to schedule the use of the limited space available for private microfilming. Approximately 5 requests are received each year. NARA estimates that the reporting burden for each respondent is 10 hours, for a total annual reporting burden of 50 hours.

Following is a description of the changes being made by this proposed rule:

The definitions in § 1252.2 are being updated to reflect a change in the title of the regional archives and to make other minor clarifications. A definition of "document" is added to describe collectively the different types of holdings that may be used in NARA research rooms. Definitions of "Nixon Presidential historical materials" and "Presidential records" are added for the convenience of researchers who use such holdings in NARA research rooms covered by the regulations in subchapter C; regulations concerning access to these types of holdings are found in subchapters E and F, respectively. The definition of "researcher" has been revised to cover all individuals who perform research in NARA holdings, whether original documents or copies on microfilm or another media. The current definition inadvertently excludes researchers who are not required to obtain a researcher identification card.

Throughout Part 1254, we are changing the terms "record" and "records" to "document" and "documents" for improved clarity wherever the provision applies to donated historical materials, Nixon Presidential historical materials, and/or Presidential records as well as to archives and FRC records. "Document" includes holdings on media other than paper, such as photographs, motion pictures, sound and video recordings, maps, drawings, and electronic files.

Non-substantive clarifications are made to §§ 1254.1 and 1254.2.

In § 1254.4 we are clarifying the requirement for "proper identification" to specify that the identification must contain a picture of the applicant, e.g., a driver's license, or work or school identification card, unless the head of the unit issuing the researcher identification card grants an exception to the requirement. To improve records security, we are also replacing the requirement to furnish a letter of reference or introduction when seeking access to large quantities of records or to records that are especially fragile or valuable with a requirement to furnish additional information about personal or professional qualifications or additional reasons why access is required in such instances.

Section 1254.12(a) is modified to add the requirement to show a researcher identification card when receiving records in the research room. Usually researchers place their requests for records to be brought to the research room with a staff archivist in an archival branch; for security purposes, the research room attendant must be able to verify that the person receiving the records is the individual who requested them. We have clarified in paragraph (b) of this section that NARA staff will assist researchers with general information concerning the microfilm holdings and operation of the microfilm readers and reader-printers, but that where microfilm is provided on a self-service basis, the researcher must retrieve the roll of microfilm from the microfilm storage area, place it on the equipment, and review the information himself or herself. Finally, we have added a new paragraph (c) to remind researchers of their responsibility to observe the Copyright Act when making reproductions of copyrighted materials.

Section 1254.14 has been revised to provide a 3-hour time limit on microfilm readers during busy periods instead of the current 2-hour limit. Researchers may put their names on the waiting list when they have relinquished use of a reader because of the time limit. Because the Microfilm Research Room in the National Archives Building is very crowded and prompt exit in an emergency is difficult, we are adding a restriction that only individuals who have been assigned microfilm readers can be in the room. The lobby outside the room has seating areas for other persons who accompany a researcher or who are waiting their turn for a microfilm reader.

We have made several changes to § 1254.16 to reduce the possibility of damage to records. We are adding here

a prohibition on having food or liquid at a desk where records are used; in the current § 1254.20(a) eating and drinking are prohibited activities in the research room. We are also requiring that only pencils be used in research rooms where original records are used to prevent possible ink damage to records from pens. (In § 1254.26(f) we have specified that NARA will provide pencils.) We propose to eliminate the practice of identifying records for copying by placing paper clips or rubber bands around the records. NARA has, for many years, provided acid-free paper tabs that can be used to indicate which records are to be copied and most researchers use the tabs. The proposed rule will require all researchers to follow this practice.

We are moving the existing § 1254.22 to § 1254.17 because it belongs with other sections concerning proper handling of records. We are adding a provision to require researchers to use only one folder of records at a time to prevent inadvertent misfiling of the records.

We have modified paragraph (a) of § 1254.20 to reference NARA facility regulations instead of GSA regulations, which do not apply to the National Archives Building and Presidential Libraries. The current regulation prohibits eating and drinking in a research room; we propose also to prohibit chewing gum because gum can be a danger to the records and a serious annoyance to other researchers. Finally, we have added computers to the list of special equipment that researchers can use only in designated areas.

In § 1254.20 (b) and (c), we are clarifying that rules and regulations of a NARA facility include rules on use of NARA viewing and copying equipment; refusal to comply with rules on equipment use are grounds for revocation of the researcher identification card and research privileges.

In § 1254.26, we have included the Pickett Street facility, where the Cartographic and Architectural Records research room and the Nixon Presidential materials research room are located, as locations where "clean research room" procedures must be followed because original documents are used. Researchers are already observing the "clean research room" procedures in these research rooms. The holdings in the Pickett Street facility are scheduled to be moved to the new Archives II facility in College Park, Maryland, this winter; at that time NARA intends to promulgate "clean research room" rules for the new facility.

In § 1254.26 (a), we are providing an exception to the exclusion of children who do not have research privileges from a research room where original documents are used to allow a child to enter the research room for a short time to view specific documents that a parent or other accompanying adult is using. The Reference Services Branch Chief will authorize the exception for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Children admitted to the research room under this exception may not participate actively in research activities (e.g., removing, copying or refiling documents) without specific NARA permission.

In paragraph (d) we have corrected the name of the research room sign-in register.

In § 1254.26 (h), which provides additional procedures for use of the Motion Picture, Sound, and Video Research Room, we propose to eliminate the system of reservations for afternoon, evening, and Saturday use of NARA viewing equipment. All equipment would be available on a first-come-first-served basis and the research room would routinely be open for use during the same extended evening and Saturday hours as the Central Research Room and Microfilm Research Room are. A 3-hour limit may be imposed when other researchers are waiting to use the equipment. These changes were recommended by a representative group of users of the research room. During the past six months since the reservation system was established, equipment has not been fully occupied by holders of reservations. Walk-in users have been able to obtain a viewing or listening station during the reserved use period.

In § 1254.27, we have added Federal records centers to the coverage and corrected the title of the regional archives. We have also made a terminology change for the title of the person responsible for the research room in several places. In paragraph (b) we have corrected the title of the sign-in register and removed the requirement to record the time the researcher leaves the research room for the day. In paragraph (f) we have modified the wording to clarify that NARA self-service copiers are not available in all locations and to make changes in copying restrictions to correspond with proposed changes in § 1254.71 which are discussed later in this supplementary information.

We have added a new § 1254.35 to provide information on where access regulations for Presidential records and Nixon Presidential materials are located

in Title 36 of the CFR. We have also referenced access regulations for these holdings in § 1254.40.

In § 1254.36, we specify that researchers should consult the appropriate director to determine whether donated historical materials contain any copyrights. The current regulation refers to "literary property rights."

We propose to move § 1254.42, Declassification responsibility, to a new § 1260.2. This section provides a general description of NARA and originating agency declassification responsibilities, with an emphasis on systematic review responsibilities. Because systematic review is not an access procedure available to the public and researchers must submit requests for access to classified NARA holdings to NARA, the section may be misleading in its present location in part 1254. We believe that it is more appropriate to place this section in part 1260, which contains regulations concerning NARA and agency declassification actions.

In § 1254.48, paragraph (a) has been modified to remove the reference to forms to apply for permission to examine classified information. NARA does not process security clearances or nondisclosure agreements for researchers. Instead NARA directs researchers who wish to apply for access to classified information under the special historical researchers and Presidential appointees access program to the agency that originated the information or that has primary subject matter interest. Paragraph (c) has been rewritten for improved clarity.

Section 1254.71 has been modified to clarify that the procedures in this section apply to the Suitland Research Room in the Washington National Records Center. The time limit for use of unreserved paper-to-paper copiers has been raised from 3 minutes to 5 minutes. A 3-copy limit is being added for unreserved self-service microfilm reader-printers and a provision for reserved use of microfilm reader-printers is added. Debitcards for self-service copiers may now be purchased with credit cards at the Cashier's Office; we have added this to paragraphs (f) and (g).

We have made two changes to the types of records not suitable for self-service copying. We have replaced the current size limitation of 11 inches by 14 inches with a limit that the record must fit entirely on the glass plate of the copier; the purpose of the original restriction was to prevent self-service copying where the record might be bent or damaged because it was larger than the glass plate on which the record is

placed. The revised restriction accomplishes the same purpose, but allows larger records to be copied in a reduced size if the copier can accommodate them. We have added records which may be subject to possible damage if copied to the prohibition on copying records in poor physical condition. Certain records, such as 19th century photographs, may not be in poor physical condition but are vulnerable to damage when placed on a copier.

The current § 1254.76 refers to "authentication" of copies of records. This term formerly was used to describe the process of signing a declaration that the copies provided are true copies of the original documents in NARA custody. The more accurate term for the process is "certification." The proposed rule changes the terminology and provides that designees of the named officials may also certify the copies.

Section 1254.92 is amended to clarify the NARA official to whom requests are made and to correct the statement required for films of donated historical materials to reflect current copyright law.

This is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects

36 CFR part 1252

Archives and records.

36 CFR part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

36 CFR part 1260

Archives and records, Classified information.

For the reasons set forth in the preamble under 44 U.S.C. 2104(a), NARA proposes to amend chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1252—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES; GENERAL

1. The authority citation for Part 1252 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1252.1 is revised to read as follows:

§ 1252.1 Scope.

This subchapter prescribes rules and procedures governing the public use of records and donated historical materials in the custody of the National Archives and Records Administration (NARA). Except for part 1250, this subchapter does not apply to current operating records of NARA. This subchapter also prescribes rules and procedures governing the public use of certain NARA facilities.

3. In § 1252.2, the definitions of "Director," "Federal records center," "Federal records center records," "Records," and "Researcher" are revised; the definition of "Archives" is removed, and the definitions of "Archives" or "archival records," "Documents," "Nixon Presidential historical materials" and "Presidential records" are added in alphabetical order to read as follows:

§ 1252.2 Definitions.

* * * * *

Archives or archival records means Federal records that have been determined by NARA to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, and have been transferred to the National Archives of the United States.

Director means the head of a Presidential library, the head of a Presidential Materials Staff, the head of a NARA division, branch, archival center, or unit responsible for servicing archival records, the head of a regional archives, or the head of a Federal records center.

Documents mean, for purposes of part 1254, archives, FRC records, donated historical materials, Nixon Presidential historical materials, and Presidential records, regardless of the media on which they are contained. Document form may include paper, microforms, photographs, sound recordings, motion pictures, maps, drawings, and electronic files.

* * * * *

Federal records center includes the Washington National Records Center, the National Personnel Records Center, and the Federal records centers listed in § 1253.6.

Federal records center records (FRC records) means records which, pending their transfer to the National Archives of the United States or their disposition in any other manner authorized by law, have been transferred to a Federal records center operated by NARA.

Nixon Presidential historical materials has the meaning specified in § 1275.16 of this chapter.

Presidential records has the meaning specified in § 1270.14 of this chapter.

Records means records or microfilm copies of records transferred to NARA under 44 U.S.C. 2107 and 3103; namely, archives and Federal records center records as the terms are defined in § 1252.2. The term "records" does not include current operating records of NARA, the public availability of which is governed by part 1250 of this chapter, or donated historical materials as defined in this section.

Researcher means a person who has been granted access to original documents or copies of documents.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

4. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118, 5 U.S.C. 552, and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

5. Part 1254 is amended by removing the terms "record" and "records" or "Records" in the sections shown in the following table and adding in their place the terms "document" and "documents" or "Documents" respectively.

a. Replace "record" with "document" in:

Sec. 1254.27(f)(2)
1254.98(c)

b. Replace "records" or "Records" with "documents" or "Documents" in:

Sec. 1254.1(a)
1254.1(d)
1254.2(a)
1254.2(c)
1254.2(d)
1254.4(a) wherever it appears
1254.4(b)
1254.4(d) wherever it appears
1254.8(c)
1254.18 wherever it appears
1254.20(b)
1254.26(e)(2)
1254.27(c)(2)
1254.27(f)(2)
1254.27(f)(4)
1254.27(f)(5)
1254.70(a)
1254.71(c)(1)
1254.71(c)(2) wherever it appears
1254.71(c)(3) wherever it appears
1254.71(d) introductory text wherever it appears
1254.71(d)(2) wherever it appears
1254.71(d)(4)
1254.71(d)(5)
1254.92(c)(1) introductory text
1254.94(b) whenever it appears
1254.94(f) introductory text
1254.94(f)(3)

1254.94(g) introductory text
 1254.94(g)(1)
 1254.94(g)(2)
 1254.94(g)(3)
 1254.94(g)(4)
 1254.94(g)(5) wherever it appears
 1254.94(g)(6) wherever it appears
 1254.94(h)
 1254.94(i) wherever it appears
 1254.96(a) introductory text wherever it appears
 1254.96(a)(1)
 1254.96(a)(2)
 1254.96(a)(3)
 1254.96(a)(5)
 1254.96(b)
 1254.98(a)
 1254.98(d)
 1254.100(b) wherever it appears
 1254.100(c)
 1254.100(d)
 1254.102(d)

6. Section 1254.1 is amended by revising paragraphs (b) and (e) to read as follows:

§ 1254.1 General provisions.

(b) Original documents will not normally be made available when microfilm copies or other alternative copies of the documents are available.

(e) Requests received in the normal course of reference service that do not specifically cite the Freedom of Information Act (5 U.S.C. 552) are not considered requests made under the act. Requests under the act must follow the procedure set forth in subpart C or subpart D of this part.

7. Section 1254.2 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1254.2 Location of documents and hours of use.

(b) The locations and hours of operation (expressed in local time) of the depositories administered by the National Archives and Records Administration are shown in part 1253.

8. Section 1254.4 is amended by revising paragraph (c) to read as follows:

§ 1254.4 Research procedures.

(c) Researchers who wish to use documents not on microfilm in a depository where the microfilm research room is separate from textual research rooms, must complete a researcher identification application form and provide the information needed to decide which documents can be made available. Researchers who wish to use

only microfilm documents in a depository where the microfilm research room is not separate from textual research rooms must also comply with this paragraph. Applicants must show identification containing a picture or physical description of the applicant, e.g., a driver's license or school identification card. Exceptions to this requirement must be approved by the director. If applying for access to large quantities of documents or to documents that are especially fragile or valuable, the researcher may be required to furnish additional information about personal or professional qualifications or to furnish additional reasons why access is required. The collection of information contained in this paragraph has been approved by the Office of Management and Budget with the control number 3095-_____.

* * * * *

§ 1254.8 [Amended]

9. In § 1254.8, paragraph (c) is amended by removing the term "National Archives Field Archives Branch" and adding the term "Regional Archives."

10. Section 1254.10 is revised to read as follows:

§ 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information asked on the registration sheet and may be asked to provide additional personal identification.

11. Section 1254.12 is revised to read as follows:

§ 1254.12 Researcher's responsibility for documents.

(a) The research room attendant may limit the quantity of documents delivered to a researcher at one time. The researcher must sign for the documents received and may be required to show his/her researcher identification card. The researcher is responsible for all documents delivered to him/her until he/she returns them. When the researcher is finished using the documents, the documents must be returned to the research room attendant. The reference service slip that accompanies the documents to the research room must not be removed. If asked to do so, the researcher must return documents as much as 15 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all documents in their proper containers.

(b) When microfilm is available on a self-service basis, research room

attendants will assist researchers in identifying research sources on microfilm and provide information concerning how to locate and retrieve the roll(s) of film containing the information of interest. The researcher is responsible for pulling and examining the roll(s). Unless a researcher requires assistance in learning how to operate microfilm reading equipment, the researcher is expected to install the microfilm on the reader. Unless otherwise permitted, a researcher is limited to one roll of microfilm at a time. After using each roll, the researcher is responsible for refiling the roll of microfilm in the location from which it was removed, unless instructed otherwise.

(c) Researchers are responsible for complying with provisions of the Copyright Act (Title 17, United States Code) which governs the making and use of electrostatic copies or other reproductions of copyrighted materials.

12. Section 1254.14 is revised to read as follows:

§ 1254.14 Restrictions on using microfilm readers.

(a) Use of the microfilm readers will be on a first-come, first-served basis. When other researchers are waiting to use a microfilm reader, a 3-hour limit may be placed on using a reader. After 3 hours of machine use, the researcher may sign the waiting list for an additional 3-hour period.

(b) The number of researchers in the microfilm research room in the National Archives Building will be limited, for fire safety reasons, to those researchers assigned a microfilm reader.

13. Section 1254.16 is revised to read as follows:

§ 1254.16 Prevention of damage to documents.

(a) Researchers must exercise all possible care to prevent damage to documents.

(b) Documents may not be used at a desk where there is food or liquid or where an ink pen is being used. Only pencils may be used in research rooms where original documents are used.

(c) Documents must not be leaned on, written on, folded anew, traced, or handled in any way likely to cause damage.

(d) Documents must be identified for reproduction only with a paper tab provided by NARA. Documents may not be fastened with paper clips or rubber bands.

(e) Microfilm must be carefully removed from and returned to the proper microfilm boxes. Care must be taken loading and unloading microfilm

from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered.

(f) Exceptionally valuable or fragile documents may be used only under the conditions specified by the research room attendant.

§ 1254.22 [Redesignated as § 1254.17 and revised]

14. Section 1254.22 is redesignated as § 1254.17 and revised to read as follows:

§ 1254.17 Keeping documents in order.

A researcher must keep unbound documents in the order in which they are delivered to him/her. Documents that appear to be in disorder must not be rearranged by the researcher, but must be referred to the research room attendant. Researchers may use only one folder at a time. Researchers are not allowed to remove documents from more than one container at a time. Researchers should bring to the attention of the research room attendant microfilm put in the wrong box or file cabinet.

15. In § 1254.20, paragraph (a) is revised to read as follows:

§ 1254.20 Conduct.

(a) *Regulations.* Researchers are subject to the provisions of part 1280 of this chapter and to all rules and regulations issued and posted or distributed by a facility director supplementing subpart B of this part, including rules on the use of NARA equipment. Eating, drinking, and chewing gum in a research room are prohibited. Smoking is prohibited except in designated smoking areas. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, computers, sound recording devices, or similar equipment must work in areas designated by the research room attendant.

* * * * *

16. The section heading of § 1254.26 and paragraphs (a), (b), (d), (f) and (h)(1) are revised to read as follows:

§ 1254.26 Additional rules for use of certain research rooms in NARA facilities in the Washington, DC, area.

(a) Admission to research rooms in the National Archives Building, the Washington National Records Center, and the Pickett Street facility at which original documents are made available is limited to individuals examining and/or copying documents and other materials in the custody of the National Archives and Records Administration. Children under the age of 16 will not be admitted to these research rooms unless

they have been granted research privileges or are granted an exception to this provision to view specific documents that a parent or other accompanying adult researcher is using. The exception will be granted by the Reference Services Branch Chief for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Normally, such a child will be admitted only for the short period required to view the documents. Unless otherwise permitted, children under the age of 16 who have been granted special permission to accompany an adult using records may not actively participate in research activities, e.g., removing, copying, or refiling documents. Students under the age of 16 who wish to perform research on original documents must apply in person to the Chief of the Reference Services Branch and present a letter of reference from a teacher. Students under the age of 16 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Chief of the Reference Services Branch specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (c) through (g) of this section apply to all research rooms in the National Archives Building (except the Microfilm Research Room); the Suitland Research Room in the Washington National Records Center; and the Cartographic and Architectural Records Research Room and the Nixon Presidential Materials research room in the Pickett Street Facility. These procedures are in addition to the procedures specified elsewhere in this part.

(d) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Researchers will also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(f) NARA will furnish to researchers, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. Pencils and unused notepaper and notecards should be returned to the research room attendant at the end of the day.

* * * * *

(h) * * *

(1) Use of NARA viewing and listening equipment in the research room is provided on a first-come-first-served basis. When others are waiting to use the equipment, a three-hour limit may be imposed on the use of the equipment.

* * * * *

17. Section 1254.27 is amended by revising the section heading, by removing from paragraph (a) the title "National Archives field branch" and adding in its place the title "regional archives," by revising paragraph (b), by removing from paragraphs (c)(2) and (c)(3) the title "chief of the branch administering the research room" and adding in its place the title "director," and by revising the introductory text of paragraph (f) and paragraphs (f)(3) and (f)(6) to read as follows:

§ 1254.27 Additional rules for use of certain research rooms in Federal records centers, regional archives, and Presidential libraries.

* * * * *

(b) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Where instructed to do so, researchers also sign out when leaving the research room for the day. Researchers are not required to sign in or out when leaving the area temporarily or at the end of the day.

* * * * *

(f) Researchers may use NARA self-service copiers if available or authorized personal paper-to-paper copiers to copy documents in accordance with NARA document handling instructions and after review of the documents by the research room attendant to determine their suitability for copying. The director or the senior archivist on duty in the research room will review the determination of suitability if requested by the researcher. The following types of documents are not suitable for copying on a self-service or personal copier:

* * * * *

(3) Documents larger than the glass copy plate of the copier;

* * * * *

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

18. Section 1254.35 is added to read as follows:

§ 1254.35 Presidential records and Nixon Presidential materials.

Access to Presidential records transferred to NARA is governed by 36 CFR part 1270. Access to the Nixon Presidential materials is governed by 36 CFR part 1275.

19. Section 1254.36 is revised to read as follows:

§ 1254.36 Donated historical materials.

The public use of donated historical materials is subject to restrictions on their use and availability as stated in writing by the donors or depositors of such materials and other restrictions imposed by statute. (Researchers are encouraged to confer with the appropriate director or reference staff member on any question of copyright.) In addition, use is subject to all conditions specified by the Archivist of the United States for purposes of archival preservation.

20. Section 1254.40 is revised to read as follows:

§ 1254.40 Access to national security information.

(a) Declassification of and public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information" is governed by Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982) and the Freedom of Information Act (5 U.S.C. 552).

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; 36 CFR 1254.36 for donated historical materials; 44 U.S.C. 2201 et seq. and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials.

§ 1254.42 [Redesignated as § 1260.2]

21. Section 1254.42 is redesignated as § 1260.2 in subchapter D of this chapter.

22. In § 1254.48, paragraphs (a) and (c) are revised to read as follows:

§ 1254.48 Access by historical researchers and former Presidential appointees.

(a) Access to classified information may be granted to U.S. citizens who are engaged in historical research projects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/

Presidential appointees access program should contact NARA at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARA will inform requesters of the agencies to which they will have to apply for permission to examine classified information, including classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

(c) To protect against the possibility of unauthorized access to restricted documents, a director may issue instructions supplementing the research room rules provided in subpart B.

23. Section 1254.50 is revised to read as follows:

§ 1254.50 Fees.

NARA will charge requesters for copies of declassified documents according to the fees listed in § 1258.12 of this chapter.

24. In § 1254.70, paragraph (b) is revised to read as follows:

§ 1254.70 NARA copying services.

(b) In order to preserve the original documents, documents which are available on microfilm or other alternate copy will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

25. In § 1254.71, paragraphs (a), (b)(1), (b)(2)(i), (d)(3), (d)(6), (f), and (g)(1) are revised to read as follows:

§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building and the Washington National Records Center.

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building and the Suitland Research Room in the Washington National Records Center. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (g) of this section.

(1) Copiers located in research rooms in the National Archives Building and the Suitland Research Room in the Washington National Records center may be used until 15 minutes prior to closing of the research room. There is a five-minute time limit on these copiers when others are waiting to use the copier. Researchers using microfilm reader-printers may be limited to three

copies when others are waiting to use the machine. Researchers wishing to copy large quantities of documents should see a staff member in the research room to reserve a copier for an extended time period.

(2) * * *

(i) A copier may be reserved for one hour at a time in the textual research room in the National Archives Building and for one-half hour at a time in the Microfilm Research Room in the National Archives Building and in the Suitland Research Room in the Washington National Records Center. Another appointment may be reserved after completing the scheduled appointment. The appointment may be forfeited if the researcher does not arrive within 10 minutes after the scheduled time.

* * * * *

(d) * * *

(3) Documents larger than the glass copy plate of the copier;

* * * * *

(6) Documents which, in the judgment of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

(f) *Purchasing debitcards for copiers.* Researchers may use cash to purchase a debitcard from a vending machine during the hours that self-service copiers are in operation. Additionally, debitcards may be purchased with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Office located in room G-1 of the National Archives Building between the hours of 8:45 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. During the evening and weekend hours, the research room supervisor can make change for \$20 or less. The debitcard will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(g) * * *

(1) To obtain a refund of any unused amount on a debitcard, a researcher must bring the debitcard to the Cashier's Office in room G-1 of the National Archives Building. Cash refunds for debitcards are currently limited to \$20.00 or less. Refunds due for more than \$20.00 are currently paid by U.S. Treasury check in approximately 6-8 weeks. Refunds due on debitcards obtained using credit cards will be made by issuing a credit of the refund amount to the credit card. Refunds due on debitcards obtained using funds from a

deposit account will be made by crediting the refund to the deposit account.

* * * * *

26. Section 1254.72 is revised to read as follows:

§ 1254.72 Information about documents.

(a) Upon request, overall information pertaining to holdings or about specific documents will be furnished, provided that the time required to furnish the information is not excessive, and provided that the information is not restricted (see subpart C and subpart D).

(b) When so specified by a director, requests must be made on prescribed forms. Such forms will be approved by OMB as information collections and will bear the approved control number.

27. Section 1254.74 is revised to read as follows:

§ 1254.74 Information from documents.

Normally, information contained in the documents will be furnished in the form of photocopies of the documents, subject to the provisions of § 1254.70. NARA will certify facts and make administrative determinations on the basis of archives, or of FRC records when appropriate officials of other agencies have authorized NARA to do so. Such certifications and determinations will be authenticated by the seal of NARA, the National Archives of the United States, or the transferring agency, as appropriate.

28. Section 1254.76 is revised to read as follows:

§ 1254.76 Certification of copies.

The responsible director, or any of his or her superiors, the Director of the Federal Register, and their designees are authorized to certify copies of documents as true copies.

29. Section 1254.90 is amended by revising paragraph (a) to read as follows:

§ 1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Washington National Records Center, the regional archives, and the Presidential libraries.

* * * * *

30. Section 1254.92 is amended by revising the section heading and paragraph (a), redesignating paragraphs (c)(5), (c)(5)(i), (c)(5)(ii), and (c)(6) as paragraphs (d), (d)(1), (d)(2), and (e), respectively, and revising redesignated paragraph (d)(2) to read as follows:

§ 1254.92 Requests to microfilm records and donated historical materials.

(a) Requests to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the National Archives Building, the Washington National Records Center, or the regional archives must be made in writing to the Assistant Archivist for the National Archives (NN), NARA, Washington, DC 20408. Requests to microfilm records or donated historical materials in a Presidential library or donated historical materials in the National Archives Building under the control of the Office of Presidential Libraries must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington, DC 20408. OMB control number 3095-_____ has been assigned to the information collection contained in this section.

* * * * *

(d) * * *

(2) If the original documents are donated historical materials, the requester must agree to include on the film this statement: "The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential library or National Archives). The National Archives administers them in accordance with the requirements of the donor's deed of gift and the U.S. Copyright Law, Title 17, U.S.C."

* * * * *

§ 1254.96 [Amended]

31. In section 1254.96, the word "evaluation" in paragraph (a) is corrected to read "evaluation."

PART 1260—DECLASSIFICATION OF AND PUBLIC ACCESS TO NATIONAL SECURITY INFORMATION

32. The authority citation for part 1260 continues to read as follows:

Authority: 44 U.S.C. 2104(a); Executive Order 123356 of April 2, 1982 (3 CFR 1982 Comp., p. 166).

§ 1260.2 [Redesignated from 1254.42]

33. Section 1260.2 is redesignated from § 1254.42 of this chapter.

Dated: October 14, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93-25882 Filed 10-21-93; 8:45 am]

BILLING CODE 7515-01-W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-4793-2]

Proposed Consent Decree; Specifications for Deposit Control Additives

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, notice is hereby given of a proposed consent decree conditionally entered into by the United States Environmental Protection Agency ("EPA") on September 30, 1993, in litigation concerning the deadline for promulgating specifications for gasoline additives to prevent the accumulation of deposits in engines and fuel supply systems. For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the proposed consent decree if appropriate in light of the public comments.

DATES: Written comments on the proposed consent decree must be received by November 22, 1993.

ADDRESSES: Written comments should be sent, preferably in triplicate, to Jonathan S. Martel, Air and Radiation Division Mail Code (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-7699. Copies of the proposed consent decree are available from Shermanita Isler-Simmons, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-7606. A copy of the proposed consent decree has been lodged with the Clerk of the United States District Court for the District of Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herzog (313) 668-4227 at U.S. Environmental Protection Agency, Office of Mobile Sources.

SUPPLEMENTARY INFORMATION: Section 211(1) of the Clean Air Act provides that the Administrator of the EPA is to promulgate a rule, not later than November 15, 1992, establishing specifications for gasoline additives to prevent the accumulation of deposits in engines or fuel supply systems. In

Oregon Natural Resources Council, Inc. v. Browner, Civ. No. 93-79-AS (D. Ore.), plaintiffs seek an order compelling the Administrator to promulgate a rule establishing such specifications. EPA and the plaintiffs have entered into a conditional consent decree providing that the Administrator will sign a notice to be published in the *Federal Register* proposing a conditional consent decree providing that the Administrator will sign a notice to be published in the *Federal Register* proposing a rule establishing such specifications no later than November 22, 1993, and will sign a notice of final action with respect to such proposal no later than October 15, 1994.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of a proposed consent decree in the *Federal Register* and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: October 13, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93-26158 Filed 10-21-93; 8:45 am]

BILLING CODE 5000-50-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 837 and 852

RIN-2900-AG67

VA Acquisition Regulation: Service Contracting

AGENCY: Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend the VA Acquisition Regulation (VAAR) to implement a class deviation from Federal Acquisition Regulation (FAR), Policy, and FAR Clause, Indemnification and Medical Liability Insurance. In addition to waiving the requirement at the FAR, a deviated clause is proposed to be added for nonpersonal health care service contracts. A prescription is also proposed to be added to instruct VA contracting officers when to insert the clause.

DATES: Comments must be received by December 20, 1993. All comments

received will be available for public inspection until December 31, 1993. This amendment is proposed to be effective on the date of publication of the final rule.

ADDRESSES: Comments should be sent to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, Room 170 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia A. Viverette, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420, (202) 233-5001.

SUPPLEMENTARY INFORMATION:

I. Background

FAR Section 37.401 and FAR Clause 52.237-7 include indemnification requirements that contractors providing nonpersonal health care services to VA are unable to comply with due to conflict with state statutes or excessive cost. To facilitate execution of nonpersonal health care service contracts, more than 100 individual deviations waiving FAR requirements have been executed. To relieve VA contracting officers from requesting individual deviations, the Deputy Secretary of Veterans Affairs approved a class deviation from portions of FAR section 37.401 and FAR Clause 52.237-7. Specifically, the Deputy Secretary waived paragraph (c) of FAR section 37.401. The Deputy Secretary also waived the indemnification, insurance, and extended reporting endorsement requirements contained in paragraphs (a), (b), and (c) of FAR Clause 52.237-7. To implement this deviation, a prescription is proposed to be added at VAAR section 837.403 to instruct VA contracting officers when to insert the deviated clause. The deviated clause is also proposed to be added to VAAR part 852, Solicitation Provisions and Contract Clauses.

II. Regulatory Flexibility Act (RFA)

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2). Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected VA Acquisition

Regulation subpart will also be considered in accordance with section 610 of the Act.

III. Paperwork Reduction Act

This amendment does not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 837 and 852

Government procurement.

Approved: October 5, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR parts 837 and 852 are amended as set forth below:

1. The authority citation for part 837 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 837—SERVICE CONTRACTING

2. Subpart 837.4, section 837.403 is added to read as follows:

Subpart 837.4—Nonpersonal Health Care Services

837.403 Contract Clause

The contracting officer shall insert the clause at 852.237-7, Indemnification and Medical Liability Insurance (Deviation), in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in FAR part 13 and VAAR part 813.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.2—[Amended]

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

4. Section 852.237-7 is added to read as follows:

852.237-7 Indemnification and Medical Liability Insurance (Deviation)

As prescribed in 837.403, insert the following clause:

Indemnification and Medical Liability Insurance (Oct 1993)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional

services rendered by the Contractor or its health care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health care providers shall be liable for their liability producing acts or omissions. The Contractor shall maintain or require all health care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____*. However, if the Contractor is an entity or subdivision of a state that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of the insurability of the offeror and/or of all health care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of state law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under this contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or for each health care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health care services under this contract. The Contractor shall be responsible for

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of clause)

[FR Doc. 93-25978 Filed 10-21-93; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB94

Endangered and Threatened Wildlife and Plants; Notice of Extension of Public Comment Period on Proposed Endangered Status for Kootenai River Population of the White Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that the comment period on the proposed endangered status for the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) is extended. This fish is found in the Kootenai River in Idaho, Montana, and British Columbia, Canada. The Service is extending the comment period to provide the public with more time in which to submit comments. The proposed rule, which stated the deadline for public comment was November 4, 1993, was published in the Federal Register on July 7, 1993 (58 FR 36379).

DATES: The comment period on the proposal is extended until November 19, 1993. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho, 83705. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles H. Lobdell, Field Supervisor, at the above address or (208) 334-1931.

SUPPLEMENTARY INFORMATION:

Background

The Kootenai River population of the white sturgeon (*Acipenser*

transmontanus) is restricted to approximately 270 kilometers (168 miles) of the Kootenai River, in Idaho, Montana, and British Columbia, Canada, primarily upstream from Cora Linn Dam at the outflow Kootenay Lake, British Columbia. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River Sturgeon from other white sturgeon populations in the Columbia River basin. The free-flowing river habitat for this fish has been adversely affected from development in the Kootenai River basin. Construction of Libby Dam for hydropower and flood control has reduced river flows critical to successful reproduction during the May to July sturgeon spawning season, and reduces the availability of nutrients in the river system. The Kootenai River population of white sturgeon declined to an estimated 880 individuals, with approximately 80 percent of the sturgeon over 20 years old. In addition to the lack of recruitment of juveniles into the population, this fish is threatened by disease and poor water quality.

On July 7, 1993, the Service proposed to list the Kootenai River population of the white sturgeon as an endangered species, without critical habitat, pursuant to the Endangered Species Act of 1973 (Act) (58 FR 36379). The public comment period originally closed on November 4, 1993; however, the Service is extending the comment period to provide the public with more opportunities to comment. Comments must be submitted to the Field Supervisor, Boise Field Office (see ADDRESSES section), by November 19, 1993.

Author

The primary author of this notice is Monica Tomosy, U.S. Fish and Wildlife Service, Portland Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232 (telephone 503/231-6131).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: October 18, 1993.

William E. Martin,

*Acting Regional Director, Fish and Wildlife
Service, Portland, Oregon.*

[FR Doc. 93-26016 Filed 10-21-93; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 58, No. 203

Friday, October 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Advisory Council Meetings; Allegheny Wild and Scenic River, Allegheny National Forest, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny National Wild and Scenic River will meet at 7 p.m., Tuesday, November 16, 1993 at the Franklin Public Library, Franklin, PA. The Council will continue to discuss recommendations for meeting draft Management Goals for the river between Franklin and Emlenton.

The Northern Advisory Council will meet at 7 p.m., Wednesday, November 17, 1993, at the Tidioute Towers, Tidioute, PA. The Northern Council will discuss recommendations for meeting draft Management Goals for the river corridor between Kinzua Dam and Oil City.

Meetings are open to the public. A sign language interpreter will be provided if requested by November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723-5150 or 814/726-2710 (TTY).

Dated: October 18, 1993.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 93-26015 Filed 10-21-93; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States

Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

NC-165

Tri County Marketing, Beulaville, North Carolina

NC-166

Mountain Livestock Auction, Murphy, North Carolina

OK-210

Winter Livestock, Inc., Enid, Oklahoma

TN-191

Somerville Livestock Sales, Inc., Somerville, Tennessee

TX-342

Hills Prairie Livestock Auction, Co., Bastrop, Texas

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3408 South Building, U.S. Department of Agriculture, Washington, D.C. 20250 by November 1, 1993. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 18th day of October 1993.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 93-26068 Filed 10-21-93; 8:45 am]

BILLING CODE 3410-KD-P

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates

specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
TN-190 H Bar M Horse Auction, Athens, Tennessee.	September 13, 1993.
TX-341 Decatur Livestock Market, Inc., Decatur, Texas.	June 14, 1993.
VA-160 Abingdon Stockyard Exchange, Inc., Abingdon, Virginia.	September 21, 1993.

Done at Washington, D.C. this 18th day of October 1993.

Harold W. Davis,

Director Livestock Marketing Division Packers and Stockyards Administration.

[FR Doc. 93-26069 Filed 10-21-93; 8:45 am]

BILLING CODE 3410-KD-P

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' meeting scheduled for 21 October 1993 has been cancelled. The next meeting is scheduled for 18 November 1993 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 15 October 1993.

Charles H. Atherton,

Secretary.

[FR Doc. 93-25974 Filed 10-21-93; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

(A-588-503)

64K Dynamic Random Access Memory Components From Japan Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is revoking the antidumping duty order on 64K dynamic random access memory components from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482-5253.

SUPPLEMENTARY INFORMATION:**Background**

On June 18, 1993, the Department of Commerce (the Department) published in the *Federal Register* (58 FR 33619) its intent to revoke the antidumping duty order on 64K dynamic random access memory components from Japan (51 FR 21781, June 16, 1986).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this duty order to each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than thirty days from the date of publication.

Scope of the Order

The merchandise covered by the order is 64K dynamic random access memory components from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8542.11.00.22 and 8542.11.00.32. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five

consecutive review periods and when no domestic interested party objects to revocation.

In this case we have received no request for review for five consecutive review periods. Furthermore, no domestic interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order covering 64K dynamic random access memory components from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of 64K dynamic random access memory components from Japan entered, or withdrawn from warehouse, for consumption on or after June 1, 1993. Entries made during the period June 1, 1992 through May 31, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 6, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-26085 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-08-M

[C-301-401, C-549-401, C-333-402, and C-542-401]

Certain Textile Mill Products From Colombia and Thailand and Certain Textile Mill Products and Apparel From Peru and Sri Lanka; Final Court Decision and Reinstatement of Agreements Suspending the Countervailing Duty Investigations and Reinstatement of Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final court decision and reinstatement of agreements suspending the countervailing duty investigation and reinstatement of countervailing duty orders.

SUMMARY: On October 12, 1993, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the

decision of the Court of International Trade (CIT) that an interested party timely objected to the Department of Commerce's (the Department) Notice of Intent to Terminate the suspended countervailing duty investigations in Certain Textile Mill Products from Colombia and Certain Textile Mill Products from Thailand, reversed the CIT's finding that an interested party timely objected to the Department's Notice of Intent to Terminate the suspended countervailing duty investigation regarding Certain Apparel from Colombia, and affirmed the CIT's denial of the motions of Sri Lanka and Peru to intervene in the litigation after the judgment of the CIT. *Belton Industries, Inc. v. United States, et al.*, CAFC Nos. 92-1419, 92-1451, and *Belton Industries, Inc. v. United States, et al.*, CAFC Nos. 92-1452, 92-1483. As a result, the Department must reinstate the agreements suspending the countervailing duty investigations regarding Certain Textile Mill Products from Colombia, and Certain Textile Mill Products from Thailand, and reinstate the countervailing duty orders on Certain Textile Mill Products and Apparel from Peru, and Certain Textile Mill Products and Apparel from Sri Lanka.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg, Joe Kaesshaefer, Linda Pasden (for suspension agreements), Office of Agreements Compliance, telephone (202) 482-3793, and James Doyle or Kelly Parkhill (for countervailing duty orders), Office of Countervailing Compliance, telephone (202) 482-2786, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Background**

On August 13, 1990, the Department revoked the countervailing duty orders concerning Certain Textile Mill Products and Apparel from Peru and Sri Lanka (55 FR 32940-42). On that same date, the Department terminated the suspended countervailing duty investigation on Certain Textile Mill Products and Apparel from Colombia (55 FR 32940). On November 3, 1990, the Department terminated in part the suspended countervailing duty investigation on Certain Textile Mill Products from Thailand (55 FR 48885).

Subsequent to publication of the Department's revocations and terminations, ten domestic producers of textile products and the American Textile Manufacturing Institute (ATMI) filed a lawsuit with the CIT challenging the Department's revocations and

terminations. On March 24, 1992, the CIT issued a decision (*Belton Industries, Inc. v. Unites States*, CIT Slip Op. 92-39) and on May 7, 1992, issued its judgment in the matter, directing the Department to rescind the terminations and revocations in the textile and apparel cases and reinstate the related suspended investigations and countervailing duty orders.

In its decision in *The Timken Company v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that the Department must publish notice of final decision of the CIT or the CAFC which is not in harmony with the Department's determination. The CAFC also held in *Timken* that in such a case the Department must suspend liquidation until there is a "conclusive" decision in the action. Therefore, on May 18, 1992, the Department directed the United States Customs Service to suspend liquidation of entries of the subject merchandise in Certain Textile Mill Products and Apparel from Peru and Sri Lanka at zero percent pending the expiration of the period to appeal the CIT's order of May 7, 1992, or pending a final decision of the CAFC if that order were appealed. See 57 FR 21960 (May 26, 1992). Because entries of the subject merchandise were not suspended previously under the suspended countervailing duty investigations involving Certain Textile Mill Products from Thailand and Certain Textile Mill Products and Apparel from Colombia, the Department did not order Customs to suspend liquidation in those matters.

Prior to the expiration of the appeal period, the United States, Thailand, and Colombia filed notices of appeal of the CIT's decision and order in the *Belton* litigation to the CAFC. However, on October 30, 1992, the CAFC granted the United States' motion to dismiss its action, thus changing the United States from an appellant in the *Belton* appeals to an appellee. Additionally, Peru and Sri Lanka appealed the CIT's separate denial of their motions to intervene post-judgment in the litigation to the CAFC. See *Belton Industries, Inc. v. United States*, CIT Slip Op. 92-102 (July 7, 1992).

On October 12, 1993, the CAFC issued its judgement affirming the decision of the CIT that an interested party timely objected to the Department's Notice of Intent to Terminate the suspended countervailing duty investigations in Certain Textile Mill Products from Colombia and Certain Textile Mill Products from Thailand; reversing the CIT's finding that an interested party timely objected to the Department's Notice of Intent to Terminate the suspended countervailing duty

investigation regarding Certain Apparel from Colombia; and affirming the CIT's denial of the motions of Sri Lanka and Peru to intervene in the litigation after the judgment of the CIT. *Belton Industries, Inc. v. United States, et al.*, CAFC Nos. 92-1419 and -1451, and *Belton Industries, Inc. v. United States, et al.*, CAFC Nos. 92-1452, -1483.

Because the CAFC affirmed the CIT's order to reinstate the suspended countervailing duty investigations in Certain Textile Mill Products from Colombia and Certain Textile Mill Products from Thailand, the Department is reinstating these agreements. The anniversary month for these two suspension agreements continues to be March.

Additionally, because the CAFC affirmed the CIT's order to reinstate the countervailing duty orders on Certain Textile Mill Products and Apparel from Peru and Sri Lanka, the Department hereby reinstates these orders, effective May 18, 1992. The Department will instruct Customs to continue to suspend liquidation of entries of the subject merchandise. In accordance with the countervailing duty orders published at 50 FR 9871 (Peru) and 50 FR 9826 (Sri Lanka), the Department is directing the U.S. Customs Service to require a cash deposit in the amount of 2.88 percent *ad valorem* for certain textile mill products and zero percent *ad valorem* for certain apparel, the last published deposit rates for each entry of the subject merchandise from Peru, and 5.00 percent *ad valorem* for textiles and 3.06 percent *ad valorem* for apparel, the last published deposit rates for each entry of the subject merchandise from Sri Lanka, which are entered, or withdrawn from warehouse, for consumption on or after the date of issuance of this notice, October 22, 1993. Merchandise entered between May 18, 1992, and October 22, 1993, was suspended at zero in accordance with the *Federal Register* notice of the CIT decision. The anniversary month for these two countervailing duty orders continues to be March.

The Department intends to publish separate *Federal Register* notices for each suspension agreement and order that will contain the proposed conversion of the scope of the orders and the suspension agreements from the Tariff Schedules of the United States to the Harmonized Tariff Schedule. Interested parties will be invited to comment at that time.

Dated: October 20, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-26182 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-08-P

National Oceanic and Atmospheric Administration

[I.D. 072093A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of a fishery management plan amendment.

SUMMARY: NMFS announces approval of Amendment 31 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment removes Atka mackerel from the "other species" category and establishes Atka mackerel as a separate target species in the Gulf of Alaska (GOA). The action is intended to promote conservation and improve management of Atka mackerel and "other species," and to further the goals and objectives of the FMP.

EFFECTIVE DATE: October 18, 1993.

ADDRESSES: Copies of Amendment 31 and the environmental assessment (EA) prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, NMFS, Alaska Region, 907-586-7228.

SUPPLEMENTARY INFORMATION: Since 1988, Atka mackerel has been managed under the FMP as a component of the "other species" category of groundfish. In recent years, target fishing for that species in the Western Regulatory Area has preempted fishing activities for remaining components of "other species". During 1992, the Council requested preparation of an FMP amendment that would establish Atka mackerel as a separate target species in the GOA. At its June 1993 meeting, the Council reviewed the resultant EA and approved Amendment 31 for review by the Secretary of Commerce (Secretary) under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

A Notice of Availability of Amendment 31, which described the proposed action and solicited comments from the public until September 20, 1993, was published in the *Federal*

Register (58 FR 39794, July 26, 1993). No comments were received during the public comment period. After review under the Magnuson Act, the Secretary determined that Amendment 31 is consistent with the Magnuson Act and other applicable laws and approved Amendment 31 on October 18, 1993.

Implementation of the Amendment

No regulatory changes are necessary to implement this FMP amendment. Total allowable catch for target species and the "other species" category are specified annually under existing regulations at § 672.20(a)(2).

Response to Comments

No written comments on the proposed action were received.

Dated: October 19, 1993.

David S. Crestin,

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

[FR Doc. 93-26078 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

[ID 101593C]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and request for comment.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on Amendment 6 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). The purpose of this amendment is to allow other trawl vessels to carry more than one mesh size codend under certain conditions and to change the annual management measure setting schedule.

DATES: Written comments on the proposed amendment will be accepted until November 30, 1993. See

SUPPLEMENTARY INFORMATION for time and locations of hearings.

ADDRESSES: Send comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, (302-674-2331) Executive Director, Mid-Atlantic Fishery Management Council, room

2115 Federal Building, 300 South New Street, Dover, DE 19901.

SUPPLEMENTARY INFORMATION: All hearings begin at 7 p.m. except the New York hearing and will be tape recorded with the tapes filed as the official transcript of the hearing. The New York hearing will begin at 7:30 p.m.

The scheduled public hearings are as follows:

1. November 3, 1993: Danfords Inn, 25 East Broadway, Pt. Jefferson, NY.
2. November 8, 1993: Holiday Inn, 290 Highway 37 East, Toms River, NJ.
3. November 9, 1993: Days Inn, 500 Hathaway Road, I-95 and Route 140, New Bedford, MA.
4. November 10, 1993: Dutch Inn, Great Island Road, Galilee, RI.
5. November 10, 1993: Holiday Inn, 916 Carolina Avenue, Washington, NC.

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

Dated: October 18, 1993.

David S. Crestin,

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

[FR Doc. 93-26079 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

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

ACTION: Application for Public Display Permit, Safari World (P533A)

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Safari World Co., Ltd., 99 Ramindra 1, KM. 9, Minburi Bankkok 10510 Thailand.

2. *Type of Permit:* Public Display.

3. *Number and Name of Animals:* Ten California sea lions (*Zalophus californianus*) from captive stock.

The applicant requests authorization to obtain permanent custody of ten California sea lions, five males and five females for the purposes of public display.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS,

NOAA, U.S. Department of Commerce, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review, by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289); Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281-9200); Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141); Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802-4213 (310/980-4016); and Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526-6150).

Dated: October 15, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-26012 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 26, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on

embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60174, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
October 19, 1993.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on October 26, 1993, you are directed to amend further the directive dated December 11, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted twelve-month limit ¹
237	242,036 dozen.
334	106,357 dozen.
335	178,471 dozen.
340/640	1,964,624 dozen.
351/651	511,287 dozen.
634	372,093 dozen.
635	228,438 dozen.
641	393,987 dozen.
647/648	856,577 dozen.

¹ The limit has not been adjusted to account for any imports exported after January 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-26089 Filed 10-21-93; 8:45 am]
BILLING CODE 3510-DR-F

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Bulgaria

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 435 is being increased for swing. The limit for Category 410 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 15485, published on March 23, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated March 10, 1993, but are designed to assist only in the

implementation of certain of its provisions.

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
October 18, 1993.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 18, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 19, 1993, you are directed to adjust the limits for wool textile products in the following categories, as provided under the terms of the Memorandum of Understanding dated March 10, 1993 between the Governments of the United States and the Republic of Bulgaria:

Category	Twelve-month limit ¹
410	661,860 square meters.
435	21,400 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-26092 Filed 10-21-93; 8:45 am]
BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the

bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 448 is being increased by application of swing, reducing the limit for Categories 342/642 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 25, 1993, you are directed to amend the directive dated November 6, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit ¹
342/642	420,308 dozen.
448	42,130 dozen.

¹The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-26095 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT:

Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased for swing and carryforward. The limit for Category 448 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 25, 1993, you are directed to amend further the December 9, 1992 directive to adjust the limits for the following categories, as provided by the current bilateral agreement between the Governments of the United States and Guatemala:

Category	Adjusted twelve-month limit
340/640	992,268 dozen.
448	16,590 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-26093 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

October 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT:

Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6712. For information on

embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 331/631 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54772, published on November 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 17, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on October 19, 1993, you are directed to increase the limit for Categories 331/631 to 1,716,273 dozen pairs¹, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-26088 Filed 10-21-93; 8:45 am]
BILLING CODE 3510-DR-F

¹The limit has not been adjusted to account for any imports exported after December 31, 1992.

Transshipment Charges for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging illegal transshipments to 1993 limits.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on investigations conducted by the Governments of the United States and Pakistan, CITA has determined that textile products in Categories 226/313 and 315 were transshipped during 1991 and 1992 in circumvention of the U.S.-Pakistan Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended. The U.S. Government informed the Government of Pakistan of the charges to be made to the 1993 quotas. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1993 quota levels for Categories 226/313 and 315:

Category	Amount to be charged
226	1,144,449 square meters.
313	2,536,325 square meters.
315	1,654,248 square meters.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in Pakistan and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant a Memorandum of Understanding dated August 19, 1993 between the Governments of the United States and Pakistan and the current bilateral U.S.-Pakistan bilateral textile agreement, and in conformity with

Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986, July 31, 1991 and December 9, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, I request that, effective on October 19, 1993, you charge the following amounts to the following categories for 1993 (see directive dated November 25, 1992):

Category	Amount to be charged
226	1,144,449 square meters.
313	2,536,325 square meters.
315	1,654,248 square meters.

This letter will be published in the **Federal Register**.

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-26091 Filed 10-21-93; 8:45 am]
BILLING CODE 3510-DR-F

Announcement of a Request for Bilateral Textile Consultations on Certain Cotton and Man-Made Fiber Fabric Produced or Manufactured in Korea

October 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 4, 1993, the Government of the United States requested consultations with the Government of the Republic of Korea regarding imports of woven pile fabric in Category 224pt. (HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020), produced or manufactured in Korea. This request was made on the basis of the current bilateral agreement between the Governments of the United States and the Republic of Korea.

The United States reserves the right to control imports at the level under paragraph 7 of the agreement. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the Republic of Korea, further notice will be published in the *Federal Register*.

Anyone wishing to comment or provide data or information regarding the treatment of Category 224pt., under the agreement with the Government of the Republic of Korea, or in any aspect thereof, to comment on domestic production or availability of products included in Category 224pt., is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Republic of Korea.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, rm H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public

which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see *Federal Register* notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-26094 Filed 10-21-93; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to and deletion from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: November 22, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: On April 16, August 13 and 27, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 19805, 43096 and 45317) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair

market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service 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 actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and 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 commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to Procurement List:

Commodities

Tool Box, Portable

5140-00-329-6305

5140-00-226-9020

5140-00-226-9021

Service

Janitorial/Custodial, Naval Intelligence Command Building 1, Suitland, Maryland.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following service is hereby deleted from the Procurement List:

Grounds Maintenance, U.S. Naval Security Activity, Skaggs Island, Sonoma, California.

E. R. Alley, Jr.

Deputy Executive Director

[FR Doc. 93-26084 Filed 10-21-93; 8:45 am]

BILLING CODE 6020-33-P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 22, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Cup, Disposable

7350-00-162-3006

7350-01-056-2896

Nonprofit Agency: Royal Maid

Association for the Blind

Hazlehurst, Mississippi

Tape, Pressure-Sensitive, Adhesive

7510-00-074-4996

7510-00-074-4954

7510-00-074-4963

7510-00-074-4955

7510-00-074-5029

7510-00-074-4964

7510-00-074-4960

7510-00-074-4946

7510-00-074-5124

7510-00-074-4969

7510-00-266-5016

7510-00-074-4961

7510-00-074-4952

7510-00-074-4978

7510-00-074-4962

Nonprofit Agency: Cincinnati

Association for the Blind

Cincinnati, Ohio

Necktab, Women's Shirt

8445-01-295-3434

8445-01-101-1649

8445-01-280-2215

Nonprofit Agency: Northeastern

Association of the Blind at Albany,

Albany, New York

Services

Commissary Shelf Stocking and Custodial

Naval Air Station, Moffett Field

San Jose, California

Nonprofit Agency: Pride Industries

Roseville, California

Janitorial/Custodial

Social Security Administration

Building

1530 4th Street

Peru, Illinois

Nonprofit Agency: Gateway Services, Inc., Princeton, Illinois

Deletions

It is proposed to delete the following commodities and services from the Procurement List:

Commodities

Assembly, Support Panel

7105-00-NSH-0004

Base, Grooming Unit

7105-01-007-1830

7105-01-019-0375

7105-01-019-0376

7105-01-019-0379

Bookcase, Drop-Lid

7105-01-005-8408

7105-01-005-8409

7105-01-007-1760

7105-01-009-2567

7105-01-047-3557

Bookcase, Open-Shelf

7105-01-007-9798

7105-01-047-3558

7105-01-047-3556

Box, Vanity

7105-01-007-1831

Bracket, Overchest Support

7105-00-NSH-0003

Chest, Five-Drawer

7105-01-005-8403

7105-01-005-8404

7105-01-007-9797

7105-01-011-8397

Chest, Six-Drawer

7105-01-005-8403

7105-01-005-8407

7105-01-005-8406

7105-01-023-4636

Chest, Stereo

7105-01-005-8474

7105-01-017-6104

7105-01-019-0377

7105-01-019-0378

7105-01-047-3573

Chest, Three-Drawer

7105-01-046-8855

Overchest

7105-01-005-8475

7105-01-047-3574

Top, Grooming Unit

7105-01-005-8476

Services

Commissary Warehousing, Langley Air

Force Base, Virginia

Grounds Maintenance, LBJ Memorial

Grove, Constitution Gardens,

Washington, DC

Janitorial/Custodial, Pentagon Officers

Athletic Club, Washington, DC

Pallet Repair, Naval Supply Center,

Norfolk, Virginia.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93-26082 Filed 10-21-93; 8:45 am]

BILLING CODE 6020-33-P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 22, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities 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 commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Folder, File, Hanging
7530-01-357-6854
7530-01-357-6855
7530-01-357-6856
7530-01-357-6857

7530-01-364-9487
7530-01-364-9495
3753-01-364-9496
7530-01-364-9497
7530-01-364-9498
7530-01-364-9499
7530-01-364-9500
7530-01-364-9501

Nonprofit Agency:
Lions Club Industries, Inc., Durham,
North Carolina
The Lighthouse for the Blind, Inc.,
Seattle, Washington

Cake Mix
8920-00-823-7227
8920-00-823-7229

Nonprofit Agency: Association for
Retarded Citizens of Putnam,
County, Inc., Algood, Tennessee.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93-26083 Filed 10-21-93; 8:45 am]

BILLING CODE 682C-33-F

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Issuance of Standards for Backyard Play Sets

AGENCY: Consumer Product Safety
Commission.

ACTION: Notice.

SUMMARY: The City of New York
Department of Consumer Affairs has
petitioned the Commission to issue
standards for backyard play sets under
provisions of the Federal Hazardous
Substances Act. The Commission
solicits written comments concerning
the petition from all interested parties.

DATES: Comments on the petition
should be received in the Office of the
Secretary by December 20, 1993.

ADDRESSES: Comments on the petition
should be addressed to the Office of the
Secretary, Consumer Product Safety
Commission, Washington, DC 20207,
telephone (301) 504-0800, and should
be captioned "Petition HP 93-1 for
Issuance of Backyard Play Set
Standards." Copies of the petition are
available by writing or calling the Office
of the Secretary.

FOR FURTHER INFORMATION CONTACT:
Sheldon D. Butts, Deputy Secretary,
Consumer Product Safety Commission,
Washington, DC 20207; telephone: (301)
504-0800.

SUPPLEMENTARY INFORMATION: The
Commission has docketed
correspondence from the City of New
York Department of Consumer Affairs
requesting that the Commission issue
standards for backyard play sets under
the Federal Hazardous Substances Act
(15 U.S.C. 1261 *et seq.*)

The petition defines backyard play sets as "those children's products covered by the voluntary guidelines developed by the American Society for Testing and Materials standard F1148-91." The petition states that such structures may be or include such equipment as swings, slides, climbers, seesaws, merry-go-rounds and exercise bars. The petition asserts that the existing voluntary standard does not adequately address all equipment-related hazards. It requests that the Commission issue a rule to declare that certain backyard play sets intended for use by children present a mechanical hazard and are therefore banned hazardous substances.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 420, 5401 Westbard Avenue, Bethesda Maryland.

The Commission is particularly interested in information that may help in assessing the degree of compliance of backyard play sets with the ASTM voluntary standard F 1148-91.

Sadye E. Dunn,

*Secretary, Consumer Product Safety
Commission.*

[FR Doc. 93-26087 Filed 10-21-93; 8:45 am]

BILLING CODE 6355-01-F

DEPARTMENT OF DEFENSE

Defense Investigation Service

Privacy Act of 1974; Notice To Amend Systems of Records

AGENCY: Defense Investigative Service,
DOD.

ACTION: Notice to amend systems of
records.

SUMMARY: The Defense Investigative
Service proposes to amend an existing
system of records to its inventory of
systems subject to the Privacy Act of
1974 (5 U.S.C. 552a), as amended, by
deleting the exemption.

The Defense Investigative Service has
also identified a system of records that
was missing from the DOD February 22,
1993 publication of its Privacy Act
systems of records notices. The notice is
identified as V2-01, entitled 'Inspector
General Complaints', last published
September 10, 1991, at 56 FR 46163.
The notice remains current and should

be added to those published February 22, 1993.

DATES: The proposed actions will be effective on October 22, 1993.

ADDRESSES: Send comments to the Defense Investigative Service, Chief, Information and Public Affairs Office, 1340 Braddock Road, Alexandria, VA 22314-1651.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hartig at (202) 475-1062.

SUPPLEMENTARY INFORMATION: The Defense Investigative Service compilation of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), has been published in the *Federal Register* and are available from the above address:

The amendment is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific change to the system of records notice is set forth below followed by the system notice, as amended, published in its entirety.

Dated: October 15, 1993.

L. M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

V9-01

SYSTEM NAME:

Litigation Case Files (February 22, 1993, 58 FR 10919).

CHANGES:

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'None'.
* * * * *

V9-01

SYSTEM NAME:

Litigation Case Files.

SYSTEM LOCATION:

Defense Investigative Service, Office of the General Counsel, 1340 Braddock Place, Alexandria, VA 22314-1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of adverse actions generated by the agency employee relations process, Merit Systems Protection Board (MSPB) and Equal Employment Opportunity Commission (EEOC) appellants, Freedom of Information Act (FOIA) and Privacy Act litigants, and individuals involved in civil litigation against DIS or other government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal or factual memoranda, legal briefs, correspondence, decisions, claims, grievances, MSPB, EEO, FOIA and Privacy Act materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Directive 5105.42, The Defense Investigative Service (32 CFR part 361).

PURPOSE(S):

To collect documentation pertinent to litigation, disciplinary matters, and administrative actions concerning the Agency. Information is compiled to support various legal-related activities of the Department of Defense, Department of Justice, the Office of Personnel Management, or other adjudicative agencies of the U.S. Government as may be necessary or required in the disposition of an individual case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DIS's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by surname of individual.

SAFEGUARDS:

Records are kept in locked cabinets and are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are held 5 years after date of last action, then retired to the Washington National Records Center. They are destroyed when 25 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Investigative Service, Office of the General Counsel, 1340 Braddock Place, Alexandria, VA 22314-1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the Defense Investigative Service, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, VA 22314-1651.

A request for information must contain the full name and Social Security number of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Defense Investigative Service, Privacy Act Office, PO Box 1211, Baltimore, MD 21203-1211.

A request for information must contain the full name and Social Security number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Investigative Service, Privacy Act Office, 2200 Van Daman Street, Baltimore, MD 21224-6603.

CONTESTING RECORD PROCEDURES:

DIS' rules for accessing records, contesting contents, and appealing initial determinations are contained in DIS Regulation 01-13; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

Information is provided by DIS field elements, Employee Relations Branch; Director, DIS Office of Affirmative Action and Equal Opportunity Policy; Directorates of Industrial Security and Investigations; Office of the Secretary of Defense; other DoD components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V2-01

SYSTEM NAME:

Inspector General Complaints.

SYSTEM LOCATION:

Defense Investigative Service, Inspector General, 1340 Braddock Road, Alexandria, VA 22314-1651.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of Defense Investigative Service (DIS) and individuals who have made a complaint, or are the subject of a complaint; or whose request for action, assistance or information has been referred to the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the organization, planning and execution of internal/external investigations, records created as a result of investigations conducted by the Office of the Inspector General including reports of investigations, records of action taken and supporting papers. Files may include documents which have been provided by individual complainants or by others. These records include investigations of both organizational elements and individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.42, Defense Investigative Service; DoD Directive 5200.26, Defense Investigative Program.

PURPOSES:

Information in the system is collected to resolve a complaint, redress a problem or provide assistance, correct records, take or recommend disciplinary action, reevaluate or rescind previous actions or decisions, conduct or recommend formal investigations or inquiries, provide assistance or guidelines in following prescribed procedures for specific problems, provide advice on how to obtain exception to policy, and to inform the Director of DIS on activities of the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' published at the beginning of DIS' compilation of system of record notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders and computerized log.

RETRIEVABILITY:

Paper records are filed by subject matter and case/accession number. Electronic records are filed by case/accession numbers.

SAFEGUARDS:

Files are contained in security containers accessible only to the Inspector General staff. Information from this record system is made available only to authorized personnel

RETENTION AND DISPOSAL:

Records are temporary and are destroyed two years after final action. Paper records are destroyed by

shredding or burning. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Investigative Service, Inspector General, 1340 Braddock Road, Alexandria, VA 22314-1651.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Investigative Service, 2200 Van Deman Street, Baltimore, MD 21224-1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Defense Investigative Service, 2200 Van Deman Street, Baltimore, MD 21224-1651.

A request for information must contain the full name of the subject individual.

Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act office.

CONTESTING RECORD PROCEDURES:

DIS' rules for accessing records, contesting contents, and appealing initial determinations are contained in DIS Regulation 01-13; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Information and Public Affairs Office, 1340 Braddock Road, Alexandria, VA 22314-1651.

RECORD SOURCE CATEGORIES:

Personal interviews; DIS personnel office; consolidated civilian personnel offices; DIS comptroller; military personnel offices, finance offices, and medical record repositories; DIS investigative files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93-26026 Filed 10-21-93; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Meeting**

October 18, 1993

Take notice that on Tuesday, November 2, 1993, at 2 p.m. the Commissioners and Commission staff will be meeting with representatives of the Natural Gas Council to hear a report on the status of a proposed Gas Industry

Standards Board. The meeting will take place in the Commission Meeting Room, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Interested persons are invited to attend.

Lois D. Cashell,
Secretary.

[FR Doc. 93-25987 Filed 10-21-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP94-24-000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

October 15, 1993

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP94-24-000]

Take notice that on October 13, 1993, Florida Gas Transmission Company (FGT) 1400 Smith Street, Houston, Texas 77002, filed Docket No. CP94-24-000 a request pursuant to § 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to construct and operate a delivery point for The Town of Walker (Walker); Louisiana, under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new tap, a side valve, electronic flow measurement and communication instruments, a gas sampler, approximately 20 feet of 2-inch connecting pipe, and related appurtenant facilities. It is stated that the proposed delivery point would be connected to FGT's 30-inch mainline near mile post 13.7 in St. Helena Parish, Louisiana. It is further stated that the gas quantity that FGT proposes to deliver for Walker at the delivery point is: Up to 500 MMBtu per day; and up to 182,500 MMBtu per year. FGT states that Walker shall reimburse it for all construction costs; estimated to be \$49,500. It is also stated that the ultimate end-use would be commercial and residential.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Penn-York Energy Corporation

[Docket No. CP94-10-000]

Take notice that on October 6, 1993, Penn-York Energy Corporation (Penn-

York) 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP94-10-000, pursuant to section 7(c) of the Natural Gas Act (NGA) and § 157.7 of the Commission's Regulations 18 CFR 157.7, for a certificate of public convenience and necessity authorizing Penn-York to modify the General Terms and Conditions of its FERC Gas Tariff to provide for the assignment of storage service to third parties, all as more fully set forth in the application on file with the Commission and open to public inspection.

Penn-York seeks authority to authorize its customers to assign their storage service under Rate Schedule SS-1 and SS-2 to third parties as set out fully in the revised Section 19 of the General Terms and Conditions of its FERC Gas Tariff.

Penn-York states that it is seeking this authority to comply with the settlement that was approved, as modified by the Commission's order on July 8, 1993.¹ Article XIV of the settlement established that upon approval of the settlement, Penn-York would file within 90 days for certificate authority to allow customers to assign rights to storage service to third parties. There are no new facilities being constructed.

Comment date: November 5, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP94-14-000]

Take notice that on October 12, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94-14-000 an application, as supplemented on October 13, 1993, pursuant to section 7(b) of the Natural Gas Act for authorization to abandon sales service and related standby service to New York Electric and Gas Corporation (NYSEG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that it received timely notice from NYSEG of an election to convert 10,000 dt equivalent of natural gas under Rate Schedule ACD to transportation service under Rate Schedule TF to be effective November 1, 1992. It is indicated that the effectiveness of the modified sales service is only for the period of November 1, 1992, until September 30, 1993, the date CNG's Order 636 compliance filing is effective. CNG states that it seeks the necessary abandonment authorization to effectuate the conversion effective as of November 1, 1992. It is further indicated that, without the requested retroactive authorization, NYSEG would incur additional demand charges of \$843,050.

Comment date: November 5, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP94-26-000]

Take notice that on October 13, 1993, Columbia Gas Transmission Corporation (Columbia Gas), Post Office Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP94-26-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate eleven delivery taps to existing customers Columbia Gas of Ohio, Inc. (Columbia of Ohio), Columbia Gas of Pennsylvania, Inc. (Columbia of Pennsylvania) and Mountaineer Gas Company (Mountaineer) at which points Columbia Gas has been requested to provide firm and interruptible transportation service under its part 284 blanket certificate, under the blanket certificate issued in Docket No. CP86-240, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gas proposes to construct and operate delivery taps to serve the following services:

Customer	Residential	Commerical	Industrial	Estimated design day quantity (Dth)	Estimated annual quantity (Dth)
Columbia of Ohio	2	.....	1	950	23,300
Columbia of Pennsylvania .....	.....	1	.....	30	3,000
Mountaineer	7	.....	.....	10.5	1,050

Columbia Gas states that in each instance it proposes to construct and operate a meter to implement the requested transportation service. Columbia Gas indicates that, in addition to the meter for Columbia of Pennsylvania, it also proposes to insert a 1,950 feet segment of 3-inch plastic line through a previously abandoned 6-inch pipeline not currently in service. Columbia Gas also states that the services provided through the proposed facilities would remain within Columbia Gas' authorized level of services. Columbia Gas concludes that construction of the facilities and providing the requested transportation service would not result in any impact on Columbia Gas' existing design day and annual obligations to its customers.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP94-16-000]

Take notice that on October 12, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP94-16-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point consisting of a 2" hot tap assembly to accommodate the delivery of natural gas to Elizabeth Natural Gas Company (Elizabeth) under the blanket certificate issued in Docket No. CP82-

413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it has entered into an amendment to a gas transportation agreement with Elizabeth to establish a new delivery point so as to transport and deliver up to 1,235 Dekatherms per day of natural gas on a firm basis pursuant to Tennessee's Rate Schedule FT-GS. In order to establish this delivery point, Tennessee seeks authorization to install, own, operate and maintain a 2" hot tap assembly at M.P. 502-1+9.40 on its existing right-of-way in Vernon Parish, Louisiana. All costs associated with the construction of

¹ 64 FERC ¶61,040 (1993).

the proposed delivery point will be borne by Elizabeth.

Tennessee does not propose to increase the total daily and/or annual quantities it is authorized to deliver to Elizabeth. Tennessee asserts that the establishment of the proposed delivery point is not prohibited by Tennessee's tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. K N Interstate Gas Transmission Company

[Docket No. CP94-18-000]

Take notice that on October 12, 1993, K N Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228-8304, filed in Docket No. CP94-18-000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate six new delivery taps in Buffalo, Cheyenne, Hall and Madison Counties, Nebraska and Goshen County, Wyoming. It is stated that these points will be added as delivery points under an existing transportation agreement between KNI and K N Energy, Inc. (K N)² and will be used by K N to facilitate the delivery of natural gas to direct retail customers, under the authorization issued in Docket Nos. CP83-140-000 and CP83-141-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

KNI states that K N, as a local distribution company, has requested the addition of six new delivery points under an existing transportation agreement between KNI and K N. It is stated that the proposed delivery points would be located on KNI's main transmission system in Nebraska and Wyoming and would facilitate the delivery of natural gas to K N for distribution to new direct retail customers.

Comment date: November 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

² In Docket No. CP93-41-000, 63 FERC ¶ 61,155 (1993), K N was authorized to abandon all its jurisdictional facilities and activities by transfer to KNI, and KNI was authorized to replace K N as the holder of the certificates previously issued by the Commission in the name of K N.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date 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 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 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.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 93-25988 Filed 10-21-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ST93-5008-000 through ST93-5513-000]

Transamerican Natural Gas Corp., et al.; Self-Implementing Transactions

October 18, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.¹

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under

¹ Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the proposed filing is in compliance with the Commission's regulations.

§ 284.221 of the Commission's regulations.

A "C-I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "C-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,
Secretary.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93-5008 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Co.	08-02-93	C	25,000	N	I	07-01-93	Indef.
ST93-5009 ..	Transamerican Natural Gas Corp.	Natural Gas Pipe Line Co.	08-02-93	C	25,000	N	I	06-01-93	Indef.
ST93-5010 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co. et al.	08-02-93	C	60,000	N	I	06-01-93	Indef.
ST93-5011 ..	Transamerican Natural Gas Corp.	Natural Gas Pipe Line Co.	08-02-93	C	25,000	N	I	06-01-93	Indef.
ST93-5012 ..	High Island Offshore System.	Trunkline Gas Co	08-02-93	K	3,000	N	I	07-01-93	06-15-94.
ST93-5013 ..	Panhandle Eastern Pipe Line Co.	Kimball Energy Corp .	08-02-93	G-S	40,000	N	I	07-01-93	03-31-95.
ST93-5014 ..	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc.	08-02-93	G-S	2,500	N	F	07-01-93	07-31-93.
ST93-5015 ..	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales Corp.	08-02-93	G-S	6,000	N	F	07-01-93	07-31-93.
ST93-5016 ..	Panhandle Eastern Pipe Line Co.	Tenaska Marketing Ventures.	08-02-93	G-S	1,031,000	N	I	07-01-93	04-30-98.
ST93-5017 ..	Panhandle Eastern Pipe Line Co.	Unigas Energy, Inc ...	08-02-93	G-S	8,576	N	F	07-01-93	07-31-93.
ST93-5018 ..	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	08-02-93	G-S	30,000	N	I	07-01-93	05-31-98.
ST93-5019 ..	Panhandle Eastern Pipe Line Co.	Tenaska Marketing Ventures.	08-02-93	G-S	5,000	N	F	07-01-93	07-31-93.
ST93-5020 ..	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	08-02-93	G-S	4,180	N	F	07-01-93	07-31-93.
ST93-5021 ..	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	08-02-93	G-S	200,000	N	I	07-01-93	04-30-98.
ST93-5022 ..	High Island Offshore System.	ANR Pipeline Co	08-02-93	K	2,900,000	Y	I	07-01-93	Indef.
ST93-5023 ..	High Island Offshore System.	ANR Pipeline Co	08-02-93	K	2,900,000	Y	I	07-01-93	Indef.
ST93-5024 ..	Northern Natural Gas Co.	Westar Transmission Co.	08-02-93	B	200,000	N	F/I	04-29-93	Indef.
ST93-5025 ..	Northern Natural Gas Co.	Minnegasco	08-02-93	B	800,000	N	F/I	04-27-93	09-30-96.
ST93-5026 ..	Northern Natural Gas Co.	Midwest Natural Gas, Inc.	08-02-93	B	5,785	N	F/I	04-27-93	Indef.
ST93-5027 ..	Florida Gas Transmission Co.	Endevco Pipeline Co .	08-02-93	B	600,000	A	I	07-01-93	Indef.
ST93-5028 ..	Tennessee Gas Pipeline Co.	Sonat Marketing Co ..	08-02-93	G-S	40,000	N	I	07-24-93	Indef.
ST93-5029 ..	Tennessee Gas Pipeline Co.	Diamond Shamrock Offshore Partners.	08-02-93	G-S	107,000	N	I	07-02-93	Indef.
ST93-5030 ..	Columbia Gas Transmission Corp.	Cobra Petroleum Production Corp.	08-02-93	G-S	900	N	I	07-12-93	Indef.
ST93-5031 ..	Columbia Gas Transmission Corp.	National Fuel Gas Supply Corp.	08-02-93	G	2,900	N	I	07-26-93	Indef.
ST93-5032 ..	Arkansas Western Gas Co.	Arka Energy Resources, et al.	08-02-93	G-LT	2,000	N	I	07-01-93	05-31-92.
ST93-5033 ..	Natural Gas P/L Co. of America.	CNG Producing Co ..	08-02-93	G-S	100,000	N	I	07-08-93	Indef.
ST93-5034 ..	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	08-02-93	G-S	100,000	A	I	07-08-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5035 ..	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.	08-03-93	G-S	10,000	N	F	05-01-93	09-30-93.
ST93-5036 ..	Williams Natural Gas Co.	Hugoton Energy Corp	08-04-93	G-S	500	N	I	07-17-93	Indef.
ST93-5037 ..	United Gas Pipe Line Co.	Polaris Pipeline Corp	08-04-93	G-S	20,960	N	I	07-30-93	11-27-93.
ST93-5038 ..	United Gas Pipe Line Co.	Citizens Gas Supply Corp.	08-04-93	G-S	20,960	N	I	07-30-93	11-27-93.
ST93-5039 ..	United Gas Pipe Line Co.	Endevco Pipeline Co.	08-04-93	B	730,000	N	I	07-30-93	Indef.
ST93-5040 ..	Gateway Pipeline Co	Valero Gas Marketing, LP.	08-04-93	G-S	47,710	N	I	07-16-93	11-13-93.
ST93-5041 ..	Transcontinental Gas P/L Corp.	United Texas Transmission Co.	08-04-93	B	50,000	N	I	07-22-93	Indef.
ST93-5042 ..	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co	08-05-93	G-S	17,755	N	F	07-09-93	07-31-93.
ST93-5043 ..	Panhandle Eastern Pipe Line Co.	Amgas, Inc	08-05-93	G-S	432	N	F	07-09-93	08-31-93.
ST93-5044 ..	Trunkline Gas Co	Citrus Marketing, Inc.	08-05-93	G-S	100,000	N	I	07-21-93	Indef.
ST93-5045 ..	Trunkline Gas Co	Citrus Marketing, Inc.	08-05-93	G-S	100,000	N	I	07-21-93	Indef.
ST93-5046 ..	Trunkline Gas Co	Coastal Gas Marketing Co.	08-05-93	G-S	100,000	N	I	07-30-93	Indef.
ST93-5047 ..	Trunkline Gas Co	NGC Transportation, Inc.	08-05-93	G-S	50,000	N	I	07-31-93	Indef.
ST93-5048 ..	Trunkline Gas Co	Louisiana Resources Co.	08-05-93	B	50,000	N	I	07-24-93	Indef.
ST93-5049 ..	Trunkline Gas Co	Fina Natural Gas Co.	08-05-93	G-S	30,000	N	I	07-24-93	Indef.
ST93-5050 ..	CNG Transmission Corp.	Appalachian Gas Sales Corp.	08-06-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5051 ..	CNG Transmission Corp.	Volunteer Energy Corp.	08-06-93	G-S	2,000	N	I	07-27-93	Indef.
ST93-5052 ..	CNG Transmission Corp.	Clinton Gas Marketing	08-06-93	G-S	10,000	N	I	07-31-93	Indef.
ST93-5053 ..	Tennessee Gas Pipeline Co.	Laser Marketing Co ..	08-06-93	G-S	83,325	N	I	07-07-93	Indef.
ST93-5054 ..	U-T Offshore System	Transco Liquids Co ...	08-06-93	G-S	150,000	N	I	08-01-93	07-31-94.
ST93-5055 ..	Northern Natural Gas Co.	Phoenix Chemical Co	08-06-93	G-S	39,678	N	F/I	07-27-93	10-31-93.
ST93-5056 ..	Northern Natural Gas Co.	Twister Transmission Co.	08-06-93	G-S	50,000	N	F/I	07-08-93	Indef.
ST93-5057 ..	Northern Natural Gas Co.	Border Resources Inc	08-06-93	G-S	3,000	N	F/I	07-21-93	Indef.
ST93-5058 ..	Northern Natural Gas Co.	Minnegasco	08-06-93	B	550	N	F/I	07-27-93	Indef.
ST93-5059 ..	Midcon Texas Pipeline Corp.	Mobile Natural Gas Inc.	08-06-93	G-I	20,000	N	I	07-14-93	Indef.
ST93-5060 ..	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	08-06-93	G-S	10,000	N	F	08-01-93	07-31-08.
ST93-5061 ..	Chandeleur Pipe Line Co.	International Paper Co.	08-06-93	K-S	73,000	N	I	12-01-92	Indef.
ST93-5062 ..	Chandeleur Pipe Line Co.	Santa Fe International	08-06-93	K-S	30,000	N	I	12-01-91	Indef.
ST93-5063 ..	Chandeleur Pipe Line Co.	Hall-Houston Oil Co ..	08-06-93	K-S	50,000	N	I	09-01-92	Indef.
ST93-5064 ..	Chandeleur Pipe Line Co.	BG Exploration America, Inc.	08-06-93	K-S	32,000	N	I	12-01-91	Indef.
ST93-5065 ..	Chandeleur Pipe Line Co.	Arco Natural Gas Marketing, Inc.	08-06-93	K-S	18,000	N	I	12-01-91	Indef.
ST93-5066 ..	Chandeleur Pipe Line Co.	Kogas Inc	08-06-93	K-S	100,000	N	I	05-01-92	Indef.
ST93-5067 ..	Chandeleur Pipe Line Co.	Ledco, Inc	08-06-93	K-S	100,000	N	I	01-01-92	Indef.
ST93-5068 ..	Chandeleur Pipe Line Co.	Sonat Marketing Co ..	08-06-93	K-S	20,000	N	I	11-16-91	Indef.
ST93-5069 ..	Chandeleur Pipe Line Co.	Eagle Natural Gas Co	08-06-93	K-S	15,000	N	I	04-01-92	Indef.
ST93-5070 ..	Chandeleur Pipe Line Co.	United Gas Services Co.	08-06-93	K-S	5,000	N	I	12-01-91	Indef.
ST93-5071 ..	Chandeleur Pipe Line Co.	Enemmax	08-06-93	K-S	50,000	N	I	02-01-92	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5072 ..	Chandeleur Pipe Line Co.	Excel Gas Marketing, Inc.	08-06-93	K-S	40,000	N	I	04-01-92	Indef.
ST93-5073 ..	Chandeleur Pipe Line Co.	Midcon Marketing Corp.	08-06-93	K-S	80,000	N	I	02-01-92	Indef.
ST93-5074 ..	Chandeleur Pipe Line Co.	MG Natural Gas Corp	08-06-93	K-S	50,000	N	I	02-01-92	Indef.
ST93-5075 ..	Chandeleur Pipe Line Co.	Seagull Marketing Services, Inc.	08-06-93	K-S	75,000	N	I	03-01-92	Indef.
ST93-5076 ..	Chandeleur Pipe Line Co.	Chevron U.S.A. Inc ...	08-06-93	K-S	100,000	N	I	05-01-93	Indef.
ST93-5077 ..	Chandeleur Pipe Line Co.	Energy International Marketing Corp.	08-06-93	K-S	31,500	N	I	05-01-93	Indef.
ST93-5078 ..	Chandeleur Pipe Line Co.	United Gas Pipe Line Co.	08-06-93	K-S	100,000	N	I	04-01-92	Indef.
ST93-5079 ..	Chandeleur Pipe Line Co.	Enron Gas Marketing, Inc.	08-06-93	K-S	30,000	N	I	06-01-92	Indef.
ST93-5080 ..	Chandeleur Pipe Line Co.	Endevco Oil & Gas Co.	08-06-93	K-S	30,000	N	I	05-01-92	Indef.
ST93-5081 ..	Chandeleur Pipe Line Co.	Eastex Hydrocarbons, Inc.	08-06-93	K-S	30,000	N	I	05-01-92	Indef.
ST93-5082 ..	Chandeleur Pipe Line Co.	KCS Energy Marketing, Inc.	08-06-93	K-S	50,000	N	I	06-01-92	Indef.
ST93-5083 ..	Chandeleur Pipe Line Co.	Aquila Energy Marketing Corp.	08-06-93	K-S	20,000	N	I	10-01-92	Indef.
ST93-5084 ..	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipeline Co.	08-09-93	C	250,000	N	I	07-08-93	Indef.
ST93-5085 ..	Transok Gas Transmission Co.	ANR Pipeline Co., Et Al.	08-09-93	C	100,000	N	I	07-20-93	Indef.
ST93-5086 ..	Transok Gas Transmission Co.	ANR Pipeline Co., Et Al.	08-09-93	C	200,000	N	I	07-10-93	Indef.
ST93-5087 ..	Colorado Interstate Gas Co.	Continental Natural Gas, Inc.	08-09-93	G-S	20,000	N	I	07-22-93	Indef.
ST93-5088 ..	Colorado Interstate Gas Co.	Continental Natural Gas, Inc.	08-09-93	G-S	20,000	N	I	07-23-93	Indef.
ST93-5089 ..	Colorado Interstate Gas Co.	KN Gas Marketing, Inc.	08-09-93	G-S	15,000	N	I	07-23-93	Indef.
ST93-5090 ..	Trunkline Gas Co	AGIP Petroleum Co., Inc.	08-09-93	G-S	100,000	N	I	07-24-93	Indef.
ST93-5091 ..	Trunkline Gas Co	Equitable Resources Marketing Co.	08-09-93	G-S	100,000	N	I	07-24-93	Indef.
ST93-5092 ..	Trunkline Gas Co	CMS Marketing Co ...	08-09-93	G-S	50,000	N	I	07-23-93	Indef.
ST93-5093 ..	Trunkline Gas Co	Pennzoil Gas Marketing Co.	08-09-93	G-S	15,000	N	I	07-24-93	Indef.
ST93-5094 ..	Natural Gas P/L Co. of America.	GGR Energy	08-09-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5095 ..	Canyon Creek Compression Co.	Texaco Gas Marketing, Inc.	08-09-93	G-S	193,000	N	I	07-02-93	Indef.
ST93-5096 ..	Questar Pipeline Co ..	Mountain Fuel Supply Co.	08-10-93	B	153,530	Y	F	05-08-93	Indef.
ST93-5097 ..	Columbia Gas Transmission Corp.	United Gas Services Co.	08-10-93	G-S	200,000	Y	I	08-01-93	Indef.
ST93-5098 ..	Columbia Gas Transmission Corp.	Southern Gas Co., Inc.	08-10-93	G-S	399	N	F	08-01-93	Indef.
ST93-5099 ..	Natural Gas P/L Co. of America.	Enron Gas Marketing Inc.	08-10-93	G-S	20,000	N	F	08-01-93	08-31-93.
ST93-5100 ..	Natural Gas P/L Co. of America.	Minnegasco, Inc	08-10-93	G-S	25,000	N	F	08-05-93	10-31-93.
ST93-5101 ..	Natural Gas P/L Co. of America.	Minnegasco, Inc	08-10-93	G-S	25,000	N	F	08-05-93	10-31-93.
ST93-5102 ..	Natural Gas P/L Co. of America.	North Canadian Marketing.	08-10-93	G-S	150,000	N	I	08-01-93	Indef.
ST93-5103 ..	Natural Gas P/L Co. of America.	Peoples Natural Gas Co.	08-10-93	G-S	150,000	N	I	08-01-93	Indef.
ST93-5104 ..	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	08-10-93	B	256	N	I	07-28-93	Indef.
ST93-5105 ..	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	08-10-93	B	153	N	I	07-31-93	Indef.
ST93-5106 ..	Texas Gas Transmission Corp.	Enron Gas Marketing, Inc.	08-10-93	G-S	300,000	N	I	07-29-93	Indef.
ST93-5107 ..	El Paso Natural Gas Co.	GPM Gas Corporation	08-10-93	G-S	225,600	N	I	07-12-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5108 ..	K N Energy, Inc	Anthem Energy Co., L.P.	08-11-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5109 ..	K N Wattenberg Trans. L.L. Co.	Panhandle Eastern Pipe Line Co.	08-11-93	G	100,000	N	I	05-01-93	Indef.
ST93-5110 ..	K N Energy, Inc	Northern Natural Gas Co.	08-11-93	G	10,000	N	I	06-01-93	Indef.
ST93-5111 ..	K N Energy, Inc	Interenergy Corp	08-11-93	G-S	15,000	N	I	08-01-93	Indef.
ST93-5112 ..	ANR Pipeline Co	Kerr-McGee Corp	08-11-93	G-S	100,000	N	F	08-01-93	Indef.
ST93-5113 ..	ANR Pipeline Co	Kerr-McGee Corp	08-11-93	G-S	100,000	N	F	08-01-93	Indef.
ST93-5114 ..	ANR Pipeline Co	Tenaska Marketing Ventures.	08-11-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5115 ..	ANR Pipeline Co	Entrade Corp	08-11-93	G-S	500,000	N	F	08-01-93	Indef.
ST93-5116 ..	ANR Pipeline Co	Chevron U.S.A. Production Co.	08-11-93	G-S	50,000	N	F	07-29-93	Indef.
ST93-5117 ..	ANR Pipeline Co	Coenergy Ventures, Inc.	08-11-93	G-S	100,000	N	F	08-01-93	Indef.
ST93-5118 ..	ANR Pipeline Co	Olympic Fuels Co	08-11-93	G-S	50,000	N	I	07-27-93	Indef.
ST93-5119 ..	ANR Pipeline Co	CMS Gas Marketing ..	08-11-93	G-S	150,000	N	F	07-20-93	Indef.
ST93-5120 ..	Tennessee Gas Pipeline Co.	Anadarko Trading Co	08-11-93	G-S	20,000	N	I	07-15-93	Indef.
ST93-5121 ..	Northwest Pipeline Corp.	Development Associates, Inc.	08-11-93	G-S	2,464	N	F	07-01-93	Indef.
ST93-5122 ..	Northwest Pipeline Corp.	Enron Gas Marketing, Inc.	08-11-93	G-S	25,000	N	F	07-01-93	Indef.
ST93-5123 ..	Northwest Pipeline Corp.	Washington Natural Gas Co.	08-11-93	G-S	100,000	N	F	07-01-93	Indef.
ST93-5124 ..	Northwest Pipeline Corp.	Grand Valley Gas Co	08-11-93	G-S	2,464	N	F	07-01-93	Indef.
ST93-5125 ..	Northwest Pipeline Corp.	Brooklyn Interstate Nat. Gas Corp.	08-11-93	G-S	100,000	N	I	08-01-93	Indef.
ST93-5126 ..	Northwest Pipeline Corp.	Columbia Power Associates, L.P.	08-11-93	G-S	25,000	N	F	08-02-93	Indef.
ST93-5127 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08-11-93	C	35,000	N	I	07-22-93	Indef.
ST93-5128 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08-11-93	C	50,000	N	I	07-01-93	Indef.
ST93-5129 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08-11-93	C	1,200	N	I	08-01-93	Indef.
ST93-5130 ..	Chandeleur Pipe Line Co.	NGC Transportation, Inc.	08-12-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-5131 ..	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	08-12-93	C	3,300	N	I	08-17-93	Indef.
ST93-5132 ..	Valero Transmission, L.P.	Transcontinental Gas Pipeline.	08-12-93	C	4,400	N	I	07-08-93	Indef.
ST93-5133 ..	K N Wattenberg Trans., L.L. Co.	Vessels Oil & Gas Co	08-12-93	G-S	60,000	N	I	04-01-93	12-11-12.
ST93-5134 ..	Arkla Energy Resources Co.	Sonat Marketing Co ..	08-12-93	G-S	85,000	N	I	08-01-93	Indef.
ST93-5135 ..	Arkla Energy Resources Co.	Bayou South Gas Gathering Co.	08-12-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5136 ..	Arkla Energy Resources Co.	Tidewest Trading & Transport Co.	08-12-93	G-S	25,000	N	I	08-01-93	Indef.
ST93-5137 ..	Arkla Energy Resources Co.	JMC Exploration Co ..	08-12-93	G-S	10,000	N	I	08-01-93	Indef.
ST93-5138 ..	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc.	08-12-93	B	140,000	N	I	07-28-93	Indef.
ST93-5139 ..	El Paso Natural Gas Co.	Amoco Energy Trading Corp.	08-12-93	G-S	9,343	N	F	08-01-93	10-31-93
ST93-5140 ..	Midwestern Gas Transmission Co.	Triumph Natural Gas, Inc.	08-13-93	G-S	19,800	N	F	08-01-93	Indef.
ST93-5141 ..	Questar Pipeline Co ..	Nepht City Corp	08-13-93	B	2,000	N	I	07-28-93	Indef.
ST93-5142 ..	Questar Pipeline Co ..	Union Pacific Fuels, Inc.	08-13-93	G-S	90,000	N	I	08-01-93	Indef.
ST93-5143 ..	Transcontinental Gas P/L Corp.	GGR Energy	08-13-93	G-S	50,000	N	F/I	07-23-93	Indef.
ST93-5144 ..	Valero Transmission, L.P.	Texas Gas Transmission Corp.	08-16-93	C	12,500	N	I	08-01-93	01-01-99.
ST93-5145 ..	Valero Transmission, L.P.	EL Paso Natural Gas Co.	08-16-93	C	2,000	N	I	08-03-93	Indef.
ST93-5146 ..	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	08-16-93	C	4,302	N	I	08-01-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Data commenced	Projected termination date
ST93-5147 ..	Valero Transmission, L.P.	El Paso Natural Gas Co.	08-16-93	C	10,000	N	I	08-01-93	Indef.
ST93-5148 ..	Valero Transmission, L.P.	United Gas Pipeline Co.	08-16-93	C	25,000	N	I	08-01-93	Indef.
ST93-5149 ..	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	08-16-93	C	8,578	N	I	08-01-93	Indef.
ST93-5150 ..	Transok, Inc	ANR Pipeline Co., et al.	08-16-93	C	100,000	N	I	07-17-93	Indef.
ST93-5151 ..	Sea Robin Pipeline Co.	GGR Energy Co	08-16-93	G-S	100,000	N	I	08-06-93	Indef.
ST93-5152 ..	North Penn Gas Co ..	New York State Electric & Gas Corp.	08-23-93	G-HT	20,000	N	I	04-01-93	03-31-9.
ST93-5153 ..	Valero Transmission, L.P.	El Paso Natural Gas Co.	08-16-93	C	25,000	N	I	07-24-93	Indef.
ST93-5154 ..	Enogex Inc	ANR Pipeline Co	08-16-93	C	50,000	N	I	07/17/93	Indef.
ST93-5155 ..	Northern Natural Gas Co.	Anaderko Trading Co	08-16-93	G-S	25,000	N	F/I	07/01/93	ndef.
ST93-5156 ..	Northern Natural Gas Co.	Grand Valley Gas Co	08-16-93	G-S	100,000	N	F/I	06/28/93	Indef.
ST93-5157 ..	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	08-16-93	C	55,000	N	I	08/01/93	Indef.
ST93-5158 ..	Mojave Pipeline Co ...	Destec Gas Services, Inc.	08-17-93	G-S	10,000	N	I	07/03/93	06-30-94.
ST93-5159 ..	El Paso Natural Gas Co.	Enron Gas Marketing, Inc.	08-17-93	G-S	20,600	N	F	07/22/93	09-30-93.
ST93-5160 ..	El Paso Natural Gas Co.	Premier Gas Co	08-17-93	G-S	51,500	N	I	07/22/93	Indef.
ST93-5161 ..	El Paso Natural Gas Co.	Grand Valley Gas Co	08-17-93	G-S	4,001	N	F	07/19/93	07-31-93.
ST93-5162 ..	Florida Gas Transmission Co.	Florida Power Corp ...	08-17-93	G-S	190,000	N	I	07/03/93	Indef.
ST93-5163 ..	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	08-17-93	G-S	73,601	N	I	07/29/93	Indef.
ST93-5164 ..	Enogex, Inc	Williams Natural Gas	08-18-93	C	50,000	N	I	07/29/93	Indef.
ST93-5165 ..	Enogex, Inc	Phillips Gas Pipeline Co.	08-18-93	C	100,000	N	I	08/01/93	Indef.
ST93-5166 ..	Enogex, Inc	William Natural Gas ..	08-18-93	C	15,000	N	I	08/11/93	Indef.
ST93-5167 ..	Tennessee Gas Pipeline Co.	Petroleum Source & Systems Group.	08-18-93	G-S	4,000	N	I	06/01/93	Indef.
ST93-5168 ..	Northwest Pipeline Corp.	Development Associates, Inc.	08-18-93	G-S	40,784	N	F	08/01/93	Indef.
ST93-5169 ..	Natural Gas P/L Co. of America.	Illinois Power Co	08-18-93	G-S	15,000	N	F	08/01/93	08-31-93.
ST93-5170 ..	Northwest Pipeline Corp.	Enron Gas Marketing, Inc.	08-18-93	G-S	100,000	N	I	07/05/93	Indef.
ST93-5171 ..	Natural Gas P/L Co. of America.	National Gas Resources, L.P.	08-18-93	G-S	9,274	N	F	08/02/93	09-30-93.
ST93-5172 ..	El Paso Natural Gas Co.	Texas-Ohio Gas, Inc .	08-18-93	G-S	2,487	N	F	08/01/93	08-31-93.
ST93-5173 ..	El Paso Natural Gas Co.	Los Gatos Tomato Products.	08-18-93	G-S	4,120	N	F	08/01/93	08-31-93.
ST93-5174 ..	El Paso Natural Gas Co.	American Hunter Exploration Ltd.	08-18-93	G-S	2,487	N	F	07/24/93	07-29-93.
ST93-5175 ..	El Paso Natural Gas Co.	Chevron U.S.A. Inc ...	08-18-93	G-S	10,300	N	F	08/01/93	08-31-93.
ST93-5176 ..	El Paso Natural Gas Co.	Mercado Gas Services, Inc.	08-18-93	G-S	2,575	N	F	07/31/93	09-30-93.
ST93-5177 ..	El Paso Natural Gas Co.	Watsonville Cogeneration Partner.	08-18-93	G-S	4,120	N	F	08/01/93	08-31-93.
ST93-5178 ..	El Paso Natural Gas Co.	Suncor Inc	08-18-93	G-S	7,125	N	F	08/01/93	08-31-93.
ST93-5179 ..	El Paso Natural Gas Co.	Mock Resources, Inc	08-18-93	G-S	14,000	N	F	08/01/93	08-31-93.
ST93-5180 ..	El Paso Natural Gas Co.	Pacific Gas & Electric Co.	08-18-93	G-S	82,400	N	F	08/05/93	08-06-93.
ST93-5181 ..	Texas Gas Transmission Corp.	Centran Corp	08-19-93	G-S	2,000	N	I	08/01/93	Indef.
ST93-5182 ..	Texas Gas Transmission Corp.	Yuma Gas Corp	08-19-93	G-S	75,000	Y	I	08/02/93	Indef.
ST93-5183 ..	Texas Gas Transmission Corp.	Fuel Services Group, Inc.	08-19-93	G-S	1,000	N	I	08/01/93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5184 ..	Texas Gas Transmission Corp.	O & R Energy, Inc	08-19-93	G-S	15,000	N	I	08/03/93	Indef.
ST93-5185 ..	Texas Gas Transmission Corp.	Union Oil Co. of California.	08-19-93	G-S	10,000	N	I	08/01/93	Indef.
ST93-5186 ..	Texas Gas Transmission Corp.	Energy Transportation Mgmt., Inc.	08-19-93	G-S	12,000	N	I	08/05/93	Indef.
ST93-5187 ..	Trunkline Gas Co	MG Ventures	08-19-93	G-S	1,000	N	F	08/01/93	Indef.
ST93-5188 ..	Trunkline Gas Co	GGR Energy	08-19-93	G-S	50,000	N	I	08/01/93	Indef.
ST93-5189 ..	Trunkline Gas Co	Castex Energy, Inc ...	08-19-93	G-S	20,000	N	I	08/01/93	Indef.
ST93-5190 ..	Trunkline Gas Co	Hudson Gas Systems, Inc.	08-19-93	G-S	10,000	N	I	08/01/93	Indef.
ST93-5191 ..	Trunkline Gas Co	Exxon Co., U.S.A	08-19-93	G-S	25,000	N	I	08/01/93	Indef.
ST93-5192 ..	Trunkline Gas Co	Transco Liquids Co ...	08-19-93	G-S	150,000	N	I	08/01/93	Indef.
ST93-5193 ..	Trunkline Gas Co	MG Natural Gas Corp	08-19-93	G-S	25,000	N	I	08/01/93	Indef.
ST93-5194 ..	Trunkline Gas Co	UGI Utilities, Inc	08-19-93	G-S	10,000	N	I	08/07/93	Indef.
ST93-5195 ..	Trunkline Gas Co	Shoats Creek Investing Partners.	08-19-93	G-S	1,000	N	I	08/01/93	Indef.
ST93-5196 ..	Trunkline Gas Co	Tenaska Marketing Ventures.	08-19-93	G-S	100,000	N	I	08/05/93	Indef.
ST93-5197 ..	Trunkline Gas Co	Thermic Refractories, Inc.	08-19-93	G-S	500	N	I	08/06/93	Indef.
ST93-5198 ..	El Paso Natural Gas Co.	NGC Transportation, Inc.	08-20-93	G-S	19,590	N	F	08/01/93	08-31-93.
ST93-5199 ..	El Paso Natural Gas Co.	DY-Dee Service of Pasadena, Inc.	08-20-93	G-S	43	N	F	08/01/93	08-31-93.
ST93-5200 ..	El Paso Natural Gas Co.	MGC Transportation, Inc.	08-20-93	G-S	19,967	N	F	08/01/93	10-31-93.
ST93-5201 ..	El Paso Natural Gas Co.	NGC Transportation, Inc.	08-20-93	G-S	29,335	N	F	08/01/93	09-30-93.
ST93-5202 ..	El Paso Natural Gas Co.	Entrade Corp	08-20-93	G-S	18,173	N	F	08/01/93	08-31-93.
ST93-5203 ..	El Paso Natural Gas Co.	Entrade Corp	08-20-93	G-S	24,392	N	F	08-01-93	09-30-93.
ST93-5204 ..	El Paso Natural Gas Co.	Redwood Resources Inc.	08-20-93	G-S	15,141	N	F	08-01-93	08-31-93.
ST93-5205 ..	El Paso Natural Gas Co.	Union Oil Co. of California.	08-20-93	G-S	8,297	N	F	08-01-93	01-31-94.
ST93-5206 ..	El Paso Natural Gas Co.	Dormtar Gypsum, Inc .	08-20-93	G-S	2,575	N	F	08-01-93	08-31-93.
ST93-5207 ..	El Paso Natural Gas Co.	Grand Valley Gas Co	08-20-93	G-S	1,545	N	F	08-01-93	07-31-94.
ST93-5208 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-20-93	G-S	14,559	N	F	08-01-93	08-31-93.
ST93-5209 ..	El Paso Natural Gas Co.	Imperial Irrigation District.	08-20-93	G-S	10,300	N	F	08-01-93	09-30-95.
ST93-5210 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-20-93	G-S	1,199	N	F	08-01-93	01-31-94.
ST93-5211 ..	El Paso Natural Gas Co.	Brooklyn Interstate Nat. Gas Corp.	08-20-93	G-S	8,900	N	F	08-01-93	08-31-93.
ST93-5212 ..	El Paso Natural Gas Co.	San Diego Gas & Electric Co.	08-19-93	G-S	24,720	N	F	08-01-93	08-31-95.
ST93-5213 ..	El Paso Natural Gas Co.	Grand Valley Gas Co	08-19-93	G-S	7,000	N	F	08-01-93	08-31-93.
ST93-5214 ..	El Paso Natural Gas Co.	Pacific Gas & Electric Co.	08-19-93	G-S	334,750	N	F	08-01-93	08-31-93.
ST93-5215 ..	El Paso Natural Gas Co.	Enron Gas Marketing, Inc.	08-19-93	G-S	70,000	N	F	08-01-93	09-30-93.
ST93-5216 ..	El Paso Natural Gas Co.	Amoco Energy Trading Corp.	08-19-93	G-S	9,343	N	F	08-01-93	07-31-94.
ST93-5217 ..	El Paso Natural Gas Co.	San Diego Gas & Electric Co.	08-19-93	G-S	42,230	N	F	08-01-93	08-31-95.
ST32-5218 ..	Monterey Pipeline Co	Trunkline Gas Co	08-19-93	C	25,000	N	I	08-01-91	Indef.
ST93-5219 ..	Columbia Gulf Transmission Co.	Phillips Petroleum Co	08-19-93	G-S	100,000	N	I	08-01-93	Indef.
ST93-5220 ..	Columbia Gulf Transmission Co.	Direct Gas Supply Corp.	08-19-93	G-S	25,000	N	I	08-01-93	Indef.
ST93-5221 ..	Columbia Gulf Transmission Co.	Coastal Gas Marketing Co.	08-19-93	G-S	100,000	N	I	07-30-93	Indef.
ST93-5222 ..	Columbia Gulf Transmission Co.	Aquila Energy Marketing Corp.	08-19-93	G-S	100,000	N	I	07-23-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5223 ..	Algonquin Gas Transmission Co.	CNG Producing Co ...	08-20-93	G-S	96,000	N	I	07-29-93	Indef.
ST93-5224 ..	Algonquin Gas Transmission Co.	Direct Gas Supply Corp.	08-20-93	G-S	120,000	N	I	07-30-93	Indef.
ST93-5225 ..	Algonquin Gas Transmission Co.	Consolidated Edison Co of New York.	08-20-93	B	2,544	N	F	08-01-93	Indef.
ST93-5226 ..	Algonquin Gas Transmission Co.	Providence Gas Co ...	08-20-93	B	56,035	N	F	07-24-93	Indef.
ST93-5227 ..	Algonquin Gas Transmission Co.	Colonia Gas Co	08-20-93	B	11,577	N	F	08-01-93	Indef.
ST93-5228 ..	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co	08-20-93	G-S	409,002	Y	I	07-22-93	04-30-95.
ST93-5229 ..	Tennessee Gas Pipeline Co.	Channel Industries Gas Co.	08-20-93	B	100,000	Y	I	07-22-93	Indef.
ST93-5230 ..	Sabine Pipeline Co ...	NGC Transportation Inc.	08-20-93	G-S	45,000	N	F	07-31-93	Indef.
ST93-5231 ..	Sabine Pipeline Co ...	Texaco Gas Marketing Inc.	08-20-93	G-S	25,000	A	F	07-31-93	Indef.
ST93-5232 ..	Superior Offshore Pipeline Co.	Union Oil Co of California.	08-20-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5233 ..	Natural Gas P/L Co of America.	Catex Energy Inc	08-20-93	G-S	11,401	N	F	08-01-93	08-31-93.
ST93-5234 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5235 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5236 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5237 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5238 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5239 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5240 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5241 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5242 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5243 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5244 ..	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	08-20-93	G-S	5,000	N	F	07-22-93	07-31-93.
ST93-5245 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5246 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5247 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	10,000	A	F	08-01-93	08-31-93.
ST93-5248 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	10,000	A	F	08-01-93	08-31-93.
ST93-5249 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5250 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	2,500	A	F	08-01-93	08-31-93.
ST93-5251 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5252 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5253 ..	Transwestern Pipeline Co.	Richardson Products Co.	08-20-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5254 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	10,000	A	F	08-01-93	08-31-93.
ST93-5255 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5256 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5257 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/ N***	Rate Sch.	Date commenced	Projected termination date
ST93-5258 ..	Transwestern Pipeline Co.	Texaco Gas Marketing, Inc.	08-20-93	G-S	2,500	N	F	08-01-93	08-31-93.
ST93-5259 ..	Transwestern Pipeline Co.	Tennegasco Corp	08-20-93	G-S	2,500	N	F	08-01-93	08-31-93.
ST93-5260 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5261 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5262 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5263 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	5,000	A	F	08-01-93	08-31-93.
ST93-5264 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	3,647	N	F	08-01-93	08-31-93.
ST93-5265 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	3,647	N	F	08-01-93	08-31-93.
ST93-5266 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5267 ..	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	08-20-93	G-S	16,500	A	F	08-05-93	08-31-93.
ST93-5268 ..	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	08-20-93	G-S	10,400	N	F	08-08-93	08-31-93.
ST93-5269 ..	Transwestern Pipeline Co.	Anthem Energy Co., L.P.	08-20-93	G-S	14,600	N	F	08-07-93	08-31-93.
ST93-5270 ..	Transwestern Pipeline Co.	Vintage Gas, Inc	08-20-93	G-S	8,882	N	F	08-01-93	08-31-93.
ST93-5271 ..	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	08-20-93	G-S	10,500	N	F	08-01-93	08-31-93.
ST93-5272 ..	Transwestern Pipeline Co.	Tristar Gas Co	08-20-93	G-S	20,000	N	F	08-01-93	08-31-93.
ST93-5273 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5274 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5275 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5276 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5277 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5278 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5279 ..	Transwestern Pipeline Co.	NGC Transportation, Inc.	08-20-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5280 ..	Transwestern Pipeline Co.	U.S.A. Production Co	08-20-93	G-S	12,067	N	F	08-01-93	08-31-93.
ST93-5281 ..	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	08-20-93	C	50,000	N	I	07-24-93	Indef.
ST93-5282 ..	Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co. of America.	08-23-93	C	375,000	N	I	07-23-93	Indef.
ST93-5283 ..	Delhi Gas Pipeline Corp.	United Gas Pipeline Co.	08-23-93	C	250,000	N	I	07-23-93	Indef.
ST93-5284 ..	K N Energy, Inc	U.S. Gas Transportation, Inc.	08-23-93	G-S	20,000	N	I	08-08-93	Indef.
ST93-5285 ..	Arkla Energy Resources Co.	Excel Gas Marketing, Inc.	08-23-93	G-S	100,000	N	I	07-01-93	Indef.
ST93-5286 ..	Southern Natural Gas Co.	Highland Energy Co ..	08-23-93	G-S	10,000	N	I	08-01-93	Indef.
ST93-5287 ..	Columbia Gulf Transmission Co.	American Hunter Energy.	08-23-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5288 ..	Columbia Gulf Transmission Co.	Atlas Gas Marketing, Inc.	08-23-93	G-S	250	N	I	08-01-93	Indef.
ST93-5289 ..	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc.	08-23-93	G-S	25,000	N	I	08-03-93	Indef.
ST93-5290 ..	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc.	08-23-93	G-S	25,000	N	I	08-03-93	Indef.
ST93-5291 ..	El Paso Natural Gas Co.	County of Los Angeles.	08-23-93	G-S	2,274	N	F	08-01-93	08-31-93.
ST93-5292 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-23-93	G-S	1,200	N	F	08-01-93	08-30-93.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93-5293 ..	El Paso Natural Gas Co.	Arco Oil & Gas Co	08-23-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5294 ..	El Paso Natural Gas Co.	Southwest Gas Corp .	08-23-93	G-S	25,750	N	F	08-01-93	07-31-95
ST93-5295 ..	El Paso Natural Gas Co.	Arco Oil & Gas Co	08-23-93	G-S	10,000	N	F	08-01-93	08-30-93
ST93-5296 ..	Transwestern Pipeline Co.	Taylor Energy Corp ...	08-23-93	G-S	7,500	N	I	06-30-93	Indef.
ST93-5297 ..	Transwestern Pipeline Co.	Mountain Front Pipeline Co., Inc.	08-23-93	G-S	30,000	N	I	07-01-93	Indef.
ST93-5298 ..	Florida Gas Transmission Co.	Coca-Cola Foods	08-23-93	G-S	3,531	N	I	08-01-93	Indef.
ST93-5299 ..	Florida Gas Transmission Co.	Winnie Pipeline Co ...	08-23-93	B	200,000	N	I	08-01-93	Indef.
ST93-5300 ..	Northern Natural Gas Co.	NGC Transportation, Inc.	08-23-93	G-S	200,000	N	F/I	07-20-93	Indef.
ST93-5301 ..	Northern Natural Gas Co.	Southern Natural Gas Co.	08-23-93	G	50,000	N	F/I	07-01-93	Indef.
ST93-5302 ..	Northern Natural Gas Co.	NGC Transportation, Inc.	08-23-93	G-S	100,000	N	F/I	07-01-93	Indef.
ST93-5303 ..	Northern Natural Gas Co.	NGC Transportation, Inc.	08-23-93	G-S	200,000	N	F/I	06-01-93	Indef.
ST93-5304 ..	Texas Gas Transmission Corp.	GGR Energy	08-23-93	G-S	50,000	Y	I	08-01-93	Indef.
ST93-5305 ..	Texas Gas Transmission Corp.	Neste Trading (USA) Inc.	08-23-93	G-S	100,000	Y	I	08-13-93	Indef.
ST93-5306 ..	Texas Gas Transmission Corp.	Arkla Energy Marketing Co.	08-23-93	G-S	100,000	Y	I	08-01-93	Indef.
ST93-5307 ..	El Paso Natural Gas Co.	Enron Gas Marketing, Inc.	08-24-93	G-S	3,600	N	F	08-01-93	09-30-93
ST93-5308 ..	El Paso Natural Gas Co.	Zacky Farms	08-24-93	G-S	350	N	F	08-01-93	08-31-93.
ST93-5309 ..	El Paso Natural Gas Co.	Chevron U.S.A., Inc ..	08-24-93	G-S	10,300	N	F	08-01-93	10-31-93.
ST93-5310 ..	El Paso Natural Gas Co.	Gallagher & Burk, Inc	08-24-93	G-S	20,584	N	F	08-01-93	08-31-93.
ST93-5311 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	2,046	N	F	08-01-93	08-31-93.
ST93-5312 ..	El Paso Natural Gas Co.	Martinez Cogen L.P ..	08-24-93	G-S	8,255	N	F	08-01-93	09-30-93
ST93-5313 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	31	N	F	08-01-93	08-31-93.
ST93-5314 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	2,542	N	F	08-01-93	08-31-93.
ST93-5315 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-24-93	G-S	49	N	F	08-01-93	08-31-93.
ST93-5316 ..	Transwestern Pipeline Co.	New Mexico Natural Gas, Inc.	08-24-93	G-S	500	N	I	07-31-93.	Indef.
ST93-5317 ..	Northern Natural Gas Co.	Peoples Natural Gas Co.	08-24-93	G-S	176,341	N	F/I	06-01-93	Indef.
ST93-5318 ..	Northern Natural Gas Co.	Oxy USA, Inc	08-24-93	G-S	42,466	N	F/I	06-01-93	Indef.
ST93-5319 ..	Tennessee Gas Pipeline Co.	National Fuel Gas Distribution Corp.	08-24-93	G-S	172,288	N	F	08-01-93	Indef.
ST93-5320 ..	Northern Illinois Gas	Broad Street Oil & Gas Co.	08-24-93	C	100,000	N	I	08-04-93	07-31-94.
ST93-5321 ..	Northern Illinois Gas	Natural Gas Clearinghouse.	08-24-93	C	100,000	N	I	07-28-93	07-31-94.
ST93-5322 ..	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	08-25-93	C	10,000	N	I	08-11-93	Indef.
ST93-5323 ..	Arkla Energy Resources Co.	Mountain Iron & Supply Co.	08-25-93	G-S	1,000	N	I	08-19-93	Indef.
ST93-5324 ..	Tennessee Gas Pipeline Co.	Prior Intrastate Corp ..	08-25-93	G-S	90,000	N	I	06-01-93	Indef.
ST93-5325 ..	Tennessee Gas Pipeline Co.	Yuma Gas Corp	08-25-93	G-S	125,000	N	I	07-26-93	Indef.
ST93-5326 ..	Tennessee Gas Pipeline Co.	Transco Liquids Co ...	08-25-93	G-S	132,495	N	I	08-01-93	Indef.
ST93-5327 ..	El Paso Natural Gas Co.	Kelco Division of Merck & Co., Inc.	08-26-93	G-S	36	N	F	08-01-93	08-31-93.

Docket No.	Transporter/Seiler	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93-5328 ..	El Paso Natural Gas Co.	Lockheed Advanced Development Co.	08-26-93	G-S	248	N	F	08-01-93	08-31-93.
ST93-5329 ..	El Paso Natural Gas Co.	Dugan Production Corp.	08-26-93	G-S	103	N	I	07-30-93	Indef.
ST93-5330 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	25	N	F	08-01-93	08-31-93.
ST93-5331 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	1	N	F	08-01-93	08-31-93.
ST93-5332 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	38	N	F	08-01-93	08-31-93.
ST93-5333 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	125	N	F	08-01-93	08-31-93.
ST93-5334 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	10	N	F	08-01-93	08-31-93.
ST93-5335 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	10	N	F	08-01-93	08-31-93.
ST93-5336 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-26-93	G-S	10	N	F	08-01-93	07-31-94.
ST93-5337 ..	Great Lakes Gas Trans., L.P.	AIG Trading Corp	08-26-93	G-S	50,000	N	F	08-10-93	10-31-93.
ST93-5338 ..	Great Lakes Gas Trans., L.P.	AIG Trading Corp	08-26-93	G-S	25,000	N	F	07-29-93	10-31-93.
ST93-5339 ..	Great Lakes Gas Trans., L.P.	GAZ Metropolitan & Co., L.P.	08-26-93	G-S	100,000	N	F	08-03-93	09-30-93.
ST93-5340 ..	Natural Gas P/L Co. of America.	Tide West Trading & Transport Co.	08-26-93	G-S	50,000	N	I	08-07-93	Indef.
ST93-5341 ..	Natural Gas P/L Co. of America.	Eastex Hydrocarbons, Inc.	08-26-93	G-S	11,300	N	F	08-01-93	08-31-93.
ST93-5342 ..	Panhandle Eastern Pipe Line Co.	City of Sunray	08-26-93	G-S	100	N	I	07-27-93	07-31-98.
ST93-5343 ..	Northwest Pipeline Corp.	Development Associates, Inc.	08-26-93	G-S	40,000	N	F	07-01-93	Indef.
ST93-5344 ..	United Gas Pipe Line Co.	Okaioosa County Gas Dist.	08-26-93	G-S	10,000	N	I	08-13-93	12-11-93.
ST93-5345 ..	United Gas Pipe Line Co.	Phillips Petroleum Co	08-26-93	G-S	20,000	N	I	08-16-93	12-14-93.
ST93-5346 ..	United Gas Pipe Line Co.	Delhi Gas Pipeline Corp.	08-26-93	G-S	104,800	N	I	08-10-93	12-08-93.
ST93-5347 ..	United Gas Pipe Line Co.	Olympic Pipeline Co ..	08-26-93	G-S	1,700	N	F	08-16-93	12-14-93.
ST93-5348 ..	United Gas Pipe Line Co.	Anadarko Trading Co	08-26-93	G-S	20,000	N	I	08-13-93	12-11-93.
ST93-5349 ..	United Gas Pipe Line Co.	Seagull Marketing Services, Inc.	08-26-93	G-S	524,000	N	I	08-16-93	12-14-93.
ST93-5350 ..	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	08-26-93	G-S	102,704	N	I	08-13-93	12-11-93.
ST93-5351 ..	Tennessee Gas Pipeline Co.	Interstate Gas Marketing, Inc.	08-26-93	G-S	11,060	N	I	07-28-93	Indef.
ST93-5352 ..	Tennessee Gas Pipeline Co.	Enron Gas Marketing, Inc.	08-26-93	G-S	703,297	N	I	07-27-93	Indef.
ST93-5353 ..	Tennessee Gas Pipeline Co.	City of Admasville	08-26-93	B	1,050	N	I	07-27-93	Indef.
ST93-5354 ..	Tennessee Gas Pipeline Co.	O&R Energy Inc	08-26-93	G-S	300,000	N	I	08-05-93	Indef.
ST93-5355 ..	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	08-26-93	G-HT	500	N	I	06-01-93	Indef.
ST93-5356 ..	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	08-26-93	G-HT	4,000	N	I	05-01-93	Indef.
ST93-5357 ..	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	08-26-93	G-HT	3,520	N	I	07-01-93	Indef.
ST93-5358 ..	ANR Pipeline Co	Elf Exploration, Inc	08-27-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5359 ..	ANR Pipeline Co	Meridian Oil Trading, Inc.	08-27-93	G-S	100,000	N	F	08-01-93	10-31-93.
ST93-5360 ..	ANR Pipeline Co	Jackson Pipeline Co .	08-27-93	B	20,000	N	I	08-01-93	Indef.
ST93-5361 ..	ANR Pipeline Co	OXY USA Inc	08-27-93	G-S	20,000	N	F	08-01-93	10-31-93.
ST93-5362 ..	ANR Pipeline Co	Rochester Gas and Electric Corp.	08-27-93	G-S	150,000	A	I	08-01-93	Indef.
ST93-5363 ..	Trunkline Gas Co	Tyflex, Inc	08-27-93	G-S	100	N	I	08-11-93	Indef.
ST93-5364 ..	Texas Eastern Transmission Corp.	National Fuel Gas Dist. Corp.	08-27-93	G-S	20,000	N	I	08-01-93	10-31-99

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93-5365 ..	Texas Eastern Transmission Corp.	National Fuel Gas Dist. Corp.	08-27-93	G-S	52,652	N	I	08-01-93	10-31-99.
ST93-5366 ..	Texas Eastern Transmission Corp.	Bristol & Warren Gas Co.	08-27-93	G-S	161	N	I	08-01-93	10-31-12.
ST93-5367 ..	Texas Eastern Transmission Corp.	Elizabethtown Gas Co	08-27-93	G-S	2,829	N	I	08-01-93	10-31-99.
ST93-5368 ..	Texas Eastern Transmission Corp.	Providence Gas Co ...	08-27-93	G-S	764	N	I	08-01-93	10-31-12.
ST93-5369 ..	Texas Eastern Transmission Corp.	Middleborough Gas & Electric Dept.	08-27-93	G-S	35	N	I	08-01-93	10-31-12.
ST93-5370 ..	Trunkline Gas Co	AIG Trading Corp	08-27-93	G-S	150,000	N	I	08-11-93	indef.
ST93-5371 ..	Tennessee Gas Pipeline Co.	Nashville Gas Co	08-27-93	B	26,000	N	I	07-30-93	indef.
ST93-5372 ..	Tennessee Gas Pipeline Co.	O&R Energy, Inc	08-27-93	G-S	10,000	N	F	08-30-93	09-01-93.
ST93-5373 ..	Tennessee Gas Pipeline Co.	Texas-Ohio Gas, Inc .	08-27-93	G-S	75,000	N	I	08-02-93	11-13-93.
ST93-5374 ..	Tennessee Gas Pipeline Co.	Woodward Marketing, Inc.	08-27-93	G-S	200,000	N	I	07-29-93	indef.
ST93-5375 ..	Williston Basin Inter. P/L Co.	Natural Gas Processing Co.	08-27-93	G-S	20,495	N	I	07-30-93	07-19-95.
ST93-5376 ..	Williston Basin Inter. P/L Co.	Interenergy Corp	08-27-93	G-S	105,550	A	I	08-09-93	05-31-95.
ST93-5377 ..	Trunkline Gas Co	Eastex Hydrocarbons, Inc.	08-27-93	G-S	50,000	N	I	08-18-93	indef.
ST93-5378 ..	Lone Star Gas Co	Arka Energy Resources, et al.	08-27-93	C	100,000	N	I	08-07-93	indef.
ST93-5379 ..	El Paso Natural Gas Co.	Southern California Edison Co.	08-27-93	G-S	100,000	N	F	08-02-93	08-06-93.
ST93-5380 ..	El Paso Natural Gas Co.	Sunrise Energy Services, Inc.	08-27-93	G-S	9,015	N	F	08-02-93	08-31-93.
ST93-5381 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-27-93	G-S	14,788	N	F	08-01-93	08-31-93.
ST93-5382 ..	El Paso Natural Gas Co.	Anadarko Trading Co	08-27-93	G-S	4,504	N	F	08-01-93	08-31-93.
ST93-5383 ..	El Paso Natural Gas Co.	Southern California Gas Co.	08-27-93	G-S	941	N	F	08-02-93	08-31-93.
ST93-5384 ..	El Paso Natural Gas Co.	Sunrise Energy Services, Inc.	08-27-93	G-S	5,718	N	F	08-02-93	08-31-93.
ST93-5385 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-27-93	G-S	13,882	N	F	08-01-93	08-31-93.
ST93-5386 ..	Natural Gas P/L Co. of America.	Olympic Fuels Co	08-27-93	G-S	13,800	N	F	08-01-93	08-31-93.
ST93-5387 ..	Gas Co. of New Mexico.	El Paso Natural Gas Co.	08-27-93	G-HT	20,000	N	I	08-28-93	indef.
ST93-5388 ..	Kentucky West Virginia Gas Co.	Kentucky Hydrocarbon.	08-30-93	G-S	20,000	N	I	07-01-93	indef.
ST93-5389 ..	ANR Pipeline Co	Trinity Pipeline, Inc ...	08-30-93	G-S	20,000	N	F	08-01-93	10-31-93.
ST93-5390 ..	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	08-30-93	C	10,000	N	I	07-29-93	indef.
ST93-5391 ..	ANR Pipeline Co	AIG Trading Corp	08-30-93	G-S	100,000	N	F	08-01-93	10-31-93.
ST93-5392 ..	ANR Pipeline Co	O&R Energy, Inc	08-30-93	G-S	50,000	N	F	08-04-93	10-31-93.
ST93-5393 ..	Tennessee Gas Pipeline Co.	Kerr-McGee Corp	08-30-93	G-S	450,000	N	I	08-01-93	indef.
ST93-5394 ..	Tennessee Gas Pipeline Co.	Ocean State Power ...	08-30-93	G-S	110,000	N	I	08-08-93	indef.
ST93-5395 ..	Tennessee Gas Pipeline Co.	Distrigas of Massachusetts Corp.	08-30-93	B	110,000	N	I	07-31-93	indef.
ST93-5396 ..	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	08-30-93	G-S	91,500	N	I	08-05-93	indef.
ST93-5397 ..	Tennessee Gas Pipeline Co.	Pennsylvania and Southern Gas Co.	08-30-93	G-S	1,500	N	F	08-01-93	indef.
ST93-5398 ..	Tennessee Gas Pipeline Co.	MG Natural Gas Corp	08-30-93	G-S	160,000	N	I	08-01-93	indef.
ST93-5399 ..	Tennessee Gas Pipeline Co.	East Ohio Co	08-30-93	B	10,000	N	I	08-07-93	indef.
ST93-5400 ..	Tennessee Gas Pipeline Co.	Equitable Resources Marketing Co.	08-30-93	G-S	307,500	N	I	08-05-93	indef.
ST93-5401 ..	Westar Transmission Co.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	06-23-93	indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93-5402 ..	Westar Transmission Co.	Northern Natural Gas Co.	08-30-93	C	50,000	N	I	06-11-93	Indef.
ST93-5403 ..	Transamerican Natural Gas Corp.	Florida Gas Transmission Co.	08-30-93	C	50,000	N	I	12-02-92	Indef.
ST93-5404 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	01-15-92	Indef.
ST93-5405 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	25,000	N	I	01-02-92	Indef.
ST93-5406 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	25,000	N	I	09-14-92	Indef.
ST93-5407 ..	Transamerican Natural Gas Corp.	Florida Gas Transmission Co.	08-30-93	C	25,000	N	I	07-22-92	Indef.
ST93-5408 ..	Transamerican Natural Gas Corp.	Florida Gas Transmission Co.	08-30-93	C	50,000	N	I	12-01-92	Indef.
ST93-5409 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	25,000	N	I	05-09-92	Indef.
ST93-5410 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	11-06-92	Indef.
ST93-5411 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5412 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	50,000	N	I	01-14-92	Indef.
ST93-5413 ..	Transamerican Natural Gas Corp.	Trunkline Gas Co	08-30-93	C	25,000	N	I	06-20-92	Indef.
ST93-5414 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	25,000	N	I	11-02-92	Indef.
ST93-5415 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	25,000	N	I	10-22-92	Indef.
ST93-5416 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	15,000	N	I	03-01-92	Indef.
ST93-5417 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	50,000	N	I	04-22-92	Indef.
ST93-5418 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	15,000	N	I	10-22-92	Indef.
ST93-5419 ..	Transamerican Natural Gas Corp.	Transcontinental Gas P/L Corp.	08-30-93	C	15,000	N	I	04-01-92	Indef.
ST93-5420 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Corp.	08-30-93	C	15,000	N	I	07-24-92	Indef.
ST93-5421 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Corp.	08-30-93	C	50,000	N	I	11-01-92	Indef.
ST93-5422 ..	Transamerican Natural Gas Corp.	Texas Eastern Transmission Corp.	08-30-93	C	15,000	N	I	10-02-92	Indef.
ST93-5423 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co., et al.	08-30-93	C	25,000	N	I	10-01-92	Indef.
ST93-5424 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	25,000	N	I	08-28-92	Indef.
ST93-5425 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5426 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	02-01-92	Indef.
ST93-5427 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5428 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	07-11-92	Indef.
ST93-5429 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5430 ..	Transamerican Natural Gas Corp.	United Gas Pipe Line Co.	08-30-93	C	10,000	N	I	03-03-92	Indef.
ST93-5431 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	02-22-92	Indef.
ST93-5432 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	05-08-92	Indef.
ST93-5433 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	01-17-92	Indef.
ST93-5434 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	10-09-92	Indef.
ST93-5435 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	01-08-92	Indef.
ST93-5436 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	50,000	N	I	08-21-92	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93-5437 ..	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	08-30-93	C	25,000	N	I	03-04-92	Indef.
ST93-5438 ..	Transamerican Natural Gas Corp.	Southern Natural Gas Co.	08-30-93	C	50,000	N	I	12-05-92	Indef.
ST93-5439 ..	Transamerican Natural Gas Corp.	Southern Natural Gas Co.	08-30-93	C	25,000	N	I	12-31-92	Indef.
ST93-5440 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-24-92	Indef.
ST93-5441 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	05-23-92	Indef.
ST93-5442 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-07-92	Indef.
ST93-5443 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	05-08-92	Indef.
ST93-5444 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-07-92	Indef.
ST93-5445 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	01-01-92	Indef.
ST93-5446 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	04-02-92	Indef.
ST93-5447 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	25,000	N	I	02-19-92	Indef.
ST93-5448 ..	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	08-30-93	C	50,000	N	I	10-30-90	Indef.
ST93-5449 ..	Transcontinental Gas P/L Corp.	National Fuel Gas Dist. Corp.	08-31-93	G-S	25,442	Y	I	08-01-93	10-31-04.
ST93-5450 ..	Transcontinental Gas P/L Corp.	ANR Production Co ..	08-31-93	G-S	2,000	N	I	08-01-93	Indef.
ST93-5451 ..	Transcontinental Gas P/L Corp.	Nerco Oil & Gas, Inc .	08-31-93	G-S	975,000	N	I	08-20-93	Indef.
ST93-5452 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-30-93	G-S	580	N	F	08-01-93	08-31-93.
ST93-5453 ..	El Paso Natural Gas Co.	Broad Street Oil & Gas Co.	08-30-93	G-S	4,540	N	F	08-01-93	08-31-93.
ST93-5454 ..	Natural Gas P/L Co. of America.	American Central Gas Cos., Inc.	08-30-93	G-S	100,000	N	I	05-04-90	Indef.
ST93-5455 ..	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	08-30-93	G-S	40,000	N	F	05-01-90	08-31-93.
ST93-5456 ..	Northern Natural Gas Co.	Mountain Front Pipeline Co., Inc.	08-30-93	B	30,000	N	F/I	06-28-93	Indef.
ST93-5457 ..	Northern Natural Gas Co.	Quivira Gas Co	08-30-93	G-S	20,000	N	F/I	04-01-93	Indef.
ST93-5458 ..	Northern Natural Gas Co.	Virginia Public Utilities	08-30-93	G-S	1,000	N	F	05-28-93	Indef.
ST93-5459 ..	El Paso Natural Gas Co.	Access Energy Corp .	08-30-93	G-S	2,747	N	F	08-01-93	08-31-93.
ST93-5460 ..	Columbia Gulf Transmission Co.	Excel Gas Marketing, Inc.	08-31-93	G-S	150,000	N	I	08-21-93	Indef.
ST93-5461 ..	Iroquois Gas Trans. System, L.P.	Gaslantic Corp	08-31-93	G-S	20,000	N	I	08-02-93	Indef.
ST93-5462 ..	Iroquois Gas Trans. System, L.P.	Appalachian AS Sales	08-31-93	G-S	29,126	N	I	07-30-93	Indef.
ST93-5463 ..	Natural Gas P/L Co. of America.	Green Valley Chemical Corp.	08-31-93	G-S	4,000	N	F	08-01-93	05-31-96.
ST93-5464 ..	Pacific Gas Transmission Co.	Pacific Gas and Electric Co.	08-31-93	G-S	203,000	N	I	08-04-93	Indef.
ST93-5465 ..	Ozark Gas Transmission System.	Tristar Gas Marketing Co.	08-31-93	G-S	10,000	N	F/I	08-01-93	Indef.
ST93-5466 ..	Mississippi River Trans. Corp.	United Cities Gas Co	08-31-93	G-S	300	N	F	08-01-93	Indef.
ST93-5467 ..	ANR Pipeline Co	Centra Gas Manitoba Inc.	08-31-93	G-S	18,000	N	I	08-11-93	08-31-93.
ST93-5468 ..	ANR Pipeline Co	Northern Illinois Gas Co.	08-31-93	G-S	300,000	N	I	08-07-93	Indef.
ST93-5469 ..	ANR Pipeline Co	Philadelphia Gas Works.	08-31-93	G-S	100,000	A	I	08-18-93	10-31-93.
ST93-5470 ..	ANR Pipeline Co	Gas Metropolitan and Co., L.P.	08-31-93	G-S	51,379	Y	I	08-06-93	Indef.
ST93-5471 ..	Panhandle Eastern Pipe Line Co.	Arco Natural Gas Marketing, Inc.	08-31-93	G-S	100,000	N	I	08-01-93	07-31-98.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Sch.	Date commenced	Projected termination date
ST93-5472 ..	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	08-31-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5473 ..	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	08-31-93	G-S	3,100	N	F	08-01-93	08-31-93.
ST93-5474 ..	Panhandle Eastern Pipe Line Co.	Tristar Gas Marketing Co.	08-31-93	G-S	20,000	N	I	08-01-93	08-31-93.
ST93-5475 ..	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, Inc.	08-31-93	G-S	5,240	N	F	08-01-93	10-31-93.
ST93-5476 ..	Panhandle Eastern Pipe Line Co.	KN Gas Marketing, Inc.	08-31-93	G-S	5,000	N	F	08-01-93	08-31-93.
ST93-5477 ..	Panhandle Eastern Pipe Line Co.	Gas Energy Development.	08-31-93	G-S	20,000	N	I	08-01-93	07-31-98.
ST93-5478 ..	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co.	08-31-93	G-S	4,199	Y	F	08-01-93	07-31-98.
ST93-5479 ..	Panhandle Eastern Pipe Line Co.	Centana Energy Corp	08-31-93	G-S	11,000	Y	F	08-01-93	09-30-93.
ST93-5480 ..	Panhandle Eastern Pipe Line Co.	Union Pacific Fuels, Inc..	08-31-93	G-S	25,000	N	I	08-01-93	07-31-08.
ST93-5481 ..	Panhandle Eastern Pipe Line Co.	Amgas, Inc	08-31-93	G-S	1,497	N	F	08-01-93	08-31-93.
ST93-5482 ..	Panhandle Eastern Pipe Line Co.	Catex Energy, Inc	08-31-93	G-S	2,511	N	F	08-02-93	08-31-93.
ST93-5483 ..	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, inc.	08-31-93	G-S	10,000	N	F	08-01-93	08-31-93.
ST93-5484 ..	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, inc.	08-31-93	G-S	127	N	F	08-01-93	08-31-93.
ST93-5485 ..	Panhandle Eastern Pipe Line Co.	Gas Energy Development.	08-31-93	G-S	3,000	N	F	08-01-93	08-31-93.
ST93-5486 ..	Panhandle Eastern Pipe Line Co..	Ives Corp	08-31-93	G-S	500	N	F	08-01-93	07-31-94.
ST93-5487 ..	Panhandle Eastern Pipe Line Co.	Eastex Ohio Gas Co .	08-31-93	G-S	10,000	N	F	08-01-93	09-30-93.
ST93-5488 ..	Panhandle Eastern Pipe Line Co.	Gas Energy Development.	08-31-93	G-S	20,000	N	I	08-01-93	07-31-98.
ST93-5489 ..	Florida Gas Transmission Co.	City Gas Co. of Florida.	08-31-93	G-S	35,810	N	F	08-01-93	Indef.
ST93-5490 ..	Florida Gas Transmission Co.	Cargill Fertilizer, Inc ..	08-31-93	G-S	3,082	N	I	08-01-93	Indef.
ST93-5491 ..	Valero Transmission, L.P.	Northern Natural Gas Co.	08-31-93	C	100,000	N	I	08-22-93	Indef.
ST93-5492 ..	Delhi Gas Pipeline Co	Arkla Energy Resources.	08-31-93	C	55,000	N	I	08-01-93	Indef.
ST93-5493 ..	Delhi Gas Pipeline Co	Panhandle Eastern Gas Pipeline Co.	08-31-93	C	375,000	N	I	08-01-93	Indef.
ST93-5494 ..	Delhi Gas Pipeline Co	Arkla Energy Resources.	08-31-93	C	375,000	N	I	08-01-93	Indef.
ST93-5495 ..	Delhi Gas Pipeline Co	ANR Pipeline Co., et al.	08-31-93	C	5,000	N	I	08-05-93	Indef.
ST93-5496 ..	Delhi Gas Pipeline Co	ANR Pipeline Co., et al.	08-31-93	C	25,000	N	I	08-01-93	Indef.
ST93-5497 ..	Gulf States Pipeline Corp.	Gulf States Transmission Corp.	8-31-93	C	30,000	N	I	08-01-93	Indef.
ST93-5498 ..	Valero Transmission, L.P.	Northern Natural Gas Co.	8-31-93	C	100,000	N	I	08-22-93	Indef.
ST93-5499 ..	Midcon Texas Pipeline Corp.	United Texas Trans. Co., et al.	8-31-93	C	200,000	N	I	08-01-93	Indef.
ST93-5500 ..	Tejas Gas Corp	Mississippi River Trans., et al.	8-31-93	C	15,000	N	I	07-13-93	07-13-95.
ST93-5501 ..	ONG Transmission Co.	Arkla Energy Resources.	8-31-93	C	50,000	N	I	08-01-93	Indef.
ST93-5502 ..	ONG Transmission Co.	Phillips Gas Pipeline Co.	8-31-93	C	100,000	N	I	08-01-93	Indef.
ST93-5503 ..	ONG Transmission Co.	Arkla Energy Resources.	8-31-93	C	10,000	N	I	08-01-93	Indef.
ST93-5504 ..	Florida Gas Transmission Co.	Kissimmee Utility Authority.	8-31-93	G-S	5,526	N	F	08-01-93	Indef.
ST93-5505 ..	Florida Gas Transmission Co.	Peoples Gas System, Inc.	8-31-93	G-S	217,167	N	F	08-01-93	Indef.
ST93-5506 ..	Florida Gas Transmission Co.	Cargill Fertilizer, Inc ..	8-31-93	G-S	1,238	N	F	08-01-93	Indef.

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	AFF. Y/A/N***	Rate Scn.	Date commenced	Projected termination date
ST93-5507 ..	Florida Gas Transmission Co.	Florida Public Utilities Co.	8-31-93	G-S	4,315	N	I	08-01-93	Indef.
ST93-5508 ..	Florida Gas Transmission Co.	Chesapeake Utilities Corp.	8-31-93	G-S	20,023	N	F	08-01-93	Indef.
ST93-5509 ..	Florida Gas Transmission Co.	City of Vero Beach	8-31-93	G-S	9,120	N	F	08-01-93	Indef.
ST93-5510 ..	Florida Gas Transmission Co.	Peoples Gas System, Inc.	8-31-93	G-S	6,308	N	I	08-01-93	Indef.
ST93-5511 ..	Florida Gas Transmission Co.	Florida Public Utilities Co.	8-31-93	G-S	20,412	N	F	08-01-93	Indef.
ST93-5512 ..	Florida Gas Transmission Co.	City Gas Co of Florida.	8-31-93	G-S	1,125	N	F	08-01-93	Indef.
ST93-5513 ..	Florida Gas Transmission Co.	City Gas Co. of Florida.	8-31-93	G-S	300	N	F	08-01-93	Indef.

*Notice of Transactions Does Not Constitute a Determination that Filings Comply with Commission Regulations in Accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/10/85).

**Estimated Maximum Daily Volumes Includes Volumes Reported by the Filing Company in MMBTU, MCF and DT.

***Affiliation of Reporting Company to Entities Involved in the Transaction. A "Y" Indicates Affiliation, an "A" Indicates Marketing Affiliation, and a "N" Indicates no Affiliation.

[FR Doc. 93-25989 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR94-1-000]

Bay Gas Storage Co., Ltd.; Petition for Rate Approval

October 18, 1993.

Take notice that on October 12, 1993, Bay Gas Storage Company, Ltd. (Bay Gas) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable market based rates for firm and interruptible storage services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Bay Gas states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate Bay Gas system in the State of Alabama. Bay Gas proposes that the rates become effective upon approval of the instant petition.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed

with the Secretary of the Commission on or before November 8, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-25990 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES-93-43-005]

Citizens Utilities Co.; Amended Application

October 19, 1993

Take notice that by letter order dated September 7, 1993, Citizens Utilities Company (Citizens) was authorized through November 30, 1995, to issue not more than \$1.25 billion of unsecured promissory notes; \$750 million aggregate principal amount of long term debt securities; and up to \$500 million in preferred and common stock with the total amount of securities outstanding at any one time limited to \$1.25 billion. On October 14, 1993, Citizens amended its application to request authorization to allow these issuances to be used to fund other acquisitions that may become available during the authorization period or for other general corporate purposes.

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 October 27, 1993. Protests will be

considered by the Commission 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 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. 93-26080 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-161-014 and RP91-160-011]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 18, 1993.

Take notice that on October 13, 1993, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) (collectively Columbia) tendered for filing proposed changes to their respective FERC Gas Tariffs, First Revised Volumes No. 1, to be effective October 1, 1993 as set forth on Appendices A and B to the filing.

Columbia states the tariff sheets listed on Appendices A and B to the filing set forth the rates applicable to the settling and non-settling parties to the Stipulation and Agreement in Docket Nos. RP91-160-000, et al. and RP91-161-000, et al. as approved by the Commission on September 29, 1993.

Columbia states that copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25991 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-20-000]

Field Gas Gathering Inc.; Petition for Declaratory Order

October 18, 1993.

Take notice that on October 12, 1993, Field Gas Gathering Inc. (Field Gas Gathering), 4 Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP94-20-000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)) for a declaratory order disclaiming jurisdiction over its partial interest acquired from Superior Offshore Pipeline Company (SOPCO) in a 12-inch diameter pipeline extending from a production platform in West Cameron Block 331 to a subsea interconnection with the High Island Offshore System (HIOS) in West Cameron Block 342, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25992 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-22-000]

Northern Border Pipeline Co.; Application for Abandonment and Certificate Authority

October 18, 1993.

Take notice that on October 13, 1993, Northern Border Pipeline Company (Northern Border), 111 South 103rd Street, Omaha, Nebraska 68124-1000, filed an application pursuant to sections 7(b) and (c) of the Natural Gas Act and section 9 of the Alaska Natural Gas Transportation Act, for (i) permission and approval to abandon its certificate authorization to transport natural gas in interstate commerce for Northern Natural Gas Company (Northern); and (ii) certificate authorization to provide firm natural gas transportation service in interstate commerce to Pan-Alberta Gas (U.S.) Inc. (PAG-US), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern Border proposes to abandon the firm transportation of 200,000 Mcf per day of natural gas volumes for Northern and provide firm transportation of 200,000 Mcf per day of natural gas volumes for PAG-US. The natural gas volumes transported by Northern Border for PAG-US will be received at Port of Morgan, Montana for delivery at Aberdeen, South Dakota; Welcome, Minnesota; and Ventura, Iowa. The primary term of the transportation arrangement extends through October 31, 2001. Northern Border has also requested a limited waiver of Order Nos. 636-A and 636-B in order to allow PAG-US to participate in Northern Border's temporary capacity release program for the proposed transportation as set forth in Subsection 27.2 of the General Terms and Conditions of Northern Border's tariff.

Northern Border states that in Northern's Stipulation and Agreement (S&A) filed with the Commission on May 7, 1993 in Docket No. RS92-8-001, et al. and approved by the Commission's order issued July 16, 1993, 64 FERC ¶61,073 (1993), Northern proposed, among other things, as part of its reverse auction process, to assign to PAG-US 200,000 Mcf/d of Northern's capacity on Northern Border along with its associated Canadian gas purchase

agreement with Northwest Alaskan Pipeline Company (Northwest Alaskan).

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10) on or before October 25, 1993. 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 party wishing to become a party to this proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25993 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-123-032]

Northwest Alaskan Pipeline Co.; Application for Abandonment and Certificate Amendment

October 18, 1993.

Take notice that on October 15, 1993, Northwest Alaskan Pipeline Company (Northwest Alaskan), One Williams Center, Tulsa, Oklahoma 74172, filed in Docket No. CP78-123-032, an application pursuant to section 7 of the Natural Gas Act and section 9 of the Alaska natural Gas Transportation Act (ANGTA) of 1976. By such application, Northwest Alaskan seeks to: (1) Abandon the sale to Northern Natural Gas Company (Northern) of a daily

average of 200,000 Mcf of Canadian natural gas transported through the Eastern Leg of the Alaskan Natural Gas Transportation System (ANGTS) previously authorized by the Commission in Docket No. CP78-123, et al; and (2) amend the certificate of public convenience and necessity previously granted by the Commission in Docket Nos. CP78-123, et al. to authorize the sale for resale to Pan-Alberta Gas (U.S.) Inc. (PAG-US) as a replacement for Northern of an average daily quantity of 200,000 Mcf of Canadian natural gas transported through the Eastern Leg of the ANGTS.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 25, 1993. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25994 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-753-000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

October 18, 1993.

Take notice that on October 30, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93-753-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, operate, and own new mainline taps, valves, and appurtenant facilities at five locations in Utah and Colorado. Northwest also proposes to construct and operate the measurement and any other interconnecting facilities to be owned by Mid-America Pipeline Company (MAPCO), under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with

the Commission and open to public inspection.

Northwest states that the Mainline Tap facilities and the meter station facilities would be constructed at a cost of \$15,000 to serve five new pump stations being constructed by MAPCO. Northwest indicates that it would make transportation deliveries to the delivery meter stations under firm and interruptible basis.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25995 Filed 10-21-93 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-86-001]

Pacific Gas Transmission Co.; Annual Charge Adjustment Errata

October 18, 1993.

Take notice that on October 13, 1993, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Fifth Revised Sheet No. 5, with an effective date of October 1, 1993.

PGT states that above tariff sheet has been revised to reflect a correction to the Monthly Demand and Commodity Unit Charges, which were incorrectly submitted in PGT's Annual Charge Adjustment filing at Docket TM94-1-86-000 filed September 1, 1993, as well as a pagination error. PGT requests waiver of FERC and PGT tariff regulations to allow this corrected tariff sheet to become effective October 1, 1993, as approved by FERC in its order dated September 30, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's

Rules of Practice and Procedure. All such protests should be filed on or before October 25, 1993. 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. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25996 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-28-000]

Pan-Alberta Gas (U.S.) Inc.; Application for Abandonment and Certificate Authority

October 18, 1993.

Take notice that on October 14, 1993 Pan-Alberta Gas (U.S.) Inc. (PAG-US), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada, T2P 3V3, filed an abbreviated application pursuant to section 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b), section 9 of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. 719g, and part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 157, for permission and approval to abandon the sale of up to 100,000 Mcf of natural gas per day to Northern Natural Gas Company (Northern) all as more fully set forth in the application which is on file with the Commission and open to public inspection. PAG-US requests that the Commission find that the authorizations requested by the application are necessary or related to the construction and initial operation of the Alaska Natural Gas Transportation System (ANGTS). PAG-US requests further that the Commission waive any electronic filing requirements to the extent that they might otherwise apply to this application.

PAG-US states that the requested abandonment is consistent with the public convenience and necessity because, among other things, it will relieve Northern of gas supply obligations which, after restructuring, will no longer be needed for Northern to meet sales requirements, and it will permit Northern's services to be restructured in a manner that does not violate the international obligations of the U.S. to the ANGTS project. PAG-US states further that it is submitting this application in conjunction with contemporaneous related filings of Northwest Alaskan Pipeline Company and Northern Border Pipeline Company.

PAG-US states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10) on or before October 25, 1993. 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 party wishing to become a party to this proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25997 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-19-003]

**Superior Offshore Pipeline Co.;
Application**

October 18, 1993.

Take notice that on October 12, 1993, Superior Offshore Pipeline Company (SOPCO), 12450 Greenspoint Drive, Houston, Texas, 77060-1991, filed in Docket No. CP94-19-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its interest in certain pipeline facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, SOPCO proposes to abandon its 50 percent interest in the West Cameron Block 331-A line which extends from a production platform in West Cameron Block 331 to a subsea tap in West Cameron Block 332 and its 54.29 percent interest in the West Cameron Block 331-B line which extends from a subsea tap in West Cameron Block 332 to a point of interconnection with High Island Offshore System (HIOS) in West Cameron Block 342. SOPCO states that its interest in the West Cameron Block 331-A line and the West Cameron Block 331-B line has been disposed of by sale to Field Gas Gathering Inc. on September 30, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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 National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 SOPCO to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25998 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-57-001]

**Superior Offshore Pipeline Co.;
Amendment**

October 18, 1993.

Take notice that on October 12, 1993, Superior Offshore Pipeline Company (SOPCO), 12450 Greenspoint Drive, Houston, Texas, 77060-1991, filed to amend its petition in Docket No. CP93-57-000 for a declaratory order dislocating jurisdiction over all of its facilities and operations, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, SOPCO proposes to delete from the description of its facilities in Docket No. CP93-57-000 those designated as the "HIOS Lateral." SOPCO states that the HIOS Lateral is composed of the West Cameron Block 331-A line which extends from a production platform in West Cameron Block 331 to a subsea tap in West Cameron Block 332 and the West Cameron Block 331-B line which extends from a subsea tap in West Cameron Block 332 to a point of interconnection with High Island Offshore System (HIOS) in West Cameron Block 342. SOPCO states that its interest in the HIOS Lateral has been disposed of by sale to Field Gas Gathering Inc. on September 30, 1993.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 93-25999 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT94-1-000]

**Texas Eastern Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

October 18, 1993.

Take notice that on October 8, 1993 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that in light of the Commission's August 2, 1993 "Order on Compliance Filing, and Granting in Part and Denying in Part Rehearing" for Equitrans, Inc. (Equitrans) in Docket No. RS92-15 et al., (August 2 Order), this filing is submitted for the purpose of reflecting that, pursuant to the August 2 Order, an Equitrans customer, Equitable Gas Company (Equitable), became a direct customer of Texas Eastern, effective September 1, 1993, by taking assignment as of August 31, 1993 of all service rights attributable to Equitrans' service agreement with Texas Eastern under Texas Eastern's Rate Schedule FT-1.

In order to reflect the transfer of Equitrans' entitlements to Equitable, Texas Eastern states that it is submitting Second Revised Sheet Nos. 546-551, 553-558, 560-565, 567-572, 575-583 and 599-601 to reflect modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1. Upon receipt of the executed service agreement from Equitable, Texas Eastern states that it will file with the Commission the executed service agreement and update the Index of Firm Customers contained in its FERC Gas Tariff, Sixth Revised Volume No. 1.

Also, in addition to the changes discussed above, Texas Eastern states that it is submitting Second Revised Sheet Nos. 547, 550, 554, 557, 561, 564, 568, 571, 576, 579, 582 and 600 to reflect the modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1 necessary to reflect a permanent reallocation of Base and Operational Segment Capacity Entitlements, pursuant to the Commission's Regulations promulgated in Order No.

636-A, from Lawrenceburg Gas Company to Midwest Natural Gas Company for North Vernon, Indiana under Texas Eastern's Rate Schedule SCT. Texas Eastern states that both parties to the reallocation have agreed to the effective date of September 1, 1993.

The proposed effective date of the tariff sheets is September 1, 1993, the effective date of assignment of Equitrans' entitlements to Equitable and the reallocation between the Rate Schedule SCT customers as described above. Texas Eastern requests that the Commission waive all necessary rules and regulations to permit the tariff sheets listed on Appendix A to become effective on September 1, 1993.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. A copy of the filing has also been served on Equitable, Midwest Natural Gas Company for North Vernon, Indiana, and Lawrenceburg Gas Company.

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. All such motions or protests should be filed on or before October 25, 1993. 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. 93-26000 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-108-001]

**Texas Eastern Transmission Corp.;
Amendment**

October 18, 1993.

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed to amend its application in Docket No. CP93-108-000 for a certificate of public convenience and necessity authorizing it to provide a new incremental firm transportation service pursuant to Rate Schedule FTS-11 and to construct and operate the associated incremental facilities required to perform the

proposed transportation service, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Texas Eastern requested authorization in Docket No. CP93-108-000 to construct, install, own and operate the following facilities required to provide the proposed transportation service:

(a) 3.0 miles of 30-inch diameter pipeline in Warren County, Ohio;

(b) 1.4 mile of 36-inch diameter pipeline in Monroe County, Ohio;

(c) 0.96 mile of 36-inch diameter pipeline loop in Greene County, Pennsylvania;

(d) replace approximately 1.07 miles of 24-inch diameter pipeline with 36-inch diameter pipeline at the Uniontown Compressor Station discharge in Somerset County, Pennsylvania;

(e) replace approximately 1.00 mile of 24-inch diameter pipeline with 36-inch diameter pipeline at the Bedford Compressor Station discharge in Fulton County, Pennsylvania; and

(f) replace approximately 1.21 miles of 20-inch diameter pipeline with 36-inch diameter pipeline at the discharge of Eagle Compressor Station in Bucks County, Pennsylvania.

Texas Eastern indicated that the facilities proposed in Docket No. CP93-108-000 would be used to render firm incremental transportation of up to 11,600 Dth equivalent of natural gas per day for Staten Island Cogeneration Corporation (Staten Island) from the existing point of interconnection between Texas Eastern and ANR Pipeline Company (ANR) near Lebanon, Ohio to an existing point of interconnection between the facilities of Texas Eastern and the Brooklyn Union Gas Company (BUG) at Goethals Bridge, New York.

In Docket No. CP93-108-001 Texas Eastern indicates that its original proposal is unchanged except for the redesign of the proposed facility additions and the resulting changes to the proposed Rate Schedule FTS-11 initial rate as a result of the facility changes. In lieu of the facilities referenced above, Texas Eastern in the instant application requests authority to install, construct, own and operate the following additions to its pipeline system together with appurtenant facilities:

(a) Approximately 1.88 miles of 24" pipeline between Lebanon, Ohio and Five Points, Ohio;

(b) Approximately 1.48 miles of 36" pipeline loop between Somerset, Ohio and Summerfield, Ohio;

(c) Approximately 2.37 miles of 36" pipeline loop between Holbrook,

Pennsylvania and Uniontown, Pennsylvania;

(d) Approximately 0.55 miles of 36" pipeline loop between Uniontown, Pennsylvania and Bedford, Pennsylvania; and

(e) Approximately 1.3 miles of 36" pipeline loop between Bedford, Pennsylvania and Chambersburg, Pennsylvania.

Texas Eastern indicates that the changes reflected in Docket No. CP93-108-001 are necessary to accommodate changes in the proposed in-service date for Staten Island from November 1, 1994, to November 1, 1995. Texas Eastern states that the estimated cost of the proposed amended facilities is \$15,711,400.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 8, 1993, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 93-26001 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-20-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

(October 18, 1993).

Take notice that on October 13, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Sheet No. 215
 First Revised Sheet No. 216
 First Revised Sheet No. 217
 First Revised Sheet No. 246
 First Revised Sheet No. 247
 First Revised Sheet No. 248

Texas Eastern states that on October 4, 1993, the Commission issued Order No.

559, the final rule in Docket No. RM93-8-000. By this order, the Commission states it is amending certain regulations and removing certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). Section 5 of the OCSLA requires open-access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OSC). The pertinent regulations were promulgated in Order No. 509, and are contained in subpart K of part 284 of the Commission's regulations. Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program and the regulation which provides for abandonment authority.

Pursuant to Order No. 559, Texas Eastern states that it submits the above captioned tariff sheets to remove provisions from its currently effective Rate Schedules FT-1 and IT-1 which specifically implement certain regulations promulgated in Order No. 509.

Texas Eastern respectfully requests that the Commission waive all necessary rules and regulations to permit the above referenced tariff sheet to become effective on November 1, 1993, which is the effective date of Order No. 559.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

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. All such motions or protests should be filed on or before October 25, 1993. 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. 93-26002 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-3-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 18, 1993.

Take notice that on October 13, 1993 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to: (1) Transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X-42 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS, (2) transportation services purchased from National Fuel under its Rate Schedule X-54 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS-2, (3) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS the costs of which are included (4) storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S-2, (5) transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT-NT, (6) transportation services purchased from CNG under its Rate Schedule X-74 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT-NT and (7) transportation services purchased from National Fuel under its Rate Schedule X-58 the costs of which are included in the rates and charges payable under TGPL's Niagara Import Point Project—System Expansion (NIPPs-SE). The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, Section 4 of TGPL's Rate Schedule SS-2, Section 26 of the General Terms and Conditions, Section 8.01(i) of TGPL's NIPPs-SE Rate Schedules X-314, X-315, X-316, X-317, X-318 and X-324 and Section 4 of TGPL's Rate Schedule FT-NT.

TGPL states that included in Appendices B through F attached to the filing are the explanations of the rate changes and details regarding the computation of the revised LSS, SS-2, S-2, NIPPs-SE and FT-NT rates.

TGPL states that copies of the filing are being mailed to each of its LSS, SS-

2, S-2, NIPPs-SE and FT-NT customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 25, 1993. 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. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-26003 Filed 10-21-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of October 1 Through October 8, 1993

During the Week of October 1 through October 8, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently

omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 18, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS [Week of Oct. 1 through Oct. 8, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 15, 1993	Browning Elementary #9, Browning, Montana.	RR272-118	Request for modification/rescission in the crude oil refund proceeding. <i>If Granted:</i> The August 24, 1993 Decision and Order issued to Browning Elementary #9 would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Oct. 5, 1993	John W. Osenbaugh, Lucas, Iowa	LFA-0324	Appeal of an information request denial. <i>If Granted:</i> The August 23, 1993 Freedom of Information Request Denial issued by the Golden Field Office would be rescinded, and John W. Osenbaugh would receive access to budget and pricing information and contract progress reports for the contract between DOE's National Renewable Energy Laboratory and Battelle Memorial Institute for research on biomass gasification.
Oct. 7, 1993	Rand Oil Company, Groesbeck, Texas ..	LEE-0053	Exception to the reporting requirements. <i>If Granted:</i> Rand Oil Company would not be required to file Form EIA-782-B, Resellers/Retailers' Monthly Petroleum Product Sales Report.
Do	Ted True, inc. and Ted W. True, Washington, DC.	LEF-0015	Implementation of special refund procedures. <i>If Granted:</i> The office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, Subpart V, in connection with the settlement approved in an October 25, 1990 order of the U.S. Bankruptcy Court for the Northern District of Texas.
Do	Telum, Inc.	LEF-0114	Implementation of special refund procedures. <i>If Granted:</i> The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, Subpart V, in connection with May 30, 1990 Consent Order which the DOE entered into with Telum, Inc.
Do	Texaco/Billy's Texaco, Capitol Heights, Maryland.	RR321-136	Request for modification/rescission in the Texaco refund proceeding. <i>If Granted:</i> The September 15, 1993 Dismissal Letter (RF321-19194) issued to Billy's Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
Do	Valley Times, Pleasanton, California	LFA-0325,	Appeal of an information request denial. <i>If Granted:</i> The September 3, 1993 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and Valley Times would receive access to expunged witness names, pronouns, and other information from two reports of the Office of the Inspector General concerning the transfer of technology at the Lawrence Livermore Laboratory.

REFUND APPLICATIONS RECEIVED WEEK OF OCTOBER 1 THROUGH OCTOBER 8, 1993

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/30/93	Shannon County School District 65	RA272-55.
10/1/93 thru 10/8/93	Atlantic Richfield refund applications received	RF304-14614 thru RF304-14647.
10/1/93 thru 10/8/93	Texaco Oil refund applications received	RF321-19918 thru RF321-19928.
10/1/93 thru 10/8/93	Crude Oil refund applications received	RF272-04911 thru RF272-04935.

[FR Doc. 93-26076 Filed 10-21-93; 8:45 am]
BILLING CODE 6450-01-P

Issuance of Decisions and Orders Office of Hearings and Appeals

During the Week of August 2 Through August 6, 1993

During the week of August 2 through August 6, 1993, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

*New England Self-Serve, Inc., 8/4/93,
LEE-0050*

New England Self-Serve, Inc. (NESS) filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." The exception request, if granted, would exempt NESS from filing Forms EIA-782B and EIA-821. Due to its precarious financial position, NESS showed that the reporting requirements impose an inordinate burden on the firm and impede the firm's operations to such an extent that a gross inequity exists. Thus, the DOE determined that exception relief should be granted which relieves NESS of those reporting requirements. However, due to the impermanence of NESS' financial situation, the exception relief granted will be effective for a period of two years, ending August 31, 1995. At that time, if NESS wishes to receive continued exemption from filing requirements, it must reapply with the DOE. Accordingly, the Application was partially granted.

Refund Applications

Atlantic Richfield Company/Wemett Corporation, the Wemett Corp., 8/4/93, RF304-13459, RF304-14224

The DOE issued a Decision and Order granting an Application for Refund filed by C.E. Wemett & Co. and rescinding in part an earlier Decision which granted a refund to The Wemett Corp. in the Atlantic Richfield Company Subpart V special refund proceeding. The Wemett Corp. had been granted a refund based upon purchases made by a retail motor gasoline sales outlet located in East Avon, New York. In its Application, The Wemett Corp. indicated that there had been no change of ownership of the outlet during the March 6, 1973 through January 27, 1981 refund period. However, on December 14, 1992, the OHA received an Application submitted by C.E. Wemett & Co. requesting a refund based upon purchases made at the same East Avon outlet during the first twelve months of the refund period. In its Application, C.E. Wemett & Co. provided documentation that proved they owned the outlet until March 1, 1974, when it was sold to The Wemett Corp. Accordingly, the OHA granted a refund of \$677 to C.E. Wemett & Co. based upon purchases made at the East Avon outlet from March 1973 to March 1, 1974. Because The Wemett Corp. did not own the outlet during that time, it is not entitled to the portion of the refund that it received based upon ARCO purchases made during the March 7, 1973 through March 1, 1974 period. Accordingly, the OHA directed The Wemett Corp. and Bassman, Mitchell & Alfano, their representative, to remit a total of \$677 to the DOE.

*Citronelle-Mobile Gathering/Globe Manufacturing Co., et al., 8/3/93,
RR336-38, et al.,*

The DOE issued a Decision and Order directing payment of refunds to 37 applicants in the Citronelle-Mobile Gathering (Citronelle) special refund proceeding. These funds had been collected from Citronelle pursuant to a March 17, 1988 decision of the United States District Court for the Southern District of Alabama. The court ordered the transfer of the Citronelle overcharges funds from the registry of the court to the DOE deposit escrow fund account, and ordered the transfer of any additional payments into the registry to

the DOE escrow account on a quarterly basis. The court directed the DOE Office of Hearings and Appeals (OHA) to make payments to the claimants, in proportion to the number of gallons of eligible refined petroleum products purchased by each claimant, whenever the amount in the DOE escrow account exceeds \$1,000,000. On July 16, 1993, a payment of \$149,949.59 from the court registry was deposited into the Citronelle escrow fund. That payment increased the total in the DOE's Citronelle overcharge account to \$1,115,465.24. Accordingly, the DOE directed that the funds in the Citronelle account be disbursed to the 37 eligible claimants.

*Hall High School, District 502, 8/4/93,
RF272-81578*

The DOE issued a Decision and Order granting an Application for Refund filed by Hall High School, District 502 (Hall), in the Subpart V crude oil refund proceeding. The district certified that it required an average of 7,900,900,000 BTU's of heat during the most recent three fiscal years (1991-93), and that its heating requirements, based on square footage heated, would not have substantially changed since the refund period. Under the circumstances, the DOE found that a reasonable estimate of Hall's fuel oil usage during the crude oil refund period could be derived from the district's current heating requirements. Based on the approximate number of BTU's of heat produced by one gallon of fuel oil, Hall would have required approximately 423,842 gallons of fuel oil to meet its heating requirements during the refund period. Based on this estimated usage, the refund granted in this Decision was \$339.

*State of New Jersey, 8/2/93, RF272-
69744*

The DOE issued a Decision and Order granting an Application for Refund filed by the State of New Jersey in the Subpart V crude oil refund proceeding. The Application was based on purchases of petroleum products by various state entities, specified in the Decision and Order, during the crude oil price control period. The Application

did not include purchases made by counties, municipalities, or school districts. In granting the refund, the DOE rejected an objection filed by a group of utilities, transporters, and manufacturers. The total refund granted to the State of New Jersey was \$258,762.

Texaco Inc./Collingswood Texaco, Yardville Texaco Truck Stop, Fairless Hills Texaco, Cherry Hill Texaco, 8/6/93, RF321-16904, RF321-16905, RF321-16906, RF321-16907

The DOE issued a Decision and Order denying four Applications for Refund filed by Sure Oil Company (Sure) in the Texaco Inc. Subpart V special refund proceeding on behalf of four retail outlets that Texaco operated. Sure is a corporation whose sole shareholder, William C. D'Ippolito, is also the majority shareholder of one of the four outlets' suppliers, Edw. J. Sweeney & Sons, Inc. (Sweeney). The DOE determined that this common ownership made Sure and Sweeney affiliates. Because Sweeney had already received the maximum refund allowed under the medium-range presumption of injury, the DOE determined that Sure was ineligible to receive any refund. Accordingly, the four Applications for Refund filed by Sure was denied.

Texaco, Inc./J.H. Bare Estate, James & Bianca Bare Disharoon, 8/2/93, RF321-16896, RF321-17322

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding on behalf of the J.H. Bare distributorship located in Port Gibson, Mississippi. Both of the applicants claimed the right to receive the refund for the distributorship's Texaco purchases made during the refund period. One applicant, Bianca Bare Disharoon, claimed the right to the full refund based upon the fact that she purchased the distributorship during the refund period. The DOE examined the Warranty Deed and found that the right to a refund was not transferred to Ms. Bare when she purchased the business. In addition, the DOE found

that Ms. Bare and her former husband had each owned a one-half interest in the distributorship. Accordingly, each applicant received a refund based upon purchases made during the period that each owned the business. Ms. Bare received one half of the refund for the distributorship for the period during which she had an interest in the business. The total amount of the refunds granted in this Decision and Order was \$6,024 (\$4,420 principal and \$1,604 interest).

Texaco Inc./Limerick Texaco, Paulsboro Texaco, Montgomeryville Texaco, Essington Service Station, Arms Texaco Service Station, Avondale Texaco, 8/5/93, RF321-16848, RF321-16849, RF321-16850, RF321-16851, RF321-16852, RF321-16853

The DOE issued a Decision and Order denying six Applications for Refund filed by Mission Gas Oil Products, Inc. (Mission) in the Texaco Inc. Subpart V special refund proceeding on behalf of six retail outlets that it operated. Mission is a corporation whose majority shareholder, William C. D'Ippolito, is also the majority shareholder of the six outlets' supplier, Edw. J. Sweeney & Sons, Inc. (Sweeney). The DOE determined that this common ownership made Mission and Sweeney affiliates. Because Sweeney had already received the maximum refund allowed under the medium-range presumption of injury and because Sweeney had already received a refund for purchases of the same gallons of product that its affiliate (Mission) was claiming, the DOE determined that Mission was ineligible to receive any refund. Accordingly, the six Applications for Refund filed by Mission were denied.

Texaco Inc./Time Oil Company, 8/14/93, RR321-74

Time Oil Company (Time) filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that the firm had filed in the Texaco refund proceeding. According to the Motion, the filing of the second application

without any reference to the earlier application resulted from miscommunication among the attorneys for the firm that prepared the second application. The DOE agreed to consider Time's refund claim, finding that Time was not attempting to obtain two refunds and that it should not be penalized for the poor communication among its attorneys. With respect to Time's claim for a refund at a level above the volumetric presumption level of \$0.0011 per gallon, the DOE found that Time was likely overcharged by Texaco in the amount of \$0.008 per gallon. This determination was based upon the findings in a Remedial Order that was substantively affirmed by the Federal Energy Regulatory Commission prior to the settlement of the enforcement proceeding by the Texaco Consent Order. The Decision also permitted Time to take advantage of the medium-range presumption of injury. The total amount of the refund granted by the DOE was \$13,631.

Texaco Inc./Toast Texaco, Brewer's Texaco, 8/2/93, RF321-2010, RF321-2195

The DOE issued a Decision and Order denying the Applications for Refund that Toast Texaco and Brewer's Texaco filed in the Texaco Inc. special refund proceeding. These applicants were unable to document their gallonage claim and instead submitted estimates based on the average monthly gallonage of Texaco outlets in their states during the refund period, as compiled from the National Petroleum News (NPN) Fact Book. The DOE found that the use of the NPN Fact Book figures was not a reliable method of estimating an individual outlet's purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the office of Hearings and Appeals.

American Standard, Inc., American Standard, Inc	RF272-16177	08/04/93
	RD272-16177	
Atlantic Richfield Company/Dave's Parkside Arco	RF304-14282	08/04/93
Atlantic Richfield Company/Harvatis Arco Service et al	RF304-13896	08/04/93
Atlantic Richfield Company/Jack's Arco et al	RF304-14200	08/02/93
Beacon Oil Company/Don Rose Oil Company, Inc	RF238-71	08/02/93
Freuhauf Trailer Corp. et al	RF272-91203	08/05/93
Grainger Ready Mix et al	RF272-91236	08/05/93
Gulf Oil Corporation/General Crushed Stone et al	RF300-16452	08/04/93
Gulf Oil Corporation/Gulf in Farmersville	RF300-13513	08/02/93
Gulf Oil Corporation/Johnston's Service Garage et al	RF300-19628	08/04/93
Metropolitan Petroleum & Fuel/Jesus Ramirez Armando Tundidor	RF349-3	08/02/93
	RF349-4	
North Chicago Community Unit School District 187 et al	RF272-81284	08/04/93

Shell Oil Company/James W. Hunter, Dahlke Oil Co	RF315-8863	08/02/93
	RF315-10175	
Texaco Inc./Academy Blvd. Texaco et al	RF321-13981	08/04/93
Texaco Inc./Adolph's Texaco	RF321-19811	08/02/93
Texaco Inc./American Commercial Barge Line et al	RF321-3104	08/06/93
Texaco Inc./Curt Labansky's Texaco et al	RF321-5663	08/04/93
Texaco Inc./Selmont Texaco	RR321-130	08/04/93
Texaco Inc./Swedes Texaco Service	RF321-19813	08/04/93
Texaco Inc./United Tire Service et al	RF321-15516	08/02/93

Dismissals

The following submissions were dismissed:

Name	Case No.
American Forest Products	RF321-17969
Bob's Texaco	RF321-9283
Bobby K. Grady's Texaco	RF321-12080
Cherry Texaco	RF321-10906
City of Seven Hills	RF272-85194
Clay Oil Terminal	RF321-8812
Clinton County	RF272-35180
Collette's Texaco	RF321-10636
Eastside Texaco	RF321-9492
Gables Texaco Service Center.	RF321-11009
Hertford County	RF272-85190
Holloway Texaco	RF321-9491
Home Market	RF321-12403
Homer Bourque Distribution .	RF300-19996
Jarrells' Texaco	RF321-11010
Jay Swab Texaco	RF321-9415
Kenneth Bollinger	RF321-14210
Lincoln & Lincoln Garage	RF321-11039
Lyon County	RF272-85185
Morrisette Texaco	RF321-11090
Northridge Texaco	RF321-12466
Northside Texaco	RF321-9490
Oklahoma Rendering Co.	RF300-15111
Platte County School District 010.	RF272-87167
Premium Oil Co.	RF321-7859
Pressley Texaco	RF321-10926
Roysen's Texaco	RF321-10955
Salem County	RF272-85177
Salem-Kelzer School District 24J.	RF272-87992
Sherwood Texaco	RF321-7849
St. Albans Service Center	RF300-15469
Stafford County	RF272-85188
Westpark Texaco	RF321-10982
Williams Texaco Service Station.	RF321-11946
Yakama Valley Tire	RF321-9401

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 18, 1993.
George B. Breznay,
 Director, Office of Hearings and Appeals.
 [FR Doc. 93-26075 Filed 10-21-93; 8:45 am]
 BILLING CODE 6460-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4793-3]

Public Water System Supervision Program Revision for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of 1213 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the Commonwealth of Pennsylvania has revised its approved State Public Water System Supervision Primacy Program. Pennsylvania has adopted public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations and has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by November 22, 1993 to the Acting Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Acting Regional Administrator. However, if a substantial request for a public hearing is made by November 22, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Acting Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on November 22, 1993.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity

requesting a hearing. (2) A brief statement of the requesting person's interest in the Acting Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
 Pennsylvania Department of Environmental Resources, P.O. Box 8467, Harrisburg, Pennsylvania 17105-8467.

FOR FURTHER INFORMATION CONTACT:

Catherine M. McCaffrey, U.S. EPA, Region 3, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597-8992.

Dated: October 5, 1993.

Stanley L. Laskowski,
 Acting Regional Administrator, EPA, Region 3.
 [FR Doc. 93-26044 Filed 10-21-93; 8:45 am]
 BILLING CODE 6560-60-M

[ER-FRL-4704-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 4, 1993 through October 8, 1993 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, 1993 (58 FR 18392).

Draft EISs

ERP No. D-AFS-J65149-MT Rating EC2, Big Mountain Ski and Summer Resort Expansion Project, Special-Use Permit, Flathead National Forest, Tally Lake and Glacier View Ranger Districts, Whitefish County, MT.

Summary: EPA expressed environmental concerns about the potential for aggravating channel erosion due to higher flows from snowmaking in a stream channel that currently is unstable and erodible and potential air quality impacts. EPA requested that these issues be discussed in more detail in the final document.

ERP No. D-AFS-J65207-CO Rating EC2, Mountain Plover (*Charadrius Montanus*) Management Strategy, Implementation, Pawnee National Grassland, Arapaho and Roosevelt National Forests, Weld County, CO.

Summary: EPA expressed environmental concerns about the proposed management plan since there is a lack of detailed knowledge concerning the requirements for sustainability of both the target species and other biotic components of the ecosystem.

ERP No. D-AFS-J65208-MT Rating EC2, Smokey-Corridor Timber Sales, Timber Management and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, White Sulphur Springs, Meagher County, MT.

Summary: EPA expressed environmental concerns about projected increases in sediment loadings and the effects they may have on aquatic resources. EPA also requested additional information on wetlands and associated monitoring.

ERP No. D-AFS-J65209-MT Rating EC2, Middle Fork Ecosystem Management Project, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead River, Flathead County, MT.

Summary: EPA expressed environmental concerns regarding protection of air quality in Class I areas, and compliance with conformity requirements of the Clean Air Act.

ERP No. D-BPA-L05204-WA Rating EC2, Tenaska—Washington II Generation Electric Power Plant Construction, Operation and NPDES Permit, Pierce County, WA.

Summary: EPA expressed environmental concerns with the incremental regional impact of project-related air emissions and the potential for infiltration of pollutants at the site during construction and operations.

ERP No. D-NPS-J80005-SD Rating LO, Jewel Cave National Monument

General Management Plan (GMP), Implementation, Black Hills National Forest, Custer County, SD.

Summary: EPA had no objections to the proposed action. ERP No. D-NPS-J80006-SD Rating LO, Wind Cave National Park, General Management Plan (GMP), Implementation, Black Hills, Custer County, SD.

Summary: EPA had no objections to the proposed action.

ERP No. D-SFW-J99050-WY Rating LO, Gray Wolves (*Canis Lupus*) Reintroduction into the Yellowstone National Park and Central Idaho, Implementation, MT, WY and ID.

Summary: EPA did not identify potential environmental impacts requiring substantive changes to the proposal.

ERP No. DA-COE-E36013-MS Rating EC2, Mississippi River and Tributaries Flood Control, Updated Information, Upper Yazoo Projects (UYP), Yazoo River Basin, several Counties, MS.

Summary: EPA expressed environmental concerns regarding the sufficiency and/or successfulness of project mitigation. Necessary additional information will need to be collected during the forthcoming monitoring to determine efficacy of the plan and its sufficiency.

Final EISs

ERP No. F-AFS-J65185-UT North Slope Timber Sale and Road Construction/Reconstruction, Implementation, Dixie National Forest, Teasdale Ranger District, Wayne County, UT.

Summary: EPA had no objections to the proposed action as the final document adequately addressed old growth management issues.

ERP No. F-AFS-J65202-MT Buck-Little Boulder Timber Sales and Timber Harvest, Implementation, Bitterroot River, Bitterroot National Forest, West Fork Ranger District, Ravalli County, MT.

Summary: EPA had no objections to the selection of alternative 5. EPA suggested that additional monitoring to validate projected impacts be included in the action.

ERP No. F-FHW-J40125-MT Shiloh Road Interchange Project, Construction, I-90 in the vicinity of the existing Shiloh Road Overpass (I-90 milepost 443) and Improvements to the South Frontage Road, Funding and Section 404 Permit, between the Cities of Laurel and Billings, Yellowstone County, MT.

Summary: EPA had no objections to the Federal Highway Administration's proposed construction of a new interchange for Interstate Highway 90 at

Shiloh road, west of Billings, Montana in Yellowstone County.

ERP No. F-NPS-J61086-MT Grant-Kohrs Ranch National Historic Site, General Management Plan and Development Concept Plan, Implementation, Northern Rockies, Powell County, MT.

Summary: EPA had no objections to the proposed action.

ERP No. F-UAF-E11028-GA Moody Air Force Base Beddown of a Composite Wing for F-16, A/OA-10 and C-130 Aircraft, Implementation, Lowndes and Lanier Counties, GA.

Summary: EPA had no objections to the proposed action as previous concerns have been adequately addressed in the final document.

Regulations

ERP No. R-DOE-A09817-00 10 CFR Part 60 Disposal of High-Level Radioactive Wastes in Geologic Repositories: Investigation Evaluation of Potentially Adverse Conditions.

Summary: EPA had no comments to the proposed regulation.

ERP No. R-DOT-A59009-00 49 CFR Part 106 et al—Research and Special Program Administration—Proposal for Safeguarding Food from Contamination during Transportation.

Summary: EPA requested that wording be added to the preamble requesting that all residues from the clean-out of the vehicles comply with applicable environmental regulations. Additionally, EPA suggested that the carrier be required to certify that the vehicle tank is cleaned and by what method.

Dated: October 19, 1993

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 93-26045 Filed 10-21-93; 8:45 am]
BILLING CODE 8560-50-U

[ER-FRL-4704-7]**Environmental Impact Statements; Availability**

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Weekly receipt of Environmental Impact Statements filed October 11, 1993 through October 15, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930360, DRAFT EIS, AFS, CA, Mount Baldy Land Exchange Project, Implementation and Special-Use Permit, Angeles National Forest, San Antonio Canyon, Los Angeles and San Bernardino Counties, CA, Due: December 6, 1993, Contact: Michael J. Rogers (818) 574-1613.

EIS No. 930361, DRAFT EIS, FHW, WI, US 151/WI-41 Waupun to Fond du Lac Project, Construction, Funding and Possible COE Section 404 Permit, Fond du Lac County, WI, Due: December 6, 1993, Contact: James Zavoral (608) 264-5944.

EIS No. 930362, FINAL EIS, EPA, AL, TX, LA, MS, ADOPTION—1993 Central and Western Gulf of Mexico Outer Continental Shelf (OSC) Oil and Gas Lease Sales No. 142 and No. 143, Implementation and Lease Offerings, offshore AL, LA, TX and AL, Contact: Norm Thomas (214) 655-2260.

The US Environmental Protection Agency has adopted the US Department of the Interior, Minerals Management Service's, final EIS filed with the US Environmental Protection Agency on 10-30-92. The EPA was a Cooperating Agency on the DOI's EIS. Recirculation of the document is not necessary.

EIS No. 930363, FINAL EIS, FHW, CA, CA-17 at Lexington Reservoir Interchange Project, Interchange and Frontage Roads Construction south of the Town of Los Gatos, Funding and COE Section 404 Permit, Santa Clara County, CA, Due: November 22, 1993, Contact: John R. Schultz (916) 551-1314.

EIS No. 930364, FINAL EIS, AFS, OR, 1991 Warner Creek Fire Recovery Project, Northern Spotted Owl Habitat and Other Resources Reforestation, Northern Spotted Owl Habitat Conservation Area 0-10, Willamette National Forest, Oakridge Ranger District, Lane County, OR, Due: November 22, 1993, Contact: Terri Jones (503) 782-2291.

EIS No. 930365, DRAFT EIS, FTA, OR, New Eugene Transfer Station Construction and Site Selection, Funding, McDonald Site or IHOP Site, Lane County, OR, Due: December 6, 1993, Contact: Terry L. Ebersole (206) 220-7954.

EIS No. 930366, DRAFT EIS, AFS, ID, Savant Sage Resource Area Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Fernan Ranger District, Bonner and Kootenai Counties, ID, Due: December 6, 1993, Contact: Patrick Sheridan (202) 720-1614.

EIS No. 930367, DRAFT EIS, AFS, ID, Prichard Creek Analysis Area Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Wallace Ranger District, Coeur d'Alene River, ID, Due: December 6, 1993, Contact: Don Garringer (208) 769-6110.

EIS No. 930368, DRAFT EIS, NPS, CA, Presido of San Francisco General

Management Plan, Golden Gate National Recreation Areas, Implementation, San Francisco, CA, Due: December 21, 1993, Contact: Brian O'Neill (415) 556-2920.

EIS No. 930369, FINAL EIS, COE, CA, Bel Marin Key Unit 5 (BMK5) Residential Community Construction and Development, Master Plan and Rezoning Application Approvals and Permits, Novato Creek, Marin County, CA, Due: November 22, 1993, Contact: Lars Forsman (415) 744-3318.

EIS No. 930370, FINAL EIS, FTA, MD, Baltimore-Washington International Airport Extension, Central Light Rail Line (CLRL), Funding, Anne Arundel, Baltimore and Howard Counties, MD, Due: November 22, 1993, Contact: Sheldon A. Kinbar (215) 656-6900.

EIS No. 930371, FINAL EIS, FTA, MD, Hunt Valley Light Rail Line Extension, Timonium Fairgrounds Station to Hunt Valley, Funding, Baltimore Central Light Rail Line, Baltimore and Anne Arundel Counties, MD, Due: November 22, 1993, Contact: Sheldon A. Kinbar (215) 656-6900.

Amended Notices

EIS No. 930288, DRAFT EIS, COE, CA, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healsburg, Sonoma County, CA, Due: October 28, 1993, Contact: Lars Forsman (415) 744-3322. Published FR-08-27-93—Review period extended.

EIS No. 930316, DRAFT EIS, AFS, CA, NV, Interagency Motor Vehicle Use Plan (IMVUP) Revision, Implementation, Acquisition for Land within the Inyo National Forest and Bishop Resource Area, Inyo, Madera, Tulare and Mono Counties, CA and Esmeralda and Mineral Counties, NV, Due: December 9, 1993, Contact: Ernie DeGraff (619) 873-2439. Published FR 09-17-93—Review period extended.

EIS No. 930356, DRAFT SUPPLEMENT, EPA, TX, LA, Gulf of Mexico Outer Continental Shelf (OCS) Region Oil and Gas Extraction Activities, General New Source NPDES Permit Issuance, offshore TX and LA, Due: November 29, 1993, Contact: Norm Thomas (214) 655-2260. Published FR 10-15-93—Title Change and notification that this document is open for a 45-day review period ending on 11-29-93.

Dated: October 19, 1993.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 93-26046 Filed 10-21-93; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4793-4]

Open Meeting of the Superfund Evaluation Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of a meeting on November 8, 1993 of the Superfund Evaluation Committee. The Superfund Evaluation Committee is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The Subcommittee will discuss their recommendations for improving key aspect of the Superfund Program. The meeting will take place at the J.W. Marriott Hotel (1331 Pennsylvania Avenue, NW.) from 12:30-5 p.m. Interested parties may call the RCRA/Superfund Hotline at 1-800-424-9346, 703-920-9810, or 1-800-486-3323 (TDD) for copies of the materials EPA is providing to the Committee.

Written comments will be reviewed by the Committee if received one week prior to the meeting. Written comments of preferably not more than 25 pages (at least 25 copies) may be provided to the committee up until the meeting. Those interested in attending must contact Abby Pirnie (U.S. EPA 401M Street SW, Washington, DC 20460, mail code, 1601 or phone, 202-260-7567, or fax, 202-260-3682.

Dated: October 15, 1993.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 93-26043 Filed 10-21-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4793-5]

Public Meeting of the Phosphoric Acid Production Waste Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: Federal Advisory Committee meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the August meeting of the Phosphoric Acid Production Waste Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to continue to review information regarding process changes that will reduce the volume and/or toxicity of phosphogypsum and process wastewater from the production of phosphoric acid.

DATES: The Committee meeting will be held on November 9, 1993 from 10 a.m. to 4:30 p.m. and November 10, 1993 from 8 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia 22204; (703) 521-2122.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical or scientific matters related to phosphoric acid wastes should contact Dr. Daniel R. Bushman, Office of Pollution Prevention and Toxics, Economics, Exposure and Technology Division, TS-779, Environmental Protection Agency, Washington, DC, 20460; phone (202) 260-6700. Persons needing further information on the committee's procedural and logistical matters should call the Committee's facilitator, Greg Bourne, Southeast Negotiation Network, Georgia Institute of Technology, Atlanta, GA (404) 853-9846.

Dated: October 19, 1993.

Deborah Dalton,

Designated Federal Official, Office of Regulatory Management & Evaluation, Office of Policy, Planning and Evaluation.

[FR Doc. 93-26040 Filed 10-21-93; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).
ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

FOR FURTHER INFORMATION CONTACT: Patricia Cornwell Johnson, Director, Human Resources Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663-4306.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of section 4314(c)(1), chapter 43 title 5 U.S.C., membership of the SES Performance Review Board is as follows: Ms. Ronnie Blumenthal, Director, Office of Federal Operations, Equal Employment Opportunity Commission (Chairperson); Mr. Bland Brockenborough, Assistant Commissioner, Administration, Financial Management Service, Department of Treasury; Mr. Doug Newkirk, Assistant, U.S. Trade Representative, Office of U.S. Trade

Representative; Ms. Elizabeth Thornton, Acting Legal Counsel, Equal Employment Opportunity Commission (Alternate).

Signed at Washington, DC, on this 18th day of October 1993.

For the Commission.

Tony E. Gallegos,
Chairman.

[FR Doc. 93-25982 Filed 10-21-93; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 18, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0076.

Title: Annual Employment Report for Common Carriers.

Form Number: FCC Form 395.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Responses: Annual reporting requirement.

Estimated Annual Burden: 1,200 responses; 1 hour average burden per response; 1,200 hours total annual burden.

Needs and Uses: The Annual Employment Report is a data collection device for enforcement and assessment of the Commission's EEO Rules. All common carrier licensees or permittees with sixteen (16) or more full-time employees are required to file this report and retain it for a two-year period. The report identifies each carrier's staff by gender, race, color and/or national origin in each of nine major job categories. The FCC Form 395 and instructions have been edited. In

addition to the style and grammatical changes, we have amended the instructions to clearly indicate that reporting units with fewer than sixteen full-time employees do not have to file this form but may do so to comply with another filing requirement under 47 CFR 21.307, 22.307, or 23.55 and have added a new section to the form that the reporting unit merely has to check in order to comply unless it has had EEO complaints filed against it. For reporting units with sixteen or more full-time employees, the new section of the form reduces the filing burden from two (2) reports to only one (1). Also the number of copies of the report to be filed as been reduced from two to one.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-25971 Filed 10-21-93; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1979]

Petitions for Reconsideration and/or Clarification of Actions in Rulemaking Proceedings

October 18, 1993.

Petitions for reconsideration and/or clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed November 8, 1993. See § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92-9, RM No. 7981 and 8004).

Petition for Reconsideration
Number of Petitions Filed: 2
Petition for Clarification and/or Reconsideration

Number of Petitions Filed: 4
Petition for Partial Reconsideration
Number of Petitions Filed: 2
Petition for Reconsideration and Partial Clarification

Number of Petitions Filed: 1
Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-25972 Filed 10-21-93; 8:45 am]

BILLING CODE 6712-01-M

Licensee Order to Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Applicant, city/state	MM docket No.
Delta Radio, Inc., Licensee of WDTL (AM), Cleveland, MS	93-262

(Regarding the silent status of Station WDTL (AM))

Pursuant to section 312(a) (3) and 4 of the Communications Act of 1934, as amended, Delta Radio, Inc. has been directed to show cause why the license for Station WDTL (AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Delta Radio, Inc. has the capability and intent to expeditiously resume broadcast operations of WKLO (AM) consistent with the Commission's rules.
2. To determine whether Delta Radio, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's rules.
3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Delta Radio, Inc. is qualified to be and remain the licensee of Station WDTL (AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202-857-3800).

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93-25968 Filed 10-21-93; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station.

Applicant, city/state	File No.	MM docket No.
A. DeSoto Broadcasting Corp., Mansfield, LA.	BPH-920324ME	93-263

Applicant, city/state	File No.	MM docket No.
B. Cary D. Camp, Mansfield, LA.	BPH-920402MI	.....
C. Mitchell Tyner, Mansfield, LA.	BPH-920403MA	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19,347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202-857-3800).

Larry D. Eads,

Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 93-25967 Filed 10-21-93; 8:45 am]

BILLING CODE 6712-01-M

Renewal Application Designated for Hearing

1. The Chief, Audio Services Division, Mass Media Bureau has before him the following application for renewal of license:

Applicant, city/state	File No.	MM Docket No.
A. Quality Communications, Inc. Nelsonville, Ohio.	BR-890606UF	93-261

(Seeking a renewal of the license of Station WYNO (AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine whether Quality Communications, Inc. has the capability and intent to expeditiously resume broadcast operations of WYNO (AM) consistent with the Commission's Rules.
2. To determine whether Quality Communications, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.
3. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202-857-3800).

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93-25969 Filed 10-21-93; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM Station:

Applicant, city/state	File No.	MM Docket
A. Frank B. DuRoss, Whitesboro, New York.	BPH-920512MC	93-264
B. New Horizons Broadcasting, Whitesboro, New York.	BPH-920513MF	.....
C. Kenneth F. Roser, Jr., Whitesboro, New York.	BPH-920513MI	.....
D. Kevin O'Kane, Whitesboro, New York.	BPH-920514MK	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the

issues whose headings are set forth below. The text of each of the issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown below each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D
3. If there are any non-standardized issues in this proceeding, the full text of each such issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202-857-3800).

Larry D. Eads,
Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93-25966 Filed 10-21-93; 8:45 am]
BILLING CODE 6712-01-M

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

[FEMA-1000-DR]

**Kansas; Amendment to Notice of a
Major Disaster Declaration**

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas. (FEMA-1000-DR), dated July 22, 1993, and related determinations.
EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Barton, Graham, and Thomas Counties for Public Assistance and Individual Assistance.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,
Deputy Associate Director, State and Local Programs and Support.
[FR Doc. 93-26038 Filed 10-21-93; 8:45 am]
BILLING CODE 6718-02-M

[FEMA-995-DR]

**Missouri; Amendment to Notice of a
Major Disaster Declaration**

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA-995-DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: October 14, 1993.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Howell and Vernon Counties for Individual Assistance.
Douglas County for Individual Assistance and Public Assistance.
Barton, DeKalb, Greene, Morgan, Pemiscot, Stone, and Texas Counties for Public Assistance. (Already designated for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,
Assistant Associate Director, Disaster Assistance Programs.
[FR Doc. 93-26047 Filed 10-21-93; 8:45 am]
BILLING CODE 6718-02-M

**FEDERAL MEDIATION AND
CONCILIATION SERVICE**

**Agency Form Under Review by the
Office of Management and Budget**

AGENCY: Federal Mediation and Conciliation Service.
ACTION: Notice of Forms R-19, R-22 and R-43 submitted for extension and review to the Office of Management and Budget.

The Federal Mediation and Conciliation Service (FMCS) submitted to the Office of Management and Budget

(OMB) a request for review of three FMCS forms: R-19, Arbitrator's Report and Fee Statement, R-22, Arbitrator's Personal Data Questionnaire, and R-43, Request for Arbitration Services. The request seeks OMB approval to extend the expiration date of Forms R-19, R-22 and R-43 until January 31, 1996. The request was submitted pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Information pertaining to the requests are as follows:

Agency: Federal Mediation and Conciliation Service
Title: Arbitrator's Report and Fee Statement

Form Number: Agency—Form R-19; OMB No. 3076-0003.

Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.

Affected Public: Individuals who apply.
Frequency: Once per application.
Burden: Approximately 7,000 responses per year. The form is only filled out once and the time required is approximately ten minutes.

Needs and Uses: FMCS uses the R-19 to review arbitrator conformance with its fee and expense reporting requirements. This data is compiled under the individual arbitrator's name and is used to provide requesting parties with a panel of arbitrators to meet their needs.

Respondents Obligation: Pursuant to 29 U.S.C. 171(b), 29 CFR part 1404

Agency: Federal Mediation and Conciliation Service
Title: Arbitrator's Personal Data Questionnaire

Form Number: Agency—Form R-22; OMB No. 3076-0001.

Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.

Affected Public: Individuals who apply to be on FMCS' Roster of Arbitrators.
Frequency: Once per application.

Burden: The number of respondents is approximately 250 as approximately that number request membership on the roster. The time required is approximately 1½ hours to complete the application.

Needs and Uses: This Questionnaire is needed in order that FMCS may select highly qualified arbitrators for the arbitrator roster. The respondents are private citizens who make application for appointment to the FMCS roster.

Respondents Obligation: Pursuant to 29 U.S.C. 171(b), 29 CFR part 1404.

Agency: Federal Mediation and Conciliation Service

Title: Request for Arbitration Services

Form Number: Agency—Form R-43;

OMB No. 3078-0002.

Type of Request: Extension of Expiration date of a currently approved collection without any change in the substance or method of collection.

Affected Public: Employees and labor organizations who request arbitration services. Individuals who apply.

Frequency: Once per application.

Burden: Approximately 28,000 respondents per year. In most instances the form is made out only once and takes about ten minutes to complete.

Needs and Uses: The need for this Form is to obtain information—name, address, type of assistance desired—so that FMCS can respond to requests for various arbitration services: e.g. furnishing a list of seven arbitrators to parties.

Respondents Obligation: Pursuant to 29 U.S.C. 171(b), 29 CFR part 1404.

OMB Desk Officer: Angela Antonelli, (202) 395-6880. Copies of the request for review may be obtained from Eileen B. Hoffman, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., room 712, Washington, DC 20427, (202) 653-5305.

Written comments pertaining to the request should be sent to Angela Antonelli, Assistant Branch Chief, room 3001, New Executive Office Building, Washington, DC 20503.

Dated: October 15, 1993.

Brian Flores,

Acting Director.

[FR Doc. 93-25973 Filed 10-21-93; 8:45 am]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR

1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following form, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before November 19, 1993.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs (202/395-7340), Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer: Mary M. McLaughlin, Division of Research and Statistics (202-452-3829), Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202-

452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Following Report:

1. **Report title:** National Survey of Small Business Finances

Agency form number: FR 3044

OMB Docket number: 7100-0262

Frequency: One-time survey

Reporters: Small businesses

Annual reporting hours: 4,500

Estimated average hours per response: 0.75

Number of respondents: 6,000

Small businesses are affected.

General description of report: This information collection is voluntary and is authorized by law. (12 U.S.C. 251, 1817(j), 1828(c), and 1841 *et seq.*) and individual respondent information is given confidential treatment. (5 U.S.C. 552(b)(4)).

This one-time telephone survey of small businesses will be conducted between November 1993 and April 1994 by employees of a private contractor. The primary purpose of the survey is to provide information that can be reported to Congress in compliance with section 477 of FDICIA regarding the availability of credit to small businesses, including minority-owned businesses.

The following is an outline of expected content of the survey questionnaire:

Firm characteristics

Industry (4 digit SIC code)

Number of offices

Location of main office (name of SMSA or county)

Location of subsidiary offices (number in different SMSAs or counties, number of different states)

Type of ownership (proprietorship, partnership, corporation)

Number of employees (current, one year ago, five years ago, full-time equivalent)

Age of firm

Fiscal year

Characteristics of investors

Individuals (number, relationship to owner or largest investor, ownership share, sex, race)

Organizations (number, type of organization, ownership share)

Assets

Cash

Currency and coin (amount)

Demand deposit and NOW accounts (number, amount, sources, location)

Money market deposit and savings accounts (number, amount, sources, location)

Certificates of deposit (amount, sources, location)
 Money market mutual fund accounts (number, amount, sources, location)
 Marketable securities (amount, type of security)
 Accounts and Notes Receivable
 Inventory
 Other investments (amount, type of investment)
 Property, plant, and equipment
 Other fixed assets (patents, trademarks, copyrights, franchises, goodwill, deferred charges and prepayments)
 Other assets (specify)
Liabilities
 Accounts payable
 Loans with less than one year maturity remaining
 Loans with more than one year maturity remaining
 Lines of credit (number, amount outstanding, amount of line, collateral, guarantees, sources, location)
 Capital leases (number, amount outstanding, source location)
 Mortgages (number, amount outstanding, source, location, guarantees)
 Vehicle loans (number, amount outstanding, source, location, guarantees)
 Equipment loans (number, amount outstanding, source, location, guarantees)
 Other loans not elsewhere classified (number, amount outstanding, source, location, guarantees, collateral)
 Loans from owners (amount outstanding)
 Accrued expenses and income taxes payable
 Other liabilities, including bonds (specify)
Equity
 Sources: firms, individuals, family members, venture capital firms
 Capital (proprietorships and partnerships)
 Stock (corporations)
 Retained earnings (corporations)

Income and expenses

Sales, sales one year ago, sales five years ago
 Cost of goods sold and operating expenses
 Operating expenses
 Income taxes
 Other income (interest, capital gains)
 Interest expense
 Operating lease expense
 Other expense
 Extraordinary expenses
 Net income
Recent borrowing experiences
 Amount of borrowing in last two years (sources, location, loan terms, collateral, guarantees, variable/fixed rate, etc.)
 Information on credit denial during last two years and when credit ultimately obtained
 Firm's view of current credit conditions, loan terms, and accessibility of credit

Miscellaneous

Use of non-traditional sources for firm financing: venture capital, equity issues
 Use of trade credit (number of suppliers, percent where cash discounts offered, percent where cash discounts taken, percentage of time payments made after due date)
 Changes to capital during last two years
 Use of other financial services (Payroll processing, coin and currency, lockbox/night depository, trust services, cash management, investment advice, brokerage services, pensions, other (specify)).

Board of Governors of the Federal Reserve System, October 18, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-26024 Filed 10-21-93; 8:45 am]

BILLING CODE 8210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
Control of Air Contaminants During Manual Dye Weigh-Out Operations; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Control of Air Contaminants during Manual Dye Weigh-Out Operations.

Time and Date: 1 p.m.-4 p.m., November 2, 1993.

Place: Alice Hamilton Laboratory, Conference Room A, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to conduct an open meeting for the review of a NIOSH project entitled, "Control of Air Contaminants during Manual Dye Weigh-Out Operations." This project will evaluate workers exposure to dye dust during the handling and weighing of dyes in the drug room of a small dyehouse. Control recommendations will include the design of a ventilated booth which will be installed at an actual site and evaluated for effectiveness. The project is being conducted jointly with the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (ETAD). Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Marjorie A. Edmonds, NIOSH, CDC, 4674 Columbia Parkway, Mailstop R5, Cincinnati, Ohio 45226, telephone 513/841-4221.

Dated: October 18, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-26014 Filed 10-21-93; 8:45 am]
 BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 93N-0389]

Antioxidant Vitamins and Risk of Cancer and of Cardiovascular Disease; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is cosponsoring, with other major health research organizations, a public conference. The purpose of this conference is to review and summarize the scientific information available for foods, including dietary supplements, on the association between the antioxidant vitamins and cancer and the antioxidant vitamins and cardiovascular disease. The conference will also provide an opportunity to discuss criteria by which significant scientific agreement on the validity of a nutrient-disease relationship may be ascertained. The antioxidant vitamins to be addressed are beta-carotene, vitamin C, and vitamin E. The conference will include invited summary papers, panel discussions, and general open

discussions. Those wishing to submit new data not publicly available to the agency for consideration at the conference should do so as soon as possible.

DATES: The public conference will be held on November 1, 2, and 3, 1993; 8 a.m. to 5:30 p.m.; 8 a.m. to 5:30 p.m.; and 8:30 a.m. to 1 p.m.; respectively. New data should be submitted as quickly as possible to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12340 Parklawn Dr., Rockville, MD 20857. Data received by October 25, 1993, will be forwarded to the individuals preparing papers or serving as panelists for the conference for possible inclusion in their reviews and discussions. Copies of all data and comments received on antioxidant vitamins and cancer before, as well as after, that date will be included in the agency's docket on its current proposal to deny a health claim on this topic for dietary supplements (Docket No. 93N-289A). Interested persons who would like to submit written comments should do so by November 22, 1993. Comments on antioxidant vitamins and cancer may be submitted to Docket No. 93N-289A until December 13, 1993.

ADDRESSES: The conference will be held at the National Academy of Sciences, Main Auditorium, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: James T. Tanner, Office of Special Nutritionals (HFS-451), Food and Drug Administration, Washington, DC 20204, 202-205-4168.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 required FDA to consider health claims on food labels for 10 nutrient-disease relationships and to determine, based on the totality of the publicly available scientific evidence, if there is significant scientific agreement among qualified experts regarding these claims. On January 6, 1993, FDA issued a final rule (58 FR 2622) announcing its decision not to authorize the use on the label or labeling of foods, other than dietary supplements of vitamins, minerals, herbs, or other nutritional substances, of health claims relating to an association between antioxidant vitamins and cancer. The agency concluded that there was not significant scientific agreement among qualified experts that a claim relating vitamin C, vitamin E, or *beta*-carotene to reduced risk of cancer is adequately supported. FDA concluded that the role for antioxidant vitamins per se was not supported by the available data, but that consumption of fruit and vegetables,

which are sources of these nutrients, is associated with reduced cancer risk. Therefore, FDA authorized a health claim for fruits and vegetables and cancer (58 FR 2622 at 2639) but concluded that it could not authorize a claim on antioxidant vitamins and cancer.

In the **Federal Register** of October 14, 1993 (58 FR 53296), the agency published a proposed rule not to authorize health claims on five nutrient-disease relationships, including antioxidant vitamins and cancer, on the label or in the labeling of dietary supplements. In that proposal, FDA reviews the available evidence on the relationship of antioxidant vitamins and cancer and explains the basis for the proposed denial of the health claim for dietary supplements.

On November 1 through 3, 1993, FDA will cosponsor a public conference with other units of the Department of Health and Human Services, including the National Institutes of Health and the Centers for Disease Control and Prevention, the American Cancer Society, the American Heart Association, the Institute of Medicine, the American Medical Association, the Federal Trade Commission, and the Congressional Research Service to review the publicly available evidence on the association between antioxidant vitamins from all foods and cancer and the relationship of these nutrients to cardiovascular disease. The conference will be held at the National Academy of Sciences. The purpose of this public conference is to review and summarize the scientific information available on these associations. In addition, in one session of the conference there will be a discussion of the criteria by which significant scientific agreement on the validity of a nutrient-disease relationship may be ascertained. The agency will solicit the input of all segments of the food industry on these issues.

The first seven parts of the November conference will focus on antioxidant vitamins. The antioxidant vitamins that the agency has considered for a health claim relating to their effects on the risk of cancer are *beta*-carotene, vitamin C, and vitamin E. FDA has invited experts in medicine, nutrition, epidemiology, pathology, and other disciplines related to antioxidant vitamins and cancer and to antioxidant vitamins and cardiovascular disease to serve as speakers. They will summarize the publicly available evidence and serve as panelists who will react to the presentations made and provide additional comments based on their individual expertise. Cancer and

cardiovascular disease will be the focus of the conference because they are the diseases with respect to which the effects of antioxidant vitamins have been most closely studied. Others may submit data from new research and will be given the opportunity to participate during discussion. New data should be submitted to the FDA contact person listed above.

The conference is divided into eight major parts as follows:

1. Opening and overview of antioxidants.
2. Antioxidant vitamins and cardiovascular disease.
3. Vitamin E and cancer.
4. *Beta*-carotene and cancer.
5. Vitamin C and cancer.
6. In-depth review of *beta*-carotene and lung cancer.
7. In-depth review of vitamin C and gastrointestinal cancer.
8. The basis for determining significant scientific agreement.

Those who would like to comment on these topics but are unable to attend the conference should either submit comments to the Dockets Management Branch, identifying their comments with the docket number found in brackets in the heading of this document, or, if they wish to comment on antioxidant vitamins and cancer, identify their comments with Docket No. 93N-289A.

All submissions should be made in triplicate.

Dated: October 19, 1993.

Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 93-26150 Filed 10-20-93; 12:15 pm]

BILLING CODE 4160-01-F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the

applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHBI SEP for three RO1 Grant Applications.

Dates of Meeting: November 2, 1993.

Time of Meeting: 2 p.m.

Place of Meeting: Chevy Chase Holiday Inn, Chevy Chase, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Dr. C. James Scheirer, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594-7452.

Name of Panel: NHBI SEP on Blood Resource Research.

Dates of Meeting: November 15-16, 1993.

Time of Meeting: 7 p.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To review and evaluate four R18's and one RO1.

Contact Person: Dr. Anthony M. Coelho Jr., 5333 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 594-7485.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and

Resources Research, National Institutes of Health.)

Dated: October 19, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research.

[FR Doc. 93-26107 Filed 10-21-93; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on October 8, 1993.

(Call PHS Reports Clearance Officer on (202) 690-7100 for copies of requests.)

1. Study to Determine the Impact of the Final Rule, "Health Care Services of

the Indian Health Service, 42 CFR Part 36"—New—This submission is for approval to conduct a survey to determine the impact of the Final Rule on the economic, social, cultural, and health status of reservation and urban Indian populations. Respondents will be users of the Indian Health Service (IHS) and tribal health care facilities, at least 18 years of age and will be selected from 11 IHS Areas (excluding California for which a separate study is legislatively mandated). Respondents: Individuals or households; Number of Respondents: 1,071; Number of Responses Per Respondent: 1; Average Burden Per Response: .66 hr.; Estimated Annual Burden hours: 706 hours.

2. 1994 National Health Interview Survey on Disability (NIHS-D)—0920-0214—The National Health Interview Survey, and ongoing survey of the civilian, non-institutionalized population, monitors the Nation's health. This submission is for addition of a supplement on disability. Respondents: Individual or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Currently Approved	48,500	1	1.01
Disability Supplement	48,500	1	1.12
Estimated Total Annual Burden—103,113.			

3. Substance Abuse Prevention and Treatment Block Grant—45 CFR Part 96—0930-0163—This Interim Final Rule provides guidance for States regarding the Substance Abuse Prevention and Treatment Block Grant legislation. The rule implements the reporting and recordkeeping requirements of Public Law 102-321 by specifying the content of the States' annual report on and application for Block Grant funds. The application and annual report are separately approved under OMB control number 0930-0080 for FY 1994 and 1995. Respondents: State or local governments; Number of Respondents: 60; Number of Responses Per Respondent: 1; Average Burden per Response: 16 hours; Estimated Annual Burden: 960 hours.

4. Petitions for Affirmation of Generally Recognized as Safe (GRAS) Substances—21 CFR Part 170—0910-0132—Section 201(s) of the FD&C Act defines food ingredients other than food additives as substances generally recognized as safe (GRAS). Under authority of sections 409 and 701 of the Act, the FDA reviews petitions for affirmation as GRAS which are

submitted on a voluntary basis by the industry and other interested parties. Respondents: Small businesses or organizations; Businesses or other for-profit; Federal agencies or employees; Number of Respondents: 9; Number of Responses Per Respondent: 1; Average Burden Per Response: 2,500 hours; Estimated Annual Burden: 22,500.

5. Schizophrenia Patient Outcomes Research Team (PORT)—New—This survey of 1,200 persons under care for schizophrenia in two states will assess their treatment experiences and needs, and outcomes of care. The findings will be used to develop treatment recommendations for schizophrenia.

The dissemination of the recommendations to practitioners and the public will be evaluated for changes in patient outcomes, practice patterns, public knowledge and attitudes, and resource use. Respondents: Individuals or households; Number of Respondents: 1,720; Number of Responses per Respondent: 1; Average Burden per Response: hours; 0.9279 hours; Estimated Annual Burden: 1,596 hours.

6. List of Ingredients Added to Tobacco in the Manufacture of Cigarette

Products—0920-0210 (Reinstatement)—Public Law 98-474 (15 U.S.C. 1336) requires cigarette manufacturers, packagers, and importers to submit a list of the ingredients added to tobacco in the manufacturer of cigarettes. This list should include each additive along with its common name, chemical name, and chemical abstract number (CAS) and be submitted to the Secretary, DHHS. Respondents: Businesses or other for-profit; Number of Respondents: 14; Number of Responses per Respondent: 1; Average Burden per Response: 2 hours; Estimated Annual Burden: 28 hours.

7. Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect—Report 21 CFR 510-0910-0012—Information is gathered by the Food and Drug Administration from manufacturers of animal drug products and veterinarians on adverse drug reactions to new animal drugs. This regulation requires the submission of full reports of information pertinent to the safety and effectiveness of the new animal drug. Respondents: Businesses or other for-profit.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour(s))
Reporting (21 CFR 510.300-302)	350	3.1	1.02
Recordkeeping (21 CFR 510.300(a) and 510.301(a)	250	1	.5
Estimated Total Annual Burden—1,250			

8. NPRM—Food Additives—Threshold of Regulation for Substances Used in Food-Contact Articles—New—The Food and Drug Administration (FDA) is proposing a policy for determining when the likelihood or extent of migration of a component of a food-contact article is so trivial as not to require regulation as a food additive. This NPRM lists the criteria which must be met for a food-contact material to be reviewed under this policy and identifies the types of data that FDA will need for its review. Respondents: Business or other for-profit; Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 1 hour.

9. Family and Genetic Study of Cardiovascular Disease: Phase II—New—The primary goal of this study is to identify and evaluate genetic and non-genetic determinants of coronary heart disease, preclinical atherosclerosis, and coronary heart disease risk factors. It is designed to expand family and genetic studies of cardiovascular disease in ongoing population-based epidemiologic studies. Respondents: Individuals or households; State or local governments, Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; Number of Respondents: 3,376; Number of Responses per Respondent: 3.7823; Average Burden per Response: 0.8668 hours; Estimated Annual Burden: 11,068 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: October 18, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93-26023 Filed 10-21-93; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-54]

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.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 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 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been

reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions

or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the *Federal Register*, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Navy*: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; *GSA*: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208-0619; (These are not toll-free numbers).

Dated: October 15, 1993.

Jacque M. Lawing,

Deputy Assistant Secretary for Economic Development.

**Title V, Federal Surplus Property Program
Federal Register Report for 10/22/93**

Suitable/Available Properties

Land (by State)

Florida

Former US Army Reserve Center
Belvedere Rd. and Clubhouse Dr.
West Palm Beach Co: Palm Beach FL 33409-
Landholding Agency: GSA
Property Number: 549310005
Status: Unutilized
Comment: 3.10 acres, utilities, previously
leased by non-profit for homeless
assistance use
GSA Number: 4-GR-FL-682A

Unsuitable Properties

Buildings (by State)

California

Morris Dam Test Facility Range
Azusa Co: Los Angeles CA 91702-
Landholding Agency: Navy
Property Number: 779410001
Status: Unutilized
Reason: Secured Area
[FR Doc. 93-25950 Filed 10-21-93; 8:45
a.m.]

BILLING CODE 4210-29-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-062-04-5440-10-B043, CACA 33071]

**Realty Action; Exchange of Public and
Private Lands, San Bernardino County,
CA**

AGENCY: Bureau of Land Management,
Department of the Interior.

ACTION: Notice of realty action; exchange
of public and private lands in San
Bernardino County, California.

SUMMARY: The following described
public lands are being considered for
disposal by exchange under section 206
of the Federal Land Policy and
Management Act of 1976 (43 U.S.C.
1716), as amended:

San Bernardino Meridian

T.16N., R.13E.,

Section 11: S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$;
Section 12: lots 1-5, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Section 13: lot 1, MS 6774 A&B,
NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;
Section 14: lot 2, NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,
NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$,
W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T.16N., R.14E.,

Section 30: lot 2, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

Containing 879.61 acres of public land,
more or less.

In exchange for these lands, the
United States would acquire an equal
value of the following private lands in
San Bernardino County from Molycorp
Inc.:

San Bernardino Meridian

T.5N., R.22E.,

Section 5: lots 1&2 of NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$, lots
1&2 of NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
Section 9: N $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ NE $\frac{1}{4}$.

T.6N., R.4E.,

Section 36.

T.6N., R.22E.,

Sections 5 and 9.

T.7N., R.21E.,

Section 5,9,13,17,21,25,29 and 33.

T.7N., R.22E.,

Sections 29 and 33.

SUPPLEMENTARY INFORMATION: The
purpose of the exchange is to acquire
and preserve private lands containing
high value desert tortoise habitat and
high public recreation values. The
desert tortoise has been listed as a
threatened species under the
Endangered Species Act of 1973. The
public lands to be exchanged have been

impacted by Molycorp's Mountain Pass
mine operations, and are no longer
suitable for multiple use management.
The exchange is scheduled to be
completed in December of 1993.
Publication of this Notice in the *Federal
Register* segregates the public lands
from the operation of the public land
laws and the general mining laws, but
not the mineral leasing laws. The
segregative effect will end upon
issuance of patent, or two years from the
date of publication, whichever occurs
first.

The value of the lands to be
exchanged will be equal, or if not equal,
full equalization of values will be
achieved under the provisions of section
206 of the Federal Land Policy and
Management Act of 1976 (43 U.S.C.
1716), as amended. Public or private
lands may be deleted from the exchange
to balance values. The public lands will
be transferred out of federal ownership
with the following reservations:

1. A right of way to the United States
for ditches and canals, pursuant to the
Act of August 30, 1890 (43 U.S.C. 945).

2. A right of way to the United States
for access to public lands.

3. Federal Aid Highway rights of
ways, serial numbers S 030881 and R
1718, held by the State of California.

The transfer of public lands will also
be subject to the following right of way
interests held by third parties:

1. Serial number LA 0162054,
powerline, to Southern California
Edison.

2. Serial number LA 0113528, road, to
American Telephone and Telegraph.

3. Serial number LA 0127125,
telephone cable, to Pacific Bell.

4. Serial number R 01730, telephone
cable to Southern California Edison.

5. Serial numbers LA 0168855 and S
5597, natural gas pipelines, to Calnev
Pipeline.

6. Serial number LA 0144389,
telephone cable, to Pacific Bell.

7. Serial number R 239, water
pipeline, to the State of California.

8. Serial number R 1806, powerline,
to Southern California Edison.

The private lands will be acquired
subject to easements of record.

For further information concerning
this exchange, contact Tom Gey,
California Desert District, 6221 Box
Springs Blvd., Riverside, CA 92507.
Phone number (909) 697-5352. For a
period of 45 days after publication of
this notice in the *Federal Register*
interested parties may submit comments
to the District Manager, California
Desert District, in care of the above
address. Objections will be reviewed by
the State Director, who may sustain,
vacate, or modify this realty action.

Dated: October 13, 1993.

G. Ben Koski,

Acting District Manager.

[FR Doc. 93-26013 Filed 10-21-93; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-04-4210-04]

Realty Action

October 13, 1993.

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Realty Action; exchange of public lands in Clark County, Nevada, for private lands in Washoe, Lyon, Storey Counties, Nevada; and San Bernardino County, California.

SUMMARY: This notice modifies the Notice of Realty Action; Non-Competitive Sale of Public Lands in Clark County, Nevada, published in the *Federal Register* Vol 58, No. 124; June 30, 1993; page 35038. The identified notice is modified to change the determination of the suitability of the public land for sale under section 203 and 209 of Public Law 94-579 to a determination that the land is more suited for exchange under section 206 of Public Law 94-579. This notice also identifies the offered private lands being considered for exchange.

The following described private lands are being considered for acquisition by exchange under authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The private lands to be acquired, that are presently owned by the Galena Resort Company or the Venture Development Corporation or the Granite Construction Company, within the Toiyabe National Forest, will be transferred to USFS management. Private lands acquired in and around the Pyramid Lake Indian Reservation would be managed by the Bureau of Land Management or transferred to the Bureau of Indian Affairs if within the reservation boundaries. The remaining private lands acquired in California will be managed by BLM, consistent with the management direction provided by BLM planning documents or management designations. The private lands specifically identified below, if acquired, will serve the public interest well.

Catellus Land San Bernardino Co., California (CACA-32685)

Mount Diablo Meridian, California

T. 32 S., R. 44 E.,

Secs.

1,3,5,11,13,15,19,21,23,25,27,29,31&33; all.

T. 32 S., R. 45 E.,

Secs. 7,11,21,25,29&33: all.

San Bernardino Meridian, California

T. 2 N., R. 12 E.,

Secs. 1&13: all;

Sec. 23: N½.

T. 2 N., R. 13 E.,

Secs. 1,5,9&13: all;

Sec. 15: S½;

Sec. 17: all;

Sec. 19: lots 1-3 of NW¼, NE¼, SE¼NW¼;

Secs. 21&23: all.

T. 2 N., R. 14 E.,

Secs. 1,5,9,13,17,19&21: all;

Sec. 23: S½;

Sec. 25: N½;

Sec. 27: N½;

Sec. 29: N½.

T. 2 N., R. 15 E.,

Sec. 17: all;

Sec. 19: lots 1&2 of SW¼, SE¼;

Sec. 21: all;

Sec. 29: N½.

T. 3 N., R. 13 E.,

Secs. 1,5,9,13,17,21,25,29&33: all.

T. 3 N., R. 14 E.,

Secs. 5,9,17,21,25,29&33: all.

T. 3 N., R. 16 E.,

Secs. 1,13&25: all.

T. 3 N., R. 17 E.,

Secs. 1,5,9,17: all;

Sec. 11: SE¼;

Sec. 21: lots 1-8, NE¼, E½W½, W½SE¼;

Sec. 29: NE¼, W½;

Sec. 31: lots 1&2 of the SW¼.

T. 4 N., R. 13 E.,

Secs. 25&33: all.

T. 4 N., R. 14 E.,

Secs. 29&33: all.

T. 4 N., R. 16 E.,

Secs. 1,5,9,13,17,21,29,&33: all;

Sec. 25: S½.

T. 4 N., R. 17 E.,

Secs. 1,9,13,25,29&33: all;

Sec. 5: lots 2-4, W½SW¼NE¼, S½NW¼,

S½;

Sec. 17: N½, SW¼, N½SE¼, SW¼SE¼;

Sec. 21: E½, E½W½, SW¼SW¼.

T. 4 N., R. 18 E.,

Secs. 5&9: all;

Sec. 11: NW¼;

Sec. 15: lots 1&2,4&5,

W½NE¼, NW¼, N½SW¼;

Secs. 17,21&29: all;

Sec. 31: lots 1-3,6&7,

W½NE¼, NW¼SE¼.

T. 5 N., R. 18 E.,

Sec. 1,13&33: all;

Sec. 25: N½, SW¼.

T. 5 N., R. 21 E.,

Sec. 1: E½ of lot 1 of NE¼, E½ of lot 2

of NE¼.

T. 5 N., R. 22 E.,

Sec. 1: all;

Sec. 5: lots 1&2 of the NE¼, lots 1&2 of the

NW¼, N½S½, S½SE¼;

Sec. 9: N½N½, S½NE¼;

Sec. 13: N½N½.

T. 5 N., R. 23 E.,

Tracts 37 to 39&41;

Sec. 13: N½.

T. 5 N., R. 24 E.,

Tract 37.

T. 6 N., R. 16 E.,

Sec. 33: all;

T. 6 N., R. 17 E.,

Sec. 1: all;

Sec. 13: W½NE¼, SE¼NE¼, E½NW¼,

SW¼NW¼, S½.

T. 6 N., R. 20 E.,

Sec. 1&5: all.

Sec. 7: SE¼;

Sec. 13: NE¼;

Sec. 17: W½NW¼.

T. 6 N., R. 22 E.,

Secs. 1,5,9,13&25: all.

T. 6 N., R. 23 E.,

Secs. 1,5,9,13,17,21,25,29&33: all.

T. 6 N., R. 24 E.,

Secs. 5,9,17,21,29&33: all.

T. 7 N., R. 3 E.,

Secs. 1,13&25: all.

T. 7 N., R. 4 E.,

Secs. 1,5,9,17,21&29: all.

T. 7 N., R. 17 E.,

Secs. 1,5,9,13,25,29&33: all.

T. 7 N., R. 18 E.,

Secs. 1,5&9: all.

T. 7 N., R. 20 E.,

Secs. 21,25,29&33: all.

T. 7 N., R. 22 E.,

Sec. 25: all.

T. 7 N., R. 23 E.,

Secs. 5,9,13,17,21,25,29&33: all.

T. 7 N., R. 24 E.,

Secs. 17,21,29&33: all.

T. 8 N., R. 4 E.,

Secs. 29&33: all.

T. 8 N., R. 17 E.,

Secs. 21,25&33: all.

T. 8 N., R. 18 E.,

Sec. 1: SE¼NE¼, SE¼;

Secs. 5,9,13,17,25,29&33: all.

T. 8 N., R. 19 E.,

Secs. 1,5,9,17&29: all.

T. 8 N., R. 20 E.,

Tracts 37 to 39;

Secs. 9&17: all.

T. 9 N., R. 5 E.,

Secs. 13&25: all.

T. 9 N., R. 6 E.,

Secs. 1,9,13,17,21,25,29&33: all.

T. 9 N., R. 7 E.,

Secs. 1,5,9,17,21&29: all.

T. 9 N., R. 19 E.,

Secs. 25,29&33: all;

T. 9 N., R. 20 E.,

Secs. 25,29&33: all.

T. 9 N., R. 21 E.,

Sec. 17: all.

T. 10 N., R. 5 E.

Sec. 13: all.

T. 10 N., R. 6 E.,

Secs. 13,17,21&25: all.

T. 10 N., R. 7 E.,

Secs. 1,9,13,17,21,25,29&33: all.

T. 11 N., R. 3 E.,

Secs. 1,9&13: all.

T. 11 N., R. 7 E.

Secs. 21&27: all.

T. 12 N., R. 3 E.,

Sec. 33: all.

For further information concerning the above listed private lands, contact Tom Gey, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. Phone number (909) 697-5352.

Massacre Ranch Lands, Washoe County, Nevada (CANVN-57582)

Mount Diablo Meridian, Nevada

- T. 41 N., R. 21 E.,
 Sec. 1: SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 2: SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 11: NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 12: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 13: Tract 39;
 Sec. 14: Tract 37;
 Sec. 24: Tract 40.
- T. 41 N., R. 22 E.,
 Sec. 4: lot 4;
 Sec. 5: lots 1 and 2, S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 6: SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 42 N., R. 20 E.,
 Sec. 36: NE $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 42 N., R. 21 E.,
 Sec. 2: lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 3: lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 9: NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 10: NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 11: SW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 14: SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$,
 N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 16: S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 18: SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 19: NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21: NW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 22: NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 23: NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 27: NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 31: lot 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 34: NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 35: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 42 N., R. 22 E.,
 Sec. 4: SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 5: Lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 6: SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 7: NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 17: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 18: W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 19: S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 20: NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 33: SW $\frac{1}{4}$ SW $\frac{1}{4}$.
- T. 43 N., R. 22 E.,
 Sec. 4: NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 5: NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 8: SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 10: NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 11: SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 16: SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 18: NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 19: lot 4;
 Sec. 20: NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 22: SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 25: SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 27: NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 30: lot 1;
 Sec. 33: SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Aggregating 4,200 acres more or less. The Bureau of Land Management will also acquire all water and mineral rights owned by the American Land Conservancy. For detailed information concerning the private lands listed under CANVN-57582 immediately above contact J. Anthony Danna, BLM Surprise Resource Area, at (916) 279-6101.

Granite Construction Company Lands, Washoe County, Nevada (N-57877)
 Mount Diablo Meridian, Nevada
 Washoe County, Nevada
 T. 20 N., R. 18 E.,
 Sec. 1: NE $\frac{1}{4}$ SW $\frac{1}{4}$;

- Sec. 2: S $\frac{1}{2}$;
 Sec. 3: all;
 Sec. 4: all;
 Sec. 8: S $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 9: all;
 Sec. 10: N $\frac{1}{2}$;
 Sec. 11: all;
 Sec. 13: all;
 Sec. 14: N $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 15: all;
 Sec. 16: all;
 Sec. 17: N $\frac{1}{2}$;
 Sec. 20: NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Venture Development Corporation Lands, Washoe County, Nevada (N-57877)

- T. 20 N., R. 18 E.,
 Sec. 17: S $\frac{1}{2}$;
 Sec. 20: N $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$,
 S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21: all;
 Sec. 22: W $\frac{1}{2}$;
 Sec. 27: N $\frac{1}{2}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 28: all;
 Sec. 29: W $\frac{1}{2}$, SE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$.

Galena Resort Company, Washoe County, Nevada (N-57877)

- T. 17 N., R. 18 E.,
 Sec. 13: S $\frac{1}{2}$;
 Sec. 15: E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 21: all;
 Sec. 23: all;
 Sec. 24: N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ east and west of
 State Rte 27;
 Sec. 25: NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$;
- T. 17 N., R. 19 E.,
 Sec. 17: NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$,
 SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$;
 Sec. 18: E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 19: NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$,
 Sec. 20: NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,
 N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$;
 Sec. 21: all;
 Sec. 23: all.

For further information concerning the above listed private lands, contact Marcia Joesph, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada, 89431. Phone number (702) 355-5300.

Pyramid Lakes Indian Reservation, Washoe, Lyon, Storey Counties, Nevada. (N-57815)

Additional lands will be acquired to implement Congressional direction provided by Public Law 101-618, section 210(b)(18). The Congress has determined that the private lands within and adjacent to the Pyramid Lake Indian Reservation should be acquired to benefit the Reservation. The listed lands will accomplish the Congressional goals by acquiring lands from willing sellers. The private landowners willing to sell their lands are as follows.

1. Approximately 11,000 acres generally known as the DePaoli Ranch located in Washoe and Storey Counties, Nevada.
2. Approximately 250 acres generally known as the Big Bend Ranch located in Washoe County, Nevada.

3. Approximately 115 acres generally known as the Urrutia Ranch located in Washoe County, Nevada.

4. Approximately 37 acres generally known as the Pace Ranch located in Washoe County, Nevada.

5. Approximately 228 acres generally known as the Logan/Keever property located in Washoe County, Nevada.

6. Approximately 1 acre generally known as the Pulver property located in Washoe County, Nevada.

7. Approximately 1 acre generally known as the Coomer property located in Washoe County, Nevada.

For detailed information, including legal descriptions of property concerning the private lands listed above contact the Carson City District Manager at 1535 Hot Springs Rd, Suite 300, Carson City, NV 89706-0638; Telephone: (702) 885-6000.

Additional lands containing sensitive resources may be acquired in and around the Red Rock Canyon National Conservation Area and the Spring Mountains National Recreation Area. When specific lands or interest in lands are identified this NORA will be modified.

The lands to be acquired in San Bernardino County, California (CACA-32685) are within or adjacent to areas proposed for wilderness designation, or are in proposed tortoise habitat management areas. The desert tortoise has been listed as a threatened species under the Endangered Species Act of 1973.

The lands in Washoe County, Nevada (CANVN-57582) are to be acquired to improve the Bureau's management of adjoining public land, and allow multiple resource planning and management for wildlife, recreation, watershed, riparian habitat and an Area of Critical Environmental Concern. Acquisition of the private lands will meet the goals and objectives of the Bureau's Cowhead/Massacre Management Framework Plan.

The publication of this notice is for the purpose of soliciting comments on the offered private lands listed above.

SUPPLEMENTARY INFORMATION:

A. The private lands described above will be acquired by the United States from the American Land Conservancy, 456 Montgomery Street, Suite 1800, San Francisco, CA 94104, in exchange for an equal value of public lands.

B. The private lands will be acquired subject to easements of record.

C. The value of the lands to be exchanged will be equal, or if not equal, full equalization of values will be achieved under the provisions of section 206 of the Federal Land Policy and

Management Act of 1976 (43 U.S.C. 1716), as amended.

D. The exchange of the lands in California will be completed only after passage of special legislation permitting an interstate land exchange. In the absence of specific Congressional authorization the acquisition of the lands in California would not be completed and that portion of this Notice will be vacated.

E. The public lands are located in the City of North Las Vegas, Clark County, Nevada, and were identified in a Notice of Realty Action previously published in the *Federal Register* (58 FR 35038-35039, June 30, 1993). The public lands will be disposed of by patent to the City of North Las Vegas and the values of the public lands credited to the American Land Conservancy under the terms of the exchange agreement between BLM and ALC.

F. The Federal land will be conveyed subject to the valid existing rights identified in the original NORA published for the public lands.

G. Publication of this notice in the *Federal Register* merely changes the disposal authority for the public land from public sale under authority of section 203 of FLPMA to disposal of the lands by exchange under section 206 of FLPMA. The segregation imposed by the previously published notice cited above is not affected by this notice and the lands will still remain segregated from appropriation under all the other public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 2 years from the date of publication of this notice in the *Federal Register* whichever occurs first.

H. Prior to the BLM issuing patents for the subject Federal Lands an environmental analysis will be completed for the disposal of the land by exchange. The EA will address the impacts associated with the acquisition of private lands to be included into public land management by land exchange. Potential mitigating measures associated with the private development of the public lands in the City of North Las Vegas will also be analyzed.

For a period of 45 days from the publication of this notice in the *Federal Register* interested parties may submit comments to the State Director, Nevada BLM State Office, P.O. Box 12000, Reno, Nevada, 89520-0006. All comments should specifically identify the portion of the exchange to which they pertain. Comments will be reviewed by the State

Director, who may sustain, vacate, or modify this realty action.

K Lynn Bennett,
Associate State Director, Nevada.

[FR Doc. 93-26028 Filed 10-21-93; 8:45 am]

BILLING CODE 4310-HC-M

[OR-014-3110-10-HC40; GP-4-007]

Realty Action; Segregation of Public Lands in Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands are being evaluated to determine if they are suitable for disposal by exchange under section 206 of the Federal Land Policy Land Management Act of 1976, 43 U.S.C. 1716. These public lands have been identified for disposal in the Lost River Management Framework Plan and the Land Tenure Adjustment Amendment to that plan dated, March 21, 1989.

T. 37 S., R. 9 E.

Sec. 3—SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$

T. 37 S., R. 10 E.

Sec. 12—S $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 13—NE $\frac{1}{4}$ NW $\frac{1}{4}$

T. 37 S., R. 11 $\frac{1}{2}$ E.

Sec. 13—E $\frac{1}{2}$ NW $\frac{1}{4}$

Sec. 14—SE $\frac{1}{4}$ NE $\frac{1}{4}$

Sec. 17—SE $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 20—NE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 21—W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$,

SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 22—W $\frac{1}{2}$ SW $\frac{1}{4}$

Sec. 26—NE $\frac{1}{4}$ NW $\frac{1}{4}$

Sec. 27—NW $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 28—SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$,

SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 29—SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$

T. 37 S., R. 11 E.

Sec. 26—SW $\frac{1}{4}$

Sec. 27—E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$

Sec. 29—N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 30—N $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 33—SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 34—E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$,

SE $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 35—S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$

T. 38 S., R. 11 E.

Sec. 1—N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 2—Lot 4, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 3—Lots 1, 2, and 3, S $\frac{1}{2}$ NE $\frac{1}{4}$,

SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$

Sec. 10—E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 11—SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 12—SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$,

SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,

E $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 13—W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$,

W $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 14—W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,

W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 22—S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 23—E $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$

Sec. 28—all

Sec. 35—N $\frac{1}{2}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$

T. 39 S., R. 11 E.

Sec. 2 Lots 1, 3, and 4.

The area described aggregates approximately 7,445.17 acres in Klamath County, Oregon.

In exchange for some or all of these lands, the Federal Government proposes to acquire the following described private lands in Klamath County Oregon from the American Land Conservancy, a nonprofit public benefit corporation: Parcel 1 of Land Partition 1-93, situated in Sections 10, 11, 13, 14, 15, 16, 21, 22, and 23 Township 34 South, Range 7 $\frac{1}{2}$ East Willamette Meridian, Klamath County, Oregon.

The parcel of land to which the above descriptions apply contains 1,680 acres, more or less.

The purpose of this exchange is to acquire the north half of the Wood River Ranch. In the 1993 appropriations act, Congress directed the BLM to purchase, at fair market value, the Wood River Ranch and after acquisition to administer the land and to consult with the Bureau of Reclamation and the Fish and Wildlife Service with regard to common management issues affecting the Klamath Basin. Congress also stated that BLM should dispose of appropriate lands under its control in Klamath County in order to compensate for the loss of local tax revenues associated with the Wood River Ranch acquisition. This exchange will fulfill part of BLM's congressional commitment. The Wood River Ranch has very important values for wetlands and contains habitat for at least three threatened or endangered species. The public interest will well served by making the exchange.

Publication of this notice in the *Federal Register* segregates the public lands described above from settlement, location, and entry under the public lands laws and the general mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. This segregative effect shall terminate upon issuance of a patent to such lands, upon publication in the *Federal Register* of a termination of the segregation, or two years from date of this publication, whichever ever occurs first.

Interested parties may submit comments to the Area Manager, Klamath Falls Resource Area, 2795 Anderson Ave. Bldg. 25 Klamath Falls, OR 97603.

FOR FURTHER INFORMATION CONTACT:

Tom Cottingham at 503-883-6916, Klamath Falls Resource Area Office,

2795 Anderson Avenue, Building 25,
Klamath Falls, OR 97603

A. Barron Bail,

Area Manager.

[FR Doc. 93-25899 Filed 10-21-93; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: October 19, 1993.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2) the location of the records (3) and the name and address of the person to whom inquiries and correspondence should be addressed (4) are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

- (1) Knouse Foods, Inc.
- (2) Peach Glen, PA 17375
- (3) Peach Glen, PA 17375
- (4) Arlene Jennings, Peach Glen, PA 17375

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-26072 Filed 10-21-93; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

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: Jones Petroleum Company, Inc., 407 East Second Street, Jackson, Georgia 30233.

2. Wholly owned subsidiaries which will participate in the operations, and State of incorporation:

Knight Petroleum Company, Inc.—

Georgia

Stark Properties, Inc.—Georgia

Convenience Stores, Inc.—Georgia

Commercial Properties, Inc.—Georgia

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-26073 Filed 10-21-93; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32361]

The Columbus & Ohio River Rail Road Company and Norfolk and Western Railway Company—Joint Relocation Project Exemption

On September 22, 1993, The Columbus & Ohio River Rail Road Company (CUOH) and Norfolk and Western Railway Company (NW) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate their interchange operations. CUOH and NW presently interchange freight at Columbus, OH. The joint project involves: (1) CUOH's use of a 212-foot connecting track to be jointly owned with NW and constructed between CUOH's main line near Leonard Avenue and NW's industrial lead track, parallel and contiguous thereto; and (2) CUOH's acquisition of bridge trackage rights over approximately 9,140 feet of NW's existing industrial lead track and use of a new side track, approximately 1,940 feet in length and parallel thereto, to be constructed by NW for use by the parties to interchange with one another.

The joint relocation will result in more direct routing of freight interchanged between the carriers. The direct route will improve service to shippers by eliminating the delays and expense associated with the present circuitous routing that involves the yarding of the tariff at Conrail's Buckeye Yard, thereby providing for a more efficient and effective utilization of railroad equipment and resources. The transaction may be consummated on or after September 29, 1993.¹

Service to shippers will not be disrupted and, in fact, should be

¹ Under 49 CFR 1180.4(g), a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. The applicants, in their verified notice, indicated that the proposed date for consummation of the transaction is upon completion of all required track construction, or as soon thereafter as possible. Mr. Wimbish was placed prior to September 29, 1993.

enhanced. CUOH's financial viability should also be enhanced. There will be no expansion into new territory, nor will there be a change in the existing competitive situations.

The Commission will exercise jurisdiction over the construction component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the construction of track is not subject to the Commission's jurisdiction. The remainder of the joint relocation project involving the acquisition of overhead trackage rights qualifies for the class exemption at 49 CFR 1180.2(d)(5) and (7). The Commission has determined that joint relocations embrace trackage rights transactions such as the one proposed here. See *D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: M.J. Connor, The Columbus & Ohio River Rail Road Company, 136 South Fifth Street, Coshocton, OH 43812; and R. Allan Wimbish, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

Decided: October 15, 1993.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-26071 Filed 10-21-93; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32347]

Hardin Southern Railroad, Inc.— Acquisition and Operation Exemption—Line of J and J Railroad, Inc.

Hardin Southern Railroad, Inc., a non-carrier, has filed a notice of exemption to acquire and operate approximately 8.34 miles of rail line owned by J and J Railroad, Inc., in Marshall and Calloway Counties, KY. The line

extends generally between milepost 30.0 and milepost 38.34, beginning at the north edge of the City of Murray, KY, continuing northward generally following the Clarks River, and terminating at Hardin, KY. This exemption will become effective on or after September 23, 1993.¹

Any comments must be filed with the Commission and served on: Francis G. McKenna, Esq., Anderson and Pendleton, P.O. Box 65891, Washington, DC 20035.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 22, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93-26070 Filed 10-21-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-28,275]

A & A Materials, A/K/A Artiguez E. Alicia Materials, Inc., Brownsville, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1993, applicable to all workers of A & A Materials, Brownsville, Texas. The certification notice was published in the *Federal Register* on March 26, 1993 (58 FR 16420).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that several of the claimants' wages are reported under the Unemployment Insurance tax account for Artiguez e Alicia Materials, Inc., in Brownsville, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA-W-28,275 is hereby issued as follows:

All workers of A & A Materials, Brownsville, Texas a/k/a Artiguez e Alicia Materials, Inc., Brownsville, Texas, producing rags who became totally or partially separated from employment on or after January 21, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this October 14, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-26067 Filed 10-21-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,064]

Penn Footwear Co., Nanticoke, Pennsylvania; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 27, 1993 in response to a worker petition which was filed on September 27, 1993 on behalf of workers at Penn Footwear Company, Nanticoke, Pennsylvania.

An active certification covering the petitioning group of workers remains in effect through October 22, 1993 (TA-W-26,195). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of October 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-26066 Filed 10-21-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

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 condition 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 on 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 determination 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 part 1 and 5. Accordingly, the applicable decisions, 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,

¹ Applicant states that the parties intend to convey the line on October 1, 1993.

Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume II

Kansas

KS930040 (Oct. 22, 1993)
 KS930041 (Oct. 22, 1993)
 KS930042 (Oct. 22, 1993)
 KS930043 (Oct. 22, 1993)
 KS930044 (Oct. 22, 1993)
 KS930045 (Oct. 22, 1993)
 KS930046 (Oct. 22, 1993)
 KS930047 (Oct. 22, 1993)
 KS930048 (Oct. 22, 1993)
 KS930049 (Oct. 22, 1993)
 KS930050 (Oct. 22, 1993)
 KS930051 (Oct. 22, 1993)
 KS930052 (Oct. 22, 1993)
 KS930053 (Oct. 22, 1993)
 KS930054 (Oct. 22, 1993)
 KS930055 (Oct. 22, 1993)
 KS930056 (Oct. 22, 1993)
 KS930057 (Oct. 22, 1993)
 KS930058 (Oct. 22, 1993)
 KS930059 (Oct. 22, 1993)

Volume III

Oregon

OR930006 (Oct. 22, 1993)
 OR930007 (Oct. 22, 1993)
 OR930008 (Oct. 22, 1993)
 OR930009 (Oct. 22, 1993)
 OR930010 (Oct. 22, 1993)
 OR930011 (Oct. 22, 1993)
 OR930012 (Oct. 22, 1993)
 OR930013 (Oct. 22, 1993)
 OR930014 (Oct. 22, 1993)
 OR930015 (Oct. 22, 1993)
 OR930016 (Oct. 22, 1993)

Washington

WA930015 (Oct. 22, 1993)
 WA930016 (Oct. 22, 1993)
 WA930017 (Oct. 22, 1993)
 WA930018 (Oct. 22, 1993)
 WA930019 (Oct. 22, 1993)
 WA930020 (Oct. 22, 1993)
 WA930021 (Oct. 22, 1993)
 WA930022 (Oct. 22, 1993)
 WA930023 (Oct. 22, 1993)
 WA930024 (Oct. 22, 1993)
 WA930025 (Oct. 22, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are

in parentheses following the decisions being modified.

Volume I

Florida

FL930013 (Feb. 19, 1993)
 FL930032 (Feb. 19, 1993)

Maryland

MD930013 (Feb. 19, 1993)
 MD930014 (Feb. 19, 1993)

New York

NY930002 (Feb. 19, 1993)

Volume II

Arkansas

AR930007 (Feb. 19, 1993)

Kansas

KS930030 (Oct. 15, 1993)

Nebraska

NE930003 (Feb. 19, 1993)
 NE930005 (Feb. 19, 1993)
 NE930011 (Feb. 19, 1993)

Ohio

OH930001 (Feb. 19, 1993)

Oklahoma

OK930013 (Feb. 19, 1993)

Volume III

Alaska

AK930001 (Feb. 19, 1993)

Arizona

AZ930001 (Feb. 19, 1993)

California

CA930001 (Feb. 19, 1993)

Colorado

CO930002 (Feb. 19, 1993)

Hawaii

HI930001 (Feb. 19, 1993)

Idaho

ID930002 (Feb. 19, 1993)

Washington

WA930001 (Feb. 19, 1993)
 WA930002 (Feb. 19, 1993)
 WA930008 (Feb. 19, 1993)

General Wage and 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 15th day of Oct. 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-25788 Filed 10-21-93; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-082]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the request for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Acting Agency Clearance Officer and the OMB Reviewer.

DATES: Comments are requested by November 1, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Acting Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0007) Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358-1474.

Reports

Title: Radioactive Material Transfer Receipt.

OMB Number: 2700-0007.

Type of Request: Extension.

Frequency of Report: On Occasion.

Type of Respondent: Business or other for-profit, Federal agencies or

employees, Non-profit institutions, Small businesses or organizations.

Number of respondents: 50.

Responses per respondent: 10.

Annual Responses: 500.

Hours per response: .5.

Recordkeeping hours: 40.

Annual Burden Hours: 290.

Abstract-Need/Uses: The Nuclear Regulatory Commission has authorized NASA to use radioactive material at temporary job sites throughout the U.S. for research and development purposes as well as launching of space vehicles. This report furnishes NASA with the necessary records on the possession, location, and use of radioactive materials.

Dated: October 14, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93-26086 Filed 10-21-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On September 17, 1993 the National Science Foundation published a notice in the *Federal Register* of permit applications received. Permit for enter site of special interest, was issued to Diane McKnight, Cathy Tate, Paul von Gurrard, Harry House, Andrew Fountain, Bruce Vaughn on October 17, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93-26027 Filed 10-21-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-424]

Georgia Power Co., et al., Vogtle Electric Generating Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR part 50, Appendix J, Section III.D.3, to Georgia Power Company, acting for itself, Olgethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), for the Vogtle Electric Generating Plant, Unit 1 (Vogtle or the facility), located in Burke County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a one-time, temporary exemption from the requirements of Section III.D.3 of Appendix J to 10 CFR part 50, to extend the interval for Type C local leak rate testing of the Unit 1 auxiliary component cooling water (ACCW) supply and return containment isolation valves. Section III.D.3 requires that Type C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The proposed exemption would allow the required test interval for valves HV-1974 (and associated check valve 1-217-U4-113), HV-1975, HV-1978, and HV-1979 to be extended from 24 months to prior entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994. The proposed exemption in accordance with the licensee's application dated September 30, 1993.

The Need for the Proposed Action

The proposed exemption is needed to prevent the shutdown of Unit 1 solely for the purposes of testing the subject valves.

Environmental Impacts of the Proposed Action

The proposed exemption will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite. The proposed action will not increase potential radiological environmental effects due to containment leakage beyond those already permitted by the regulations.

Testing of Type B and C components under Appendix J to 10 CFR part 50 is intended to demonstrate that containment leakage from these components is within defined acceptable limits of less than 0.6 times the maximum allowable containment leakage rate with the containment pressurized to its design limit, which provide information used to calculate the maximum radiological consequences of a design basis accident.

The subject ACCW valves have been Type C tested during all previous refueling outages with the exception of the Unit 1 spring 1993 outage. A review of the previous Type C test data has shown that sufficient margin existed and that there has been no significant degradation of the valves isolation capability.

The probability of containment isolation failure following a core damage accident is modeled in the Vogtle individual plant examination (IPE). The IPE was submitted by letter dated December 23, 1992. In order to model a more conservative scenario of containment isolation failure than was considered in the base case Vogtle IPE, the licensee assumed that the occurrence of any core damage scenario would cause a break in the ACCW flow path and that the operator would be required to isolate the ACCW system for successful containment isolation. Based on a Type C test interval of 2 years, the frequency of core damage with containment isolation failure was found by the licensee to be on the order of 10^{-7} per reactor year. The licensee has stated that extending the required Type C test interval for these valves beyond the Appendix J 2-year period has a negligible impact on that probability. Thus, the probability of an event that leads to core damage and a failure of the ACCW piping inside containment with a failure to isolate containment is not considered to be credible by the licensee. The staff concurs that the additional operation period, between expiration of the current leak tests to prior to entry into Mode 4 following the next scheduled refueling outage (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994, is not expected to significantly decrease the margin between expected as-found leak rate and L_{10} .

Therefore, radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed action does not affect plant nonradiological effluents and has no

other nonradiological environmental impact.

Therefore, there will not be a significant increase in the types or amounts of any effluent that may be released offsite and, as such, the proposed exemption does not involve irreversible environmental consequences beyond those already associated with normal operation of the plant.

Based on its review, the Commission concludes that the proposed exemption is acceptable. The staff has determined that the proposed exemption does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed exemption does not increase the probability or consequences of 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 proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption involves components in the plant which are located within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for exemption. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Vogtle Electric Generating Plant, Units 1 and 2, dated March 1985.

Agencies and Persons Consulted

The staff consulted with the State of Georgia regarding the environmental impact of the proposed action

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption, dated September 30, 1993, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland this 18th day of October 1993.

For the Nuclear Regulatory Commission,
Victor Nereses,

*Acting Director, Project Directorate II-3,
Division of Reactor Projects—II/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 93-26029 Filed 10-21-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

Entergy Operations, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its June 27, 1991, application for proposed amendment to Facility Operating License No. DPR-51 for the Arkansas Nuclear One, Unit No. 1 (ANO-1), located in Pope County, Arkansas.

The proposed amendment would have revised Technical Specifications (TSs) 3.9 and 4.10 regarding the control room emergency ventilation (air conditioning and air filtration) system and control room isolation system, to achieve consistency with the requirements for ANO-2 and to avoid misinterpretation of the TSs and enhance the operability of the systems.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on August 7, 1991 (56 FR 31580). However, by letter dated October 1, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 27, 1991, and the licensee's letter dated October 1, 1993, which withdrew the application for license amendment. The above

documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 15th day of October, 1993.

For the Nuclear Regulatory Commission,

Roby B. Bevan,

*Project Manager, Project Directorate IV-1,
Division of Reactor Projects—III/IV/V, Office
of Nuclear Reactor Regulation.*

[FR Doc. 93-26030 Filed 10-21-93; 8:45 a.m.]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A94-2; Order No. 994]

Extension, Louisiana 71239; (M.P. Dailey, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Decided October 14, 1993.

Issued October 18, 1993.

Docket Number: A94-2.

Name of Affected Post Office:

Extension, Louisiana 71239.

Name(S) of Petitioner(S): M.P. Dailey.

Type of Determination: Closing.

Date of Filing of Appeal Papers:

October 13, 1993.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 28, 1993.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the *Federal Register*.

By the Commission.

Charles L. Clapp,
Secretary.

October 13, 1993

Filing of Petition

October 18, 1993

Notice and Order of Filing of Appeal

November 8, 1993

Last day of filing of petitions to intervene
[see 39 CFR 3001.111(b)]

November 17, 1993

Petitioner's Participant Statement or Initial
Brief [see 39 CFR 3001.115 (a) and (b)]

December 7, 1993

Postal Service Answering Brief [see 39 CFR
3001.115(c)]

December 22, 1993

Petitioner's Reply Brief should Petitioner
choose to file one [see 39 CFR
3001.115(d)]

December 29, 1993

Deadline for motions by any party
requesting oral argument. The
Commission will schedule oral argument
only when it is a necessary addition to
the written filings [see 39 CFR 3001.116]

February 9, 1994

Expiration of 120-day decisional schedule
[see 39 U.S.C. 404(b)(5)]

[FR Doc. 93-25963 Filed 10-21-93; 8:45 am]

BILLING CODE 7710-FW-P

Notice of Commission Visit

October 20, 1993.

Notice is hereby given that during the period October 26 through October 30, members of the Commission and certain advisory staff personnel will visit and be briefed on facilities of private industry and the U.S. Postal Service.

The on-site visits will include: U.S. Postal Service Sacramento Processing and Distribution Center and the Sacramento Bee; the U.S. Postal Service San Diego Processing and Distribution Center and its attendant remote "key" encoding facility in Otay Mesa, Ca.; the headquarters and training facilities of Mail Boxes Etc., in San Diego; the mail processing and forwarding operations of U.S. Marine Corps Recruit Depot, San Diego.; Roger's Bindery/Times Mirror, in Colton, Ca.; the headquarters and operations of Harte Hanks Shoppers, in Brea Ca.; and the United Parcel Service Ontario (Ca.) Airport hub.

A report of on-site visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202-789-6840.

Charles L. Clapp,
Secretary.

[FR Doc. 93-26237 Filed 10-21-93; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget; Agency Clearance Officer—John J. Lane (202) 272-3900

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension

Rule 17a-7

File No. 270-238

Rule 18f-1 and Form N-18F-1

File No. 270-187

Rule 19a-1

File No. 270-240

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget requests for approval of extension on currently approved rules and forms under the Investment Company Act of 1940.

Rule 17A-7 requires registered investment companies to keep various records in connection with certain purchase or sale transactions between investment companies and certain of their affiliates. It is anticipated that approximately 500 recordkeepers will spend a total of 500 hours to comply with this rule.

Rule 18f-1 enables a registered open-end management investment company that may redeem its securities in kind to elect to commit to make limited cash redemptions without violating section 18(f) of the Investment Company Act of 1940. Form N-18F-1 provides notification of this election. It is anticipated that approximately 62 respondents will spend a total of 62 hours to comply with this rule.

Rule 19a-1 requires a written statement to accompany certain dividend payments. Approximately 3,300 respondents incur an aggregate annual burden of 1,650 hours to comply with this rule.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be

directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance, Officer, Office of Management and Budget, (Paperwork Reduction Act Numbers 3235-0214, 3235-0211, and 3235-0216), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 14, 1993.

[FR Doc. 93-26055 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33057; File No. SR-CHX-93-26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Establish a Policy Concerning the Designated Primary Market Maker and Registered Market Maker of a Basket

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 13, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.³

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to publish to members Interpretation and Policy .01 under Exchange Article XXXIV, Rule 8 concerning the interactions between the Designated Primary Market Maker ("DPM") and the Registered Market Makers ("RMs") in trading the Chicago Basket ("CXM Basket").⁴

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ The Exchange also has requested permanent approval of this proposal in File No. SR-CHX-93-27. Today, the Commission is publishing notice of that proposal in Securities Exchange Act Release No. 33058 (October 15, 1993).

⁴ Today, the Commission is approving a proposed rule change by the CHX which amends the Rules of the Exchange to establish rules allowing for and governing the trading of standardized baskets on the Exchange Floor, and to trade a specific basket product to be known as the Chicago CXM Basket. See Securities Exchange Act Release No. 33053 (October 15, 1993) (order approving File No. SR-CHX-93-18). The present proposal provides an

The specific "Interpretation and Policy" is as follows:

.01 When the Designated Primary Market Maker and a Registered Market Maker, as those terms are used in Article XXXVI, are both displaying, through the quotation system, the same bid or offer price for a basket, the Designated Primary Market Maker and the Registered Market Maker will be entitled to participate in transactions on a $\frac{2}{3}$ to $\frac{1}{3}$ parity, respectively, up to the size of their displayed quotations. (i.e. the Designated Primary Market Maker is entitled to twice the size of a Registered Market Maker's order up to the size of the Designated Primary Market Maker's quotation. Conversely, a Registered Market Maker is entitled to participate at $\frac{1}{3}$ the size of the Designated Primary Market Maker's order up to the size of the Registered Market Maker's displayed quotation.) In the event that the Designated Market Maker or a Registered Market Maker has not displayed a size greater than or equal to the size he or she would be entitled to based on the $\frac{2}{3}$ to $\frac{1}{3}$ parity, the Designated Market Maker or a Registered Market Maker, as the case may be, shall only participate up to their displayed size.

The Exchange requests accelerated approval of the proposal so that the proposed Interpretation and Policy will be in effect when the CXM Basket commences trading on October 15, 1993. This would ensure that the DPM and RMs trading the CXM Basket know their respective obligations under Exchange Article XXXIV, Rule 8, and that the Exchange's Floor Procedure Committee's interpretation and method of implementation of that Rule will be applied if a DPM or RM invokes the Rule while trading the CXM Basket.⁵

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁵ additional Exchange "Interpretation and Policy" which would work in concert with the rules and procedures approved in Securities Exchange Act Release No. 33053. The DPM will act as the specialist in making markets and executing transactions in the CXM Basket, while one or more RMs act as market makers in the Basket.

⁶ Telephone conversation between David Rusoff, Foley & Lardner, and Betsy Prout, Commission, on October 13, 1993.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to clarify that Article XXXIV, Rule 8 of the Exchange rules providing for a two-thirds/one-third parity between a specialist and registered market makers in the same issue will also apply to trades in the CXM Basket.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedure Committee.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-93-26 and should be submitted by November 12, 1993.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the CHX's proposal to add an Interpretation and Policy to Exchange Article XXXIV, Rule 8, on a temporary basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular with Section 6(b)(5) of the Act.⁶ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to facilitate transactions in securities.

Current Exchange Article XXXIV, Rule 8, provides for a two-thirds/one-third split between a specialist and one or more market makers, as a group, in a security when the specialist participates in a transaction in one of his or her specialty securities while one or more market makers are bidding or offering at the transaction price. The present proposal applies Rule 8 to the trading of market baskets on the Exchange. The proposal also adds a provision that essentially limits the number of baskets in which a DPM or RM may participate in the above situation to the number of baskets he or she is bidding or offering at the transaction price. The Commission believes that, because the proposal specifies the respective rights of the DPM and RMs on parity in certain basket transactions, the Exchange is clarifying and adapting its rule to basket trading. This interpretation should help to facilitate basket transactions and may prevent trading disputes between market participants. The Commission also believes that temporary approval of the proposal is appropriate to provide the Commission and the Exchange with an opportunity to evaluate this interpretation of Exchange Rule 8 and its application to market basket trading.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As noted above, the proposal clarifies the application of an existing Exchange rule to the trading of baskets. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the CHX to implement the Interpretation and Policy before the Exchange begins trading the CHX Basket on October 15, 1993.

⁶ 15 U.S.C. 78ff(b)(5) (1988).

It is therefore ordered, Pursuant to section 19(b)(2)⁷ that the proposed rule change is hereby approved on a temporary basis through December 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-26005 Filed 10-21-93; 8:45 am]

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[Release No. 34-33053; File No. SR-CHX-93-18]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc., Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Establishment of Rules to Allow for and Govern the Trading of Standardized Baskets and To Trade a Specific Basket of Stocks, the Chicago Basket

October 15, 1993.

I. Introduction

On August 2, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange")¹ filed with the Securities and Exchange Commission ("Commission") the proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ as amended on October 1, 1993,⁴ on October 7, 1993,⁵ and on October 12, 1993,⁶ to establish

¹ 15 U.S.C. 78s(b)(2) (1988).

² 17 CFR 200.30-3(a)(12) (1991).

³ As of July 8, 1993, the Midwest Stock Exchange, Inc. ("MSE") changed its name to the Chicago Stock Exchange, Inc. See Securities Exchange Act Release Nos. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR-MSE-93-13) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Certificate of Incorporation and Constitution to effect a name change) and 32489 (June 18, 1993), 58 FR 34285 (June 24, 1993) (File No. SR-MSE-93-16) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Rules to make conforming changes in accordance with its name change).

⁴ 15 U.S.C. 78s(b) (1) (1988).

⁵ 17 CFR 240.19b-4 (1991).

⁶ See letter from David T. Rusoff, Foley & Lardner, to Diana Luka-Hopson, Commission, dated September 30, 1993. Amendment No. 1 clarifies language in the proposed rule amendment concerning customer confirmations of basket transactions.

⁷ See letter from David T. Rusoff, Foley & Lardner, to Diana Luka-Hopson, Commission dated October 6, 1993. Amendment No. 2 establishes rules that would govern trading halts in baskets.

⁸ See letter from David T. Rusoff, Foley & Lardner, to Diana Luka-Hopson, Commission, dated October

rules allowing for and governing the trading of standardized baskets on the Exchange floor. The Exchange also is seeking Commission approval to trade a specific basket product on the Exchange.⁷

The proposed rule change was published for comment in Securities Exchange Act Release No. 32731 (August 10, 1993), 58 FR 43664 (August 17, 1993). No comments were received on the proposal. This order approves the proposed rule change.

II. Background and Description of Market Baskets

A. Description and Terms of Market Basket Contracts

The Exchange has proposed to amend its rules to add Article XXXVI, Baskets, which would establish general rules for the trading of baskets on the CHX floor.⁸ The Exchange also seeks Commission approval to trade a specific basket product which would be known as the Chicago "CXM" Basket. Proposed Article XXXVI includes "Interpretations and Policies .01" which would establish the specific contract terms and trading procedures for the CXM Basket.

The proposal enables the trading of standardized baskets of stocks at an aggregate price in a single execution on the Exchange's floor. A market basket

11, 1993. Amendment No. 3 amends the portion of the original proposal to provide that Exchange Article XX, Rule 40, ITS "Trade-Throughs" and "Locked markets" shall be inapplicable with respect to trading in the basket only when basket trading causes a trade-through or otherwise affects the individual securities comprising the basket.

⁷ Simultaneously with the filing of the present proposed rule change, the Exchange withdrew file No. SR-MSE-92-10 which was submitted to the Commission on August 12, 1992. See letter from George T. Simon, Foley & Lardner, to Diana Luka-Hopson, Branch Chief, Commission, dated July 29, 1993. The Commission published, for notice and comment, File No. SR-MSE-92-10 which, like the File No. SR-CHX-93-18, proposed to establish rules for the trading of a standardized basket. See Securities Exchange Act Release No. 32011 (March 17, 1993), 58 FR 15888. No comments were received on the proposal contained in File No. SR-MSE-92-10.

⁸ Rules 1 and 2 of proposed Article XXXVI would provide the definitions of the terms "Basket," "Basket Contract," "Component Security" and the terms of baskets generally. According to the proposed rules, the term "Basket" would mean a group of securities that the Exchange designates as eligible for execution in a single trade and that consists of securities whose inclusion and relative representation in the group are determined by the Exchange. "Basket Contract" would mean a contract obligating the seller to sell and the purchaser to buy the designated quantity of each issue contained in the basket, with delivery of such securities to be made as provided in the Rules of a registered clearing agency. "Underlying security" would mean a component security included in the basket. According to proposed Rule 2, the number and quantity of the component securities deliverable upon settlement of a basket would be determined by the Exchange.

trade will result in a transfer to the buyer of ownership of each of the component stocks. When the transaction is completed, the buyer will be entitled to all rights attending ownership of the basket stocks (including rights to vote and receive dividends), and will be free to sell or hold each stock separately. That same buyer may later sell the basket stocks he or she acquired, either individually or through an offsetting trade of the identical basket.

Rule 3 of proposed Article XXXVI would provide that only baskets approved by, and currently open for trading on, the Exchange could be purchased or sold on the Exchange. A basket may be dealt in on the Exchange only if each of its component securities has been admitted to dealings on the Exchange, pursuant to listing or unlisted trading privileges, on an "issued," "when issued," or "when distributed" basis, including component securities subject to the exemption contained in Rule 12a-7, promulgated under Section 12(a) of the Act.⁹ Proposed Rule 3(c) provides that, after approving a particular basket, the Exchange may from time to time replace, add or delete one or more of the basket's component securities, change a component security's relative representation in a basket by changing the quantity and number of shares of that security that the basket includes, and may make such other basket-related changes as the Exchange may from time to time specify. The Exchange has represented to the Commission, however, that any change made pursuant to proposed Rule 3(c) will not alter the Basket's relationship to the underlying index upon which the Basket's approval is based.¹⁰ Proposed Rule 3(c) will only be used to make corresponding changes to the Basket when there have been changes made to the index upon which the Basket is based.¹¹

The specific basket which the Exchange proposes to trade is the CXM Basket which will be a basket of stocks comprised of the stocks included in the "MMI" stock index futures contract which began trading on the Chicago Mercantile Exchange ("Merc") on September 7, 1993. The CXM Basket will offer a highly correlative hedge to

⁹ The Commission notes that Rule 12a-7 under the Act, 17 CFR 240.12a-7, expressly provides an exemption from registration of component securities of a basket only where the basket is comprised of at least 100 stocks. The CXM basket which the Exchange currently proposes to trade is comprised of 20 stocks and, therefore, would not fall within the Rule 12a-7 exemption.

¹⁰ See letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Commission, dated September 30, 1993 ("September Letter").

¹¹ *Id.*

that contract. This basket will be comprised of a fixed quantity of 25 shares of each of the stocks included in the new Merc futures contract. The new Merc futures contract is a stock index futures contract which is based on the American Stock Exchange's ("Amex") MMI. The Amex's MMI, in turn, is a broadbased, price-weighted index currently based on 20 stocks listed on the New York Stock Exchange ("NYSE"). The new Merc futures contract replaces the "BC" futures contract, a stock-index futures contract based on the Amex's MMI, which was traded on the Chicago Board of Trade ("CBOT") until recently.

For many years, the CBOT traded the BC futures contract as well as options on that futures contract. The CHX states that, since the beginning of trading in the BC futures contract, an interest and need was expressed for an efficient way to hedge the futures contract with the equity cash market. Based upon this need, the CHX developed the equity cash market trading facility in order to create an offsetting position with the BC futures contract. Now that the BC futures contract is traded on the Merc as the MMI futures contract, this basket facility will be used to create an offsetting position with the Merc's new contract.

B. Market Structure for the Trading of Market Basket Contracts

1. DPM and Market Makers

The trading market for the CXM on the CHX floor will consist of a registered specialist, known as a Designated Primary Market Maker ("DPM"), and Registered Market Makers ("RM"). DPMs will be required to quote continuously a two-sided market for four CXM baskets.¹² RMs will be required to quote continuously a two-sided market for one CXM basket. Pursuant to proposed Interpretation and Policy .01, the DPM will be required to maintain \$250,000 in excess net capital for the CXM Basket.¹³ The CHX has represented to the Commission that the Exchange will file a proposed rule change with the Commission for approval if the Exchange should seek to

¹² Each basket will be expressed as one hundred shares for the purpose of disseminating quotations and transactions in the CXM Basket. Therefore, the DPM will be required to quote a four hundred share two-sided market in the CXM Basket.

¹³ The proposal does not establish specific net capital rules for the RMs. However, RMs will be Exchange market makers and, therefore, will be subject to the Exchange's market maker net capital requirements. See Exchange Article XI, Rule 3(b)(2). The Commission notes that the DPM will be subject to the Commission's Net Capital Rule, 17 CFR 15c3-1(b)(1) as of April 1, 1994.

change the \$250,000 net capital requirements for DPMs.¹⁴

The DPMs and RMs in the CXM Basket would be members registered as specialists in the securities underlying the baskets and would be entitled to obtain exempt credit by financing their CXM Basket transactions. The DPM would be chosen by the Committee on Specialist Assignment and Evaluation upon the recommendation of the Exchange's New Product Committee. In acting as a specialist, the DPM will conduct the opening procedures for each basket at or as soon as practicable after the Exchange opening, or upon resumption in trading after trading has been halted or suspended in such a manner as to result in a single price opening.¹⁵ Pursuant to proposed Article XXXVI, Rule 16, Basket Quotation Dissemination Requirements, DPMs and RMs will have the same quotation duties with respect to baskets that dealers and market makers have with respect to securities pursuant to Rule 11Ac1-1 of the Act.¹⁶

2. Location of the Market Basket Posts

The Exchange proposes to trade the CXM Basket at a specific, fixed location of the CHX trading floor. All members of the Exchange will have access to buy and sell the CXM. The Exchange states that the floor will be configured to accommodate a sizable "crowd" without disrupting others on the trading floor. Facilities will be visible to the crowd to display information from the futures and options markets. The displays also will show market information for the CXM. The Exchange's automated order routing system ("MAX") could be used to enter orders and send reports as with any other issue. However, MAX could be used only for its order routing capability and not for its automatic execution feature.

C. Application of Exchange Rules to Market Basket Contracts

Proposed Article XXXVI establishes rules which would be applicable to the trading of market baskets. Baskets also would be subject to the general rules of the Exchange to the same extent that the rules apply to securities, except where the context otherwise requires. Because a market basket contract is a stock product, there are areas where the Exchange proposes to modify or clarify the applicable Exchange rules.

¹⁴ See September Letter, *supra* note 10.

¹⁵ See proposed Exchange Article XXXVI, Baskets, Rule 6, Opening of Trading.

¹⁶ 17 CFR 240.11Ac1-1 (1991).

1. Bids, Offers, and Units of Trading

Proposed Rules 4 and 12 provide general rules for bids, offers and the units of trading in basket transactions. Specifically, Rules 4 and 12(c) provide that bids and offers must be expressed in terms of dollars and fractions of one dollar. Rule 12 also provides that the unit of trading of each basket is one hundred shares as specified by the Exchange, that all bids or offers for baskets are deemed to be for one unit of trading unless a larger number of baskets is expressed in the bid or offer, and that all bids made and accepted, and all offers made and accepted, in accordance with the proposed Basket Rules and other Rules made applicable to basket transactions executed will be binding.

Proposed Interpretation and Policy .01 provides more specific terms for the trading of the CXM Basket. The CXM Basket will trade with a minimum variation of 1/4th point and in quantities of one hundred shares where one hundred shares equals 1 CXM basket.¹⁷ One hundred shares will be the minimum unit of trade for the CXM. In the price expression, one point will equal one dollar.

2. Exchange Dissemination of Transactions and Quotations

Proposed Rule 5 requires the Exchange to disseminate or cause to be disseminated, after the close of business and from time-to-time on days on which transactions in baskets are made on the Exchange, the price at which each transaction in baskets has been effected, the transaction volume of baskets at such price, and the prices at which bids and offers are made on the floor of the Exchange. CXM Basket trades and quotes will be available on "Network B." As with any other CHX exclusive

¹⁷ On October 12, 1993, 100 shares of CXM was equal to 500 individual equity shares (25 shares of each stock) where 1300 shares of CXM is approximately equal to two futures contracts. The closing price of CXM on October 12 would have been approximately 282 1/4. The closing price multiplied by 100 (the number of shares) equals \$28,212.50. The closing value of the futures on October 12, 1993 was \$182,100. Therefore, 13 CXM's equate to \$327,762.50 which compares with two futures contracts which equates to \$264,200. Telephone conversation between David Rusoff, Foley & Lardner, and Betsy Prout, Commission, on October 13, 1993. The Commission notes that in the notice of this proposal published in the Federal Register, the Exchange provided similar calculations based on closing prices from April 6, 1993. See Securities Exchange Act Release No. 32731 (August 10, 1993), 58 FR 43662 (August 17, 1993). The only differences between the calculations in the notice and the above calculations are the closing values and the resultant price values, and the fact that the future contracts are now traded on the Merc. The share and pricing formulas, however, are the same.

issue, the DPM will disseminate quotes through CQS. In its Letter Requesting Exemptions, the Exchange stated that the Exchange intends to disseminate bid and offer quotations for the Basket, representing the highest bid and lowest offer price at which any Exchange member is willing to buy or sell that Basket (in addition to any customer interest that a specialist would be required to display if the Basket were a security) on the floor throughout the trading day.¹⁸

3. Clearance, Settlement and Margin Requirements

Proposed Rule 7 provides that delivery of the component securities upon the sale of a basket, and the payment of the basket price in respect thereof, shall be in accordance with the Rules of a registered clearing agency.¹⁹

The CXM Basket will be traded for settlement on T + 5 (*i.e.*, regular way), but special settlements and cash settlements will be allowed. At the end of the trading day, all CXM transactions will be recorded with Midwest Clearing Corporation ("MCC"). MCC will then aggregate all CXM buy transactions within one account as well as all sell transactions. These two aggregated transactions will be burst into the component stocks. Dollar values will be assigned to each individual stock based upon the NYSE closing price of each stock relative to the total closing price of all stocks in the CXM basket. Then, the component securities will be entered into MCC's Continuous Net Settlement system for netting with each participant's other transactions in the same security.

Proposed Rule 8 provides that the margin requirements for baskets will be determined in accordance with the provisions of Article X of the Exchange's Rules, which apply to the positions (long or short) in the component securities. Under the

¹⁸ See Letter Requesting Exemptions, *infra* note 32. The Commission notes that, pursuant to Rule 11Ac1-1 under the Act, the Exchange must ensure the dissemination of real-time quotations and transaction reports for securities traded on its floor. The Exchange has not requested exemptive relief from Rule 11Ac1-1 for quotation and transaction reporting in the actual baskets traded on the Exchange floor and, therefore, the Exchange must provide real-time disseminations of quotations and transactions in baskets. The Commission has granted limited exemptive relief from the Rule 11Ac1-1 requirements, however, concerning the underlying securities in the CXM baskets when quotes or transactions are effected in the CXM basket. See Exemptive Relief Letter, *infra* note 42.

¹⁹ For a more detailed discussion of the Exchange's proposal concerning the clearance and settlement of baskets, and the Commission's approval of those procedures, see Securities Exchange Act Release No. 33054 (October 15, 1993) (order approving File No. SR-MCC-93-3).

proposed clearance and settlement procedures, on the day after the transaction is completed, the bursting process for basket transactions will result in an end-of-day net buyer of a basket receiving 25 shares in its account of each of the underlying securities in the baskets to be settled on T + 5. This bursting process enables the Exchange to calculate margins for baskets as if the buyer (or seller) had actually purchased (or sold) the component securities on the transaction date.²⁰

4. Trading Halts

Proposed Rule 19 establishes Exchange rules regarding basket trading halts or suspensions. Specifically, proposed Rule 19 would require that, in addition to any halt in basket trading pursuant to Article IX, Rule 10A (Trading Halts Due to Extraordinary Market Volatility), trading in a basket will be halted whenever the Chairman, or in his absence, the Vice Chairman or other Exchange Officer(s) designated by the Chairman, in consultation with a majority, but not fewer than two Floor Governors then available on the floor, determine that market conditions warrant such a halt in the interests of a fair and orderly market and to protect investors. Under the proposed rule, among the facts that may be considered are the following: trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the underlying index value; the current calculation of the index derived from the current market prices of the stocks is not available; or other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²¹ Trading in the CXM Basket will be halted in the event that there is a regulatory halt in the underlying Merc futures contract. Finally, if the Commission suspends trading pursuant to section 12(k) of the Act,²² in any security underlying the Basket, the CHX will halt trading in the Basket for the period of such summary suspension, so long as the security or securities which are subject to the summary suspension remain a security underlying the Basket.²³

5. Customer Protection Rules

The Exchange does not propose to exempt basket trading from its customer

protection rules for securities. Instead, the CHX proposes to clarify: (1) The impact basket trading will have on Exchange Rules that regulate the markets for component stocks; and (ii) the impact that certain stock rules will have on basket trading. First, the Exchange proposes that Article IX, Rule 5 shall not preclude a member or member organization from initiating basket transactions when the member or an associated party holds or has knowledge of an unexecuted order for one or more of a basket's component stocks. Second, the Exchange proposes that Article XXX, Rule 9 shall not preclude a specialist from initiating basket transactions solely because the basket contains his specialty stocks. Next, the Exchange proposes that Article VIII, Rule 20 shall not preclude a member organization from effecting transactions for the account of any customer in, or from making recommendations with respect to a basket that contains a security issued by the member organization or any corporation controlling, controlled by or under common control with the member organization. Fourth, the Exchange proposes that Article IX, Rule 15 shall not preclude a member or member organization who holds or has granted a put, call, straddle or option on one or more of a basket's component stocks from initiating basket purchases and sales on the Exchange for any account in which the member, member organization or any of its associated parties has a direct or indirect interest. Finally, the Exchange proposes that Article IX, Rule 3 shall not preclude a specialist from originating for a discretionary account orders for a basket that contains his specialty stock.

With respect to the confirmation of customer transactions, member organizations must provide details, not only as to the market basket transaction itself, but also information as to the identity, price and number of shares of each of the component stocks that comprise the basket. Specifically, proposed Rule 9(b) provides, among other things, that the confirmations must comply with Rule 10b-10(a) of the Act,²⁴ except that pursuant to an exemption from Rule 10b-10,²⁵ each confirmation must show the class of basket, the Exchange, basket price and number of baskets purchased or sold.

²⁰ *Id.*

²¹ See Amendment No. 2 to the proposal, *supra* note 5. Amendment No. 2 also specifies when trading in a basket that has been subject to a halt or suspension by the CHX may resume. See proposed Article XXXVI, Rule 19(b).

²² 15 U.S.C. 78(k) (1988).

²³ See September Letter, *supra* note 10.

²⁴ 17 CFR 240.10b-10(a) (1991).

²⁵ See Exemptive Relief Letter, *infra* note 42. In its Exemptive Relief Letter, the Commission describes more fully the specific exemption it is providing with respect to Rule 10b-10 as it relates to customer confirmations for the CXM Basket, and the Commission's reasons for providing that exemption.

Proposed Rule 9(b) also provides that a member organization that participates in the National Institutional Delivery System of the Depositories may use the confirmations generated by that System to satisfy the requirements of proposed Rule 9 to the extent that the confirmations contain the information required to be furnished to customers, provided that the member firm will remain responsible for ensuring that all required information is furnished to its customers. Further, pursuant to proposed Rule 9 (b), each basket confirmation that contains less than complete information as to each component security purchased or sold must contain a statement that, upon request, the broker-dealer will furnish complete written information reflecting the identity, price, and number of shares of each of the component stocks included in the transaction. Finally, proposed Rule 9(b) provides that the additional information must be furnished as soon as practicable following the request, but in any event within five business days of the request, or if the transaction was more than thirty days prior to the request, within fifteen business days.

III. Discussion

A. Introduction

After careful review, the Commission believes that the CHX's market basket proposal is reasonably designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. For these reasons and for the additional reasons set forth below, the Commission finds that approval of the Exchange's proposed rule change relating to the trading of market basket contracts is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in general, and the requirements of section 6(b)(5)²⁶ of the Act and the rules and regulations thereunder, in particular.

B. Benefits of Market Baskets

For many years, the Commission has been supportive of the exchanges' initiatives concerning the development of market basket facilities.²⁷ The

Division of Market Regulation's Report on The October 1987 Market Break ("Staff Report"), and an NYSE-commissioned study entitled An Overview of Program Trading and Its Impact on Current Market Practices ("Katzenbach Report"), recommended, among other things, the listing and trading of a basket of stocks on an exchange as a means to enhance market efficiency and, possibly, the market's ability to absorb institutional portfolio trading.²⁸

The Commission believes that the CXM Basket will provide investors with a cost efficient means to make investment decisions based on the direction of standardized measures of stock market segments and the stock market as a whole, and may provide stock market participants several advantages over existing methods of effecting program trades of stocks and transactions in portfolios of securities. For the reasons discussed below, the Commission finds that the market structure proposed by the CHX reasonably is designed to promote just and equitable principles of trade and fair and orderly markets. Furthermore, the Commission believes that market basket trading will not lead unduly toward a more fragmented and volatile market, and that the CHX proposal to trade market baskets is consistent with the development of an open and competitive national market system.

C. Price Dissemination and Reporting

The CHX proposes to disseminate basket last sale information and quotations through Network B and to require that the DPM disseminate quotes through CQS, thereby ensuring that all market participants will have ready access to market basket transaction reports and quotations. Rule 11Aa3-1 under the Act (the "Tape Rule")²⁹ requires that every national securities exchange file a reporting plan that would govern transaction reporting of certain securities traded on that exchange. Among other things, the Tape Rule precludes an exchange from disseminating transaction reports except pursuant to that plan. The CHX, along with the other national securities exchanges, has filed a plan ("CTA Plan") with the Commission pursuant to

which the Exchange disseminates transaction reports in reported securities. The CTA Plan, however, does not contemplate or permit reporting in baskets. With respect to the Tape Rule, the Exchange has requested, among other things, that the Commission provide a limited exemption from the transaction reporting plan requirement, provided that the Exchange collects and disseminates transaction reports as it does with any other exclusive issue, thereby ensuring that customers have up-to-the-minute, last sale information with respect to the Basket. The Commission has granted this limited exemption.³⁰ The Commission believes that transaction reporting in the Basket which is performed identically to transaction reporting in CHX exclusive issues should provide sufficient information to the public concerning trades in the Basket.

Rule 11Ac1-1 under the Act (the "Quote Rule")³¹ requires national securities exchanges to disseminate throughout the trading day bid and offer quotations with respect to reported securities traded on their floors. Consistent with the Quote Rule, the Exchange will ensure dissemination of Basket quotations through CQS, representing the highest bid price and lowest offer price at which any Exchange member is willing to buy or sell that basket on the floor throughout the trading day. The Exchange will disseminate this quotation information to vendors in the same manner it disseminates quotations with respect to its exclusive listings through CQS.³² Moreover, the proposal requires DPMs and RMs to make firm quotes for market basket contracts which is consistent with the requirement in Commission Rule 11Ac1-1 that quotations be firm.

No quotes or last sale reports will be generated or disseminated for the individual constituent stocks comprising the market basket during the trading day. In order to ensure that the Tape Rule and the Quote Rule are not read to require the Exchange to disseminate transaction reports and quotations in the securities underlying the CXM Basket at the same time that transactions and quotations in the CXM Basket are generated, the Exchange has requested that the Commission provide exemptions from those rules with respect to the component securities

²⁶ 15 U.S.C. 78(b)(5) (1988).

²⁷ The Commission has approved proposed rule changes for the New York Stock Exchange, Inc., and for the Chicago Board Option Exchange which provide for the trading of market baskets on their floors. See Securities Exchange Act Release Nos. 27382 (October 28, 1989), 54 FR 49834 (October 31, 1989) (order approving File No. SR-NYSE-89-05) and 27383 (October 28, 1989), 54 FR 45846 (October

31, 1989) (order approving File No. SR-CBOE-89-20).

²⁸ Division of Market Regulation, The October 1987 Market Break (February 1988). See also Securities and Exchange Commission Recommendations Regarding the October 1987 Market Break contained in Testimony of David S. Ruder, Chairman, SEC, Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, on February 3, 1988.

²⁹ 17 CFR 240.11Aa3-1 (1991).

³⁰ See Exemptive Relief Letter, *infra* note 42.

³¹ 17 CFR 240.11Ac1-1 (1991).

³² See letter from George T. Simon, Foley & Lardner, to Diana Luka-Hopeon, Branch Chief, Commission, dated September 13, 1993 ("Letter Requesting Exemptions").

underlying the Basket.³³ The Commission has provided those exemptions as requested by the Exchange.³⁴

The Tape Rule also requires an exchange to disseminate consolidated total daily trading volume. The CHX has requested a temporary exemption from this requirement.³⁵ For the first six months of basket trading, the CHX will not disseminate on a consolidated basis the total trading volume represented by basket trades. While the Commission is aware of the limited usefulness of price information on the underlying securities in the baskets, it believes that dissemination of the share volume in the underlying securities is important information and should be included in the daily consolidated volume for each of the underlying securities. Because this presents a number of technological difficulties for the CHX, the CHX has represented that it will attempt to cure its technology problems so that at the end of the first six months of Basket trading, the Exchange will be able to include end-of-day transaction volume in each component stock in the consolidated transactions volume figures.³⁶

D. Market Structure

The Commission believes that the trading structure for market basket contracts is adequate to provide fair and orderly markets.³⁷ The Commission believes that the use of DPMs should help to ensure continuous quotations for the basket products. Moreover, supplemental market making support for baskets will be provided by potentially numerous market makers, the RMs. These market makers will be obligated to make markets, and, specifically, provide bid and/or offer quotations which will be subject to immediate acceptance.

³³ *Id.*

³⁴ See Exemption Relief Letter, *infra* note 42.

³⁵ See Letter Requesting Exemptions, *supra* note 32.

³⁶ *Id.* The Commission expects the CHX to submit a proposed rule change to the Commission by March 15, 1994, which should either request an additional six month exemption from the end-of-day trade reporting requirement or propose a rule change which would implement end-of-day consolidated transaction reporting in the component securities underlying the Basket. If the Exchange requests an extension to this exemption, the Exchange also must report to the Commission on or before March 15, 1994, the status of the Exchange's efforts in resolving its technological difficulties concerning end-of-day reporting and the reasons for its continued inability to comply with the end-of-day consolidated trade reporting requirements.

³⁷ The Commission notes that the DPM system has been used successfully on the CBOE for Basket trading.

The Commission believes the proposed financial requirements for the DPM and RMs to trade market basket contracts are appropriate. Specifically, the financial requirement for the DPM will ensure that the DPM has sufficient resources to perform effectively its market making obligations. Additionally, the Commission believes the extension of Exchange net capital requirements for market makers³⁸ in securities to RMs is sufficient to ensure adequate capital to support the potential equity demands on RMs. At the same time, these financial standards are not so high as to result in an inadequate number of market basket market makers. The Commission believes that the Exchange has balanced concerns regarding liquidity and required capital, and, accordingly, designed standards to ensure sufficient market making resources at the market basket trading post.

In regard to the physical location of market basket trading, the Commission believes that the Exchange's designation of a specified, fixed location of the CHX trading floor for CXM Basket trading, with adequate space around that area to accommodate a sizable "crowd" and facilities with which to transmit Basket and futures and index data to that crowd, is consistent with the Act. Specifically, the Commission believes that these elements of the Exchange's proposal should help to ensure that maintenance of fair and orderly markets in the CXM Basket, thereby promoting just and equitable principles of trade consistent with sections 11A(a)(1)(C), 11A(a)(2) and 6(b)(5) of the Act.

E. Application of Current Rules to Market Basket Contracts

The Commission believes that the application of the existing Exchange securities trading rules to market basket transactions will assist in the maintenance of a fair and orderly market for the new market basket contracts. Moreover, the Commission believes that the application of the current trading rules will promote just and equitable principles of trade at the market basket trading post and protect investors and the general public.

For example, because the baskets will be burst into component securities for clearance and settlement, the Commission believes that margin rules for customers, DPMs, and RMs should be based on current Exchange rules applicable to the underlying stocks involved in a market basket transaction. The Commission recognizes that because transactions in market basket

contracts result in the transfer of the underlying stocks, certain Exchange rules designed for securities contracts may not be entirely appropriate for the trading of market basket contracts. For example, the Commission believes that proposed Rule 19 regarding basket trading halts or suspensions appropriately enhances the CHX's Rules to provide for certain circumstances which may arise in the trading of market baskets. Specifically, as noted above, proposed Rule 19 allows the Exchange, to halt trading in the Basket when a substantial portion of the component securities' value cannot be ascertained, subject to specific provisions set forth in Rule 19, or whenever conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Commission believes that these provisions should help to ensure that basket pricing is linked efficiently to pricing in the underlying indexes, futures, and component securities. Moreover, the Commission believes that these provisions should help to ensure efficient settlement pricing of the component securities when they are burst into accounts. Finally, the Commission believes that the Exchange's proposal is consistent with the Act with regard to the prohibition of basket trading if such trading would result in a transaction in a security halted by the Commission pursuant to section 12(k) of the Act, and by requiring basket trading halts pursuant to the Exchange's Circuit Breaker provisions.³⁹

The Commission also believes that the proposed rules regarding customer protection are appropriate for market basket contracts. The Commission recognizes that, because of the size of a market basket contract, it is unlikely that small, unsophisticated investors would buy them. The Commission notes, however, that except in areas where the Commission is granting exemptive relief, or approving proposed rules which limit the application of Exchange Rules designed to protect the public, the Exchange will apply substantially all of its customer protection rules to market basket transactions.

The Commission believes that proposed CHX Rule 15, which clarifies the interplay between stock trading and basket trading on the Exchange is appropriate to accommodate the trading of a standardized basket such as the CXM Basket. Specifically, as noted above, proposed Rule 15 provides that

³⁹ See Exchange Article IX, Rule 10A, Trading Halts Due to Extraordinary Market Volatility.

³⁸ See Exchange Article XI, Rule 3(b)(2).

the following Exchange Rules shall not preclude member organizations or specialists in particular, where relevant, from participating in basket transactions where transactions in one or more of the underlying component securities would be prohibited: Exchange Article IX, Rule 5, Personal Selling and Purchasing Prohibited (specialists only); Exchange Article XXX, Rule 9, Dealings in Self-Interest Securities; Exchange Article VIII, Rule 20, Trading by a Member Corporation in Its Own or Its Parent Firm's Securities; Exchange Article IX, Rule 15, Dealings in Stocks on Put, Call, Straddle or Option; and Exchange Article IX, Rule 3, Discretion of Members Prohibited (specialists only).

The Commission believes that these proposed exceptions for members or specialists participating in basket transactions are appropriate measures to facilitate liquidity in a market of primarily sophisticated investors. Because the CXM Basket represents a correlative hedge to the MMI stock futures contract, the Commission believes that the number of component securities underlying the CXM Basket is sufficient to justify the limited preclusion of application of the Exchange Rules listed in proposed Rule 15. While the Commission is concerned that basket trading may provide an opportunity for traders to obtain positions in the component securities that might otherwise be prohibited, the Commission also recognizes that CXM Basket transactions and the unwinding of basket positions present trading strategies and histories which, subject to proper Exchange market surveillance monitoring, should serve to help ensure protection of customer interests and the public interest in general.

While the Commission is approving proposed Rule 15, the Commission expects the Exchange to undertake adequate surveillance procedures to ensure that basket trading does not create any opportunities for abuses which are prohibited under Exchange Rules, or the Act and the Rules thereunder. Moreover, the Commission will review the applicability of Rule 15 as it may relate to any other basket products the Exchange may propose to trade in the future. As noted above, the Exchange has represented that it will submit to the Commission a proposed rule change for approval prior to initiating trading in any other baskets of securities.⁴⁰ At that time, the Commission would reexamine the appropriateness of extending Rule 15 to

any other basket which the Exchange may propose to trade.

F. Exemption Requests

The Exchange has requested that the Commission grant exemptions from or interpretive advice regarding, Sections 7 and 11(a)(1)(D) of the Act and Rules 10a-1, 10b-6, 10b-7, 10b-8, 10b-10, 10b-13, 11a1-1(T), 11Aa3-1, 11Aa3.2, and 11ac1-1 thereunder with respect to the trading of the CXM Basket.⁴¹ Based on the Exchange's representations in its Letter Requesting Exemptive Relief and as discussed more fully by the Commission in its response to the Exchange, the Commission has provided the Exchange with the interpretive advice and exemptions requested with respect to those Rules.⁴²

IV. Conclusion

The Commission believes that the market structure for trading market baskets is consistent with just and equitable principles of trade. Moreover, given the sophisticated character of stock portfolio trading that market basket trading is designed to capture, the Commission believes that the Exchange's chosen market structure is a fair and competitive market structure. Finally, the Commission's Section 19 authority and the Rule 19b-4 process allow the Commission and the Exchange sufficient flexibility to modify market basket trading in light of actual trading experience and any future developments.

Accordingly, based upon the aforementioned factors, the Commission finds that the Exchange's proposed rule change relating to the trading of market baskets is properly within its jurisdiction and consistent with the requirements of section 6(b)(5) of the Act and the rules and regulations thereunder.⁴³

The Commission finds good cause for approving those portions of the proposal that were amended by Amendment Nos. 1, 2 and 3 prior to the thirtieth day after the date of publication of the amendments in the Federal Register.

⁴¹ See Letter Requesting Exemptions, *supra* note 32.

⁴² See letter from Robert Colby, Deputy Director, Commission, to George T. Simon, Foley & Lardner, dated October 15, 1993 ("Exemptive Relief Letter").

⁴³ The Commission notes that approval of the proposed rule change is based upon a determination that the terms of market basket trading are consistent with the requirements of the Act. If the terms of the market basket contract, including the index multiplier, or market structure are changed in any material way, however, it would be necessary for the CHX to submit a proposed rule change in order to afford the public an opportunity to review and comment on the proposed modification and for the Commission to review its prior determination.

The original filing was the subject of a 30-day notice period and the amendments made only minimal changes to the proposal as noticed. In addition, accelerated approval is necessary because market basket trading is scheduled to begin on October 15, 1993. Because of the Commission's view of the benefits that may result from the trading of the CXM market baskets, the Commission believes a good cause finding is justified.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submission should refer to file number SR-CHX-93-18, and should be submitted by November 12, 1993.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-CHX-93-18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26004 Filed 10-21-93; 8:45 am]

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⁴⁰ See September Letter, *supra* note 10.

⁴⁴ 15 U.S.C. 78s(b)(2) (1988).

⁴⁵ 17 U.S.C. 200.30-3(a)(12) (1991).

[Release No. 34-33060; International Series Release No. 591; File No. SR-NASD-93-55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change Relating to the Quotation Linkage With the London Stock Exchange.

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 12, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the London Stock Exchange ("LSE") (formerly, the International Stock Exchange of the United Kingdom and the Republic of Ireland) for a pilot term of two years.² This experimental linkage is designed to provide an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and LSE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the Nasdaq and LSE dealer systems ("common issues") are authorized to access linkage information without paying a separate charge to receive it. Operation of the linkage in this fashion comports with the terms of the Commission's October 1987 Order. Most recently, the Commission authorized an extension of this pilot linkage through November 5, 1993, by approving File No. SR-NASD-93-27.³

Pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, the NASD

submits this proposed rule change to obtain Commission approval of the NASD/LSE pilot linkage through May 5, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an interim extension of the Commission's temporary approval of the NASD/LSE linkage through May 5, 1994. Absent an extension, authorization for the linkage will expire as of November 5, 1993.

During the proposed extension, the NASD and LSE will continue to consider possible options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage, the pursuit of another joint initiative, or a decision to act independently in developing international systems that are responsive to the business needs of the sponsors constituencies. Any decision to enhance the linkage or to develop jointly an alternative system will entail another Rule 19b-4 filing that will afford the Commission (and other interested parties) an opportunity to focus on the relevant policy and regulatory issues. Meanwhile, continuation of the pilot linkage, as proposed, would be supportive of the NASD's and LSE's efforts to define systems capable of accommodating cross-border trading more efficiently.

The NASD submits that the statutory bases for the NASD/LSE pilot linkage and the requested extension thereof are contained in sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect

to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires, *inter alia*, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. Section 17A(a)(1) set forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage's pilot operation is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/LSE pilot linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through counsel.⁴ In response, the NASD, after consultation with the LSE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR-NASD-87-20, which the Commission approved by issuing the October 1987 Order. Further, in File No. SR-NASD-89-44 (which resulted in extension of the linkage's authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the pilot project. In the event that the NASD and LSE determine to seek permanent approval of, or materially enhance the linkage, every effort will be made to supply the Commission with the empirical data needed for its deliberations on the corresponding Rule 19b-4 filing.

With respect to the instant filing, the NASD believes that the proposed extension of the pilot linkage will not create any competitive burden *vis-à-vis* Instinet or any other vendor of securities market information. Moreover, Instinet and other interested parties will have

⁴ See Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15980 (April 29, 1986). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 18, 1986.

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 24979 (October 2, 1987), 52 FR 37684 (October 8, 1987), (the "October 1987 Order").

³ Securities Exchange Act Release No. 32267 (May 5, 1993), 58 FR 28079 (May 12, 1993).

ample opportunity to comment on any subsequent Rule 19b-4 filing involving permanent approval or substantive enhancement of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating of an intermarket, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause for approving this proposed rule change prior to the 30th day following publication of notice of the filing in the *Federal Register*, and, in any event, by November 5, 1993, the expiration of the linkage's present authorization. The NASD believes that the requested extension of the pilot period is fully consistent with the statutory provisions and policy goals referenced in Section III of this Rule 19b-4 filing. Moreover, the additional time will enable the sponsoring markets to consider various options and determine the future course of this experimental project. Those deliberations will focus on evaluating feasible enhancements to the linkage as well as alternative projects intended to advance the internationalization of securities markets through more efficient computerized systems. Under these circumstances, it would be counterproductive to allow the NASD/LSE linkage to cease operation. Accordingly, the NASD believes that good cause exists to accelerate the effectiveness of this rule change to a date no later than November 5, 1993.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD and LSE to consider feasible options for enhancing the linkage or defining other

automation initiatives to facilitate the efficient handling of international order flow. Accordingly, the Commission believes the NASD/LSE linkage should not be terminated while these efforts are ongoing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-93-55 should be submitted by November 12, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, temporarily approved thereby extending the NASD/LSE linkage until May 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-33061; International Series Release No. 592; File No. SR-NASD-93-57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change Relating to the Informational Linkage With the Stock Exchange of Singapore Ltd.

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ ("Act"), notice is hereby given that on October 12, 1993, the National

Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, for Commission authorization to extend the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES") for six months. The Pilot Program currently consists of an interchange of closing price and volume data on up to 35 Nasdaq securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. The end-of-day information being exchanged under the Pilot Program may assist in the establishment of opening prices the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD-SES Pilot Program for a two-year term² that was extended most recently through November 12, 1993.³ Commission approval of the instant filing would permit continuation of this Pilot Program through May 12, 1994. During this interval, no more than 35 Nasdaq issues will be included in this Pilot Program. That figure corresponds to the number originally authorized at the inception of the Pilot Program in 1988. As noted in the last filing on this matter (File No. SR-NASD-93-28), the SES information being transmitted to the NASD reflects the SES's use of an order-driven trading system (known as the "CLOB").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

² See Securities Exchange Act Release No. 25457 (March 14, 1988), 53 FR 9156 (March 21, 1988).

³ See Securities Exchange Act Release No. 32298 (May 12, 1993), 58 FR 29017 (May 18, 1993).

¹ 17 CFR 200.30-3(a)(12) (1992).

¹ 15 U.S.C. 78e(b)(1) (1988).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD-SES Pilot Program commenced operation with the Commission's approval of File No. SR-NASD-87-40 on March 14, 1988. The principal features of this Program were fully described in Section 1 of that Form 19b-4, which description is hereby incorporated by reference.⁴

The current authorization of the NASD-SES Pilot Program will expire on November 12, 1993. The NASD, on its own as well as the SES's behalf, hereby requests that the Commission approve a further extension of the Pilot Program for six months, expiring on May 12, 1994.

During the proposed extension, each market will transmit to the other static price/volume information compiled at the end of each trading day on approximately 35 Nasdaq securities which are also traded on the SES. The NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price and the closing quote of every Nasdaq market maker in each of the Pilot securities (collectively referred to as "NASD information"). In recognition of the SES's use of the order-driven CLOB system, the SES will transmit the following data elements for each Pilot security: Closing price (i.e., the price of the final transaction in the CLOB on that business day), the highest and lowest prices at which transactions were effected, and the aggregate volume (collectively referred to as "SES information").⁵ Because all trading of Nasdaq securities also traded on the SES occurs in the CLOB, the price information sent to the NASD will reflect the prices of actual trades consummated by the automated matching of buy and sell orders resident in the CLOB system.

The CLOB is a fully automated trading system that was instituted by the SES in 1989. Prior to that time, the SES

employed a quote-driven, market maker system similar to the Nasdaq System. Orders to buy and sell securities are entered into the CLOB through some 1,800 trading terminals on the premises of 26 SES member firms. The CLOB provides an electronic limit order file with open orders ranked by price and time in each security. When the terms of two orders match, the CLOB generates an automated execution accompanied by confirmations back to the originating brokers.

As noted in File No. SR-NASD-93-28, the SES intends to incorporate the Nasdaq pilot stocks into "CLOB International." The latter is a separate section of the SES market system for the trading of foreign issues that are not listed on the SES. These securities trade through the CLOB in the same manner as SES-listed securities. CLOB International currently includes the stocks of Malaysian, Hong Kong, and Philippine issuers. The SES regards inclusion of the Nasdaq pilot stocks in CLOB International as a logical step in the progression of the Pilot Program. Further, the SES believes that this step could stimulate greater trading interest in Nasdaq securities among Singapore investors. Accordingly, both the NASD and the SES desire to continue the Pilot Program.

The incorporation of Nasdaq securities into CLOB International will not alter the basic operation of the Pilot Program, namely, the interchange of static, end-of-day information on the Pilot securities. SES information will continue to be offered only to subscribers of Nasdaq Level 2/3 services.⁶ Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's CLOB system. The original linkage agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. That agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the limited nature and limited scope of the Pilot Program.

Finally, the NASD acknowledges that any further enhancement to the Pilot Program, including the introduction of automated order routing and execution facilities, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement is planned for implementation during the requested extension.

⁶ To retrieve this information, a Nasdaq subscriber must enter a discrete query through a Nasdaq Workstation device.

The NASD believes that sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1) of the Act provide the statutory basis for this proposed rule change. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires, inter alia, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Finally, section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits the extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of Nasdaq securities between the NASD and the SES on a nonexclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operations of the present Pilot Program poses any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit or receive written comments on this rule proposal.

⁴ See also Securities Exchange Act Release No. 25063 (October 28, 1987), 52 FR 42167 (November 3, 1987).

⁵ If no trades are effected in a Pilot security on a given day, the SES will transmit no data on that issue even if orders to buy or sell had been entered into the CLOB for possible execution.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find, pursuant to section 19(b)(2) of the Act, good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing, and in any event, by November 12, 1993. The NASD believes that accelerated approval is appropriate for the following reasons: (1) The experimental character of the Pilot Program and the need to maintain continuity in its operation; (2) the limited nature of the Pilot Program, both in terms of the number of Pilot securities and the amount of market information being exchanged; and (3) the limited utility of end-of-day, static information to the NASD and SES member firms capable of accessing, respectively, SES and NASD information. Moreover, during the period of the proposed extension, the sponsoring markets remain committed to exchange regulatory information whenever the need arises. Finally, if accelerated approval is not granted, the sponsors will be obliged to terminate this experimental program before its potential benefits can be realized in relation to the globalization of securities markets.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to maintain continuity in the Pilot Program and to allow the sponsors to continue to assess the impact of the trading of these securities in the international section of the SES's order-driven market system. Further, the Pilot Program is of a limited nature. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR-NASD-93-57 and should be submitted by November 12, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, temporarily approved thereby extending the NASD-SES Pilot Program until May 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-26036 Filed 10-21-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-33063; File No. SR-PHLX-93-18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of 2½ Point Strike Price Intervals for Equity Options With Strike Prices Below \$35

October 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Sec" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.¹ The Commission is publishing this notice to solicit

⁷ 17 CFR 200.30-3(a)(12) (1992).

¹ The PHLX clarified its proposal by indicating that the proposed strike price interval of \$5.00 or greater will apply to stock options with strike prices between \$35.00 and \$200.00. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Richard Zack Branch Chief, Options Regulations, Division of Market Regulation ("Division"), Commission, dated August 4, 1993 ("August 4 Letter").

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the PHLX's rules allow the Exchange to list strike price intervals of \$2.50 for equity options with strike prices of \$25.00 or less, and intervals of \$5.00 for stocks with strike prices over \$25.00 and up to \$200.00.² The PHLX proposes to amend Exchange Rule 1012, "Series of Options Open for Trading," by adding Commentary .04, which will allow the Exchange to list strike price intervals of \$2.50 or greater for individual stock options with strike prices of less than \$35.00, and intervals of \$5.00 or greater for individual stock options with strike prices of \$35.00 but less than \$200.00.³

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the PHLX's rules allow the Exchange to list strike price intervals of \$2.50 for equity options with strike prices of \$25.00 or less, and intervals of \$5.00 for stocks with strike prices over \$25.00 and up to \$200.00. The PHLX proposes to amend Exchange Rule 1012, "Series of Options Open for Trading," to allow the Exchange to list strike price intervals of \$2.50 or greater for individual stock options with strike prices of less than \$35.00 and intervals of \$5.00 or greater where the strike price

² See Securities Exchange Act Release No. 21985 (April 25, 1985), 50 FR 18595 (order approving File Nos. SR-PHLX-85-9 and SR-PSE-85-9). See also Securities Exchange Act Release No. 21929 (April 10, 1985), 50 FR 15258 (order approving File Nos. SR-CBOE-85-1 and SR-Amex-85-6).

³ See August 4 Letter, supra note 1.

is \$35.00 but less than \$200.00. The PHLX explains that the listing of \$2.50 strikes for equity options trading between \$25.00 and \$35.00 would add two strike prices, 27½ and 32½, in affected issues.

Specifically, the PHLX states that 56 PHLX equity options would be affected by the proposal and that if two additional strike prices were listed in all of these issues, a total of 896 new strike prices would be added, including both puts and calls on all four listed expiration months. The Exchange notes that there are two remaining Options Price Reporting Authority ("OPRA") strike price format codes, "Y" and "Z," not yet in use for equity options, which could be used to denote the 27½ and 32½ strike prices.

The Exchange believes that the addition of two new 2½ strike prices will stimulate customer interest by creating greater trading opportunity and flexibility. For example, 2½ point strikes will provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. An increase in customer interest will, in turn, enhance the depth and liquidity of the markets in the affected equity options.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and, in particular with section 6(b)(5), in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by increasing trading opportunities which should, in turn, increase the depth and liquidity of the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-26054 Filed 10-21-93; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-33054; File No. SR-MCC-93-3]

Self-Regulatory Organizations; Midwest Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Processing of Basket Trades

October 15, 1993.

On August 18, 1993, Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ a proposed rule change (File No. SR-MCC-93-3) relating to the processing of

basket trades.² The Commission published notice of this proposal in the Federal Register on September 7, 1993.³ MCC filed technical amendments to its proposal on September 20, 1993,⁴ and on October 12, 1993,⁵ that did not require republication of notice. No public comments have been received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

MCC is amending its rules to enable it to process basket trades.⁶ Specifically, MCC will process trades in a new basket product, the Chicago Basket ("CXM"), which will be traded on the Chicago Stock Exchange ("CHX"). The CXM will be comprised of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's ("Merc") new stock index futures contract,⁷ the MMI. The CXM will offer a highly correlative hedge to the MMI.⁸

MCC will accept locked-in basket trade data (i.e., compared trade data) from an exchange or other market place SRO on the day of the trade ("T").⁹ For

¹ Simultaneous with the submission of its current proposal, MCC withdrew a previous proposed rule change, File No. SR-MCC-92-10, relating to the processing of basket trades. Notice of File No. SR-MCC-92-10 had been published on February 22, 1993. Securities Exchange Act Release No. 31858 (February 18, 1993), 58 FR 9581.

² Securities Exchange Act Release No. 32818 (August 27, 1993), 58 FR 47183.

³ Amendment No. 1 clarified that the new basket will settle "regular way" unless negotiated otherwise by the parties. Letter from David T. Rusoff, Foley & Lardner, to Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission (September 17, 1993).

⁴ Amendment No. 2 clarified that MCC will report to participants the securities components of their basket transactions prior to netting. Letter from David T. Rusoff, Foley & Lardner, to Jerry W. Carpenter, Branch Chief, Division, Commission (October 12, 1993).

⁵ Under MCC's amended rules, a basket trade is defined as a trade in a group of securities that an exchange or other market place self-regulatory organization ("SRO") has designated as eligible for execution in a single trade. MCC Art. I, Rule 1.

⁶ The Merc's MMI is a stock index futures contract which is based on the American Stock Exchange's Major Market Index. The Major Market Index is a broad-based, price-weighted index currently based on twenty stocks listed on the New York Stock Exchange. The MMI began trading on September 7, 1993, and replaced the stock index futures contract based on the Major Market Index that traded on the Chicago Board of Trade.

⁷ A detailed description of the CXM is contained in CHX's proposal seeking approval to trade the basket. Securities Exchange Act Release No. 32731 (August 10, 1993), 58 FR 43685 (File No. SR-CHX-93-18) notice of filing of proposed rule change and 33053 (October 15, 1993) (order approving proposed rule change).

⁸ On the day following the basket trade ("T+1"), MCC will report to each participant its locked-in basket trade data. Reported information will include: (1) The quantity of basket purchases and sales; (2) the contra side of each basket trade; (3)

¹ 15 U.S.C. 78e(b)(1) (1988).

each participant, MCC will aggregate the trade data to arrive at an aggregate basket purchase figure and an aggregate basket sale figure. MCC then will "burst" the aggregated basket purchase transactions and the aggregated basket sale transactions into the component securities. The component securities will be entered into MCC's Continuous Net Settlement ("CNS") system for netting with each participant's other purchase and sale transactions in the same security.¹⁰

To process baskets, including the settlement of component securities, MCC will have to provide participants with appropriate values for the component securities. To do so, MCC will calculate a settlement price for each component security based on an algorithm that uses each component security's closing price on its primary market.¹¹ MCC will apply its current, standard trade recording fees based on transactions in the individual component stocks.

II. Discussion

The Commission believes that MCC's proposal is consistent with the Act and in particular with section 17A(b)(3)(F) thereunder.¹² That section requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds that are in the clearing agency's custody or under its control or for which it is

the security components of the basket trades; (4) the settlement value of each such security component; (5) the aggregate settlement value of all such components, determined after aggregating buy side and sell side transactions and bursting them into component parts; (6) any adjustments to basket trades or component securities; and (7) any other details that MCC may decide to report. MCC Act II, Rule 1, Section 7.

¹⁰ Aggregate buy side and aggregate sell side component securities will be entered into the CNS system (i.e., buy and sell sides will not be netted prior to entry in the CNS system). After the component securities are entered into the CNS system for netting, they will be reflected in MCC's regular CNS purchase and sales report. MCC Act II, Rule 1, Section 8.

¹¹ The algorithm for calculating the settlement value of each component security in the CNS uses the following information:

- (1) The market value of each component derived by multiplying the primary market closing price by the number of shares of each component;
- (2) The total market value of the basket calculated by summing the market value of each component security;
- (3) The percent value of each component security derived by dividing the total market value of the basket by the market value of the basket by the market value of each component security; and
- (4) The settlement value of each component security calculated by multiplying the actual market value of the basket by the percent value of each component security.

¹² 15 U.S.C. 78q-1(b)(3)(F) (1988).

responsible, and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

MCC's proposal allows participants who wish to trade the CXM to utilize MCC's netting and guarantee services.¹³ These services help to promote the prompt and accurate clearance and settlement of basket trades by limiting participants' exposure to their net, as opposed to their gross, deliver and receive obligations.

MCC's processing of basket transactions appears to have been designed in a manner consistent with its responsibilities under the Act to safeguard securities and funds in its custody or under its control. MCC participants who trade baskets will be subject to the same financial responsibility and reporting requirements as other MCC participants. Furthermore, because the baskets will be burst into their component securities for processing and MCC currently processes trades in the underlying component securities, MCC's existing risk management systems will apply to the processing of basket trades.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-MCC-93-3) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-26006 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

¹³ The Commission has recognized that the trading of securities baskets may benefit the securities system and its participants. Securities Exchange Act Release No. 27388 (October 26, 1989), 54 FR 45870 [File No. SR-NSCC-89-06] (order approving a proposed rule change providing for the National Securities Clearing Corporation's processing of basket trades). Among other things, such products have been cited as one way to moderate market volatility and to alleviate liquidity problems such as those experienced during the market decline of October of 1987. See *id.* at nn.11-12 and accompanying text; see also Division, The October 1987 Market Break 3-18 (February 1988).

¹⁴ 15 U.S.C. 78e(b)(2) (1988).

¹⁵ 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-33058; File No. SR-NASD-93-59]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Elimination of the Professional Trading Account Rules for the Small Order Execution System

October 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 15, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed deletions are in brackets.

SOES RULES

RULES OF PRACTICE AND PROCEDURE FOR THE SMALL ORDER EXECUTION SYSTEM

a) DEFINITIONS

(10. The term "professional trading account" shall mean

(A) an account in which five or more day trades have been executed through SOES during any trading day; or
(B) an account in which there has been a professional trading pattern in SOES as demonstrated by

(1) a pattern or practice of executing day trades;

(2) executing a high volume of day trades in relation to the total transactions in the account;

(3) executing a high volume of day trades in relation to the amount and value of securities held in the account;

(4) excessive frequency of short-term trading;

(5) excessive frequency of short sale transactions;

(6) existence of discretion; or

(7) direct or physical access to SOES execution capability or to Nasdaq Level 2 (NQDS) service.

11. The term "day trade" or "day trading" shall mean the execution through SOES of either one or both sides of offsetting trades in the same security for generally the same size during the same trading day.]

Subsections 12 and 13 renumbered 10 and 11, respectively.

(c) PARTICIPANT OBLIGATIONS IN SOES

3. SOES Order Entry Firms—

(E) (i) No member or person associated with a member shall enter any order for execution in SOES on behalf of a professional trading account. The Association shall take into account the factors enumerated in Section (a)(10) in determining whether an account will be designated as a professional trading account.

(ii) A member will be presumed to be in compliance with Subsection (i) if (a) the member instructs persons associated with the member that no such person shall knowingly accept any order for entry into SOES from a professional trading account, and (b) the Association has not notified the member that the account has been classified as a professional trading account pursuant to subsection (iii) hereof.

(iii) Upon receiving written notice from the Association, a member shall report to the Association information concerning transactions entered in SOES by the firm and such other information as the Association may request. Based upon such information, the Association may identify to the member specific accounts as professional trading accounts.

(F) Article IX of the Code of Procedure shall apply to Order Entry Firms and other persons seeking review of the restrictions imposed due to the designation of a professional trading account, pursuant to this Subsection.]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to eliminate the "professional trading

account" rules found in the Rules of Practice and Procedure for the Small Order Execution System ("SOES Rules"). The professional trading account rules, adopted in 1988¹ and amended in 1991,² were implemented in response to misuse of SOES by customers of brokers who, by reason of their day trading activities, were deemed to be professional traders. Because the NASD designed SOES to accommodate small investor orders with immediate executions from Nasdaq market makers, the NASD believed that the distinction between small investors and day traders was an appropriate and valid basis upon which to curtail access to market makers' capital through automated executions in SOES.

The NASD continues to believe that the distinction between investment activity and professional trading activity remains a valid regulatory distinction. A recent decision by the District of Columbia Court of Appeals,³ however, remanded the 1991 professional trading account rule amendments to the SEC for further explanation and economic analysis. Although the SEC's approval of the rules was not vacated, the Court questioned whether the standards contained in the rules were unacceptably vague. In light of the concerns raised by the Court, the NASD has determined to withdraw the professional trading account rules.

Because of continuing concerns with SOES operations and the deleterious impact of SOES active trading firm volume on market volatility and spreads,⁴ the NASD has submitted new rules to the Commission proposing across-the-board modifications to SOES that may curtail misuse of the system.⁵ In addition, the NASD contemplates long-term modifications to SOES operations that will be submitted to the SEC for review. The NASD continues to believe that patterns of trading using SOES to lock in profits from momentary aberrations in pricing akin to arbitrage opportunities between different markets are not appropriate for an automated execution system designed for investor use and made mandatory for market makers in Nasdaq National Market

¹ Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (December 22, 1988).

² Securities Exchange Act Release No. 29809 (October 10, 1991), 56 FR 52092 (October 17, 1991).

³ *Timpinaro, et al. v. SEC*, (Current Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶ 97,702 (D.C. Cir., Aug. 13, 1993).

⁴ See Amendment No. 3 to SR-NASD-93-16, Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (May 21, 1993).

⁵ See SR-NASD-93-16, Securities Exchange Act Release No. 32143 (April 14, 1993), 58 FR 21484 (April 21, 1993).

System securities by NASD requirement. However, to eliminate confusion resulting from the current professional trading account definitions, the NASD is proposing to eliminate the rules and urges the Commission to approve the SOES proposals on file as soon as possible.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. By eliminating any confusion resulting from the current professional trading account standards, the NASD believes that the proposed rule change is fully consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-26007 Filed 10-21-93; 8:45 am]
BILLING CODE 8610-01-M

[Release No. IC-19792; 812-8534]

**Farm Bureau Life Insurance Co., et al.;
Application for Exemption**

October 15, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Farm Bureau Life Insurance Company ("FB Life"), Farm Bureau Life Annuity Account (the "Account"), and FBL Marketing Services, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of the Account, which funds individual flexible premium deferred variable annuity contracts.

FILING DATE: August 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on November 9, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Farm Bureau Life Insurance Company, 5400 University Avenue, West Des Moines, Iowa 50266.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504-2802, or Michael V. Wible, Special Counsel, at (202) 272-2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FB Life is a stock life insurance company that was incorporated in Iowa in 1944. FB Life's outstanding voting stock is owned by Iowa Farm Bureau Federation, Farm Bureau Mutual Insurance Company (an Iowa mutual property and casualty insurance company), and Rural Mutual Insurance Company (a Wisconsin mutual property and casualty company). FB Life is engaged principally in the offering of life insurance policies, disability income and other health insurance policies, and annuity contracts. FB Life is admitted to do business in Iowa, Minnesota, Nebraska, South Dakota, Utah, and Wisconsin. FB Life is the depositor and sponsor of the Account, as those terms have been interpreted by the Commission with respect to life insurance company separate accounts.

2. On July 26, 1993, FB Life established the Account as a separate investment account under Iowa law to fund individual flexible premium deferred variable annuity contracts (the "Contracts"). The Account is registered under the 1940 Act as a unit investment trust, and has the following six subaccounts: The Growth Common Stock Subaccount, High Grade Bond Subaccount, High Yield Bond Subaccount, Money Market Subaccount, Managed Subaccount, and Blue Chip Subaccount (collectively, the "subaccounts"). Under Iowa law, the assets of the Account equal to the reserves and other Contract liabilities are owned by FB Life, but are held

separately from all other assets of FB Life for the benefit of owners of, and the persons entitled to payments under, the Contracts. Consequently, such assets are not chargeable with liabilities arising out of any other business FB Life may conduct. The income, gains and losses, realized and unrealized, from the assets of the Account will be credited to or charged against the Account, without regard to other income, gains or losses of FB Life. The Account meets the definition of a "separate account" in Rule 0-1(e) under the 1940 Act.

3. Each subaccount will invest exclusively in shares of a designated investment portfolio of the FBL Variable Insurance Series Fund (the "Fund"). In the future, FB Life may establish other subaccounts, which will invest in specified portfolios of the Fund or other similar funds. The Fund was organized as a Massachusetts business trust under a declaration of trust dated November 3, 1986, and is registered under the 1940 Act as an open-end diversified management investment company. The Fund is a series investment company that is comprised of the following six portfolios: Growth Common Stock Portfolio, High Grade Bond Portfolio, High Yield Bond Portfolio, Managed Portfolio, Money Market Portfolio, and Blue Chip Portfolio.

4. The Contracts may be purchased on a non-tax qualified basis, or they may be purchased and used in connection with retirement plans, including retirement programs described in section 401(a) or section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code") or as individual retirement annuities that qualify for favorable federal income tax treatment under section 408 of the Code. The Contracts require a minimum initial premium payment of \$1,000. Subsequent premium payments must be at least \$50. The Contract owner can allocate premium payments to one or more subaccounts, each of which will invest in a corresponding portfolio of the Fund. The Contract owner also can allocate premium payments to the Declared Interest Option, which is part of FB Life's general account, and such payments will be credited with interest as provided for in the Contracts.

5. Prior to the retirement date, a Contract owner may transfer cash values among the subaccounts or from a subaccount to the Declared Interest Option an unlimited number of times, or may surrender all or a portion of the cash value at any time. A Contract owner may transfer cash value from the Declared Interest Option to the Account once per Contract year. Transfers must be for amounts of at least \$100, and partial surrenders must be for amounts

of at least \$500. FB Life reserves the right to impose a \$25 charge for each transfer request after the first request in each Contract year. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 under the 1940 Act, and represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. FB Life does not anticipate making any profit from this charge.

6. The Contract provides for a series of annuity payments beginning on the retirement date. The Contract owner may select from five fixed annuity payment options.

7. If the annuitant (who is always the Contract owner) dies prior to the retirement date, a death benefit is payable to the beneficiary upon receipt of due proof of death and proof that the annuitant died prior to the retirement date. The death benefit is equal to the greater of the cash value on the date of receipt of due proof of death or the premiums paid, less partial surrenders (including any applicable surrender charge).

8. FB Life will impose an annual administrative charge of \$30, which will be deducted from the Contract's cash value on the Contract date and on each Contract anniversary prior to the retirement date, to compensate FB Life for the administrative services provided to Contract owners. This charge is guaranteed not to increase for the duration of the Contract. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 under the 1940 Act. FB Life does not anticipate making any profit from this charge. No administrative charge is deducted during the annuity period.

9. In order to permit investment of the entire initial premium payment, FB Life does not deduct sales charges at the time of investment. However, a contingent deferred sales charge of up to 6% of the amount withdrawn is imposed on certain partial or full surrenders of cash value and upon election of certain annuity payment options during the first six Contract years to cover expenses relating to the sale of the Contracts, including commissions payable to registered representatives and other promotional expenses. The amount of this charge decreases by one percent each year that the Contract is in force. The aggregate contingent deferred sales charges are guaranteed never to exceed 8.5% of the premium payments. FB Life does not anticipate that the contingent deferred sales charges will generate sufficient revenues to pay the cost of distributing the Contracts. If these charges are insufficient to cover distribution

expenses, the deficiency will be met from FB Life's general account assets, which may include amounts derived from the charge for mortality and expense risks discussed below.

10. FB Life seeks to impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge will be equal to an effective annual rate of 1.25% of the value of the net assets in the Account. Of that charge, approximately .86% is attributable to mortality risks and .39% is attributable to expense risks. FB Life guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on FB Life. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to FB Life. FB Life currently anticipates making a profit from the charge.

11. The mortality risks borne by FB Life arise from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the annuitant will receive under the Contract. FB Life also incurs a risk in connection with the death benefit guarantee. On the death of the annuitant (who is always the owner), FB Life will pay the greater of (a) the cash value, or (b) premium payments (net of withdrawals, including applicable surrender charges). There is no extra charge for this guarantee. The expense risk assumed by FB Life is the risk that FB Life's actual administration costs will exceed the amount recovered through the administrative charge.

12. FB Life will not make a deduction for premium taxes. FB Life reserves the right, however, to deduct such taxes from cash values. No charges are currently made for other federal, state, or local taxes that FB Life incurs or that may be attributable to the Account or the Contracts. FB Life reserves the right, however, to deduct a charge in the future for any such tax or economic burden on it resulting from application of the tax laws that it determines to be properly attributable to the Account or the Contracts.

Applicants' Legal Analysis

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant exemptions from the

provisions described below to the extent necessary to permit the assessment of the daily charge for mortality and expense risks. Applicants state that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by sections 26(a)(2) and 26(a)(3) of the 1940 Act. Applicants request an exemptive order because the proposed mortality and expense risk charge is not a bookkeeping or administrative charge allowed by sections 26(a)(2) and 27(c)(2).

3. Applicants submit that FB Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of up to 1.25% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. As described above, in return for this amount, FB Life guarantees certain risks in the Contracts. The mortality and expense risk charge is a reasonable charge to compensate FB Life for the risk that annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts, for the risk that the cash value will be less than the death benefit, and for the risk that administrative expenses will be greater than amounts derived from the administrative charge.

4. FB Life represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon FB Life's analysis of publicly available information about similar

industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. FB Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Applicants acknowledge that the proceeds of surrender charges may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. FB Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by FB Life at its administrative offices, and will be available to the Commission. FB Life also represents that the Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

Applicants' Conclusion

Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit them to deduct on a daily basis a charge equal to 1.25% annually of the assets of the Account for the assumption of mortality and expense risks described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26008 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19793; 812-8604]

Gruntal & Co., Inc.; Temporary Order and Notice of Application

October 18, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Temporary order and notice of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Gruntal & Co., Incorporated. **RELEVANT ACT SECTIONS:** Exemption from section 9(a) under section 9(c).

SUMMARY OF APPLICATION: Applicant has been granted a temporary conditional order, and has requested a permanent conditional order, under section 9(c) exempting applicant from section 9(a) to the extent necessary to permit applicant to employ an individual who is subject to a securities related injunction.

FILING DATE: The application was filed on October 12, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1993, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 14 Wall Street, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272-3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a securities brokerage and investment banking firm. Applicant also is a registered investment adviser. Applicant serves as a selected dealer for various registered open-end investment companies, and as an investment

adviser to individuals and entities other than registered investment companies. Applicant states that it could be construed to be a principal underwriter of various unit investment trusts.

2. Applicant proposes to employ Robert J. DeCanio ("DeCanio") as a registered representative, subject to receiving the requested exemption. DeCanio was employed by Shearson Lehman Bros. Inc. ("Shearson") from 1969 until April 12, 1993.

3. In 1976, DeCanio was permanently enjoined from engaging in certain manipulative or deceptive practices in connection with the offer or sale of securities. DeCanio consented to the injunction in a suit brought by the Commission alleging violations of section 17(a) of the Securities Act of 1933, and section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5 thereunder. *SEC v. Orofino*, 76 Civ. 5553 (S.D.N.Y.), Litigation Release No. 7709 (Dec. 27, 1976). The Commission's complaint alleged that in 1975 DeCanio was offered and received stock in Tucker Drilling Company Inc. as compensation for his efforts in soliciting purchasers of Tucker's stock, and that DeCanio failed to disclose the compensation to the prospective purchasers of Tucker's stock. DeCanio also was suspended from association with any broker, dealer, or investment company for a period of sixty days under a settlement of an administrative proceeding instituted by the Commission involving the same conduct.

4. In 1988 and 1989, DeCanio was involved in two arbitration proceedings arising from customer complaints, and a customers complaint which did not result in a formal arbitration proceeding but was settled. One of the arbitration proceedings was settled for a payment by Shearson of \$100,000. The other proceeding resulted in an award against the respondents of \$65,000, which was paid by Shearson. The customer complaint that did not result in a formal arbitration proceeding was settled for the payment by Shearson of \$175,000. Shearson assessed 45% of the \$175,000 against DeCanio.

5. Applicant notes that it has extensive compliance and registration procedures to ensure that prospective employees who are subject to a statutory disqualification under section 9 of the Act do not become employed by applicant until the section 9 issues are appropriately resolved.

Applicant's Legal Analysis

1. Section 9(a)(2) of the Act, in pertinent part, prohibits any person who has been enjoined from engaging in or

continuing any conduct or practice in connection with the purchase or sale of a security from acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company. A company with an employee or other affiliated person ineligible to serve in any of these capacities under section 9(a)(2) is similarly ineligible under section 9(a)(3).

2. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

3. If DeCanio becomes an employee of applicant, applicant will be subject to the disqualification provisions of section 9(a). Applicant requests (a) a temporary exemption under section 9(c) from the provisions of section 9(a) for a period of 90 days following the date of entry of the temporary order to relieve applicant from any ineligibility under section 9(a) by reason of the employment by applicant of DeCanio; and (b) a permanent order under section 9(c) granting the requested relief.

4. Applicant asserts that the application of the prohibitions of section 9(a) to applicant by reason of the employment of DeCanio would be unduly and disproportionately severe. Applicant also asserts that the conduct of applicant and DeCanio has been such as to make it not against the public interest or the protection of investors to grant the requested relief.

5. Applicant states that DeCanio will not serve in any capacity related in any way to the provision of investment advice to any registered investment company or to acting as principal underwriter to any registered open-end investment company or as principal underwriter or depositor to any registered unit investment trust.¹ DeCanio will not be a corporate officer of applicant or serve in a policy-making role or participate in the management or administrative activities of applicant

¹ Applicant states that it expects that DeCanio will be involved to some degree in the retail sale of investment company securities.

relating to registered investment companies.

6. Applicant states that the conduct complained of by the Commission on the part of DeCanio did not relate to investment company activities. Applicant notes that the injunction against DeCanio was entered more than 16 years ago. DeCanio has not been subject to similar action, nor to the knowledge of applicant have any complaints (other than the complaints described above) been filed against DeCanio with the Commission, any self-regulatory organization, or any state securities commission, since the date of the injunction.

7. Finally, applicant asserts that the balance of fairness requires that the requested relief be granted. If the exemption is not granted, applicant will not offer to employ DeCanio because to do so would subject applicant to a section 9(a) bar on investment company activities. Consequently, DeCanio would be cut off from his livelihood and his customers would lose the benefit of continuity in service.

Applicant's Condition

Applicant agrees that any order granted by the Commission pursuant to the application will be subject to the condition set forth below:

Applicant will not employ DeCanio in any capacity related directly to the provision of investment advisory services for registered investment companies, or acting as a principal underwriter for a registered open-end investment company, or as a principal underwriter or depositor for a registered unit investment trust.

Temporary Order

The Division of Investment Management, pursuant to delegated authority, has considered the matter and finds, under the standards of section 9(c), that applicant has made the necessary showing to justify granting a temporary exemption. Accordingly,

It is ordered, under section 9(c) of the Act, that, subject to the conditions set forth above, applicant is hereby temporarily exempted from the provisions of section 9(a) of the Act until the earlier of January 16, 1994 or the date on which the Commission takes final action on the application for an order granting applicant a permanent exemption from the provisions of section 9(a).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-26056 Filed 10-21-93; 8:45 am]
BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19798; 811-6427]

MFS Utilities Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Utilities Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Sanderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On October 4, 1991, applicant filed a notification of

registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on February 6, 1992, and applicant commenced its initial public offering on or about the effective date.

2. On June 25, 1993, the applicant and MFS Series Trust VI entered into an agreement for the purchase of the applicant assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Utilities Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust VI, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On June 9, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring fund was in the best interests of applicant shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on July 6, 1993 and were mailed to shareholders on or about June 25, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant shareholders at a meeting held on August 20, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring fund. In exchange for \$37,925,556.25 of net assets transferred to the Acquiring Fund, applicant received 4,841,554.552 Class A shares at a net asset value per share of \$7.83. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately \$19,424.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93-26052 Filed 10-21-93; 8:45 am]
BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19796;
811-4578]

MFS Managed Sectors Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Managed Sectors Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representatives

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts

business trust. On February 5, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act. On January 31, 1986, applicant filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on April 29, 1986, and applicant commenced its initial public offering on or about the effective date.

2. On April 14, 1993, the applicant and MFS Series Trust I entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Managed Sectors Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust I, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 16, 1993 and were mailed to shareholders on or about that date. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 3, 1993.

5. On September 20, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for \$142,822,786.80 of net assets transferred to the Acquiring Fund, applicant received 9,110,083.872 Class A shares at a net asset value per share of \$15.67. The exchanges were made at net asset value determined as of the close of business on September 17, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The applicant and the Acquiring Fund each assumed its own expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately \$70,072, borne by applicant, and \$83,958, borne by the Acquiring Fund.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation

or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26051 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19795; 811-5507]

MFS Lifetime Gold & Natural Resources Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Lifetime Gold & Natural Resources Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On March 18, 1988, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on July 20, 1988, and applicant commenced its initial public offering on or about the effective date.

2. On June 3, 1993, the applicant and MFS Series Trust II entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Gold & Natural Resources Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust II, in exchange for Class B shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 14, 1993 and were mailed to shareholders on or about that date. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on July 30, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for \$20,210,779.15 of net assets transferred to the Acquiring Fund, applicant received 3,344,691.345 Class B shares at a net asset value per share of \$6.04. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalled approximately \$17,076.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26050 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19794; 811-3704]

MFS Special Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Special Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On March 31, 1993, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on May 31, 1983, and applicant commenced its initial public offering on or about the effective date.

2. On June 9, 1993, the applicant and MFS Series Trust VII entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Value Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust VII, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 21, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 18, 1993 and were mailed to shareholders on or about that date. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 5, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for \$131,460,972.30 of net assets transferred to the Acquiring Fund, applicant received 12,280,366.94 Class A shares at a net asset value per share of \$10.71. The exchange was made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately \$17,778.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26049 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19797; 811-4277]

MFS California Municipal Bond Fund; Application

October 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS California Municipal Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On April 9, 1985, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on June 10, 1985, and applicant commenced its initial public offering on or about the effective date.

2. On June 3, 1993, the applicant and MFS Municipal Series Trust entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS California Municipal Bond Fund (the "Acquiring Fund"), a portfolio of MFS Municipal Series Trust, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Definitive proxy materials soliciting shareholder approval of the reorganization were mailed to shareholders on or about June 3, 1993, and were filed with the SEC on June 14, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on July 30, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for \$333,295,526.70 of net assets transferred to the Acquiring Fund, applicant received 55,540,032.968 Class A shares at a net asset value per share of \$6.00. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses

included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately \$20,132.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26048 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25908]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 15, 1993

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 8, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Public Service Company of New Hampshire (70-8036)

Public Service Company of New Hampshire ("PSNH"), 1000 Elm Street, Manchester, New Hampshire 03101, an

electric utility subsidiary company of Northeast Utilities ("Northeast"), a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder to its declaration.

In a series of transactions not jurisdictional under the Act at the time, the Business Finance Authority of the State of New Hampshire (formerly, The Industrial Development Authority of the State of New Hampshire) issued five series of pollution control revenue bonds ("Bonds") for financing PSNH's share of the cost of constructing certain pollution control, sewage, and solid waste disposal facilities at the Seabrook Nuclear Electric Generating Station, Unit No. 1. The Bonds included two series of taxable pollution control revenue bonds: (i) The \$114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series D Bonds) ("Series D Bonds"); and (ii) the \$114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series E Bonds) ("Series E Bonds") (collectively, "Taxable Bonds").

In order to improve the credit ratings of, and to support, the Taxable Bonds, PSNH obtained two letters of credit from Citibank, N.A. ("Citibank"), one for each series of the Taxable Bonds.

After the Taxable Bonds were issued, Citibank's rating in the financial markets deteriorated. In addition, after obtaining the Citibank letters of credit, PSNH was advised by remarketing agents that: (i) Many institutional investors that otherwise would be interested in purchasing the Taxable Bonds would not purchase securities secured by letters of credit issued by Citibank; and (ii) those investors that were still willing to purchase the Taxable Bonds were demanding an interest rate premium that was causing PSNH's effective interest cost to be higher than it would have otherwise been.

In response to PSNH's concerns with Citibank, by order dated September 4, 1992 (HCAR No. 25623), PSNH received authority to replace the Citibank letter of credit for the Series D Bonds with a substitute letter of credit issued by Barclays Bank PLC, New York Branch ("Barclays").

PSNH now proposes to obtain extensions and modifications of and replacements for (i) the Barclays letter of credit and the associated reimbursement agreement for the Series D Bonds (and any previous extensions and modifications thereof and replacements therefor) and (ii) the Citibank letter of

credit and the associated reimbursement agreement for the Series E Bonds (and any other extensions and modifications thereof and replacements therefor), in each case from time-to-time during the term of the Taxable Bonds, provided that: (A) The total amount available to be drawn under any such extended, modified or replacement letter of credit does not exceed \$121,014,000; (B) the annual letter of credit commission applicable to any such extension, modification or replacement does not exceed 1% per annum of the total amount available to be drawn under the extended, modified or replacement letter of credit; (C) the reimbursement agreement applicable to any such extension, modification or replacement shall provide (or shall afford PSNH the option to elect) that drawings to pay the principal portion of the purchase price for unremarketed, tendered Taxable Bonds would bear interest until paid at a rate not to exceed the higher of (1) the prime rate plus 200 basis points or (2) the federal funds rate plus 200 basis points; (D) such extension, modification or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the letter of credit and reimbursement agreement (or previous extension or modification thereof or replacement thereof) being extended, modified or replaced; and, (E) PSNH shall have obtained all necessary State commission approvals applicable to such extension, modification or replacement.

PSNH also requests authorization to begin negotiations pursuant to an exception from the requirements of Rule 50, pursuant to subsection (a)(5) thereunder, with any future issuer of a letter of credit to document the terms of the extension, modification or replacement of the present letter of credit. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-26009 Filed 10-21-93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw From Listing and Registration; (United States Filter Corp., Common Stock, \$.01 Par Value) File No. 1-10728

October 18, 1993.

United States Filter Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities

Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"): The Company's common stock commenced trading on the NYSE at the opening of business on September 1, 1993 and concurrently therewith, such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before November 8, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 93-26010 Filed 10-21-93; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and

recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 22, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Debt Collection Activities and Financial Statement of Debtor

Form No.: SBA Form 770

Description of Respondents: Recipients of SBA Loans

Annual Responses: 169,000

Annual Burden: 169,000

Dated: October 18, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-26035 Filed 10-21-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Gulfport-Biloxi Regional Airport, Gulfport, Mississippi

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Gulfport-Biloxi Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Gulfport-Biloxi Regional Airport Authority. This program was submitted subsequent to a

determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Gulfport-Biloxi Regional Airport were in compliance with applicable requirements effective May 21, 1993. The proposed noise compatibility program will be approved or disapproved on or before April 3, 1994.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is October 5, 1993. The public comment period ends December 4, 1993.

FOR FURTHER INFORMATION CONTACT: Walter Bauer, Program Manager, Atlanta Airports District Office, 1680 Phoenix Parkway, Suite 101, College Park, Georgia 30349. Telephone: (404) 994-5306. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Gulfport-Biloxi Regional Airport which will be approved or disapproved on or before April 3, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Gulfport-Biloxi Regional Airport, effective on October 5, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to be requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 3, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary

considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Atlanta Airports District Office, 1680 Phoenix Parkway, Suite 101, College Park, Georgia 30349.

Mr. Bruce Frallic, Executive Director, Gulfport-Biloxi Regional Airport Authority, 14035-L Airport Road, Gulfport, Mississippi 39501.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Atlanta, Georgia, October 5, 1993.

Howard M. Robinson,

Acting Manager, Atlanta Airports District Office.

[FR Doc. 93-26062 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-83-45]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary

is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 11, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Ave, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 18, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27403

Petitioner: Mr. Doyle Vaughan

Sections of the FAR Affected: 14 CFR 121.383(c)

Description of Relief Sought/

Disposition: To permit the petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27423

Petitioner: Mr. Lawrence Edwin Davis

Sections of the FAR Affected: 14 CFR 21.183(d)(2)

Description of Relief Sought/

Disposition: To permit issuance of a Standard Airworthiness Certificate for a Falcon Biplane, model F-1.

Docket No.: 27428

Petitioner: Snow Aviation International, Inc.

Sections of the FAR Affected: 14 CFR 21.19(a) and (b)(1)

Description of Relief Sought: To allow Snow Aviation, Inc. to apply for a Supplemental Type Certificate for a design change that changes the number of engines from three to two on the Boeing model 727-200 airplanes.

Docket No.: 27457

Petitioner: Daniel Webster College and Miss Robin L. Bray
Sections of the FAR Affected: 14 CFR 141.35(d)(2)

Description of Relief Sought: To allow Miss Bray to serve as the Chief Flight Instructor at Daniel Webster College administering a course of training other than those that lead to the issuance of a private pilot certificate or rating or an instrument rating, or a rating with instrument privileges, without the required minimum of 2000 hours as pilot in command (PIC).

Dispositions of Petitions

Docket No.: 26532

Petitioner: McCall Air Taxi, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought/

Disposition: To extend and amend Exemption No. 5381 to continue to permit the appropriately trained and certified pilots employed by McCall Air Taxi, Inc. to convert the cabins of its aircraft (minus the Cessna 320-B and plus a Britten-Normand BN-2A and Cessna 210) operated under FAR Part 135 from passenger to cargo configurations, and the converse, by removing and replacing seats when certified mechanics are not available to perform the maintenance.

Grant, October 5, 1993, Exemption No. 5381A

Docket No.: 27283

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.356

Description of Relief Sought/

Disposition: To permit the petitioner to operate six DC-9-10 aircraft between December 30, 1993 and June 30, 1994, without those aircraft being equipped with an approved Traffic Alert and Collision Avoidance System (TCAS).

Denial, October 8, 1993, Exemption No. 5763

Docket No.: 27329

Petitioner: Comair Airlines

Sections of the FAR Affected: 14 CFR 135.167(a)(2), (b), and (c)

Description of Relief Sought: To allow Comair to operate in extended overwater operations without carrying certain emergency equipment, such as liferafts, emergency locator Transmitters, pyrotechnical signaling devices, and survival kits on its airplanes.

Denial, October 5, 1993, Exemption No. 5760

Docket No.: 27383

Petitioner: Hudson Air Service, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To allow the pilots employed by Hudson Air Service, Inc. to remove and reinstall aircraft cabin seats in company aircraft.

Grant, October 5, 1993, Exemption No. 5762

Docket No. 27430

Petitioner: Midwest Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought/

Disposition: To permit Midwest Flying Service, Inc. to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under the provisions of Part 135.

Grant, October 4, 1993, Exemption No. 5757

Docket No.: 27441

Petitioner: Department of the Army
Sections of the FAR Affected: 14 CFR 45.29(b)(3)

Description of Relief Sought: To allow for the use of smaller aircraft nationality and registration markings in place of the 12-inch high markings required by the regulations.

Grant, October 6, 1993, Exemption No. 5761

[FR Doc. 93-26059 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on October 28, 1993, at 9 a.m. Arrange for oral presentations by October 18, 1993.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 101(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-

463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on October 28, 1993, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Working Group Reports
 - ICPTF
 - ELT
 - Delegation System
 - Parts
 - Production Certification
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 18, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Sign and oral interpretation can be made available at the meeting, as well as an assistant listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on October 6, 1993.

William J. Sullivan,

Assistant Executive Director, for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-26058 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 1993, there were seven applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC APPLICATIONS APPROVED

Public Agency: Greater Rockford Airport Authority, Rockford, Illinois.

Application Number: 93-02-U-OO-RFD.

Application Type: Use PFC Revenue.

PFC Level: \$3.00.

Total Approved Net PFC Revenue:

\$1,168,937.

Earliest Permissible Charge Effective

Date: October 1, 1992.

Estimated Charge Expiration Date:

October 1, 1996.

Class of Air Carriers not Required to

Collect PFS's:

Previously approved in July 24, 1992

decision.

Brief Description of Projects approved to use PFC Revenue:

Complete extension of runway 6, Construct parallel taxiway to runway 6 extension,

Acquire Parcel P, Rehabilitate runway 18/36,

Environmental assessment,

Update Part 150 study,

Security upgrade to meet Part 107.14.

Decision date: September 2, 1993.

FOR FURTHER INFORMATION CONTACT:

Louis H. Yates, Chicago Airports District Office, (312) 694-6335.

Public Agency: Yuma County Airport Authority, Yuma, Arizona.

Application Number: 93-01-C-OO-YUM.

Application Type: Impose and Use PFC Revenue.

PFC Level: \$3.00.

Total Approved Net PFC Revenue:

\$1,678,064.

Earliest Permissible Charge Effective

Date: December 1, 1993.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers not Required to Collect PFC's:

Part 135 air taxi/commercial operators and Part 135 air ambulances.

Determination: Approved. Based on information submitted in the Yuma County Airport Authority's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Yuma International Airport.

Brief Description of Projects Approved for Collection and Use:

Expand large aircraft parking apron,

Construct a new access road,

Intall Precision Approach Path

Indicators on each end of runways 8,

26, and 35,

Construct two heliports (helipads),

Erosion protection/soil stabilization,

Construct new terminal.

Brief Description of Project

Disapproved:

Land acquisition.
Determination: Disapproved. This project is ineligible under section 158.3. Acquisition costs were incurred prior to November 5, 1990 and therefore, the project is not PFC eligible.
Decision Date: September 9, 1993.
FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western-Pacific Region Airports Division, (310) 297-1029.
Public Agency: City of New Haven, New Haven, Connecticut.
Application Number: 93-01-C-00-HVN.
Application Type: Impose and Use PFC Revenue.
PFC Level: \$3.00.
Total Approved Net PFC Revenue: \$2,490,450.
Earliest Permissible Charge Effective Date: December 1, 1993.
Estimated Charge Expiration Date: June 1, 1999.
Class of Air Carriers Not Required To Collect PFC'S:
 On demand air taxi/charter operators filing FAA Form 1800-31.
Determination: Approved. Based on information submitted in the City of New Haven's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Tweed-New Haven Airport.
Brief Description of Project Approved For Collection and Use:
 Acquire land.
Decision Date: September 10, 1993.
FOR FURTHER INFORMATION CONTACT: Priscilla Soldan, New England Region Airports Division, (617) 238-7614.
Public Agency: Greater Orlando Airport Authority, Orlando, Florida.
Application Number: 93-02-C-00-MCO.
Application Type: Impose and Use PFC Revenue.
PFC Level: \$3.00.
Total Approved Net PFC Revenue: \$12,957,000.
Earliest Estimated Charge Effective Date: July 1, 1997.
Estimated Charge Expiration Date: February 1, 1998.
Class of Air Carriers Not Required To Collect PFC'S:
 None.
Brief Description of Projects Approved For Collection and Use:
 New east airfield land purchase, interest of the existing land acquisition program.

Decision Date: September 24, 1993.
FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Orlando Airports District Office, (407) 648-6583.
Public Agency: Luzerne and Lackawanna Counties Bi-County Airport Board, Avoca, Pennsylvania.
Application Number: 93-01-C-00-AVP.
Application Type: Impose and Use PFC Revenue.
PFC Level: \$3.00.
Total Approved Net PFC Revenue: \$2,369,566.
Earliest Permissible Charge Effective Date: December 1, 1993.
Estimated Charge Expiration Date: June 1, 1997.
Class of Air Carriers Not Required to Collect PFC'S:
 Air taxi/commercial operators filing FAA Form 1800-31.
Determination: Approved. Based on information submitted in the Luzerne and Lackawanna Counties Bi-County Airport Board's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Wilkes Barre/Scranton International Airport.
Brief Description of Projects Approved For Collection and Use:
 Purchase snow removal equipment, Purchase aircraft rescue and firefighting (ARFF) vehicle.
Brief Description of Projects Approved For Collection Only:
 Design passenger terminal, Design passenger terminal apron, Design ARFF building, Construct parallel taxiway—runway 10/28, Construct phase I—air cargo, Construct ARFF building.
Decision Date: September 24, 1993.
FOR FURTHER INFORMATION CONTACT: L. W. Walsh, Harrisburg Airports District Office, (717) 975-3423.
Public Agency: Flathead Municipal Airport Authority, Kalispell, Montana.
Application Number: 93-01-C-00-FCA.
Application Type: Impose and Use PFC Revenue.
PFC Level: \$3.00.
Total Approved Net PFC Revenue: \$1,211,000.
Earliest Permissible Charge Effective Date: December 1, 1993.
Estimated Charge Expiration Date: November 1, 1999.
Class of Air Carriers not Required to Collect PFC'S:

Air taxi commercial operators.
Determination: Approved. Based on information submitted in the Flathead Municipal Airport Authority's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Glacier Park International Airport (FCA).
Brief Description of Projects Approved for Collection and Use:
 Runway 2/20 rehabilitation.
 Runway snowplow and truck replacement.
Brief Description of Project Approved in-Part for Collection and use:
 ARFF hydrant water system.
Determination: Approved in part. The project is generally airport improvement program (AIP) eligible in accordance with paragraphs 562 and 567 of FAA Order 5100.38A and will enhance safety at FCA. However, the hydrant and distribution line serving the fuel farm are not eligible since they serve a facility that is not AIP eligible; therefore, that portion of the project is not approved.
Decision Date: September 29, 1993.
FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Helena Airports District Office, (406) 449-5271.
Public Agency: City of Chico, Chico, California.
Application Number: 93-01-C-00-CIC.
Application Type: Impose and Use PFC Revenue.
PFC Level: \$3.00.
Total Approved PFC Revenue: \$137,043.
Earliest Permissible Charge Effective Date: December 1, 1993.
Estimated Charge Expiration Date: June 1, 1997.
Class of Air Carriers not Required to Collect PFC'S:
 None.
Brief Description of Project Approved for Collection and use:
 Terminal building sterile and baggage areas.
Decision Date: September 29, 1993.
FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, San Francisco Airports District Office, (415) 878-2805.
 Issued in Washington, DC on October 18, 1993.
Lowell Johnson,
 Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
Alabama:					
92-01-I-00-HSV., Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	\$3	\$19,002,366	06/01/1992	11/01/2008
93-02-U-00-HSV., Huntsville Intl-Carl T Jones Field, Huntsville	06/03/1993	3	19,002,366	09/01/1993	11/01/2008
92-01-C-00-MSL., Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
92-01-C-00-FLG., Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California:					
92-01-C-00-ACV., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
92-01-C-000-IYK., Inyokem, Inyokem	12/10/1992	3	127,500	03/01/1993	09/01/1995
93-01-C-00-LAX., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
92-01-C-00-OAK., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
93-01-I-00-ONT., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92-01-C-00-PSP., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92-01-C-00-SMF., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92-01-C-00-SJC., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93-02-U-00-SJC., San Jose International, San Jose	02/22/1993	3	29,228,826	05/01/1993	08/01/1995
93-03-C-00-SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92-01-C-00-SBP., San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92-01-C-00-STs., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91-01-I-00-TVL., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92-01-C-00-COS., Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92-01-C-00-DVX., Denver International (New), Denver ..	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93-01-C-00-EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93-01-C-00-FNL., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92-01-C-00-GJT., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	08/01/1998
93-01-C-00-GUC., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93-01-C-00-HDN., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93-01-C-00-MTJ., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93-01-C-00-PUB., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92-01-C-00-SBS., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92-01-C-00-TEX., Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93-02-I-00-BDL., Bradley International, Windsor Locks ..	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
Florida:					
93-01-C-00-DAB., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92-01-C-00-RSW., Southwest Florida International, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
93-02-U-00-RSW., Southwest Florida International, Fort Myers	05/10/1993	3	252,548,262	11/01/1992	06/01/2014
92-01-C-00-EYW., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92-01-C-00-MTH., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92-01-C-00-MCO., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
92-01-C-00-PNS., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92-01-I-00-SRQ., Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92-01-I-00-TLH., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93-01-C-00-TPA., Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
Georgia:					
91-01-C-00-SAV., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92-01-I-00-VLD., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
93-01-C-00-SUN., Friedman Memorial, Halley	06/29/1993	3	188,000	09/01/1993	09/01/1997
92-01-C-00-IDA., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
92-01-C-00-TWF., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-MDW., Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-ORD., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
92-01-00-RFD., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
92-01-00-SPI., Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-SPI., Capital, Springfield	04/28/1993	3	562,104	06/01/1992	02/01/1994
Indiana:					
92-01-C-00-FWA., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93-01-C-00-IND., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
92-01-00-DBQ., Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
93-01-C-00-SUX., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Kentucky:					
93-01-C-00-LEX., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
Louisiana:					
92-01-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
93-01-C-00-MSY., New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
92-01-00-BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
93-01-C-00-BOS., General Edward L Logan International, Boston	08/24/1993	3	598,800,000	11/01/1993	10/01/2011
92-01-C-00-ORH., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-DTW., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92-01-00-ESC., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-FNT., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92-01-00-GRR., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-CMX., Houghton County Memorial, Hancock	04/29/1993	3	182,986	07/01/1993	01/01/1998
93-01-C-00-IWD., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93-01-C-00-LAN., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92-01-00-MQT., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
92-01-C-00-PLN., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
93-01-C-00-BRD., Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92-01-C-00-MSP., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
91-01-C-00-GTR., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92-01-C-00-GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
92-01-C-00-PIB., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93-01-C-00-JAN., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92-01-C-00-MEI., Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
93-01-C-00-SGF., Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92-01-C-00-STL., Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93-01-C-00-BZN., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	09/01/1993	06/01/2005
92-01-C-00-GTF., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93-02-U-00-GTF., Great Falls International, Great Falls	05/25/1993	3	3,010,900	11/01/1992	07/01/2002
92-01-C-00-HLN., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
92-01-C-00-MSO., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91-01-C-00-LAS. McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93-02-C-00-LAS., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
New Hampshire:					
92-01-C-00-MHT., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92-01-C-00-EWR., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
93-01-C-00-BGM., Binghamton Regional/Edwin A Link Field, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92-01-I-00-Buf., Greater Buffalo International, Buffalo	05/28/1992	3	189,873,00	08/01/1992	03/01/2026
92-01-I-00-ITH., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92-01-C-00-JHW., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92-01-C-00-JFK., John F Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92-01-C-00-LGA., Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
92-01-I-00-PLB., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92-01-C-00-HPN., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota:					
92-01-C-00-GFK., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio:					
92-01-C-00-CAK., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92-01-C-00-CLE., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
92-01-I-00-CMH., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93-02-I-00-CMH., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93-01-C-00-TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
Oklahoma:					
92-01-C-00-LAW., Lawton Municipal, Lawton	05/08/1992	3	334,078	08/01/1992	01/01/1996
92-01-I-00-TUL., Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
93-01-C-00-EUG., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93-01-C-00-MFR., Medford-Jackson County, Medford ...	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
92-01-C-00-PDX., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93-01-C-00-RDM., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92-01-I-00-ABE., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92-01-C-00-ADD., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92-01-C-00-ERI., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93-01-C-00-JST., Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92-01-I-00-PHL., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93-02-U-00-PHL., Philadelphia International, Philadelphia	05/14/1993	3	76,169,000	08/01/1993	07/01/1995
92-01-C-00-UNV., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
South Carolina:					
93-01-C-00-CAE., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
Tennessee:					
92-01-I-00-MEM., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
92-01-C-00-BNA., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93-02-C-00-AUS., Robert Mueller Municipal, Austin	06/04/1993	2	6,189,300	11/01/1993	06/01/1995
92-01-C-00-ILE., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93-01-I-00-LRD., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93-01-C-00-LBB., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
92-01-I-00-MAF., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
93-01-C-00-SJT., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virginia:					
92-01-I-00-CHO., Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92-02-U-00-CHO., Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
93-01-C-00-DCA., Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
Washington:					
93-01-C-00-BLI., Bellingham International, Bellingham ...	04/29/1993	3	366,000	07/01/1993	07/01/1994
93-01-C-00-PSC., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93-01-C-00-CLM., William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
92-01-C-00-SEA., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93-01-C-00-GEG., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93-01-I-00-ALW., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93-01-C-00-EAT., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, Application No., Airport, City	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date
92-01-C-00-YKM., Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93-01-C-00-CRW., Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
92-01-C-00-MGW., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
92-01-C-00-GRB., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
93-01-C-00-MSN., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93-01-C-00-GCC., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93-01-C-00-RHI., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93-01-C-00-CPR., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93-01-C-00-CYS., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93-01-C-00-GCC., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93-01-C-00-JAC., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92-01-C-00-NGM., Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
92-01-C-00-BQN., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92-01-C-00-PSE., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92-01-C-00-SJU., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1977
Virgin Islands:					
92-01-C-00-STT., Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92-01-C-00-STX., Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93-26065 Filed 8-21-93; 8:45 am]
BILLING CODE 4910-13-M

Notice of Intent to Rule on Previously Deferred Projects in Application to Impose a Passenger Facility Charge (PFC) and to Rule on Application To Use the Revenue From a PFC at Memphis International Airport, Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on applications.

SUMMARY: The FAA proposes to rule and invites public comment on projects previously deferred from ruling on the application to impose a PFC and proposes to rule and invites public comment on the application to use the revenue from a PFC at Memphis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131-0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry D. Cox of the Memphis International Airports at the following address: Mr. Larry D. Cox, President, Memphis-Shelby County Airport Authority, Memphis International Airport, P. O. Box 30168, Memphis, Tennessee 38131-0168.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Memphis-Shelby County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee, 38131-0301, (901) 544-3495. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on projects previously

deferred from ruling on the application to impose a PFC and proposes to rule and invites public comment on the application to use the revenue from a PFC at Memphis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On May 28, 1992, FAA issued a Record of Decision on an application to impose a PFC, ruling on several projects and deferring ruling on several other projects at the request of the Memphis-Shelby County Airport Authority. On September 16, 1993, the FAA received a request to rule on the previously deferred projects and an application to use PFC revenue from the Memphis-Shelby County Airport Authority. On October 12, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Memphis-Shelby County Airport Authority was substantially complete within the requirements of § 158.23 of part 158. The FAA will approve or disapprove the previously deferred projects in the impose application, and will approve or disapprove the use application, in

whole or in part, no later than January 14, 1994.

The following is a brief overview of the request and the application.

Level of the approved PFC: \$3,000.

Actual charge effective date: August 1, 1992.

Estimated charge expiration date: October 1, 1999.

Total approved net PFC revenue: \$26,000,000.

Proposed net increase in total net PFC revenue: \$24,026,000.

Total estimated net PFC revenue: \$50,026,000.

Estimated PFC revenue to be used on projects in the application to use PFC revenue: \$42,689,000.

Brief description of proposed project(s):

- A. Impose Only Project (Previously Deferred)
 - 1. Extend Runway 18L-36R (Memphis-Shelby County Airport Authority (MSCAA) Airport Capital Plan (ACP) projects D.9 & D.10)
- B. Impose and Use Projects (Previously Deferred)
 - 1. Land Acquisition, Roadways, and Utilities (MSCAA ACP projects A.2, A.5, A.6, A.7 & B.1-B.4)
 - 2. Construct Third Parallel Runway, 18E-36E (MSCAA ACP projects D.2, D.3, & D.3-D.6)
- C. Use Only Projects
 - 1. Taxiways & Other Projects (MSCAA ACP projects D.14-D.18)
 - 2. Taxiway "S" (MSCAA ACP project D.12)

Proposed amendment of class or classes of air carriers for which the FAA has approved exemption from the requirement to collect PFCs: From "On-demand Air Taxi/Commercial Operators that (1) do not enplane or deplane passengers at the Memphis International

Airport's main passenger terminal buildings and (2) enplane less than 500 passengers per year at Memphis International Airport" to "Any carrier that enplanes less than 500 passengers per year at Memphis International Airport".

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Memphis-Shelby County Airport Authority.

Issued in Atlanta, Georgia on October 13, 1993.

Troy R. Butler,

PFC Program Manager, Southern Region.

[FR Doc. 93-26061 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 15, 1993.

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.

SPECIAL REQUEST: The Department of the Treasury is requesting review and approval the Internal Revenue Service information collection described below by 10/31/93. In accordance with 5 CFR 1320.18, a copy of Form 2678 will accompany this notice for public review. All comments must be received by close of business October 22, 1993.

Internal Revenue Service

OMB Number: 1545-0748

Form Number: IRS Form 2678

Type of Review: Extension

Title: Employer Appointment of Agent

Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers.

Respondents: Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents: 94,020

Estimated Burden Hours Per Respondent: 30 minutes

Frequency of Response: Other (as necessary)

Estimated Total Reporting Burden: 47,010 hours

Clearance Officer: Garrick Shear (202) 622-3869, 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.

BILLING CODE 4830-01-P

Form 2678 (Rev. October 1993)	Department of the Treasury - Internal Revenue Service Employer Appointment of Agent Under Section 3504 of the Internal Revenue Code <i>(For use by employers or payers)</i>		OMB Number 1545-0748 Expires: 10-31-96
1. To Director _____ Service Center		Instructions Employer or Payer: Please complete this form and give it to the agent. Agent: Please attach a letter requesting authority to do either all that is required of the employer for wages you pay on the employer's behalf or all that is required of the payer for requirements of backup withholding. <i>(See applicable Revenue Procedures 70-6 or 84-33.)</i> Forward both the letter of request and Form 2678 to the Director of the Internal Revenue Service Center where you file your returns. <i>(See reverse side for addresses.)</i>	
Note: Rev. Proc. 70-6 is available in Publication 1271 and Rev. Proc. 84-33 is available in Publication 1272.			
2. Employer's or Payer's name _____	3. Employer's or Payer's address <i>(Number and street, city, town or post office, State and ZIP code)</i> _____		
4. Employer identification number _____			
5. Agent's name _____	6. Agent's address <i>(Number and street, city, town or post office, State and ZIP code)</i> _____		
7. Agent's employer identification number _____			
8. Effective for <i>(Check the box or boxes that apply)</i> <input type="checkbox"/> Employment taxes <i>(Rev. Proc. 70-6)</i> <input type="checkbox"/> Backup withholding <i>(Rev. Proc. 84-33)</i>	9. If filing under Rev. Proc. 70-6, does this apply to all employees? <input type="checkbox"/> Yes <input type="checkbox"/> No	10. Effective date of appointment by employer or payer _____	
Under section 3504 of the Internal Revenue Code, please authorize this agent to do all that is required under <i>(Check the one(s) that apply)</i> <input type="checkbox"/> Chapter 21 <i>(FICA)</i> <input type="checkbox"/> Chapter 22 <i>(Railroad Retirement)</i> <input type="checkbox"/> Chapter 24— <input type="checkbox"/> Withholding and/or <input type="checkbox"/> Backup withholding <input type="checkbox"/> Chapter 25 <i>(General Provisions)</i> of Subtitle C The agent named above has been appointed either to pay wages for employers and/or report and deposit backup withholding amounts for payers. This appointment is effective on the date shown in Item 10. It is understood that the agent and the employer or payer are subject to all provisions of law and regulations <i>(including penalties)</i> which apply to employers or payers.	Signature of employer or payer _____	Date _____	
Title of signing official <i>(Indicate whether the person signing is an owner, partner, member of firm, fiduciary, or a corporate officer.)</i> _____			
For Internal Revenue Service Use Only			
Effective date granted by IRS _____ ▶			

For the Paperwork Reduction Act Notice, please see the back of this form.

Paperwork Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information. The time needed to complete this form will vary depending on individual circumstances. The estimated average time is: 30 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the Internal Revenue Service, attn: Reports Clearance Officer, PC:FP, Washington, DC 20224, and the Office of Management and Budget, Paperwork Reduction Project (1545-0748), Washington, DC 20503. Do not send this form to either of these offices. Instead, send it to the Director of the Internal Revenue Service Center where you file your returns.

**File with the
Internal Revenue
Service Center at:**

Holtsville, NY 00501

Andover, MA 05501

Philadelphia, PA 19255

Atlanta, GA 39901

Cincinnati, OH 45999

Austin, TX 73301

Ogden, UT 84201

Kansas City, MO 64999

Fresno, CA 93888

Memphis, TN 37501

Public Information Collection Requirements Submitted to OMB for Review

October 15, 1993.

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: 1545-0718

Form Number: IRS Form 941-M

Type of Review: Extension

Title: Employer's Monthly Federal Tax Return

Description: Form 941-M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941-M monthly.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 12,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—11 hrs., 43 min.

Learning about the law or the form—12 min.

Preparing, copying, assembling, and sending the form to the IRS—14 min.

Frequency of Response: Monthly

Estimated Total Reporting/

Recordkeeping Burden: 147,840 hours

Clearance Officer: Garrick Shear (202) 622-3869, 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. 93-25986 Filed 10-21-93; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

October 18, 1993.

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: 1545-0029

Form Number: IRS Forms 941, 941E, and 941-SS; Schedule A (Form 941) and Schedule B (Form 941)

Type of Review: Revision

Title: Employer's Quarterly Federal Tax Return (941); Quarterly Return Withheld Federal Income Tax and Medicare Tax (941E); Employer's Quarterly Federal Tax Return—American Samoa, Guam, The Commonwealth of Northern Mariana Islands, and the Virgin Islands (941-SS); Record of Federal Backup Withholding Tax Liability (Schedule A); and Employer's Record of Federal Tax Liability (Schedule B)

Description: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941E is used primarily by state and local governments to report withheld income and Medicare taxes only. Form 941-SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule A is used by payers who elect to report backup withholding separately. Schedule B is used by employers to record their employment tax liability.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/

Recordkeepers: 12,494,773

Estimated Burden Hours Per

Respondent/Recordkeeper:

	941	941E	941-SS	Sched. A	Sched. B
Recordkeeping	10 hr. 3 min.	9 hr. 5 min.	7 hr. 54 min.	2 hr. 40 min.	2 hr. 40 min.
Learning about the law or the form	22 min.	28 min. ....	.....	.....
Preparing, copying, assembling, and sending the form to the IRS.	1 hr. 45 min.	1 hr. 45 min.	8 min..		

Frequency of Response: Quarterly

Estimated Total Reporting/

Recordkeeping Burden: 307,385,880 hours

Clearance Officer: Garrick Shear, (202) 622-3869, 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. 93-26032 Filed 10-21-93; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

October 18, 1993.

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:** 1545-0049**Form Number:** IRS Form 990-BL, Schedule A (Form 990-BL), Form 6069**Type of Review:** Extension**Title:** Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Persons (990-BL); Computation of Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons Schedule A

(Form 990-BL); Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction (6069)

Description: IRS uses Form 990-BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in prescribed activities. The tax is figured on Schedule A and attached to the 990-BL. Form 6069 is used by

coal mine operators to figure the maximum deduction to a black lung trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions
Estimated Number of Respondents/Recordkeepers: 27
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 990-BL	Schedule A	Form 6069
Recordkeeping	16 hours, 44 minutes ..	6 hours, 56 minutes ...	6 hours, 49 minutes.
Learning about the law or the form	6 hours, 16 minutes ...	18 minutes	2 hours, 25 minutes.
Preparing, copying, assembling, and sending the form to the IRS	6 hours, 49 minutes ...	25 minutes	3 hours, 58 minutes.

Frequency of Response: Monthly
Estimated Total Reporting/**Recordkeeping Burden:** 700 hours
Cleance Officer: Garrick Shear, (202) 622-3869, 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. 93-26033 Filed 10-21-93; 8:45 am]
BILLING CODE 4830-01-P

open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535-7571) prior to October 22, 1993.

Dated: October 12, 1993.

Heyward Bannister,
Committee Management Officer.
[FR Doc. 93-25977 Filed 10-21-93; 8:45 am]
BILLING CODE 8320-01-M

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amended routine use statements to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, 20420. All relevant material received before November 22, 1993, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 1, 1993.

If no public comment is received during the 30 day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Department of Veterans Affairs, the amendments to 58 VA 21/22 included herein are effective November 22, 1993, or 40 days after the notice was approved, whichever is latest.

Approved: October 13, 1993.

Jesse Brown,
Secretary of Veterans Affairs.**DEPARTMENT OF VETERANS AFFAIRS****Advisory Committee on Women Veterans; Meeting**

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Women Veterans will be held November 9-10, 1993, in room 946, Tech World, 801 I Street, NW., Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on November 9 a.m.-4:30 p.m.; November 10 from 9 a.m.-4:30 p.m., room 946, Tech World, 801 I Street, NW., Washington, DC. All sessions will be

Privacy Act of 1974;**Amendment of System Notice****AGENCY:** Department of Veterans Affairs.
ACTION: Notice.Notice is hereby given that the Department of Veterans Affairs (VA) is considering adding a new routine use to the system of records entitled Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) as set forth in **Federal Register** publication, "Privacy Act Issuances," 1991 Compilation, Volume II, pages 967-971 as amended at 57 FR 12374 (4-9-92), and 57 FR 44007 (9-23-92).

If a court that is located in a state other than where the veteran's claims folder is located issues a garnishment order, the court must be able to obtain the veteran's claims file number and the regional office location of the claims folder in order to request that office to properly effect the garnishment.

This routine use would add provisions to allow the release of a defendant veteran's claims file number and the folder location to a court of proper jurisdiction which has issued a garnishment order for that veteran under 42 U.S.C. 659 through 662.

Notice of Amendment to System of RecordsThe system of records identified as 58 VA 21/22, "Compensation, Pension, Education and Rehabilitation records—VA" as set forth in **Federal Register** publication, "Privacy Act Issuances," 1989 Compilation, Volume II, pages 918-922, is amended by adding the following:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education
and Rehabilitation Records—VA.

ROUTINE USES OF RECORDS MAINTAINED IN THE
SYSTEM, INCLUDING CATEGORIES OF USERS AND
THEIR PURPOSES OF SUCH USES:

57. A veteran's claims file number
and folder location may be disclosed to
a court of proper jurisdiction which has
issued a garnishment order for that
veteran under 42 U.S.C. 659 through
662.

[FR Doc. 93-25979 Filed 10-21-93; 8:45 am]
BILLING CODE 8320-01

Performance Review Board Members

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: Under the provisions of 5
U.S.C. 4314(c)(4) agencies are required
to publish a notice in the *Federal
Register* of the appointment of
Performance Review Board (PRB)
members. This notice revises the list of
members of the Department of Veterans
Affairs (VA) Performance Review
Boards which was published in the
Federal Register on November 19, 1992,
(57 FR 54638).

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT:
Carol A. Kummer, Office of Human
Resources Management (053),
Department of Veterans Affairs, 810
Vermont Avenue, NW., Washington, DC
20420, (202) 535-8723.

VA Performance Review Board (PRB)

Ronald E. Cowles, Acting Assistant
Secretary for Human Resources and
Administration (Chairperson)
Shirley Carozza, Deputy Assistant
Secretary for Budget
Norman B. (Gabby) Hartnett, Chief of
Staff, Office of the Secretary
C. Wayne Hawkins, Deputy Under
Secretary for Health for
Administration and Operations
Gerald K. Hinch, Deputy Assistant
Secretary for Equal Opportunity
Mary Lou Keener, General Counsel
William T. Merriman, Deputy Inspector
General
Roger R. Rapp, Director of Field
Operations, National Cemetery
System
John Vogel, Acting Deputy Chief
Benefits Director

Veterans Benefits Administration PRB

Harold F. Gracey, Jr., Chief of Staff
(Chairperson)
Raymond H. Avent, Director, Eastern
Area
David A. Brigham, Director, Veterans
Assistance Service
J. Gary Hickman, Director,
Compensation and Pension Service
Rhoda R. Mancher, Director, Office of
Information Technology
Richard Pell, Jr., Deputy Chief of Staff
David M. Walls, Director, Western Area

Veterans Health Administration PRB

John T. Farrar, M.D., Deputy Under
Secretary for Health (Chairperson)
C. Wayne Hawkins, Deputy Under
Secretary for Health for
Administration and Operations (Co-
Chairperson)
Bernice P. Dorse, R.D., Director, Dietetic
Service
Clark R. Doughty, Regional Director,
Western Region

Barbara L. Gallagher, Regional Director,
Eastern Region
Sanford M. Garfunkel, Associate Chief
Medical Director (CMD) for
Operations
Norman B. (Gabby) Hartnett, Chief of
Staff, Office of the Secretary
David H. Law, M.D., Acting Associate
Deputy CMD for Clinical Programs
Charles A. Milbrandt, Acting Associate
CMD for Resource Management
Richard P. Miller, Regional Director,
Southern Region
Alline L. Norman, Associate CMD for
Administration
Elizabeth M. Short, M.D., Associate
CMD for Academic Affairs
Dennis H. Smith, Executive Assistant to
the Under Secretary for Health
Nancy M. Valentine, Ph.D., R.N.,
Assistant CMD for Nursing Programs
Charles V. Yarbrough, Associate CMD
for Construction Management
Thomas T. Yoshikawa, M.D., Assistant
CMD for Geriatrics and Extended Care
Albert Zamberlan, Regional Director,
Central Region

Office of Inspector General PRB

Milton M. MacDonald, Deputy Assistant
Inspector General for Audit,
Department of State (Chairperson)
David A. Brinkman, Assistant Inspector
General for Analysis and Follow-up,
Department of Defense
Sebastian R. Lorigo, Deputy Inspector
General for Investigations,
Department of Housing and Urban
Development

Dated: October 13, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93-25978 Filed 10-21-93; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 203

Friday, October 22, 1993

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).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:00 a.m.—1:00 p.m.

PLACE: ADF Headquarters.

DATE: Wednesday, October 27, 1993.

STATUS: Open.

Agenda:

11:00

President's Report

12:00

Audit Committee Report

12:30

Executive Session

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673-3916.

Gregory Robeson Smith,

President.

[FR Doc. 93-26176 Filed 10-20-93; 2:32 pm]

BILLING CODE 6110-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 5, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-26126 Filed 10-20-93; 10:23 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 12, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-26127 Filed 10-20-93; 10:23 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 26128 Filed 10-20-93; 10:23 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 26, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-26129 Filed 10-20-93; 10:23 am]

BILLING CODE 6351-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 27, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-26134 Filed 10-20-93; 10:37 am]

BILLING CODE 6210-01-F

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 9:00 a.m., November 1, 1993.

PLACE: Uniformed Services University of the Health Sciences, Room D3001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

9:00 a.m.

Meeting—Board of Regents

(1) Approval of Minutes—9 August 1993; (2) Awards; (3) Graduate Degrees; (4) Faculty Matters; (5) Departmental Reports; (6) Financial Report; (7) Report—President, USUHS; (8) Comments—Chairman, Board of Regents.

New Business

CONTACT PERSON FOR MORE INFORMATION: George A. Drumbor, Executive Secretary of the Board of Regents, 301/295-3886.

Dated: October 20, 1993.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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Corrections

Federal Register

Vol. 58, No. 203

Friday, October 22, 1993

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 THE INTERIOR

Bureau of Land Management

[CD-930-4214-10; COC-55779]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

Correction

In notice document 93-24226 beginning on page 51647 in the issue of Monday, October 4, 1993, make the following correction:

On page 51648, in the first column, under DATES:, in the last line, "January 3, 1993." should read "January 3, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-932-4214-10; COC-55323]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

Correction

In notice document 93-24225 beginning on page 51648 in the issue of Monday, October 4, 1993, make the following correction:

On page 51648, in the second column, under DATES:, in the last line, "January 3, 1993." should read "January 3, 1994."

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, 72, and 150

RIN 3150-AE50

Whistleblower Protection for Employees of NRC-Licensed Activities

Correction

In rule document 93-24787 beginning on page 52406 in the issue of Friday October 8, 1993, make the following correction:

On page 52406, in the third column, in the EFFECTIVE DATE:, in the first line, "October 8, 1993." should read "November 8, 1993."

BILLING CODE 1505-01-D

Environmental Protection Agency

Friday
October 22, 1993

Part II

**Environmental
Protection Agency**

40 CFR Part 51, et al.
Enhanced Monitoring Program; Proposed
Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 60, 61 and 64

[IL-64-2-5807; FRL-4787-6]

RIN 2060-AD18

Enhanced Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of opportunity for public hearing.

SUMMARY: Pursuant to the Clean Air Act (the Act) the EPA is proposing a new Enhanced Monitoring Program, including both new regulations and certain amendments to several existing air pollution program regulations. The program would require owners or operators of both major stationary sources of non-hazardous air pollutants and of sources subject to existing national emission standards for hazardous air pollutants, to perform enhanced monitoring at significant emissions units of air pollution. The proposed rule would require that enhanced monitoring data be used to determine the compliance status of affected emissions units with certain applicable emission limitations or standards.

The proposed rule would establish the criteria and procedures that owners or operators must satisfy in evaluating, selecting and demonstrating enhanced monitoring, and would include appendices containing enhanced monitoring performance and quality assurance requirements. Proposed reporting and recordkeeping requirements would identify the basis, content, frequency and other requirements for enhanced monitoring reports. The reporting requirements would also specify that enhanced monitoring data be used by an owner or operator to certify compliance pursuant to 40 CFR part 70 for those applicable requirements subject to enhanced monitoring. Finally, the proposed amendments to existing regulations would clarify that the enhanced monitoring program could be implemented through preconstruction permits issued under the Act and that enhanced monitoring and certain other information collected could be used to determine compliance with applicable emission limitations or standards.

DATES: Comments on the proposed rule must be received by December 20, 1993. The EPA will hold a public hearing in Washington, DC on the proposed regulations on November 19, 1993. Requests to present oral testimony must

be received on or before November 5, 1993. If possible, comments should be sent in both computerized form and hardcopy. Comments generated using word processing software should be sent on a clearly labeled, 3.5 inch IBM-compatible diskette. Comments formatted in WordPerfect 5.0 or 5.1 may be submitted as is; comments prepared by other word processing software, should be submitted in an "unformatted" mode. All comments submitted in hardcopy should be submitted in duplicate. Comments should refer to page numbers and columns whenever possible.

Docket: Supporting information used in developing the proposed regulations is contained in Docket No. A-91-52. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at the address listed below. A reasonable fee may be charged for copying.

ADDRESSES: Comments must be mailed (in duplicate, if possible) to: EPA Air Docket (LE-131), Attention: Docket No. A-91-52, room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. The public hearing will be held in the Waterside Mall auditorium at the EPA's Washington, DC Headquarters Office on November 19, 1993. Persons interested in attending the hearing or wishing to present oral testimony should contact Mr. Keith Brown, Stationary Source Compliance Division (EN-341W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (703) 308-8676.

FOR FURTHER INFORMATION CONTACT: Keith Brown at (703) 308-8676.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

- I. Background and Purpose
 - A. Statutory Authority
 - B. Alternatives Considered
 - C. Benefits of Enhanced Monitoring
 - D. Public Participation
- II. Implementation Principles
 - A. Ensure Environmental Protection
 - B. Incorporate Broad-Based Perspective for Rule Development
 - C. Maintain an Effective Partnership With State and Local Governments
 - D. Minimize Small Business Concerns
 - E. Promote Pollution Prevention
 - F. Facilitate Use of Market-Based Incentives
 - G. Allow Flexibility in State Programs and Source Permits
 - H. Enable Effective and Efficient Information Transfer
 - I. Promote Simple and Streamlined Regulations
- III. Summary of Key Concepts
 - A. Development and Selection of Enhanced Monitoring Protocols

- B. Purpose of Enhanced Monitoring
 - C. Relationship to Title V Permit Program
- IV. Detailed Discussion of the Provisions of the Proposed Regulations
 - A. Section 64.1—Applicability
 - B. Section 64.2—Definitions
 - C. Section 64.3—Implementation Requirements
 - D. Section 64.4—Enhanced Monitoring Protocol Requirements
 - E. Section 64.5—Reporting Requirements
 - F. Section 64.6—Recordkeeping Requirements
 - G. Section 64.7—Permit Application Requirements
 - H. Section 64.8—Permit Requirements
 - I. Section 64.9—Prohibitions
 - J. 40 CFR Parts 51, 52, 60 and 61
 - K. SIP Call
 - V. Other Topics for Discussion
 - A. Relationship to Nonattainment Area Provisions
 - B. Relationship to Section 112 Regulatory Developments
 - C. Relationship to Title I Permit Programs
 - VI. Administrative Requirements
 - A. Public Hearing
 - B. Docket
 - C. Office of Management and Budget (OMB) Review
 - D. Regulatory Flexibility Act
 - E. Paperwork Reduction Act

The first section of this preamble provides background on the statutory provisions under the Act that require owners or operators of stationary sources to perform enhanced monitoring and to submit compliance certifications. This section also provides information on the purpose, basic options, and the expected benefits of the proposed enhanced monitoring program. This section also relates the proposed enhanced monitoring program to the compliance certification requirements of 40 CFR part 70.

The second section explains the implementation principles EPA has followed while developing the proposed regulations, and EPA's position on associated issues. These implementation principles should be considered when the reader reviews the preamble and proposed regulations.

The third section provides a summary of the general approach EPA has taken in developing the proposed regulations.

The fourth section of the preamble presents a summary of each section of the proposed enhanced monitoring program. This section includes background on the provisions and a discussion of issues that EPA has identified and would like especially to be considered during the public comment period.

The fifth section then provides discussion on relationships between the enhanced monitoring program and other provisions of the Act. The sixth and final section of the preamble contains

the administrative requirements that accompany Federal regulatory actions.

The preamble includes many citations which refer the reader to more detailed discussions of a topic or to the origin of certain requirements. These citation sections will generally not be followed by their origin, such as "of this preamble" or "of the Act." Rather, the reader can recognize the origins of the sections by their nature: sections of the preamble begin with a Roman numeral; sections of the proposed regulations range from §§ 64.1 to 64.8; sections of existing EPA regulations are preceded by 40 CFR; and sections of the Act are referenced by a three digit number, such as 114 or 504.

This preamble often refers to "State" or "permitting authority." The reader should assume that where the preamble refers to a "State," such term also includes local air pollution agencies, Indian tribes, and territories of the United States to the extent they are or will be the permitting authority for their area or have been or will be delegated permitting responsibilities under the Act. In addition, the term "permitting authority" would also include EPA to the extent EPA is the permitting authority of record.

Finally, this preamble often refers to 40 CFR part 70, the regulations promulgated July 21, 1992, implementing the operating permits program under title V of the Act (see 57 FR 32250). Those regulations provide requirements applicable to federally-approved, State-administered operating permits programs. Where a State fails to submit an approvable program or to adequately administer and enforce an approved program, EPA will have to promulgate, administer and enforce a Federal program for issuing permits in that State. The reader should assume that where the preamble refers to 40 CFR part 70, such term may also refer to an EPA-administered (Federal) operating permits program, which may be promulgated under another part of 40 CFR.

I. Background and Purpose

A. Statutory Authority

The proposed regulations respond principally to the statutory mandate in section 702(b) of the Clean Air Act Amendments of 1990, Public Law 101-549, 104 Stat. 2399, which requires the Administrator of EPA to promulgate rules on enhanced monitoring and compliance certifications. Section 702(b) of the 1990 Amendments revised section 114(a) of the Act by adding a new paragraph (3) that provides, in part:

The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require * * *

The 1990 Amendments also revised section 114(a)(1) of the Act to provide additional authority concerning monitoring, reporting, and recordkeeping requirements. As amended, that section provides the Administrator with the authority to require any owner or operator of a source:

On a one-time, periodic or continuous basis to—

- (A) Establish and maintain such records;
- (B) Make such reports;
- (C) Install, use, and maintain such monitoring equipment * * *
- (D) Sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);
- (E) Keep records on control equipment parameters, production variables, or other indirect data when direct monitoring of emissions is impractical;
- (F) Submit compliance certifications in accordance with section 114(a)(3); and
- (G) Provide such other information as the Administrator may reasonably require * * *.

In addition, related provisions under title V of the Act specify that operating permits must include requirements for monitoring and compliance certification. Section 504(c) requires that each permit must set forth "monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions." Section 504(b) permits the Administrator to promulgate appropriate test methods and monitoring requirements for determining compliance. That section states that "continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance." Because this section directly refers to promulgating monitoring requirements for determining compliance, the proposal

cites this section in addition to section 114(a)(3) as explicit authority for the proposed regulations.

Section 504(a) states that permits shall include "a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of the Act." Section 503(b)(2) states that permitted sources must certify compliance with any applicable permit requirements "no less frequently than annually * * * and promptly report any deviation from permit requirements to the permitting authority."

The 1990 Amendments also revised section 113 to clarify what evidence may be used to prove violations of the Act. Section 113(e), as amended, provides that "the duration" of a violation may be established "by any credible evidence (including evidence other than the applicable test method)." The Legislative history for this provision states that by this amendment, Congress meant to clarify that, in an enforcement action, "courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State implementation [sic] or regulation." (S. Rep. No. 228, 101st Cong., 1st Sess., 366 (1989) *reprinted* in 1990 U.S. Code Cong. & Admin. News 3385, 3749.)

Coupled with these changes to section 113, section 114(a)(3) specifically requires that a certification be based upon a determination of whether compliance was continuous or intermittent. Therefore, the enhanced monitoring protocol must collect data that can be used to document compliance and facilitate enforcement of documented violations. Congress noted in a Senate Committee Report that "similar to the reporting requirements of the Clean Water Act, 33 U.S.C. 1342, compliance certifications and emission data submitted pursuant to this [section 114(a)(3)] authority will facilitate enforcement, due in part to the fact that such data and certifications can be used as evidence." (S. Rep. 228, 101st Cong., 1st Sess., at 368 (1989)). Similarly, a House Committee Report stated that this section "confirms that EPA has authority under section 114(a) to require enhanced monitoring and to require such monitoring in compliance certifications." (H.R. Rep. 490, 101st Cong. 2d Sess., pt. 1, at 394 (1990)). Thus, Congress linked enhanced monitoring and compliance

certifications, with the idea that enhanced monitoring data would serve as the basis for certifying compliance and could be used to determine the existence of an enforceable violation.

In this proposal, EPA is proposing a new part 64 to respond to the direct mandate in section 114(a)(3). To assure that this mandate is carried out effectively and in a manner that responds to amended section 113, EPA also is proposing as part of this proposal revisions to portions of 40 CFR parts 51, 52, 60 and 61. These proposed revisions include proposed Federal implementation language that will be incorporated into SIP's for States that do not adequately respond to a SIP Call that EPA will issue in February 1994. See sections III.B, IV.J, and IV.K. below. For these proposed revisions to 40 CFR parts 51, 52, 60, and 61, EPA is relying on the procedural requirements of section 307(d) of the Act.

B. Alternatives Considered

One clear objective inherent in all of these statutory provisions is to assure that owners or operators are accountable for their emissions and compliance status on a continuous basis. Thus, these proposed regulations would require that the owners or operators of all major sources of non-hazardous air pollutants, or any permitted emissions unit subject to existing hazardous air pollutant requirements under 40 CFR part 61, conduct enhanced monitoring for the purpose of determining their compliance status and report on that status in compliance certifications.

To achieve that objective in a cost-effective manner that is integrated with other regulatory initiatives under the Act, EPA investigated alternatives for three separate decisions. First, EPA considered the degree to which the proposed regulations should prescribe enhanced monitoring requirements. Second, EPA considered to which regulated air pollutants and sources the proposed regulations should apply. Finally, the Agency considered in what manner the proposed regulations could ensure that enhanced monitoring provides a determination of whether compliance is continuous or intermittent, as mandated by section 114(a)(3).

1. Enhanced Monitoring Prescriptiveness

With respect to enhanced monitoring prescriptiveness, one possible option for achieving accountability would be to obtain the most accurate, timely and reliable data that is technologically feasible. For some sources, that option would entail the frequent use of

reference test method procedures, while for others it would entail use of continuous emission monitoring systems (CEMS's). This "top-down" option was rejected by EPA as too burdensome and as inconsistent with congressional recognition under section 504(b) that other monitoring options may provide sufficiently reliable and timely information to determine compliance. The EPA solicits comments on the proposal to reject this option.

A second option considered was to specify the precise enhanced monitoring requirements for each major source category. That option was considered impractical given the short time period for issuing the enhanced monitoring program, the large number of source categories affected, and the Agency resource commitments that approach would require. The EPA solicits comments on the proposal to reject this option, including comments as to whether it may be feasible to develop specific requirements for a limited number of source categories and use the general requirements in the proposed regulations for all other source categories. For those comments that support the development of specific requirements, EPA also solicits comments on which source categories should have specific requirements.

A third option considered was to specify technical criteria that an enhanced monitoring protocol must achieve and then allow an owner or operator to demonstrate that its proposed enhanced monitoring protocol is the best monitoring for its particular emissions unit that could achieve these criteria. This option forms the basis for the proposal. It provides the owner or operator with significant flexibility in proposing the type of monitoring that best fits the owner or operator's circumstances, while at the same time assuring that all proposed monitoring methodologies meet the technical criteria that would ensure that a proposed protocol provides quality-assured, representative monitoring data that can be used to determine continuous compliance as required by section 114(a)(3).

It is important to note that the term "best" as would be used in the proposed regulations is not intended to require a top-down selection process that focuses on the best monitoring system that is technically and economically feasible. Rather, the term "best" focuses on what monitoring can best provide an assurance that a particular emissions unit remains in compliance. This use of the term "best" would require evaluating several site-specific factors, such as emissions unit and control

system design, operating processes at the facility, the demonstrated margin of compliance and the potential variability of emissions.

For instance, the best monitoring for determining continuous compliance at a large uncontrolled SIP industrial boiler burning high sulfur coal that results in emissions close to the SIP emission limit may be a CEMS given the potential variability in the fuel. However, the best system for a similar uncontrolled boiler burning fuel oil may be a fuel sampling and analysis program. The assurance of continuing compliance, and not the technological elements of the monitoring, would be the appropriate measure of what is "best."

The selection approach described above would serve as the basis for the proposed regulations. However, to ensure that owners or operators make informed proposals and to ensure that the permitting authority has adequate information to act upon proposed enhanced monitoring protocols, the proposed regulations would include some additional evaluation procedures for the enhanced monitoring protocol selection process.

The first option for evaluating a monitoring methodology that could be used as enhanced monitoring would be to consider the best "established monitoring." The proposed regulations would define this term to include monitoring that has been established in certain previous regulatory actions governing many source categories. The EPA believes that the use of established monitoring should serve to decrease the burden on permitting authorities because these methods are familiar and will increase the standardization of the selection process. The second option that an owner or operator would have is to identify all technologically feasible monitoring approaches in order to select the best monitoring methodology for a particular emissions unit that can satisfy all of the requirements for an enhanced monitoring protocol. These monitoring approaches would include both established monitoring and other monitoring identified by the owner or operator. This evaluation process is discussed in further detail in section III. A.

The proposed regulations would use the operating permits program as the primary vehicle for implementing the evaluation and selection process described above. The owner or operator would include its proposed enhanced monitoring protocol and supporting information as part of a permit application. The permitting authority would then review and approve or deny the proposed protocol as part of its

permit issuance process. The performance of verification tests to certify that the protocol achieves technical specifications and requirements then would occur after permit issuance in order to finally demonstrate that the enhanced monitoring protocol achieves all of the requirements of the proposed regulations.

The operating permits program will provide a vehicle for selecting the best monitoring for emissions units at a particular source. Provided that the criteria in the proposed regulations are satisfied, a broad range of monitoring approaches may be approved as the best monitoring at a particular emissions unit. Depending on the circumstances at the emissions unit being monitored, enhanced monitoring could involve procedures such as maintaining records of, analyzing, and reporting on fuel or raw material usage, or systems such as control device parameter monitors or continuous emission monitoring systems. The types of monitoring procedures and systems that could be used under the proposed regulations are discussed in section III.A.

The reader should note that the proposed regulations also would be implemented through the preconstruction permit programs for new and modified sources under parts C and D of title I of the Act. Selection of enhanced monitoring at the preconstruction stage would assure that enhanced monitoring needs are considered in the design and construction of an emissions unit. Implementation through preconstruction permits would also allow for streamlined conversion of preconstruction permits into operating permits where a permitting authority separates the issuance of the two permits. The proposed amendments to 40 CFR part 51 and 40 CFR 52.21 in the proposal would assure that permitting authorities adopt sufficient legal authority to impose enhanced monitoring conditions in preconstruction permits. This issue is discussed in further detail in section V.C.

As stated in its operating permits rule, the Agency intends that title V permits contain all the requirements of the Act applicable to the permitted source. The title V process was not intended to establish more stringent or new requirements. However, the one exception is for compliance provisions required in all permits by title V and 40 CFR 70.6. The part 70 rule allows in some circumstances for the addition or clarification of compliance requirements—as opposed to new

emission limits or standards. For example, an addition might be made through this process to specify an averaging period or periodic monitoring requirement where the underlying standard fails to specify these elements as a part of the monitoring requirement. EPA continues to intend that the role of the title V permitting process is to express all of the underlying requirements applicable to the source.

2. Enhanced Monitoring Program Applicability

With respect to the scope of the proposed part 64 regulations, EPA considered several alternatives for defining the universe of sources, regulated air pollutants, emission limitations or standards, and emissions units that should be subject to the enhanced monitoring requirement. Section 114(a)(3) provides a general requirement that EPA must require enhanced monitoring at major stationary sources. However, section 114(a)(3) does not provide EPA with any further guidance as to which regulated air pollutants, emissions units, and emission limitations or standards at a major source must be covered by enhanced monitoring requirements.

In contrast, section 504(c) provides that each permit must include "inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions." Furthermore, section 503(b)(2) requires a compliance certification for "any applicable permit requirements." Because of the language in these two title V sections, EPA has required monitoring and certification at all emissions units for all applicable requirements under the Act in 40 CFR part 70 because Congress clearly required in title V that all applicable requirements be subject to appropriate monitoring to "assure compliance."

Section 114(a)(3) does not contain such specific language regarding the scope of the part 64 program. Thus, Congress having remained silent on the precise question at issue, EPA believes the legislative branch was providing the Agency with broad discretion to determine what type of monitoring is enhancement enough for various emissions units at major sources. See *Chevron USA, Inc., v. Natural Resources Defense Council*, 456 U.S. 837 (1984). First, as a general rule, EPA has determined that the proposed rules should only apply at the units that emit pollutants for which the source is major. EPA believes that Congress's intent in requiring enhanced monitoring of major sources was an attempt to focus on

imposing monitoring most immediately on the sources that may emit a particular pollutant in large amounts. With respect to which emission limitations and standards are covered by the enhanced monitoring rule, EPA believes that part 64 should apply to all emission limitations and standards applicable to the pollutants for which the source is major and at an emissions unit subject to part 64. Finally, the following two subsections will describe the emissions units that would be subject to part 64.

EPA has divided the applicability requirement into two parts: hazardous air pollutants and other regulated pollutants. With respect to these two categories of pollutants, EPA independently explored the range of applicability.

a. Hazardous Air Pollutant Sources. Requirements for hazardous air pollutants under the Act include existing NESHAP requirements under 40 CFR part 61 and will include new standards developed under section 112 as amended by the 1990 Amendments. The EPA recognizes that both minor and major sources of hazardous air pollutants are of significant concern and warrant enhanced monitoring. Therefore, EPA intends to apply enhanced monitoring under section 114(a)(3) of the Act to as many hazardous air pollutant sources as possible.

First, with respect to sources subject to existing part 61 requirements, the proposed regulations would apply to any emissions unit required to obtain a permit (regardless of whether the source is a major or area source). The EPA is not required to establish enhanced monitoring for area sources under section 114(a)(3), but has been granted discretion to establish enhanced monitoring for those sources. Because of the significance of hazardous air pollutants, EPA believes that area sources that must also obtain permits under part 70 should develop methods for enhanced monitoring in the permit application process. However, asbestos demolition and renovation projects subject to subpart M of part 61 are exempt from the requirements of part 70. Because EPA is not requiring States to permit these sources and the permit program is the established method for implementing enhanced monitoring, EPA has exempted these sources from the requirements of part 64.

With respect to emissions units subject to new hazardous air pollutant requirements under amended section 112 of the Act, EPA will include appropriate enhanced monitoring requirements as part of those new

hazardous air pollutant requirements. This approach is consistent with EPA's statement in the July 21, 1992 preamble to 40 CFR part 70 that all future rulemakings will have no gaps in their monitoring provisions (see 57 FR 32278). Therefore, EPA will exercise its section 114(a)(3) authority to require enhanced monitoring for sources subject to new section 112 requirements in actions taken pursuant to the amended section 112. These actions include the general provisions of 40 CFR part 63 and the individual subparts of that new part, as well as case-by-case permit decisions in certain instances. The interrelationship between the proposed regulations and NESHAP regulatory development is discussed in further detail in Section V.B.

Finally, as to sources that achieve early reductions in accordance with the regulation promulgated pursuant to section 112(i)(5), 57 FR 61970 (Dec. 29, 1992), to be codified at 40 CFR 63.70 et seq., EPA believes that the monitoring required pursuant to the permits program is enhancement enough. The early reductions program is a temporary program; these sources will ultimately need to comply with the new standards being developed under section 112. The EPA believes that during this interim period, the monitoring requirements of the permits program will provide monitoring sufficient for these sources to certify compliance with applicable emission limitations.

b. *Criteria Air Pollutant Sources.* With respect to sources and emissions units that emit non-hazardous pollutants, EPA determined to use its discretion to limit the scope of applicability more than for hazardous air pollutants. First, EPA determined not to exercise its discretion to require enhanced monitoring at non-major sources at this time. With respect to the Act's undefined mandate to require enhanced monitoring at major stationary sources, EPA has determined that some proposed limitations on the applicability of part 64 at certain emissions units located at major stationary sources would be appropriate. In making that determination, EPA considered three factors: the statutory requirement of enhanced monitoring at major stationary sources, the results of its Regulatory Impact Analysis (RIA), and the monitoring requirements of the part 70 operating permits program.

EPA is required to perform an RIA pursuant to E.O. 12291 in order to assess the costs and benefits of the proposed rule and to maximize the net benefits to society. The RIA calculates net benefits in two ways. For attainment areas, the calculation involves weighing

health and welfare benefits associated with emissions reductions against the costs of complying with enhanced monitoring requirements. In nonattainment areas, the anticipated net benefits also include the avoided cost to the regulated source of alternative emission reduction regulations that would be necessary to achieve emission reductions required for attainment in the absence of enhanced monitoring requirements.

The RIA takes into account both the permitting authority burden costs and costs to the regulated community. The costs to the permitting authorities include costs associated with review and approval of proposed enhanced monitoring methods and subsequent review of monitoring reports. The costs analyzed for the regulated community include all aspects of implementing enhanced monitoring at a source. These include any one-time capital costs for purchasing and installing new monitoring equipment, and recurring annual costs for monitor operation and maintenance, quality assurance activities, and reporting, compliance certification, and recordkeeping burden costs. Because enhanced monitoring does not change the stringency of underlying standards or limitations, any costs associated with coming into compliance with these emissions limitations or standards by sources are not considered costs associated with this rule. The EPA solicits comments on this approach, and on whether other costs to the permitting authorities and regulated community should be incorporated in the analysis.

Because of EPA's uncertainty as to the scope of applicability, the Agency established a range of options in the RIA for imposing the enhanced monitoring rule to units at major stationary sources. The RIA explored in detail five gradations of coverage for the part 64 requirements:

- (1) All units emitting pollutants for which the source is major (Option 1);
- (2) All units that have the potential to emit pollutants in an amount equal to or greater than 10% of the applicable major source definition (Option 2);
- (3) All units that have the potential to emit pollutants in an amount equal to or greater than 30% of the applicable major source definition (Option 3);
- (4) All units that have the potential to emit pollutants in an amount equal to or greater than 50% of the applicable major source definition (Option 4); and
- (5) All units that have the potential to emit pollutants in an amount equal to or greater than the applicable major source definition (Option 5).

The EPA also considered the fact that the regulations developed under part 70 require monitoring at all emissions units at a major source. The monitoring required by part 70 in many instances will be an enhancement over the existing monitoring at an emissions unit. In this sense, many units will have established some enhancement through the permit process even in the absence of part 64. For the other units covered by part 70 monitoring, EPA believes the existing monitoring is sufficiently enhanced.

Based on the three factors discussed above, EPA has decided not to propose Option 5. The EPA recognized that under that option, many major stationary sources would avoid any additional monitoring beyond that required by part 70. The RIA analysis indicates that only 47 percent of all major stationary sources would be subject to the part 64 requirement at one or more emissions units. In addition, this option would have the undesirable effect of excluding many significant emissions units from the part 64 enhanced monitoring requirements. For example, a source with several 90 tons per year emissions units would avoid any part 64 enhanced monitoring requirement. By contrast, a source consisting of one 110 tons per year unit would be subject to part 64 enhanced monitoring under this option. Finally, the RIA indicates that this option would not present the greatest net benefits (i.e., further net benefits are achieved by moving to Option 4). Therefore, balancing the fact that Option 5 would require part 64 monitoring at less than 50 percent of all major stationary sources with the fact that it did not produce the greatest net savings, EPA determined that Option 5 would not be an acceptable proposed approach.

As to the remaining options, EPA determined that there were positive and negative factors supporting each option. Option 1 would ensure that part 64 monitoring is performed at all emissions units that emit the pollutant for which the source is major. However, this option also would provide the lowest net benefits of the options considered. The RIA estimates the loss of net benefits of moving from Option 4 (which would maximize net benefits, i.e. any other option selected would result in net costs) to Option 1 at \$735 million; in addition, the RIA indicated that the marginal cost of obtaining further emission reductions by moving from Option 4 to Option 1 would be extremely high (approximately \$11,750 per ton). Option 2, while ensuring that approximately 82 percent of all major stationary sources would be subject to

the part 64 requirements at one or more emissions units, also would result in lower net benefits (\$197 million less) than those provided under Option 4; in addition, the RIA indicates that the costs for the incremental emission reductions would remain high (approximately \$5600 per ton).

Although the RIA indicates that Option 4 would maximize net benefits, only 56 percent of all major stationary sources would have emissions units subject to the part 64 requirements under this option. Moreover, Option 4 would require part 64 monitoring at less than 1/3 of all regulated emissions units at major stationary sources that emit the pollutant for which the source is major, leaving some significant emissions units to be regulated by the monitoring requirements of part 70. While EPA believes that there would be some support for this option because of the application of part 70 periodic monitoring requirements at the remaining major stationary sources, the Agency questions whether that monitoring would be sufficiently enhanced for the potentially large emissions units that would not be subject to part 64 enhanced monitoring.

Finally, Option 3 would provide increased coverage of major stationary sources—65 percent of all stationary sources that are major for one or more criteria pollutants—and the RIA indicates that the additional emission reductions that could be achieved from moving from Option 4 to 3 would be reasonable in light of the projected additional costs achieved (approximately \$3000 per ton of additional emissions reduced). The EPA also believes that many of the additional emissions units that would be subject to part 64 monitoring under Option 3 should be considered significant emissions units that warrant part 64 enhanced monitoring.

Because Option 3 appears to be the best approach when balancing the three factors described earlier, EPA has selected this option for the proposed rule. Option 3 would ensure part 64 enhanced monitoring at one or more emissions units at a significant number of major stationary sources (65 percent). The remaining major sources would still be subject to monitoring under part 70 that EPA views as "enhanced" for units that size. Moreover, those emissions units that would be required to meet only the part 70 monitoring requirements would be those with the potential to emit less than 30 percent of the pollutant for which the source is major, presumably the less significant units.

EPA solicits comment on its proposed general approach, the proposal to adopt Option 3 as the best approach. We are also interested in soliciting comments on any or all options appropriate for consideration, especially Option 1 which is the most inclusive, and Options 4 and 5, which have the highest net benefits. With respect to the decision to cover only units that emit the pollutant for which the source is major, EPA solicits comment on the policy and legal implications of the decision. As an alternative basis for not applying the part 64 requirements to certain units, EPA also solicits comments on the possible use of a de minimis exception to exempt certain units from the part 64 monitoring requirements in light of the general statutory requirement that EPA require enhanced monitoring at major stationary sources. EPA believes that a de minimis exception for certain units at major sources may be acceptable because the broad language of section 114(a)(3) would not preclude the drafting of such an exception. See *Alabama Power Co. v. Costle*, 636 F.2d 323, 357 (D.C. Cir. 1979). However, EPA believes that a de minimis exception to the general requirement of enhanced monitoring at all major sources would be appropriate only if there were trivial gains in requiring enhanced monitoring at some subset of emissions units. *Id.* at 361.

Finally, EPA also solicits comment on other reasonable alternatives. For example, EPA solicits comment on whether it should adopt a method for determining the universe of units subject to part 64 that is based upon uncontrolled emissions rather than potential to emit, as such an approach arguably would better address the units with the greatest environmental risk. In other words, in a monitoring rule such as part 64, should EPA use a different definition of potential to emit than EPA has used for other purposes.

The reader should note that the same 30 percent threshold that is applied to a single emissions unit as described above would apply to a group of emissions units in certain circumstances. A group of emissions units at a major source may in some instances achieve compliance with applicable emission limitations or standards by aggregating, averaging, apportioning or trading emissions among the group of emissions units. For instance, a source may be operating with an approved bubble plan or similar scheme. In such circumstances, if, collectively, the potential emissions of the group exceed the tons per year threshold described above for a single emissions unit, then the proposed rule

would apply to all emissions units in the group.

One final alternative approach that EPA considered was to apply these rules only to major stationary sources in nonattainment areas. The EPA rejected this approach as inconsistent with the explicit language of section 114(a)(3) and because it would fail to address the benefits that can be achieved by improving compliance with maintenance-related requirements in attainment as well as nonattainment areas.

3. Use of Enhanced Monitoring to Determine Compliance

As discussed in further detail in Section III.B., the purpose of enhanced monitoring is to provide a means for determining and certifying whether compliance is continuous or intermittent. Many existing regulations do not include a regulatory method for determining compliance on that basis. In addition, some such regulations are written in such a manner as to prohibit the use of methods not included in the applicable regulation as a means for determining compliance. Therefore, some existing rules as written could not allow for effective implementation of the enhanced monitoring program mandated by section 114(a)(3).

The EPA considered three alternative means for addressing this concern. First, EPA considered requiring an owner or operator to establish a separately enforceable permit condition whenever an existing rule would not permit a determination of compliance with the underlying emission limitation or standard on the basis of enhanced monitoring. This alternative was rejected as inconsistent with the concept discussed in the part 70 operating permits rule that the permit generally would not be used as a means of establishing new requirements. (The part 70 rule does in limited circumstances allow for clarifying or adding compliance requirements as opposed to new emission limitations or standards, e.g., specifying an averaging period or specifying a periodic monitoring requirement where no current monitoring exists.)

The second alternative considered was to construct the enhanced monitoring rule in a manner designed to work within the structure of existing applicable requirements, and to provide incentive for owners or operators to voluntarily consent to the use of enhanced monitoring to determine compliance where the underlying applicable requirement would allow. Under this alternative, the specified compliance test method would have to

be included as part of an enhanced monitoring protocol if the underlying rule prohibited alternative means of determining compliance or the owner or operator did not consent to the alternative means. The proposed rule would have required an owner or operator to conduct the compliance method specified in the applicable regulation on a more frequent basis than currently required and whenever a set amount of deviations occurred. This alternative was rejected because in many instances it would fail to provide sufficient data to satisfy the statutory requirement that the enhanced monitoring be able to establish whether an emissions unit is in continuous compliance with an applicable requirement.

The third alternative, which is the approach selected for the proposed rule, would be to make amendments to the general provisions in Federal regulations, and to issue a SIP Call to correct any deficiencies in State regulations. These amendments and SIP changes would allow for a determination of compliance to be made on the basis of enhanced monitoring. These changes would best address the new statutory mandate in section 114(a)(3) and would allow for effective implementation of the enhanced monitoring program. The details of the proposed amendments and SIP Call are discussed in sections III.B., IV.J. and IV.K. below.

It should be noted that the proposed regulations, although intended to fulfill the mandate to determine whether compliance is continuous or intermittent, are not intended to change the stringency of any underlying emission limitations or standards. Federal regulations, including approved SIP regulations, generally are intended to be complied with at all times, consistent with any associated averaging time and any federally-approved excused periods such as startup, shutdown or malfunction. The proposed regulations would measure compliance consistent with averaging periods, and would recognize the federally-enforceable provisions that may allow for periods of excess emissions. The EPA solicits comments on the issue of whether, and if so how, the proposed regulations would increase the stringency of an emission limitation or standard.

C. Benefits of Enhanced Monitoring

A primary benefit of the proposed enhanced monitoring program would be a reduction in overall emissions through increased compliance with the requirements of the Act. Continuing

compliance with regulations after demonstrating initial compliance is necessary to assure that the emission reductions intended by regulations are achieved. One of the key elements to assure that reductions are achieved is a self-monitoring program that can quickly alert owners or operators so that they may take corrective or preventive action in order to prevent non-complying conditions and to minimize the amount of environmental harm caused.

In addition to the direct environmental benefit of decreased emissions, increased compliance rates would also achieve a corollary economic benefit. As a general matter, increased compliance rates with existing rules would lower the long-term overall cost of air pollution control by decreasing the need for additional command and control regulations to obtain the necessary emission reductions. For nonattainment areas, this benefit would be especially important as States that contain those areas prepare to demonstrate that reasonable further progress toward attainment is being achieved. Increasing the effectiveness of existing and future rules would allow States in many instances to reduce the level of additional control measures needed to achieve the necessary emissions reductions. The extent to which the States with an enhanced monitoring program would be able to rely upon increased rule effectiveness in meeting their attainment demonstration burdens under title I of the Act is discussed in greater detail in section V.A.

The information developed through the use of enhanced monitoring would have other benefits as well. First, enhanced monitoring data could be used to establish baseline emission information in those areas where economic incentive programs (such as emissions trading) may be implemented. Economic incentive programs will also require accurate data bases of monitoring information to allow for emissions trading or other marketable emissions concepts. The data developed from the enhanced monitoring protocols that would be required under the proposed regulations would assist in establishing these required data bases. This point is addressed in greater detail in section V.A. of the preamble. The increased data accuracy that would result from conducting enhanced monitoring would also improve the accuracy of title I emission inventories and emission statements, and may allow for increased accuracy in the assessment of permit fees under the title V operating permits program to the extent

a permitting authority bases its fee program on actual emissions.

Enhanced monitoring would also result in benefits to the regulated community. Although a self-monitoring program may not always be justified purely on the basis of economic benefit to a source, a monitoring program often provides an owner or operator with information beneficial to reducing other costs. Self-monitoring can in some situations reduce operating costs. For example, monitoring data can be used to increase combustion efficiency in an industrial boiler or to increase capture and reuse of solvents at a coating plant. A 1990 study by the General Accounting Office entitled "Air Pollution: Improvements Needed in Detecting and Preventing Violations" noted several instances in which companies have achieved such operating cost reductions. An enhanced monitoring program could also alert owners or operators that potential control device problems may exist. The owner or operator can use this information to target control devices for routine maintenance and repair, and reduce the potential of significant, costly breakdowns.

As discussed in section VI.C., a complete analysis of the costs and benefits of the proposed regulations is included in the RIA. As stated previously, the Agency solicits comments on its approach. The RIA document is available in the docket.

D. Public Participation

The proposed regulations were developed with the benefit of insight from many parties that would be affected by the proposed regulations. These groups include State and local air pollution control agencies, major industries, trade associations and environmental organizations.

To obtain the views of all these parties, as well as the general public, EPA published a notice in the *Federal Register* on August 8, 1991 to make available a Public Information Document on enhanced monitoring and to provide notice of a public meeting on the subject (56 FR 37700-01). The meeting was held in Washington, DC on August 22, 1991, and was attended by representatives from over fifty organizations. In response to the public meeting, EPA received many comments which are included in the docket.

Since the public meeting, EPA has held a series of informal informational and discussion sessions with interested organizations to receive their views on enhanced monitoring, as well as a recent informational meeting with approximately fifty attendees held on

August 12, 1993. (A summary of those contacts is included in the docket.) The EPA is interested in receiving comments from these and other interested parties during the public comment period for the proposed regulations.

II. Implementation Principles

In the May 10, 1991 preamble to the proposed 40 CFR part 70 regulations, EPA announced several principles that "should guide the design and implementation of title V regulations and related programs" (56 FR 21714). As noted in section I. above, the proposed regulations would be related to many of the provisions of title V. In addition, these proposed regulations would be implemented in large part through the operating permits program. Thus EPA has developed the proposed regulations in a manner consistent with these implementation principles of title V. The following discussion provides a brief outline of some of the title V implementation principles that most significantly relate to the proposed regulations.

A. Ensure Environmental Protection

Congress' basic goal in adopting section 114(a)(3) and related provisions is to ensure that sources continue to remain in compliance with applicable requirements of the Act after demonstrating initial compliance. The proposed enhanced monitoring program would provide EPA and States with the information necessary to oversee sources' compliance with the Act. The EPA anticipates that through improved oversight capabilities, overall compliance with the Act's requirements will improve and result in lowered emissions and improved air quality. This increased rule effectiveness will reduce the need to adopt additional air pollution control requirements in order to achieve national ambient air quality standards (see section V.A.). The EPA believes that the other implementation objectives stated below must complement this objective and not undercut the potential of the proposed regulations for strengthening air quality management efforts across the country.

B. Incorporate Broad-Based Perspective for Rule Development

The EPA continually seeks a better understanding of the key concerns of those most affected by proposed rulemakings in order to have a broad-based perspective during the regulation development process. By considering the views of various parties affected by a proposed regulation, EPA hopes to ease implementation of the proposed regulations and to minimize resource

expenditures. As noted above in section I.D., the proposed regulations were developed with the benefit of insight from important affected parties (including State and local governments, major industries, trade associations, and environmental organizations) that are actively involved in implementation of the Act. The EPA is interested in receiving additional input from these and other interested parties during the public comment period.

C. Maintain an Effective Partnership With State and Local Governments

The EPA recognizes that the bulk of the responsibility for implementing the proposed regulations would fall upon permitting authorities at the State and local level. A key principle in developing the proposed rules has been to build upon existing monitoring programs and to provide the States with flexibility wherever possible to reduce the burden of implementing the rules. In addition, EPA has developed a reference document to accompany these rules that would provide assistance in implementing the proposed rules.

D. Minimize Small Business Concerns

The EPA is sensitive to the potential impact of regulations on small businesses. To minimize such impacts, the proposed regulations would apply only to emissions units at sources of the most significant concern. In addition, the proposal could complement cost-effective permitting techniques, such as general permits, that can simplify the permit application and issuance process. For instance, in some circumstances, a group of facilities with similar emissions units subject to the proposed rule could develop a suggested enhanced monitoring protocol that, if considered acceptable, could then be incorporated as the enhanced monitoring requirement in a general permit applicable to each facility in the group. Finally, EPA has developed, but not mandated, a standardized summary reporting format that could be used for reporting under the proposed regulations. Use of the suggested standardized format would simplify and streamline reporting procedures. The standardized format is included as part of the draft Enhanced Monitoring Reference Document (see section III.A.3.) and will be available on the technology transfer network bulletin board system (TTNBB) operated by EPA's Office of Air Quality Planning and Standards.

E. Promote Pollution Prevention

The EPA encourages permitting authorities to promote cost-effective

pollution prevention alternatives where possible in their permitting activities. Because these proposed regulations would not cover emissions units with potential emissions below a minimum applicable threshold of regulated non-hazardous air pollutants, the proposal would encourage sources to limit their potential emissions by undertaking enforceable pollution prevention measures rather than be required to conduct enhanced monitoring. In addition, the flexible monitoring approach in the proposed regulations, including the use of material balance procedures where appropriate, would be compatible with materials recovery and other pollution prevention approaches for controlling emissions.

F. Facilitate Use of Market-Based Incentives

The operating permits program and the proposed enhanced monitoring program are intended to be useful administrative tools for achieving cost-effective improvements in air quality through market-based principles. The proposed regulations would facilitate implementation of market-based programs by requiring information to be collected that could be used to determine emission baselines and subsequent reductions. This type of information will be an essential element of any economic incentive program that may be implemented.

G. Allow Flexibility in State Programs and Source Permits

The EPA recognizes the need for flexibility to consider different but effective monitoring techniques that would meet the requirements of the proposed enhanced monitoring program. Therefore the proposed regulations would allow States and owners or operators a flexible range of options in designing source-specific enhanced monitoring requirements.

H. Enable Effective and Efficient Information Transfer

The EPA intends that information contained in enhanced monitoring reports (to the extent not protected under laws of confidentiality) would be used for several air quality management purposes. The EPA intends to promote consistent data submittals to track progress, consolidate current reporting burdens, and inform affected parties of a source's compliance status relative to its applicable requirements.

I. Promote Simple and Streamlined Regulations

It is EPA's intent to simplify and streamline these regulations to the

extent possible. To this end, EPA solicits comments as to how this proposal might be further simplified or streamlined.

III. Summary of Key Concepts

In developing these proposed rules to implement the statutory mandates and intent under amended section 114(a) and title V of the Act, there are several key concepts that have guided the overall approach taken in the proposed regulations:

(1) Enhanced monitoring requirements should be flexible and allow for technological innovation and development;

(2) Enhanced monitoring data must be able to detect deviations with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness in order for an owner or operator to determine and certify whether compliance with applicable emission limitations or standards is continuous or intermittent; and

(3) A link between the provisions under section 114(a) and the provisions under title V of the Act was intended by Congress.

Each of these concepts is addressed in further detail in the following subsections.

A. Development and Selection of Enhanced Monitoring Protocols

1. General Approach

The proposed regulations envision that enhanced monitoring systems and procedures applicable to an individual emissions unit would be set forth in an enhanced monitoring protocol to be developed and proposed by an owner or operator for approval by the permitting authority. The proposed regulations would require an owner or operator to implement an enhanced monitoring protocol that can be used to determine and certify continuous or intermittent compliance in accordance with section 114(a)(3) of the Act. This link between the enhanced monitoring protocol and determining whether an emissions unit is in continuous compliance would serve as the fundamental criterion on which all proposed enhanced monitoring protocols must be evaluated.

To assure sufficient data quality for purposes of determining continuous compliance and to assist in the selection and evaluation of proposed enhanced monitoring, the proposed regulations would require that an enhanced monitoring protocol provide for the collection of data with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness to satisfy the basic requirement of

determining continuous compliance. The proposed regulations would include specifications and requirements related to monitoring equipment, installation, performance, performance verification test, and quality assurance procedures to assure that these data quality objectives are achieved.

The EPA has determined that there are many monitoring systems and procedures that can potentially satisfy these basic requirements for enhanced monitoring. Depending upon the nature of the emissions unit being monitored, an enhanced monitoring protocol could contain elements such as: continuous emission monitoring systems; continuous process or control device parameter monitoring systems or procedures; emission calculations based on accepted engineering estimation techniques; maintenance and analysis of records of fuel or raw materials usage; periodic verification of emissions, process parameters or control device parameters using portable or in situ measurement devices; recording results of a program or protocol to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices; any other form of measuring emissions, process parameters or control device parameters that can achieve the requirements of the proposed regulations; or any combination of the above.

Many sources subject to Federal regulatory or permit requirements, and some SIP sources, use one or more of these types of monitoring systems or procedures already. For many other SIP sources, one or more of these monitoring methodologies are used by similar new sources. The EPA has proposed to classify much of this existing monitoring as "established monitoring." "Established monitoring" would be defined as monitoring that has previously been demonstrated as a feasible means of assessing compliance at a specific type of emissions unit at a source, without taking into account the date of construction or modification of the emissions unit. For instance, a monitoring requirement in an NSPS subpart would be considered "established" for both NSPS and SIP emissions units that are of the type covered by the applicable subpart. Established monitoring includes the monitoring requirements specified in 40 CFR part 60 (the NSPS program), 40 CFR part 61 (the NESHAP program), appendix P of part 51 (SIP CEMS requirements), provisions in SIPs that implement monitoring systems and procedures identified in Control Technique Guidelines developed by

EPA pursuant to section 108 of the Act, monitoring requirements in preconstruction permits issued pursuant to title I of the Act, and, the Acid Rain Program monitoring requirements in 40 CFR part 75.

The proposed regulations would provide as one option that an owner or operator consider using the best established monitoring for the owner or operator's particular emissions unit for the purpose of enhanced monitoring. As noted in Section I.B.1., the determination of what is the "best" monitoring would involve an assessment of the circumstances at the particular emissions unit in question, and would not necessarily require the use of the best technologically and economically feasible monitoring.

If the established monitoring satisfies the requirements of part 64, then the owner or operator could propose that monitoring system or procedure for purposes of its proposed enhanced monitoring protocol. If necessary, the owner or operator would modify or add to the performance and operating requirements applicable to the established monitoring in order to satisfy enhanced monitoring performance and operating requirements specified under § 64.4(b), such as data availability requirements or quality-assurance procedures. Where parameter monitoring is involved, the owner or operator may also have to include procedures for establishing a "demonstrated compliance parameter level" in order to demonstrate compliance with an applicable emission limitation or standard. (See section IV.D. for discussions of these topics.)

If no established monitoring applies, or if the owner or operator considers the established monitoring inappropriate, then the owner or operator would be able to propose alternative monitoring for its enhanced monitoring protocol. In these circumstances, the owner or operator would have to identify all monitoring methodologies that are technologically feasible for the particular emissions unit. From that group of potential monitoring approaches, the owner would then have to select a methodology that can best satisfy enhanced monitoring requirements for the particular emissions unit. Again, the determination of what is "best" would involve an assessment of site-specific circumstances.

After the evaluation process, the owner or operator would describe and justify in a permit application the proposed enhanced monitoring protocol selected on the basis of the owner or operator's evaluation. The application

would have to list the monitoring methodologies identified, include a summary explanation of how the proposed monitoring approach would best satisfy the enhanced monitoring requirements at the particular emissions unit, and provide detailed supporting documentation and information.

The EPA has proposed this process of identifying, evaluating and proposing an enhanced monitoring protocol because it emphasizes the use of monitoring systems and procedures that EPA has previously established to be acceptable for specific emissions units, based on the specific source category, the type of industry, and the size and nature of the emissions unit. Where an owner or operator proposes to use a different form of monitoring, then the process of identifying technologically feasible monitoring methodologies before evaluating a methodology for use in an enhanced monitoring protocol would assure that there is sufficient information for both the source and the permitting authority to select and approve an enhanced monitoring protocol.

It should be noted that existing monitoring systems and procedures, including many established monitoring methodologies, may need to be upgraded, either through improved instrumentation or through improved practices such as quality assurance, to meet the proposed enhanced monitoring protocol requirements. This upgrading would in large part be necessary to satisfy the enhanced quality assurance and data availability requirements in the proposed regulations.

The EPA has proposed this flexible approach for selecting an enhanced monitoring protocol for several reasons. Given the short time-frame provided by Congress for promulgating regulations pursuant to section 114(a)(3), it would be infeasible for EPA to develop regulations dictating the enhanced monitoring approach that each possible source category must adopt. More importantly, the proposed approach would promote the development of technological advances and innovative ideas for cost-effective enhanced monitoring by the private sector. EPA is committed to allowing the private market to develop new and innovative means of achieving the air quality goals contained in the Act. One of the primary forces behind the 1990 Amendments was the drive to increase the reliance upon market-based efficiencies in developing air pollution control requirements, such as Congress included in the allowance trading provisions for the Acid Rain Program under title IV of the Act. By allowing

source owners or operators to have a greater input on the type of monitoring that can be used, these regulations can allow for the development of cost-effective monitoring alternatives by the regulated community.

This flexible approach will also allow for differences in sources' potential variability in emissions to be taken into account. The emphasis in the proposed rule is on providing monitoring data that can determine accurately whether a source remains in compliance with applicable emission limitations or standards. If a particular emissions unit has a large margin of compliance and low potential variability in emissions, then less sophisticated monitoring would be more appropriate than if only a small margin of compliance exists or the potential variability of emissions is high.

The EPA anticipates that there generally would be a need for some type of continuous instrumental monitoring for those emissions units that use an add-on control device to achieve compliance with an applicable emission limitation or standard. Proper operation of a control device is essential for compliance with an applicable emission limitation or standard, and a failure of the control device can lead to significant emission exceedances even if a large margin of compliance is demonstrated while the control device is functioning properly.

Because many types of control devices are subject to potential reduced efficiency, enhanced monitoring generally would have to measure on a continuous basis the effectiveness of a control device in order to determine continuous compliance with the applicable emission limitation or standard. For some types of control devices, an owner or operator may be able to justify less frequent measurements (e.g., less frequent measurements may be justified for carbon bed adsorbers used to control VOC emissions because of the operational characteristics of that particular control device). A source generally would have to either monitor the emissions exiting the control device (and entering if a reduction efficiency requirement applies), or monitor one or more operating parameters of the control device and maintain appropriate records for the emissions unit.

As noted earlier in section I.B., the selection and use of monitoring, regardless of the degree of instrumentation or frequency of data collection, is not intended to affect the stringency of underlying emission limitations or standards.

2. Distinguishing Continuous Compliance From Continuous Monitoring

The reader should note that EPA has included within the monitoring approaches listed above both continuous and periodic monitoring systems and procedures. It is important to distinguish between the requirement under section 114(a)(3) to determine "whether compliance is continuous or intermittent" and the use of continuous or periodic monitoring approaches. Continuous compliance generally means to remain in compliance during all times that compliance is required, consistent with the applicable averaging period. Continuous monitoring generally means to measure emissions or parameters on an extremely frequent basis and then to average those results over some period of time.

For instance, a gaseous CEMS is required under 40 CFR part 60 to complete one cycle of measurement, analysis and data recording every fifteen minutes, and then those individual measurements are averaged over a period of time, often one hour, to provide a single average emissions value. For many emissions units, frequent measurements and averaging the results is unnecessary to determine whether compliance is continuous. In these circumstances, periodic measurements can be used to determine continuous compliance.

The determination of measurement frequency is a function of both the averaging period for the emission limitation or standard and the potential variability of emissions. As a general matter, a determination of continuous compliance will require some data for all applicable averaging periods for a standard. Where the potential variability in emissions is high, then several measurements within an averaging period may be required. Where the potential variability is low, a single periodic measurement that covers several averaging periods may be appropriate.

For instance, fuel sampling and analysis may be an appropriate form of enhanced monitoring at some fossil fuel-fired steam generating emissions units. By conducting proper fuel sampling and analysis, sulfur dioxide (SO₂) emission rates can be determined based on the sulfur content of the fuel used and the amount of fuel consumed. If an hourly averaging time is specified, usage rates may have to be determined on a more frequent basis than if the averaging time is daily. As another example, since the sulfur content of coal is more variable than that of distillate

oil, coal generally would require more frequent sampling and analysis. See section IV.D. for a further discussion of measurement frequency and related performance specifications.

In public comments received during development of the proposal, some commenters suggested that the phrase "continuous or intermittent" as used in section 114(a)(3) referred to whether the methodology used for determining compliance was continuous or intermittent, not whether compliance was continuous or intermittent. The EPA believes that this interpretation of the statute is contrary to the explicit language of section 114(a)(3). Section 114(a)(3) states that a compliance certification must include, among other items, two discreet elements: the methods used to "determine the compliance status of the source" and "whether compliance is continuous or intermittent." If Congress had intended the latter phrase to apply to the methodology for determining compliance, Congress would have required that the certification identify whether compliance was determined on a continuous or intermittent basis.

The confusion on this issue may stem in part from language in section 114(a)(1) that gives the Administrator the authority to require any source to conduct monitoring, testing, reporting and recordkeeping "on a one-time, periodic or continuous basis." This language was added to section 114(a)(1) to clarify EPA's long-standing ability to require any owner or operator to collect and submit data pursuant to section 114 of the Act. The new language in section 114(a)(1) reaffirms EPA's authority to obtain this information on a one-time, periodic, or continuous basis. The EPA believes that the citations to discussions in a Senate report (see S. Rep. 228, 101st Cong., 1st Sess., at 368 (1989)) made by these commenters apply to this general provision and are not related to the term "enhanced monitoring" or the related provisions of section 114(a)(3).

3. Enhanced Monitoring Reference Document

Included in the docket for the proposed regulations is a separate preliminary draft "Enhanced Monitoring Reference Document" (referred to hereafter as the "EM Reference Document"). The EPA believes that this document, when finalized, will serve to reduce the burden on permitting authorities and sources by laying out the protocol evaluation process and including many examples of acceptable protocols.

The EM Reference Document provides an overview of the enhanced monitoring

program and the types of issues that must be addressed by an owner or operator that seeks to comply with the proposed part 64 requirements. The document also reviews the selection process and provides a summary of the "established monitoring" from existing monitoring regulations that could be evaluated by an owner or operator where applicable. (See the discussion of "established monitoring" in sections III.A.1. and IV.D.5.)

The EM Reference Document also provides examples of other monitoring systems and procedures that potentially could be used as enhanced monitoring. The document also describes performance specifications, calibration and quality assurance procedures, and data availability requirements for enhanced monitoring protocols. Finally, the document provides guidance on how enhanced monitoring can be addressed in preparing permit applications and in developing permit terms and conditions.

The EM Reference Document is not included as part of the proposed regulation and is not intended to be viewed as a regulatory requirement. Rather, the EM Reference Document is intended to simplify the permitting process to the maximum extent possible by providing a compendium of established monitoring and other potential approaches to enhanced monitoring. Thus, for many situations, an owner or operator would be able to rely on the EM Reference Document as support in justifying that a proposed enhanced monitoring protocol can satisfy the regulatory requirements.

In some instances, however, the owner or operator, or the permitting authority, may decide that a system or procedure identified in the EM Reference Document is inappropriate for an emissions unit at a particular source because of unit-specific concerns, such as measurement interferences or unique design considerations. In other instances, an owner or operator may propose another alternative that will provide sufficient data to satisfy enhanced monitoring requirements, but that is less costly for the source. Finally, due to the scope of the enhanced monitoring program, the EM Reference Document cannot be all-encompassing. For emissions units not included, the owner or operator would have to demonstrate to the permitting authority that its proposed enhanced monitoring protocol meets the requirements of the proposed regulations.

The EPA intends that the EM Reference Document will be a dynamic document and that additional non-instrumental and instrumental

monitoring approaches will be added over time to increase the effectiveness of the document as a reference tool for permitting authorities and the regulated community. The EPA anticipates adding additional examples to the document prior to promulgation of final enhanced monitoring rules. In addition, EPA encourages all affected parties to submit comments on the EM Reference Document and to propose enhanced monitoring protocols for consideration, not only before promulgation of the part 64 regulations, but after that time as well. In this manner, the document can be updated on a regular basis.

B. Purpose of Enhanced Monitoring

The enhanced monitoring and compliance certification program constitutes a new initiative under sections 114(a)(3) and 113(e) of the Act designed to increase overall compliance with applicable emission limitations or standards. Historically, the determination of the compliance status of an emissions unit has been made in many cases on the basis of a single compliance demonstration, sometimes followed by additional (usually infrequent) compliance demonstrations to confirm continuing compliance. For new sources, an initial performance test using reference test method procedures is conducted in order to document an emissions unit's capability to comply with applicable emission limitations or standards. After demonstrating that an emissions unit is capable of compliance through this initial test, EPA has generally relied upon surveillance techniques (e.g., inspections, citizen complaints, etc.) to target sources for further compliance demonstrations.

The requirements of section 114(a)(3) shift to the owner or operator the burden to document and report whether an emissions unit remains in compliance with applicable emission limitations or standards over time. As required by section 114(a)(3), a responsible official of the source must certify "whether compliance is continuous or intermittent" during the reporting period. In order to meet the clean air goals of the Act, owners or operators, not EPA and States, must collect sufficient data to determine and report on the continuous compliance status of their emissions units.

The EPA anticipates that for those source's subject to the enhanced monitoring requirements, the proposed enhanced monitoring program coupled with the compliance certification provisions of part 70 would improve overall compliance with emission limitations or standards under the Act and bring noncomplying owners or

operators into compliance. The increased compliance that can be achieved through effective implementation of these proposed regulations and the part 70 regulations would reduce emissions significantly below current levels. The data analyzed by EPA in developing the RIA for these proposed regulations (see section VI.C.) indicate that where monitoring programs have been initiated for determining continuous compliance, emissions have been reduced significantly. The reduced emissions that would occur from effective implementation is thus a primary environmental benefit of these proposed regulations.

In addition to environmental benefits, such emissions reductions will probably result in substantial reductions in the overall cost of air pollution control. The RIA performed to support the proposal documents that enhanced monitoring can achieve emissions reduction more cost-effectively than additional control technology requirements. By increasing the compliance rate with existing requirements through the performance of enhanced monitoring, the need for additional, more costly control regulations can be avoided. For instance, with respect to VOC emission inventories required in nonattainment areas, EPA currently allows States to take credit for only 80 percent of the emission reductions that could be achieved by full compliance with a regulation. Increased compliance would allow States to take credit for additional reductions. In particular, where a State must document reasonable further progress in nonattainment areas pursuant to title I of the Act, EPA is considering the option of allowing a State that has implemented these proposed rules to take credit for a significant portion of its required progress demonstration; this point is discussed in further detail in section V.A.

Finally, as noted earlier in section I.C., a self-monitoring program can have economic benefits for many sources as well. Self-monitoring can increase operating efficiencies and reduce process costs. Monitoring can also document the need to perform routine maintenance of control equipment and avoid the need to perform costly repairs to, or even replacement of, a large capital investment. Instrumental systems can frequently be used to diagnose control device problems. In addition, self-monitoring could provide data that would allow an owner or operator to rectify control device problems before a period of non-compliance occurs and eliminate

potential exposure to enforcement actions.

Section 114(a)(3) specifically requires that a certification be based upon a determination of whether compliance was continuous or intermittent. Therefore, the enhanced monitoring protocol must collect data that can be used to document compliance and facilitate enforcement of documented violations. Congress noted in a Senate Committee Report that "similar to the reporting requirements of the Clean Water Act, 33 U.S.C. 1342, compliance certifications and emission data submitted pursuant to this [section 114(a)(3)] authority will facilitate enforcement, due in part to the fact that such data and certifications can be used as evidence." (S. Rep. 228, 101st Cong., 1st Sess., at 368 (1989)). Similarly, a House Committee Report stated that this section "confirms that EPA has authority under section 114(a) to require enhanced monitoring and to require such monitoring in compliance certifications." (H.R. Rep. 490, 101st Cong. 2d Sess., pt. 1, at 394 (1990).) Thus, Congress linked enhanced monitoring and compliance certifications, with the idea that enhanced monitoring data would serve as the basis for certifying compliance and could be used to determine the existence of an enforceable violation.

To be effective, this program must also be practical and cost-effective for both the regulated community and the regulatory agencies at the local, State and Federal level. The EPA realizes that, because many existing reference test methods require expensive in-stack sampling techniques, it would often be impractical to require a source to conduct such tests frequently enough to have representative data with which to determine and certify its compliance status over a period of time. However, some existing provisions in 40 CFR parts 51, 52, 60 and 61, and in some SIP's, are written in a manner that potentially limits determinations of compliance to such reference method test procedures. To implement the new statutory mandate effectively, the existing provisions must be modified to allow explicitly for the enhanced monitoring and compliance certification requirements to be implemented through 40 CFR parts 64 and 70.

Thus, this proposal would include several changes to 40 CFR parts 52, 60 and 61 to address this issue. (Additional amendments to parts 51 and 52 to address preconstruction permit implementation issues are discussed in section V.C.) These amendments would allow for the use of enhanced monitoring protocols approved through

the part 64 process, if applicable (and on the basis of other monitoring approved through the part 70 process), for the purpose of certifying compliance, in addition to the means of determining and certifying compliance provided for in the referenced regulations. The EPA also intends to require through State implementation plan (SIP) call procedures that all SIP's contain adequate authority to allow for the enhanced monitoring (and other part 70 monitoring) to be used for compliance certification purposes.

In addition to making enhanced monitoring and periodic monitoring data usable for compliance certifications, the amendments and the SIP Call also will make changes which make EPA's enforcement scheme consistent with the changes made by Congress to section 113 of the Act. Congress made these changes, such as providing EPA with the authority to issue administrative penalty orders under the Act, to strengthen EPA's ability to bring enforcement actions for violations of the Act.

The change to the Act most relevant to the proposed amendments is section 113(e). Section 113(e) of the Act is entitled "Penalty Assessment Criteria," which in addition to establishing the factors to be assessed in the penalty phase of trial, also creates presumptions for proving continuing violations. (See section 113(e)(2) of the Act, 42 U.S.C. 7413(e)(2).) In addition, most relevant for the purposes of this proposed rule, section 113(e)(1) clarifies that violations can be proved based on any credible evidence admissible under the Federal Rules of Evidence. Section 113(e)(1) now provides that "in determining the amount of any penalty to be assessed * * * the Administrator or the court, as appropriate, shall take into consideration * * * the duration of the violation as established by any credible evidence (including evidence other than the applicable test method) * * * ." (See section 113(e)(1) of the Act, 42 U.S.C. 7413(e)(1).) Under the Act, penalties are assessed for each day of violation. (See sections 113(b), 113(d) and 113(e)(2), 42 U.S.C. 7413(b), 7413(d) and 7413(e)(2).) Therefore, penalties cannot be considered or assessed unless, and until, liability for the underlying days of violation has been established. In order for a court to consider penalty assessment for the "duration of the violation," liability for the violation must first be established by appropriate means, including "as established by any credible evidence."

The legislative history explains that Congress intended to grant the Agency

greater flexibility in its use of evidence in proving a violation. Congress stated:

* * * the amendment clarifies that courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State implementation (plan) or regulation. For example, Courts may consider evidence from continuous emission monitoring systems, expert testimony, and bypassing and control equipment malfunctions, even if these are not the applicable test methods. Thus, this amendment overrules the ruling in *United States v. Kaiser Steel Corp.*, No. 82-2623-IH (C.D. Cal. January 17, 1984) to the extent that the court in that case excluded the consideration of such evidence. (S. Rep. No. 228, 101st Cong., 1st Sess. 1, 366 (1989), reprinted in 1990 U.S. Code Cong. & Admin. News 3385, 3749.)

In addition, Congress also stated that the enforcement title of the Clean Air Act Amendments of 1990 makes "clear that the Agency may rely upon any credible evidence of violations in pursuing alleged violations." (S. Rep. No. 228, 101st Cong., 1st Sess. 1, 366 (1989), reprinted in 1990 U.S. Code Cong. & Admin. News 3385, 3741.)

The statutory language and the legislative history demonstrate that Congress intended to amend the penalty assessment provision in part to overrule *Kaiser Steel*. In *Kaiser Steel*, EPA argued to the court that it should be able to prove violations based on evidence other than the applicable "reference" test method. Then, as now, section 113(a) allowed the initiation of an enforcement action based on any information available to the Administrator. (See section 113(a), 42 U.S.C. 7413(a).) The court disagreed with EPA's argument and ruled that expert testimony of the opacity of Kaiser's blast furnace exhaust gases was inadmissible because the testimony did not strictly comply with the applicable test method. Thus, EPA was limited to proving violations on days for which reference test data was available. In overruling *Kaiser Steel*, Congress intended that section 113(e) would facilitate enforcement by allowing for the use of any credible evidence to prove a violation.

Thus, section 113(e), read in conjunction with sections 113(a), (b) and (d), authorizes the Agency to bring enforcement actions based on any credible evidence. However, some provisions now in applicable state implementation plans and in existing Federal regulations (e.g., 40 CFR 52.12(c), 60.11, and 61.12) appear to conflict with these statutory provisions.

Accordingly, EPA is planning to call for States to amend their applicable implementation plans to ensure that owners or operators may use enhanced monitoring (or other monitoring approved for the source pursuant to part 70) for compliance certification purposes, and that data from this monitoring, along with any other credible evidence, may be used as evidence of a violation of an applicable plan. The proposed amendments to parts 51, 52, 60, and 61 would have the same goal.

The EPA considered the option of requiring States to revise the applicable plan by amending each individual federally-enforceable regulation applicable to emissions units. This approach, however, would have taken an enormous investment of time and resources by the States and by EPA; moreover, it would have been difficult to implement in a timely manner, thereby frustrating implementation of a significant new initiative under the Act. The EPA, therefore, believes that the proposed revisions to the general provisions of the applicable regulations and plans would achieve the statutory mandates in the most efficient manner.

The EPA solicits comments on the proposed approaches discussed in this section.

C. Relationship to Title V Permit Program

In accordance with title V of the Act, EPA promulgated regulations requiring States to implement and enforce operating permits programs at 40 CFR part 70 on July 21, 1992 (57 FR 32314). The operating permits program signifies an important development in the administration of the Act and makes the air program consistent with other environmental programs that use operating permit systems, such as the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (40 CFR parts 122-124) and the hazardous waste permit program under the Resource Conservation and Recovery Act (40 CFR parts 270 and 271).

The proposed regulations have been developed to work in concert with the operating permits program. (The reader should note that the proposed regulations also would be implemented through preconstruction permits programs pursuant to parts C and D of title I of the Act. The relationship between the proposal and these permit programs is discussed in section V.C. of this preamble.) The following discussion highlights the most significant areas of interrelationship between the proposed enhanced

monitoring program and the operating permits program.

1. Implementation

To allow for a flexible approach for enhanced monitoring protocol selection, the proposed regulations would require that the enhanced monitoring protocol for each affected emissions unit be approved through the operating permit process. An owner or operator would be required to propose an enhanced monitoring protocol in its operating permit application which could then be reviewed and acted upon by the permitting authority. The operating permit issued to the owner or operator would contain the requirements associated with the enhanced monitoring protocol.

The enhanced monitoring requirements under part 64 would be independent requirements separate from the part 70 regulations. However, because of the close link between these requirements and the operating permits program, proposed part 64 would also contain permit application and content requirements. The EPA believes that this implementation guidance would facilitate effective implementation of part 64 under the operating permits program.

It should also be noted that, although part 64 requirements are independent of part 70, owners or operators would satisfy the general part 70 monitoring requirements for those emissions units and applicable requirements for which sources conduct part 64 enhanced monitoring. For example, an emissions unit currently may have no monitoring under existing requirements that can be used for certifying whether compliance is continuous or intermittent. The general provisions of § 70.6(a)(3) would require the source to fill that gap as part of the part 70 process. If, however, that same emissions unit would be subject to the part 64 requirements, part 64 would fill the gap without additional measures required under part 70. (See the earlier discussion of the role of gap-filling in the title V process in section I.B.)

2. Reporting

As mentioned in Section I., title V requires monitoring and compliance certification. Under 40 CFR 70.6, all permits must contain terms and conditions specifying monitoring and compliance certification requirements. Moreover, 40 CFR 70.6(c)(5) includes all of the statutory criteria required under section 114(a)(3) for the content of a compliance certification, including a requirement that the certification state whether compliance was continuous or intermittent. That section also states

that the certification shall include such other information as may be required pursuant to regulations developed under section 114(a)(3). Because the 40 CFR part 70 provisions include the minimum statutory criteria concerning content of a certification, the proposed regulations would not require a separate annual compliance certification under part 64, but would simply require that the annual compliance certification submitted under 40 CFR part 70 be based on enhanced monitoring data for all emissions units and applicable requirements subject to part 64. Thus the reader should note that, although the proposed regulations focus on enhanced monitoring requirements, the proposed regulations would act together with the previously promulgated part 70 regulations to create an integrated enhanced monitoring and compliance certification program.

3. Flexible and Market Strategies

As noted in section II., flexibility and the use of market-based incentives are both guiding principles behind the implementation of the title V operating permits program and the proposed regulations. Two specific flexible strategies highlighted in the promulgation of part 70 have been incorporated into these proposed regulations. First, 40 CFR 70.4(b)(12)(ii), 70.6(a)(8) and 70.6(a)(10) allow a State program to allow permitted sources to trade emissions within a single source where the applicable implementation plan allows for such trading. These provisions are intended to promote greater reliance on market-based programs and least cost compliance planning. The proposal would apply to such emissions units at a source allowed to trade emissions under this part 70 provision. This approach, coupled with the flexible monitoring selection process incorporated in the proposed regulations, would give the sources the necessary flexibility while at the same time requiring the accurate emissions tracking information needed for a successful and enforceable trading program.

The second strategy in part 70 is the concept of alternative limits adopted at permit issuance. 40 CFR 70.6(a)(1)(iii) allows a State to incorporate at permit issuance an alternative limit that is equivalent to the underlying requirement, if the applicable implementation plan allows for such action. That section requires that the alternative limit be quantifiable, accountable, enforceable and based on replicable procedures.

This part 70 provision could assist in the facilitation of the flexible enhanced

monitoring protocol selection approach taken in the proposed regulation, especially where parameter monitoring may be used. Once the monitored parameter (or parameters) satisfies the requirements above, the appropriate parameter limitation(s) could be established as the alternative limit to the underlying emission limitation or standard. The compliance status with the alternative limit would then be determined based upon the enhanced monitoring protocol data.

4. Permit Fees

The cost of implementing part 64 will be one of the costs that can be recovered through permit fees required under title V of the Act. Section 502(b)(3)(A) provides that a State program must require sources subject to part 70 to pay an annual fee to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program. Under 40 CFR 70.9(b), the costs of "emissions monitoring," "supporting and tracking of permit applications, compliance certifications, and data entry," and all costs associated with "implementing and enforcing the terms of any part 70 permit" are all covered by the fee requirements.

Enhanced monitoring will prove to be an aid to owners or operators that are assessed a fee based on the preceding year's actual emissions. Through the implementation of the proposed enhanced monitoring requirements, an owner or operator would have a more accurate data base with which to document its most significant emissions. This could lead to reduced overall fees for the owner or operator because emissions documented through enhanced monitoring would replace other more general emission estimation techniques which, by not being able to take into account actual operating conditions, can inflate the actual emissions that occur at a source.

IV. Discussion of the Key Aspects of the Proposed Regulation

A. 64.1—Applicability

1. Applicability To Hazardous Air Pollutant Sources

Section 64.1(a) would state that the enhanced monitoring requirements under part 64 apply to all emission limitations or standards established under 40 CFR part 61 at any source that is required to obtain an operating permit under part 70. Part 61 (the existing NESHAP program) governs the control of several hazardous air pollutants from several different categories of stationary sources.

These existing NESHAP's generally contain monitoring requirements and part 64 would state that part 61 monitoring requirements are considered "established monitoring" for the applicable emissions units. The EPA believes that owners or operators generally would be able to use such monitoring to propose an enhanced monitoring protocol without making substantial additional efforts to comply with proposed part 64. However, the part 61 emission standards are of significant environmental importance and thus EPA considers it appropriate to ensure that an owner or operator be required to monitor for continuous compliance with all such standards.

The EPA considers future standards that are being developed for hazardous air pollutants to be of significant importance and intends to require enhanced monitoring of sources subject to such standards. However, EPA intends to address the enhanced monitoring requirements pursuant to section 114(a)(3) in the requirements developed for such pollutants and not as part of the general provisions in proposed part 64. The following discussion briefly summarizes this proposed approach.

As amended in 1990, section 112 of the Act requires EPA to promulgate emission standards for categories or subcategories of additional hazardous air pollutant sources according to a prescribed regulatory schedule. The emission standards are to be based on maximum achievable control technology (MACT). These standards will be promulgated at 40 CFR part 63. If EPA fails to promulgate a standard in a timely fashion, section 112(j) of the Act requires that a permit include a standard that is equivalent to the standard that would be required under a promulgated rulemaking. Similarly, section 112(g) requires a case-by-case emission standard for any new or modified major hazardous air pollutant source if no emission standard has been promulgated by EPA.

EPA intends that the general provisions of part 63, MACT standards promulgated by rulemaking in individual subparts of part 63, or permit-specific conditions pursuant to sections 112 (g) and (j), will include, pursuant to the authority in section 114(a)(3) of the Act, appropriate enhanced monitoring provisions. Therefore, the general enhanced monitoring requirements in the proposed part 64 regulations would apply only to the part 61 NESHAP requirements that have been established without implementing section 114(a)(3)

of the Act and not to these new section 112 requirements.

2. Other Regulated Air Pollutant Sources

For sources of non-hazardous regulated air pollutants, the proposed regulations would apply only to emissions units at "major stationary sources." As defined under section 302 of the Act, that term generally applies to any stationary source with the potential to emit 100 tons or more per year of any air pollutant. However, other sections of the Act modify this general definition by lowering the applicable threshold. The definition of "major source" included in the 40 CFR part 70

operating permit regulations incorporates both the general section 302 definition (100 tons per year of any air pollutant) and the more stringent thresholds created under other sections of the Act. It is important to note that this part 70 definition does not include the "major source" threshold established for prevention of significant deterioration (PSD) permitting under part C of title I of the Act. That threshold in some instances is set at 250 tons or more per year. The maximum threshold under part 70 is 100 tons per year.

Since the part 70 definition of "major source" also includes "major" sources of hazardous air pollutants for which

enhanced monitoring will be addressed in the rulemakings proposed under the amended section 112 of the Act, the part 70 definition would be too broad for these proposed rules. Therefore, for purposes of the proposal, the term "major source" would be defined more narrowly than under part 70 to include only the following sources:

(1) Sources of air pollutants, as defined in section 302 of the Act, with the potential to emit 100 tpy or more of any air pollutant; and

(2) Sources subject to the nonattainment area provisions of title I, part D of the Act, with the potential to emit pollutants in the following or greater amounts:

Pollutant	Nonattainment status	Major source threshold (in TPY)
(i) Ozone (VOC and NO _x) ¹	Serious	50.
	Areas in transport regions not classified as severe or extreme	50 (VOC only).
	Severe	25.
	Extreme	10.
(ii) Carbon Monoxide	Serious (where stationary sources contribute significantly)	50.
(iii) Particulate Matter (PM-10)	Serious	70.

¹ For this purpose, title I treats volatile organic compounds (VOC) and oxides of nitrogen (NO_x) sources differently. Certain areas and sources may qualify for an exemption under section 182(f) of the Act. (Generally, certain sources may be exempt if, during implementation plan approval, the Administrator determines net air quality benefits are greater in the absence of NO_x reductions from such sources. In addition, areas may be exempt (in whole or in part) if the Administrator determines that, for certain areas, additional reductions of NO_x would not contribute to ozone attainment or, for certain other areas, not produce net ozone air quality benefits.) In those areas and for those sources covered by a section 182(f) exemption, sources with the potential to emit less than 100 tpy of NO_x would not be considered major sources under part D of title I. In areas not qualifying for this exemption, NO_x sources are subject to the lower thresholds created by section 182(f). In ozone transport regions, a lower threshold of 50 tpy for VOC sources is created by section 184(b). Because section 182(f) does not refer to section 184(b), the lower threshold in ozone transport regions applies to VOC sources, but not to NO_x sources. Whatever its location, any 100 tpy source would be considered a major source under section 302 of the Act.

At these major sources, the proposed regulations would apply only to the emission limitations or standards applicable to those regulated air pollutants for which a source is classified as a major source. This approach would focus part 64 requirements on the more significant pollutants at each source. The RIA conducted in support of the proposal documents greater net benefits using this approach than using other alternatives because of the increased amount of potential emissions reductions of the more significant pollutants. Furthermore, 40 CFR part 70 will still require monitoring to assure compliance with the emission limitations or standards for the other pollutants.

With respect to those emission limitations or standards applicable to the "major" regulated air pollutants, the proposed regulations generally would apply only to those emissions units at a major source with potential emissions of the "major" regulated air pollutant equal to or greater than 30 percent of the tons per year necessary to qualify the

source as a major source for that pollutant.

As an example of how the thirty percent threshold would apply, a source of VOC in an attainment area, which is defined under part 70 as being major at 100 tons per year, would conduct enhanced monitoring at all emissions units within its facility that had the potential to emit VOC in amounts equal to or greater than 30 tons per year. A source of VOC in an area that is classified as extreme nonattainment would be a major source if it had the potential to emit 10 tons per year of VOC; at such a major source, emissions units which had the potential to emit 3 tons per year of VOC would be subject to enhanced monitoring.

It is important to note that the enhanced monitoring rule applies to major sources as defined at part 70, and not as defined under all applicable sections of the Act. Although part 70 refers to sections 112, 302 and part D of the Act for definitions of major source, the part 70 regulations do not adopt the major source definition of the Prevention of Significant Deterioration

(PSD) provisions at part C of title I of the Act. (Under the PSD requirements, a source can, in some instances, be defined as a major source if it has the potential to emit as much as 250 tons per year of regulated pollutant.) This means that a major source, including a PSD source, is one that has the potential to emit 100 tons or more per year of a regulated pollutant, or some lesser amount as set forth in part 70. Thus, for purposes of applicability under this rule, the 30 percent threshold amount would never be greater than 30 tons per year.

The EPA realizes that this proposed approach would not apply part 64 requirements to all emissions units at a major source given that those below the percent threshold would be excluded. In addition, because a major source may be comprised only of such small emissions units, the proposed rules would not necessarily apply to all major sources.

However, as noted above in section I.B., the RIA conducted in support of the proposed regulations documents that requiring part 64 enhanced monitoring at all emissions units at a major source

would result in less net benefits than the proposed option. In addition, that earlier discussion noted that part 70 monitoring data must assure compliance with all applicable requirements. Section 70.6(c)(5) specifically links the monitoring required under § 70.6(a)(3) to the compliance certification submitted by the owner or operator. Based on the results of the RIA evaluation, EPA is proposing to consider those compliance monitoring requirements under part 70 as sufficient to satisfy § 114(a)(3) of the Act for small emissions units at a major source without requiring such monitoring to be further enhanced. As noted in section I.B., EPA solicits comments on this proposed approach.

a. *Applicability to Multiple Emissions Units.* In certain instances, the potential emissions from several emissions units would be combined for determining whether, as a group, such emissions units are subject to enhanced monitoring. Section 64.1(b)(2) would provide that, in order to determine if an emissions unit was subject to enhanced monitoring, all emissions from any group of emissions units that participate in an emissions aggregating, averaging, apportioning, or trading program at a source would be combined to determine whether, collectively, the potential emissions from such group of units exceed the thirty percent of a major source threshold established for a typical single emissions unit. The first type of emissions unit group to which this provision would apply would be those emissions units involved in some form of "bubbling" or trading plan within a single facility. This would include, for instance, a source with emissions units subject to either an approved "bubble" consistent with EPA's December 4, 1986 Emission Trading Policy Statement (51 FR 43829) or, in the future, EPA's policy and rule on economic incentives programs. (For EPA's guidance to States on establishing economic incentive programs, see 58 FR 11110, February 23, 1993. This guidance also served as a proposed rulemaking for final economic incentive program rules.) Emissions units also may participate in source-wide emissions trading plans as contemplated by 40 CFR part 70 (see discussion at 57 FR 32267-32268, July 21, 1992).

In these and similar circumstances, the potential emissions from all such emissions units are treated collectively for the purposes of the underlying regulatory program and thus would be similarly treated under the proposed part 64 regulations. Although the emissions from such emissions units would be treated collectively to

determine if the proposed regulations are applicable to such emissions units, EPA anticipates that such emissions units often may require separate monitoring in order to provide sufficient data to determine compliance.

The second type of emissions unit group for which emissions would be combined under this provision would be fugitive emissions points for which compliance is evaluated on a process-wide or facility-wide basis. If the total fugitive emissions from such points at the source exceeds an applicable major source threshold, then those emissions would be subject to the part 64 requirements. As discussed below in section IV.D.3., in these circumstances multiple point monitoring of these fugitive emissions would be expected. For instance, a facility-wide visible emission observation protocol might be used for the purpose of monitoring fugitive particulate emissions at a non-metallic mineral processing facility. Under that protocol, not all emissions points creating fugitive particulate emissions would necessarily have to be monitored with the same frequency that a single emissions unit would be monitored.

Finally, the reader should note that this combined treatment of emissions units would not apply to emissions units that trade allowances, or in any other manner act in concert, for the sole purpose of compliance with annual emission limitations or standards under the Acid Rain Program promulgated pursuant to title IV of the Act. As discussed below in section IV.A.3., part 64 would not apply to those emission limitations since title IV requires the establishment of distinct continuous compliance monitoring requirements for the Acid Rain Program. Therefore, this combined treatment of emissions units would not apply to owners or operators seeking to comply with those exempt annual acid rain emission limitations.

b. *Meaning of "Potential to Emit."* In determining whether a particular emissions unit at a major source would be subject to the proposed regulations, the owner or operator and the permitting authority must first determine an emissions unit's "potential to emit" an applicable regulated air pollutant. The definition of "potential to emit" considers the maximum capacity of an emissions unit to emit an air pollutant under the emissions unit's physical and operational design. Certain factors can be considered part of an emissions unit's design and thus reduce its maximum potential to emit. These factors include air pollution control equipment, restrictions on hours of

operation, or restrictions on the type or content of fuel or raw materials combusted, stored or used at a facility. In order to take these factors into consideration, however, the use of control equipment or other operating restrictions must constitute limitations that are enforceable by the Administrator. Because proposed part 64 would apply only to sources required to obtain a permit, such restrictions would have to be included as part of the operating permit applicable to the emissions unit. In contrast, under 40 CFR part 70, a federally-enforceable limitation may be outside of the operating permit because an owner or operator may rely on that limitation to avoid being considered a "major source" and, therefore, avoid having to obtain a part 70 operating permit.

A requirement to use control equipment or to adopt other operating restrictions will only be federally-enforceable if such requirement meets two criteria. First, the requirement either must be an "applicable requirement" under the Act as that term is defined under 40 CFR 70.2 or be a voluntary emission limitation assumed at the request of an owner or operator. As noted above, for the purpose of the proposed regulations, that voluntary limit would have to be included as part of the source's federally-enforceable operating permit. Second, the requirement must be enforceable as a practical matter.

The EPA has previously provided guidance on the issue of "federally-enforceable as a practical matter" in the context of new source permitting. (See "Guidance on Limiting Potential to Emit in New Source Permitting," Memorandum from Terrel E. Hunt, Associate Enforcement Counsel, Air Enforcement Division, and John S. Seitz, Director, Stationary Source Compliance Division, June 13, 1989. This document is included in the docket established for this rulemaking; see also the discussion in the preamble to the final rule revising 40 CFR parts 51 and 52 to amend the Federal enforceability requirements in those two parts (54 FR 27274, 27283, June 28, 1989).) A critical element of determining whether a restriction is in fact federally-enforceable is whether adequate monitoring, including recordkeeping and reporting requirements, exists. For instance, where add-on controls operating at a certain efficiency are used to limit an emissions unit's potential to emit, the guidance states that operating parameters must be included as enforceable conditions of any permit. In addition, in circumstances where setting appropriate operating parameters is

infeasible, short-term emission limits that reflect operation of the control equipment at the required efficiency level and requirements to use CEMS data to determine compliance may be used to limit an emissions unit's potential to emit.

Thus, for purposes of these proposed regulations, in determining the potential to emit of an emissions unit, an owner or operator may use control equipment as a means of defining potential to emit only if an operating permit includes enforceable conditions requiring the owner or operator to either:

- (1) measure and report on control device operating parameters to demonstrate compliance with specific operating parameter requirements established in the source's permit; or
- (2) use CEMS data to demonstrate compliance with a short-term emission limit which assures that the control system operates at the required efficiency.

Similarly, if a source uses operational restrictions to define its potential to emit (e.g., an operating time restriction), then the source's permit must require the source to record and report on the restricted operations (e.g., maintain and report on an operating log).

The EPA believes that the requirement that any restrictions on potential to emit must be enforceable in practice can assure that emissions units posing significant air quality concerns would not be able to avoid necessary monitoring requirements. In essence, the requirements that assure that the restrictions on an emissions unit's potential to emit are enforceable in practice would involve requirements to monitor facility operations that are similar to enhanced monitoring requirements. However, as noted in section I.B., EPA solicits comments on whether the applicability of enhanced monitoring should be based on uncontrolled rather than potential emissions. That approach would eliminate the need for EPA to oversee proper implementation of the potential to emit guidance on a permit-specific basis.

3. Exemptions

The proposed regulation would include five specific exemptions. First, § 64.1(c)(1) would provide that any emission limitation or standard developed pursuant to sections 404, 405, 406, 407(a) and 407(b) of title IV of the Act (the Acid Rain Program) would not be subject to part 64 requirements. Continuous compliance with these annual emission limitations created under title IV are subject to monitoring, reporting and certification requirements

under regulations promulgated on January 11, 1993 at 40 CFR parts 72-75 (58 FR 3590). Those requirements are sufficient to satisfy the enhanced monitoring requirements that would be required in the proposed regulations.

An emissions unit subject to title IV that meets the proposed part 64 applicability threshold for emissions units would still have to comply with part 64 with respect to other emission limitations or standards that may apply pursuant to a SIP or NSPS requirement. In that situation, the title IV monitoring requirements could be used to fulfill the proposed enhanced monitoring protocol requirements, since the monitoring could produce data useable to determine compliance with the other emission limitations or standards pursuant to an applicable NSPS or SIP provision. For this reason, the definition of "established monitoring" includes the Acid Rain Program monitoring requirements.

Because of the emphasis placed on the use of established monitoring in the proposed regulations (see section IV.D.5.) and the belief that owners or operators desire to minimize costs, EPA anticipates that owners or operators of title IV emissions units would in most instances use the required title IV monitoring to meet the enhanced monitoring requirements (using any appropriate conversion factors to report data in terms of the applicable emission limitation or standard).

Second, § 64.1(c)(2) would exempt from part 64 requirements any emission limitation or standard required to be monitored under section 603 of the Act concerning stratospheric ozone protection. The stratospheric ozone protection program is separate and distinct from the other programs under the Act, applies to producers of certain substances and not necessarily to the sources of emissions of those substances, and will be subject to separate monitoring and certification requirements for compliance purposes. The EPA believes that these circumstances warrant an explicit exemption from the proposed part 64 regulations for these applicable requirements.

Third, as discussed earlier in this section of the preamble, the proposed rule would specifically exempt all emission limitations or standards established pursuant to section 112 of the Act, except for standards established in 40 CFR part 61.

The fourth and fifth exemptions would be for requirements applicable to two source categories exempt under part 70: NESHAP standards for asbestos demolition and renovation projects, and

NSPS standards for residential woodheaters. Because neither of these source types is required to obtain a permit, it would be impractical to apply the proposed regulations to such sources.

5. Other Monitoring Requirements

The proposed enhanced monitoring program requirements would not affect the monitoring requirements that exist under other regulations. Other Federal and State regulations may impose additional or more restrictive monitoring requirements, and § 64.1(d) would act as an anti-backsliding provision to assure that those requirements are still met. Section 64.1(d) of the proposed regulation also would clarify that the part 64 requirements would not restrict the authority of States to adopt more stringent requirements under State laws and regulations, or to prevent the Administrator from requiring enhanced monitoring, testing, reporting or recordkeeping of any owner or operator when using other authority under the Act, including the Administrator's general section 114(a) authority.

B. Section 64.2—Definitions

This section of the proposed regulations would define the terms used in the regulations. Many of the proposed definitions would incorporate the language provided in other regulations developed under the Act, including part 70. As discussed above, these proposed regulations would be implemented through the operating permits program to a large extent, and EPA believes that the two regulations must be closely coordinated. The proposed regulations would rely explicitly on the part 70 definitions for "major source" (excluding any hazardous air pollutant source), "regulated air pollutant," and "responsible official."

Some additional definitions that are of particular importance will be noted here. Under section 302 of the Act, the terms "emission limitation," "emission standard," "means of emission limitation" and "standard of performance" are all used to define the types of standards that can be used to control emissions, ranging from a numerical mass emissions limitation to a general work practice requirement. These terms would include any "alternative" or "equivalent" emission limitation, emission standard, means of emission limitation or standard of performance that may be applied pursuant to the Act (e.g., an alternative means of emission limitation under section 112(h)(3) of the Act). The proposed regulations would combine

these terms into the single term "emission limitation or standard." The proposed regulations would then define "applicable emission limitation or standard" for purposes of part 64 as any such limitation or standard applicable to either a non-hazardous regulated air pollutant for which a source is considered a "major source" or a regulated hazardous air pollutant under 40 CFR part 61.

The proposed regulations would require that the data from an enhanced monitoring protocol be used to certify compliance. Thus, the protocol would have to provide sufficient data to determine whether compliance is "continuous or intermittent." The proposed terms "deviation," "continuous compliance," and "intermittent compliance" under § 64.2 would have a bearing on this determination of continuous or intermittent compliance.

The term "deviation" would be defined to include any condition which indicates that an emissions unit has failed to meet an applicable emission limitation or standard. The term deviation would include emissions that exceed an emission limitation or standard. It would also include a failure to meet a required minimum limit (e.g., a minimum incinerator combustion temperature limit). A deviation could also be a failure to observe a required work practice (e.g., failure to wet down a surface area or to repair a leaking seal at a bulk terminal).

These types of conditions include both actual violations of the limitation or standard, and conditions that would be violations except for a federally-approved or federally-promulgated exemption. One example of such an exemption is the limited exemption for startup, shutdown or malfunctions provided in many NSPS requirements. Regardless of whether a deviation would constitute a violation, all deviations would have to be reported.

The proposed regulations would also define the related terms "continuous compliance" and "intermittent compliance." An owner or operator would have to document three events in order to be in continuous compliance with an applicable emission limitation or standard. First, the owner or operator would have to obtain sufficient quality-assured data from the enhanced monitoring protocol to comply with the data availability requirement imposed by the permitting authority pursuant to § 64.4. Second, the data obtained from the enhanced monitoring protocol would have to document that the owner or operator remained in compliance with the applicable emission limitation

or standard throughout the reporting period. Third, if any other data were collected during the reporting period for the purpose of determining compliance, that data would also have to document that the owner or operator remained in compliance with the applicable emission limitation or standard throughout the reporting period.

In contrast, a source or emissions unit would be in "intermittent compliance" with an applicable emission limitation or standard if, during the reporting period, either the data availability requirement was not satisfied because insufficient quality-assured data was obtained from the enhanced monitoring protocol, or the owner or operator violated the applicable emission limitation or standard because a deviation occurred during a period for which no federally-approved or federally-promulgated exemption applied.

Other proposed definitions are discussed as necessary in the context of the individual sections of the proposed regulations.

C. Section 64.3—Implementation Requirements

Section 64.3(a) of the proposed regulations would require that the requirements of part 64 be implemented through the operating permits program under 40 CFR part 70 and the preconstruction permits programs developed under parts C and D of title I of the Act. Sections 64.7 and 64.8 of the proposed regulations would provide the details of how permit applications and permits must address enhanced monitoring requirements (see section IV.G. below).

The proposed regulations do not specify how operating permit applications received prior to the effective date of these proposed regulations should be treated. Under 40 CFR part 70, a source must include in its permit application proposed monitoring procedures only for all promulgated or approved regulations. However, in the event that a permit application is submitted but not approved prior to the effective date of the part 64 requirements, EPA anticipates that, pursuant to 40 CFR 70.5(b), the permitting authority will require the source to submit the necessary supplemental information.

The proposed regulations also do not specify how operating permits issued prior to the effective date of these proposed regulations would be treated. However, 40 CFR 70.7(f)(1)(i) requires that if three or more years remain in the term of a permit, a permit must be reopened to add applicable

requirements that become effective after issuance of the permit. Because State operating permits program submissions are due by November 1993 and EPA has twelve months to approve or disapprove the submittals, EPA believes few permits will be approved before promulgation of part 64; therefore, it is unlikely that many permits would have to be reopened for the purpose of adding enhanced monitoring requirements.

With respect to new source permits, the proposed regulations would not apply if an owner or operator has received a preconstruction permit or has submitted a complete preconstruction permit application prior to the effective date of the proposed regulations. In those instances, § 64.3(c) would require the owner or operator to satisfy part 64 requirements only when the owner or operator is required to receive an operating permit under part 70. However, if the source files a joint preconstruction and operating permit application, then, as discussed above, the owner or operator would be required to supplement the application prior to permit issuance.

Section 64.3(d) would clarify that any change in an approved enhanced monitoring protocol would require a significant permit modification under 40 CFR 70.7. That approach is consistent with 40 CFR 70.7(e)(4) which requires a significant permit modification for any significant change to an underlying monitoring requirement. In addition, § 64.3(d) would apply to situations in which an emissions unit is modified after issuance of an operating permit in such a manner as to trigger the applicability of part 64 requirements or to make an existing approved enhanced monitoring protocol no longer capable of meeting the requirements of part 64. Because part 64 would rely on the permit application and issuance process as a vehicle for selecting an enhanced monitoring protocol, an owner or operator would not be able in such situations to comply with part 64 without the involvement of the permitting authority. Thus, § 64.3(d) would require that in such circumstances, the procedures for a significant permit modification under 40 CFR part 70 be followed.

The EPA believes that the significant modifications procedures would apply using the criteria provided in 40 CFR 70.7(e)(2)(i) even without this explicit language in proposed § 64.3(d). The EPA believes that this explicit cross-reference, as with the other references to permit applications, and permit terms and conditions provided in §§ 64.7 and 64.8 of the proposal, would assist in the

implementation of part 64, but would not modify any requirements or procedures adopted in 40 CFR part 70.

D. Section 64.4—Enhanced Monitoring Protocol Requirements

1. General Requirements

Section 64.4(a) would establish the basic requirements applicable to all enhanced monitoring protocols. This section would require that an enhanced monitoring protocol be capable of detecting deviations with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine whether an emissions unit's compliance with applicable emission limitations or standards over the reporting period was continuous or intermittent. As noted in section III.B., Congress specifically stated that enhanced monitoring would be used to document compliance and facilitate enforcement against violations. Thus, these basic enhanced monitoring criteria rely on the statutory requirement that a source conduct enhanced monitoring that is sufficient to certify whether compliance is "continuous or intermittent."

To satisfy that requirement, enhanced monitoring data first must be "representative." For instance, where an enhanced monitoring protocol uses emission monitoring techniques, the sample taken by the monitoring device would have to be "representative" of the gas stream emitted from the emissions unit, and requirements for proper location of a sampling device would be an element of satisfying this criterion.

An enhanced monitoring protocol would also have to be verified initially as producing accurate and precise data and then be subject to quality assurance requirements to provide a check on monitor accuracy and precision over time. Relative accuracy or parameter correlation tests would be required to assure an accurate and precise correlation exists between the monitoring data and that from the applicable test method. In addition, the enhanced monitoring protocol would have to be "reliable," which would require that the protocol be able to produce data over time on a specific schedule without unreasonably frequent breakdowns and quality-assurance adjustments.

The frequency criterion would require that sufficient enhanced monitoring data be collected to provide an accurate assessment of the compliance status throughout the reporting period. As discussed earlier in section III.A., the frequency of data collection would be a function of the averaging time of the

applicable limitations or standards, the likely variability of potential emissions from an emissions unit, and the margin of compliance demonstrated by the source. Finally, the data also would have to be available on a timely basis to allow for determining compliance and reporting compliance status.

2. Parameter Monitoring Protocols

If a source proposes to use process or control device parameter monitoring, § 64.4(c) would require the owner or operator of a source to justify that a known and consistent relationship exists between the emissions subject to an applicable limitation or standard and the parameters being monitored. The general known and consistent relationship would then be specifically correlated for the particular emissions unit by comparing emission test method data with contemporaneous parameter monitoring data as part of the performance verification test procedures for demonstrating the system's effectiveness. Appendix C to the proposed regulations would provide the correlation test procedures for parameter monitoring.

One type of correlation that can apply to a limited number of parameter monitoring methodologies is where the owner or operator uses parameter data to predict emissions subject to an applicable emission limitation or standard. A common form of this approach is to use surface coating VOC content records and then calculate VOC emissions based on that process parameter data. Another example would be fuel sampling and analysis procedures that monitor the sulfur content of fuel to predict SO₂ emissions. Another example is the use of parametric relationships to predict NO_x emissions, such as is provided for in appendix E to 40 CFR part 75 (alternative NO_x monitoring for oil- and gas-fired peaking units subject to the Acid Rain Program based on a load/NO_x emission rate relationship). In all of these situations, appendix C of the proposed regulations would define the testing procedures, including a relative accuracy test, that would be required for such predictive parameter monitoring systems and procedures.

A second type of correlation, most common with control device parameter monitoring, is a demonstrated compliance correlation. The owner or operator first would select parameters to be monitored based on known relationships between parameters and emissions. The permit application would have to include general empirical or theoretical data to justify to the permitting authority that the

relationship exists and that non-monitored parameters will not adversely affect the relationship.

If the permitting authority approves an enhanced monitoring protocol based on this type of parametric relationship, then the owner or operator would monitor those parameters during a series of reference method tests that show compliance with an applicable emission limitation or standard to verify the performance of the approved protocol. The owner or operator would then use the measured parameter values to establish for each parameter a parameter value (or range of parameter values) that, if monitored and achieved, would assure that the compliance documented by the reference method tests would be maintained. For each separate parameter monitored, the value (or range of values) that would assure compliance with the applicable emission limitation or standard would be referred to as a "demonstrated compliance parameter level" (DCPL).

If an owner or operator chooses to propose a correlation process that results in a DCPL (or series of DCPL's if multiple parameters must be monitored to assure compliance), the proposed regulations would provide that a failure to achieve the DCPL (or any one DCPL if multiple DCPL's apply) will be deemed to be a deviation from the applicable emission limitation or standard. In essence, a DCPL would constitute a surrogate compliance/ deviation measurement in place of the explicit terms of the applicable emission limitation or standard. It is important to note that part 64 would not state that a failure to achieve a DCPL is a deviation of a requirement separate from the applicable emission limitation or standard, but only a deviation from the applicable emission limitation or standard. However, under separate authority the permitting authority may include the DCPL as a separate federally-enforceable permit condition. For instance, a DCPL may be a federally-enforceable permit condition in a preconstruction permit issued under title I of the Act that serves as a federally-enforceable limit on an emissions unit's potential to emit.

Finally, it should also be noted that where an applicable requirement requires an owner or operator to comply with a parameter limitation, the use of parameter monitoring for purposes of enhanced monitoring with respect to that parameter limitation would be appropriate without having to conduct any correlation analysis. In these cases, however, the owner or operator would still have to demonstrate that the parameter monitor satisfied the general

regulatory criteria of representativeness, accuracy, precision, reliability, frequency and timeliness.

3. Fugitive Emissions Monitoring

Section 64.4(d) of the proposed regulations would allow a source to use a multi-point monitoring protocol where fugitive emissions would be subject to the proposed regulations. In this situation, EPA recognizes that for many sources, requiring separate monitoring at each fugitive emissions point would be impractical. For instance, many sources have VOC fugitive emissions from hundreds or even thousands of emissions points. These VOC fugitive emission points are generally not regulated separately, but are covered by leak detection and repair requirements applicable on a process unit or even a facility-wide basis. Where a process unit basis is used, these fugitive emissions would be subject to enhanced monitoring if the process (i.e., emissions) unit meets the proposed applicability thresholds for an emissions unit in proposed § 64.1(b). If a facility-wide requirement applies, then the fugitive points would be subject to the proposed regulations if the total of such emissions exceeded the applicability threshold because of the provisions in § 64.1(b) that combine emissions from a group of emissions units to determine applicability. (See the discussion of this issue in section IV.A.2.)

At other types of operations, fugitive particulate emissions can arise from certain mineral processing operations or can come from storage areas, roadways and other non-production facilities. Again, at many of those sources, the emission limitation or standard applicable to the fugitive emissions is a source-wide work practice standard or other set of operation and maintenance procedures. In this situation, these fugitive emissions points could be subject to the proposal if the combined emissions from all such points exceed the applicability thresholds in proposed § 64.1(b).

Under any of these scenarios, EPA believes it would be impractical to require that each separate fugitive emissions point be monitored separately. Because of that concern, § 64.4(d) would provide the owner or operator the ability to use multiple point monitoring of fugitive emissions. That provision would require only that a fugitive emissions enhanced monitoring protocol collect data that are sufficiently frequent to assure that representative periods of deviation are detected at each emissions point.

4. Protocol Performance and Operating Requirements

Section 64.4(b) of the proposed regulations would require that every enhanced monitoring protocol be subject to minimum performance specifications, performance verification, quality assurance and data availability requirements. Both instrumental and non-instrumental monitoring elements of an enhanced monitoring protocol would be subject to these general requirements, although only certain elements within each general category would apply to certain monitoring techniques.

To implement the requirements in § 64.4(b), appendices A through D of part 64 would provide general performance specifications (including installation, equipment and calibration gas specifications), performance verification test procedures and quality assurance procedures. For continuous emission and opacity monitoring systems, existing Federal requirements already have developed specific procedures for each of these areas. Each of the appendices would refer to these existing requirements and would require that, if such systems are used as part of an enhanced monitoring protocol, the existing requirements be followed in addition to any additional requirements imposed in the part 64 appendices. For elements of an enhanced monitoring protocol where those types of specific procedures are not available, the appendices would provide the basic criteria for establishing these procedures on a source-specific basis.

Section 64.4(b)(5) would state that a permitting authority could allow an owner or operator to adopt alternative procedures to those provided in appendices A through D. This decision would be especially important for CEMS's and COMS's for which some States have highly developed performance and quality assurance requirements that vary slightly from corresponding Federal requirements.

This section would require that any alternative procedures satisfy three criteria. First, the alternative procedures must have elements that correspond to the elements in appendices A through D. For instance, if a test to determine calibration error is required, the alternative procedure must also include a calibration error test.

The second criterion is that the alternative must provide relative accuracy, calibration error and measurement frequency specifications that are at least as stringent as the specifications in the part 64 appendices.

For instance, by cross-referencing appendix B of 40 CFR part 60, appendix A of part 64 would require a CEMS to satisfy a 20 percent relative accuracy specification. Similarly, by cross-referencing 40 CFR 60.13, appendix A would also require a gas CEMS to use four equally-spaced data points to calculate hourly averages.

The third and final criterion would require that the alternative procedures provide the same degree of confidence in the data from the enhanced monitoring protocol in terms of representativeness, accuracy, precision, reliability, frequency and timeliness. This criterion would apply to confidence at both the initial verification stage and over time as documented by quality assurance activities.

With respect to non-instrumental monitoring approaches, the requirements of § 64.4(b) and the appendices would apply only to the extent that they are relevant. For example, if leak detection monitoring involves the use of a portable VOC detection device, the requirements under § 64.4(b) would require that appropriate performance specifications, calibration and quality assurance procedures be followed for those devices, such as are required under 40 CFR part 60, appendix A, Method 21.

The basic performance and operating requirements of § 64.4(b) would be the following:

a. *Performance Specifications.* Section 64.4(b)(1) would require an owner or operator to satisfy performance specification procedures as set forth in appendices A and B of part 64. Those appendices provide general elements that all performance specifications must address, and in some cases create specific requirements. In addition, because existing requirements already impose specific performance specifications for CEMS's and COMS's, those specifications would be cross-referenced and would have to be followed to satisfy part 64.

The basic performance specifications that would have to be addressed are as follows:

Measurement frequency. Section 2 of appendix A would establish the criteria for evaluating the appropriate measurement frequency of an enhanced monitoring protocol. The required objective would be that measurements be performed frequently enough to allow the owner or operator to certify whether the owner or operator achieved compliance with an applicable emission limitation or standard on a continuous or intermittent basis, consistent with the

averaging time period of the permitted emission limitation or standard.

To satisfy this objective, the required specification would be that the owner or operator specify a frequency of measurements for the elements of a protocol and for calculating averages of data points that are commensurate with the averaging time of the emission limit. Measurement frequency would have to be sufficient such that the enhanced monitoring protocol can provide data within each averaging period during operation of an emissions unit, with two exceptions.

First, the requirements for measurements within each averaging period would not apply if measurements are not obtainable because of periods of allowable monitor downtime to perform quality assurance and routine maintenance as provided in § 64.4(b)(4).

Second, the permitting authority may approve less frequent measurements where the owner or operator demonstrates that the potential variability of emissions, when considered in conjunction with the margin of compliance demonstrated for the emissions unit, is sufficiently low so that a determination of continuous or intermittent compliance does not require data to be collected within each averaging period. In such circumstances, the measurement frequency would have to be established at a level that can reliably determine if compliance is achieved on a continuous basis.

Relative accuracy. Relative accuracy is an evaluation of monitor accuracy by correlating data from the enhanced monitoring protocol with that of a specified reference emission testing method (RM) over a series of measurements under actual source conditions. A relative accuracy test consists of a series of at least nine comparison measurements.

The owner or operator would have to specify in a permit application a proposed relative accuracy specification in terms of ranges of measurement or the permitted emission limitations or standards. The stringency of the proposed relative accuracy would have to be at least 20 percent, which is the relative accuracy required for a CEMS pursuant to appendix B of 40 CFR part 60. The demonstration that the enhanced monitoring protocol achieves the proposed relative accuracy would be determined as part of the verification tests required by appendix C.

Some types of monitoring methodologies would not require a relative accuracy specification. First, a parameter monitoring system would

only require a relative accuracy specification if the owner or operator intends to use the parameter monitoring to predict emissions (such as fuel sampling and analysis used to predict SO₂ emissions). In place of the relative accuracy requirement, specifications for parametric relationships, verified by correlation tests establishing parameter levels that demonstrate compliance with emission limitations or standards, would be required. These correlation test procedures would be similar to the relative accuracy test procedures except that the relative accuracy equation applied to the test results would not be used. Parameter correlation testing may also require testing under a broader range of operating conditions. (See the preceding section IV.D.2. for a discussion of parameter monitoring.)

Second, a relative accuracy specification and test requirements would not apply to a continuous opacity monitoring system because there is no scientifically independent test method for determining in-stack opacity. This approach is consistent with existing requirements for opacity monitors. (Theoretically, an owner or operator could propose to use a COMS as a predictive parameter methodology for predicting particulate emissions, in which case a relative accuracy specification and test would apply. In practice, this use of a COMS is not expected to occur given the greater burden of establishing a predictive, as opposed to demonstrated compliance, relationship between opacity levels and particulate emissions.)

Calibration error. Calibration error is the difference in enhanced monitoring protocol output readings from an established reference value (e.g., known concentration of the cylinder gas, value of a parameter, or concurrent emission measurements) after a stated period of operation during which no unscheduled maintenance, repair, or adjustment to the monitoring protocol takes place. To assure accuracy over the measurement range, the owner or operator would have to propose in the permit application a level of calibration error, with no single comparison measurement during a test for calibration error to exceed ± 5 percent. Appendix C would specify the initial test procedure to check calibration error at the low, mid, and high measurement levels. As discussed below in this section, the proposed quality assurance plan would have to include procedures for periodic calibration error checks both at low and high measurement levels, and, at less frequent intervals, at low, mid, and high measurement levels. The permitting authority would have discretion to

approve fewer measurement levels where appropriate.

Measurement span. Measurement span is the anticipated range of emissions or parameters that must be measured to determine the compliance status of the affected emissions unit with the applicable emission limitations or standards. The owner or operator would have to consider the measurement span in any existing regulation and propose a span for the enhanced monitoring protocol which meets any required measurement span. Where no existing span requirement applies, the owner or operator would have to propose a span that is sufficient to assure that the enhanced monitoring protocol can provide accurate data for all potential emission or parameter values that may occur.

There are two types of span specifications. First, some spans include all potential concentrations. This type of specification may require multiple range pollutant or flow analyzers and parameter instrumentation in the enhanced monitoring protocol to meet the required accuracy. The frequency of measurements also may be affected. Second, some spans include a limited range of emission concentrations or correlated parameter ranges. This type of specification sets an upper limit that normally includes the permitted levels plus a range or value beyond the permitted emission standard or parameter limitation (e.g., 1.25 times the parameter or emission limitation).

Response time. Response time is the time interval between the start of a step change in the system input (e.g., change of calibration gas or change in source concentration) and the time when the data acquisition and handling system (DAHS) displays 95 percent of the final value. This type of response time is most important when time-sharing of enhanced monitoring protocols among two or more measurement locations occurs, or when the regulations require an enhanced monitoring protocol to measure short duration permit limitation exceedances, e.g., concentration spikes.

Response time also would be defined to include the time interval between the initial accumulation of information to assess the affected emissions unit's emissions and the availability of the information for emission level status review. Thus, for a VOC surface coating operation, response time could be the review within 24 hours of the daily records and coating analyses to determine compliance with a daily VOC limitation.

The owner or operator would have to include in a permit application a

proposed response time specification for the enhanced monitoring protocol that includes upscale and downscale response times for all instrumental components of the protocol, and a combined response time for the system output. The combined response time would have to be commensurate with the measurement frequency requirements. Since response time is inherently rapid with some instruments, the permitting authority would have the authority to waive the individual component specification. Finally, where a proposed protocol includes recordkeeping procedures to assess compliance, the response time specification would have to reflect the time interval appropriate for analyzing such records and providing an output that relates to the compliance status of the monitored emissions unit.

Parametric relationship. If a proposed enhanced monitoring protocol includes the use of parameter monitoring, a parametric relationship specification would apply. The parametric relationship is the known relationship between the monitored parameters and the applicable emission limitations or standards. Requirements for parametric relationship specifications would not apply where the emission limitation or standard is already expressed in terms of the monitored parameters. For example, no parametric relationship specification would apply if an owner or operator proposed to use a fuel sampling and analysis protocol to monitor compliance with a sulfur in fuel standard.

Appendix A would establish a two-step process for establishing a parametric relationship specification. In the permit application, an owner or operator would be required to propose a general specification, describing the known relationship. The owner or operator would have to provide general empirical or theoretical data to justify the general specification. Finally, the application would have to include the correlation test plan the owner or operator would use to refine and verify the known relationship.

The second step would be to perform the correlation tests to further establish and verify the known relationship. Based on these tests, the owner or operator would describe the correlation in the form of an equation or graph if the owner or operator intends to use the parameter monitoring to predict emissions, emission rates, or control efficiency rates. If the owner or operator intends to establish parameter levels that demonstrate compliance with an emission limitation or standard, then the correlation would be described in

the form of a minimum or maximum value (or range of values between a minimum and maximum value) for one or more parameters that, if achieved, assures compliance with an emission limitation or standard.

Measurement technique procedures. An enhanced monitoring protocol that includes recordkeeping or qualifies under § 64.4(d) as multiple fugitive emissions point monitoring would have to include appropriate measurement technique procedures. For instance, a protocol that relies primarily on calculating VOC emissions from coating manufacturer formulation data would also have to include periodic measurements of coatings to verify the accuracy of the formulation records.

Measurement technique procedures may include, but are not limited to: Method 9 or 22 of appendix A of part 60 of this chapter for opacity or particulate emission limitations; Method 21 of appendix A of part 60 of this chapter for volatile or toxic organic compound leak detection and repair programs; Method 19 of appendix A of part 60 of this chapter for sulfur dioxide emissions from combustion devices without control devices; and Method 24 of appendix A of part 60 of this chapter for VOC content of coatings. The owner or operator would have to consider the measurement technique procedures in any existing regulation and propose a measurement technique procedure that is based on the affected emissions unit's operation.

b. Equipment, Installation and Calibration Gas Specifications. Appendix B would establish requirements for equipment design and location, and for calibration gas materials. For other types of enhanced monitoring protocols, specifications for equipment design and location, and calibration reference materials, would have to be handled on a case-by-case basis in order to assure that representative measurements are obtained by the monitoring protocol.

c. Performance Verification Test Procedures. Verification that the monitoring procedures or systems provide data that satisfy all of the regulatory criteria is an essential part of enhanced monitoring. Section 64.4(b)(2) would require, as provided in appendix C to the proposed regulations, that an owner or operator conduct certain test procedures similar to those under existing programs. The three basic tests that would be required, as applicable, are a calibration error test, response time test and relative accuracy test. Where existing Federal provisions contain requirements that satisfy these general test requirements, the owner or

operator would not be required to conduct separate verification tests under part 64. In addition, appendix C would specify the procedures for correlation of parameter monitoring to an applicable emission limitation or standard. This concept was discussed above in section IV.D.2.

d. Quality Assurance. Section 64.4(b)(3) would require that an owner or operator conduct quality assurance activities that are designed to identify periods of unreliable data in accordance with the specifications in appendix D to the proposed regulations. If the enhanced monitoring protocol uses a CEMS, appendix D would require the owner or operator to follow appendix F of 40 CFR part 60 as well as any additional general requirements in appendix D. If the protocol uses a COMS, appendix D would require that 40 CFR part 51, appendix M, Method 203 also be followed as well as any additional general requirements in appendix D.

Of course, the permitting authority could allow the use of alternative procedures as described above and thus appendix F or Method 203 would not have to be followed exactly. Some existing quality assurance provisions, while fundamentally similar, may have slight variations that EPA believes should be allowed to remain without requiring duplicative efforts (e.g., the Commonwealth of Pennsylvania has established different quality assurance requirements from appendix F).

Where systems or procedures other than a CEMS or COMS are used, the proposed regulations would require that the enhanced monitoring protocol include procedures that satisfy the general elements described in appendix D to part 64. The quality assurance plan would have to include a program of frequent (e.g., daily) and less frequent (e.g., quarterly and annual) checks of an enhanced monitoring protocol. Quality control programs used for the certification of emissions and enhanced monitoring protocol output verification could include daily, quarterly and annual evaluations. Such programs would not be limited to just instrumental sampling and analysis, but also quality assessments of material inventories used for establishing affected unit emissions. The rigorosity and frequency of assessment would have to be commensurate with the proposed protocol and would be proposed by the source owner or operator at the time of permit application for incorporation into the permit. The basic elements to be included would be:

Quality control (QC) checks and error assessments. QC checks and error assessments (e.g., temperature and pressure recording devices have failed) would have to be done daily, unless the permit applicant can justify less frequent assessments to the permitting authority. For recordkeeping components of a proposed protocol, the QC checks would have to involve checking the data forms to see that all required information is recorded and the information is recorded correctly. For a proposed protocol that involves instrumental measurements, the QC checks would have to describe the procedure for checking the calibration error of each instrument at the zero (low) and span (high) levels. Alternatives could be used subject to the approval of the permitting authority.

The proposed quality assurance plan would also have to specify the criteria for excessive error, i.e., when the enhanced monitoring protocol's data are invalid (e.g., outside performance specifications including recording of insufficient information). The plan proposed by the owner or operator would have to ensure that the beginning and ending times of the invalid data period are identified.

Data accuracy assessment. The QA plan would have to include procedures (e.g., calibration error, relative accuracy testing, inventory assessment, or fugitive emission assessment plan review) for a quarterly and annual assessment of the proposed protocol's data accuracy and would have to specify the criteria for excessive error (e.g., does not meet the relative accuracy requirement or fails to statistically prove that leaks were less than 1 percent of all potential leaks).

Minimum data availability. The proposed regulations require owners or operators to operate and maintain an enhanced monitoring protocol to ensure quality data during all times when an emissions unit is operating, except during defined periods of calibration, routine maintenance, and QA activities. The QA plan submitted by the owner or operator as a part of an enhanced monitoring protocol would have to include an identification of and justification for the periods of monitor downtime associated with QA activities and accounting for and responding to mechanical breakdowns. This topic is discussed in the section following this discussion of quality assurance plan requirements.

Reporting and recordkeeping. The requirements for reporting and recordkeeping for enhanced monitoring protocols would be provided in §§ 64.5 and 64.6. The QA plan proposed by the

owner or operator would have to detail how the information necessary for conformance with those sections will be obtained and maintained.

e. *Data Availability.* Section 64.4(b)(4) would require that an enhanced monitoring protocol satisfy a data availability requirement. For some enhanced monitoring protocols, an applicable NSPS or NESHAP may already include a data availability requirement (e.g., 40 CFR part 60, subpart Ea includes a data availability requirement for SO₂, NO_x, CO, and temperature monitoring systems at municipal waste combustors). The proposed regulations would allow an owner or operator to use such existing requirements where applicable. The proposed regulations would not rely on existing data availability requirements in SIP's because of a concern that such data availability requirements may not have been designed to support monitoring used for determining continuous compliance.

Where an existing Federal data availability requirement does not apply, the owner or operator must generally provide quality-assured data for all periods of emissions unit operation (consistent with the required measurement frequency of data collection for the enhanced monitoring protocol). The only acceptable downtime would be the period of time that the owner or operator justifies to the permitting authority (and that the permitting authority approves) as necessary to conduct required quality assurance activities, including routine maintenance. Pursuant to § 64.8, the permitting authority would include a data availability requirement in the permit (often expressed as a percentage of operating time) that reflects the proposed requirements of § 64.4(b)(4).

The EPA has received input from several industry representatives that have argued for an exception to a data availability requirement if a sudden and unforeseeable event causes elements of a protocol to be out of service for an extended period. In response to those concerns, § 64.4(g)(2) would provide that where an enhanced monitoring protocol fails to perform due to a sudden and unforeseeable monitor malfunction beyond the control of the owner or operator (e.g., a lightning strike), the owner or operator could use the existence of that malfunction as an affirmative defense against a violation of the data availability requirement (imposed pursuant to § 64.4(b)(4)) that occurs as a result of the malfunction. (There would be, however, a duty to submit other interim monitoring data if the enhanced monitoring protocol is

down for an extended period; see Section IV.D.6.)

Monitor failures that are due in whole or in part to poor maintenance, careless operation or other preventable conditions would not be considered to be "malfunction" events "beyond the control of the owner or operator." In addition, if an enhanced monitoring protocol for a particular emissions unit includes a backup monitoring system, including statistical missing data procedures, the malfunction of the primary monitoring system would not relieve the owner or operator from employing the backup system or procedures. In addition, the defense does not preclude the Administrator or the permitting authority from requiring additional testing and monitoring or from taking enforcement action based on that or any other credible information.

Finally, § 64.4(g)(3) would clarify that the owner or operator has the burden of proof at all times that a monitor failure was in fact a sudden and unforeseeable malfunction. (For further discussion of notice and other requirements related to monitor failures generally, see section IV.D.6. below.)

5. Proposed Enhanced Monitoring Protocol Evaluation and Demonstration

Sections 64.4(e) and (f) would detail the procedures an owner or operator must follow in order to obtain approval of an enhanced monitoring protocol, and the consequences of failing to achieve compliance with enhanced monitoring requirements. As a starting point, the owner or operator would have the option to first evaluate the best "established monitoring" (as defined in § 64.2) for the particular emissions unit. As discussed in section I.B.1., the determination of what is the "best" monitoring would focus on what is the best means for the particular emissions unit to determine continuous compliance, not what is the "best" technologically available monitoring system.

Established monitoring would include any monitoring methodology that has already been evaluated by EPA and determined to be a feasible means of assessing compliance with an emission limitation or standard for a specific type of emissions unit at a source. The types of monitoring that would be included are:

- (1) Monitoring identified in an applicable subpart of 40 CFR part 60 or part 61 (NSPS and NESHAP standards);
- (2) Appendix P of part 51 (SIP CEMS requirements);
- (3) Monitoring requirements in implementation plans approved or

promulgated by the Administrator pursuant to Title I of the Act that reflect a Control Technique Guideline published by the Administrator under section 108 of the Act;

(4) Monitoring requirements established in any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act; and

(5) Monitoring requirements established in 40 CFR part 75.

This type of established monitoring would be of most assistance to SIP sources that can look to NSPS or new source review permit requirements to assess the types of monitoring that are required of new facilities within a similar source category. The reader should also note that the reference to new source permits has been included with the knowledge that the "established monitoring" in these permits will vary. The EPA recognizes that many older permits may in fact have monitoring that would no longer be considered adequate and would not likely satisfy enhanced monitoring requirements. The EM Reference Document will provide a list of generally applied monitoring in new source review permits that could potentially be used to satisfy part 64 as well as general guidance on how the owner or operator can access information on monitoring requirements in new source review permits that could be used for enhanced monitoring purposes.

The "established monitoring" methodology could be one that has been established for the purpose of either determining compliance or merely indicating compliance. Thus, a monitoring methodology could qualify as established monitoring and not necessarily satisfy enhanced monitoring requirements. Therefore, an owner or operator that proposes a monitoring methodology in its enhanced monitoring protocol that qualifies as established monitoring still would be required to justify that the methodology would be able to satisfy the requirements for enhanced monitoring in part 64. The owner or operator would not be required to compare its proposed monitoring against other potential monitoring methods, even if other established monitoring methods may apply.

Established monitoring that is already used to determine continuous compliance would likely satisfy enhanced monitoring requirements without any additional enhancements. However, other forms of established monitoring could often require

enhancements in order for the monitoring to satisfy enhanced monitoring requirements. Examples of the types of enhancements that could be required include: (1) Imposing quality assurance procedures, (2) requiring more frequent measurements, or (3) establishing a data availability requirement.

Unless the owner or operator proposes to use established monitoring, § 64.4(e)(2) would require an owner or operator to identify all technologically feasible monitoring methodologies for a particular emissions unit. The owner or operator would then be able to select and propose the identified methodology that best satisfies at the particular emissions unit all of the technical criteria for an enhanced monitoring protocol. Again, in determining what is the "best" monitoring for the particular emissions unit, the owner or operator would take into account circumstances at the particular emissions unit and not necessarily be required to propose the "best" technologically feasible monitoring system.

Section 64.4(e)(3) would state that an owner or operator has the burden of proof to justify that a proposed enhanced monitoring protocol can satisfy all of the enhanced monitoring requirements in part 64. To assist the owner or operator in meeting this burden, § 64.4(e)(3) would state that, in accordance with § 64.7, a permit application include all necessary information concerning the proposed enhanced monitoring protocol.

Section 64.7(b) would provide a general requirement that a permit application include all descriptions, explanations, justifications, and supporting information necessary to show that a proposed protocol can satisfy part 64 requirements. Section 64.7(b) then provides a list of particular types of information to be included.

The application would have to include a complete description of the proposed protocol. The description would have to include a description of the components and procedures that comprise the protocol. This type of information should include manufacturer literature and model number of any instrumental components. The description should also include scaled drawings of the emissions unit that indicate the location of any fixed monitor components, or sampling locations for non-fixed components. This type of description would also have to include calculation, data reduction and conversion, and similar types of procedures. The description would also have to include, as applicable, all performance,

equipment, and installation specifications; a proposed quality assurance plan; and a proposed data availability requirement.

The permit application would also have to describe the physical and operational characteristics of the emissions unit and any potential interferences or other adverse impacts on the proposed protocol that such characteristics may have. This information will be essential for the permitting authority in determining whether the proposed protocol can satisfy the part 64 requirements given the expected range of facility operations.

Second, the permit application would have to include justifications for the specifications, quality assurance procedures and data availability requirement proposed by the owner or operator. This type of information could include, for instance, a justification for reduced measurement frequency based on the potential variability of emissions and the demonstrated margin of compliance at the emissions unit. (See section IV.D.4.a. above.)

The third type of information that would be included relates to the evaluation process. If required, the owner or operator would list the monitoring methodologies identified as technologically feasible and then provide documentation of any evaluations conducted. In all instances, however, the owner or operator would have to explain how the proposed monitoring could provide sufficiently representative, accurate, precise, reliable, frequent and timely data to detect deviations and determine whether compliance is continuous or intermittent.

The fourth item that § 64.7(b) would require to be included in a permit application is a test plan and schedule for conducting performance verification testing in accordance with appendix C that includes the elements described in § 64.4(f).

Section 64.4(f) would require that the plan describe the conditions under which tests will be performed, the reference test procedures to be employed, and any other pertinent or unique information that describes the testing approach. If the proposed enhanced monitoring protocol includes the use of parameter monitoring, then the test plan would have to include the correlation test procedures to be employed. This would include a description of the operating conditions to be varied during the correlation test to demonstrate the validity of the correlation over the potential range of facility operations. The test plan would also have to describe any parameters not

monitored as part of the protocol that could affect the correlation and demonstrate that excluding such parameters will not adversely affect the validity of the correlation.

Section 64.4(f)(2) would establish as a general requirement that all testing be completed and test results submitted "as expeditiously as practicable" after approval of the selection of the proposed enhanced monitoring protocol, and would require that an enforceable test schedule be included in the permit that reflects this general duty. No outside date for completion of the tests would be specified in the regulation because of the wide variety of systems and procedures to be tested and the desire not to establish that outside date as the presumptive norm for all types of enhanced monitoring protocols. For instance, if an enhanced monitoring protocol involved the proposal to install and operate a continuous opacity monitoring system, "as expeditiously as practicable" would have to provide a significant period to allow time for delivery and installation prior to conditioning and operational test periods, and performance tests. On the other hand, if the enhanced monitoring protocol involved the use of a previously installed continuous opacity monitoring system, "as expeditiously as practicable" would require less time because there would be no allowance for delivery and installation.

Once an owner or operator has completed the performance verification tests, § 64.4(f)(3) would require that the enhanced monitoring protocol be operated and maintained in accordance with all requirements, including quality assurance procedures. The owner or operator would also have to record and report data as required under part 64.

Section 64.4(f)(4) would then detail under what circumstances the owner or operator would be considered to have failed to achieve compliance with enhanced monitoring requirements. The proposed regulations would list three instances in which such failure could occur:

- (1) If the owner or operator fails to submit complete test results;
- (2) If the test results submitted demonstrate that the enhanced monitoring protocol fails to satisfy the applicable performance specifications and other requirements for the enhanced monitoring protocol specified in the permit; or
- (3) If, after approval of test results, the permitting authority or EPA obtains information that a previously approved enhanced monitoring protocol no longer is achieving the performance

requirements of the proposed regulations.

The proposed regulations do not specify what actions will be taken upon a failure to achieve compliance with part 64. Under these circumstances, the owner or operator would be subject to enforcement, including administrative or judicial actions depending upon the circumstances. Section 64.4(f)(5) of the proposed regulations would specifically state that one non-exclusive option available to EPA or the permitting authority upon a failure to achieve compliance would be to reopen the source's permit to assure compliance with part 64. This explicit provision would clarify the general authority under 40 CFR 70.7(f)(1)(iv) of the operating permit regulations, and is not intended in any manner to alter the requirements of part 70.

6. Monitor Failures

Sections 64.4(g) and 64.5(e) of the proposed regulations would establish requirements for responding to monitor failures. Section 64.4(g) would detail the types of monitor failures that could occur and the owner or operator's general obligations as a result of the failure. Section 64.5(e) would detail the notice and reporting requirements.

For any failure that has the potential to interrupt the normal operation of an enhanced monitoring protocol for more than 48 hours, the owner or operator would have to notify the permitting authority. The notice would have to be in accordance with notification requirements established by the permitting authority, or, if there are none, within 24 hours.

The next required step to address a monitor failure would be to correct the problem and return the monitoring protocol to normal operation. Section 64.5(e)(2) would require the owner or operator to certify that the corrective action has taken place and that the enhanced monitoring protocol has resumed operation and production of valid quality-assured data within two weeks of the failure.

There may be certain monitor failures that cannot feasibly be addressed within a two-week timeframe. In these instances, instead of the two-week certification, § 64.5(e)(3) would require the owner or operator to submit for approval by the permitting authority a proposed corrective action plan that addressed two separate issues: correcting the problem and collecting data in the interim. The proposed plan would have to be submitted within two weeks of the failure.

To address how the owner or operator intends to correct the failure, the

proposed plan would have to include a schedule with milestones to correct the failure as expeditiously as possible, but in no event later than six months after the occurrence of the failure. For interim monitoring, the owner or operator would have to provide substitute monitoring to determine compliance; the permitting authority could accept substitute monitoring that does not satisfy all of the enhanced monitoring performance and operating criteria in § 64.4(b) of the proposed regulations.

As noted earlier in section IV.D.4., where an owner or operator can prove that a monitor failure occurs as a result of a sudden and unforeseeable malfunction, the owner or operator would be able to use that occurrence as a defense against an alleged violation of the data availability requirement. Where the defense does not apply, the owner or operator would be subject to enforcement for alleged violations that result from the monitor failure. The proposed notice and other reporting requirements for monitor failure (i.e., either a certification that corrective action is completed or a proposed corrective action plan) are not intended to excuse the failure or in any way limit the permitting authority, the Administrator or a citizen (to the extent permitted under section 304 of the Act) from seeking enforcement against the owner or operator for any alleged violation of the proposed regulations.

E. Section 64.5—Reporting Requirements

1. General Requirements

Section 64.5 of the proposal contains the basic reporting requirements that each major source would have to meet to satisfy section 114(a)(3) of the Act. First, § 64.5(a) of the proposed regulations would require that a responsible official for a source subject to these regulations use the enhanced monitoring data (and any other data collected for the purpose of determining compliance during the period) as the basis for an annual compliance certification submitted under 40 CFR part 70 for those emissions units and emission limitations or standards that are subject to these proposed regulations.

Section 64.5(a) would create an interim exemption from this requirement where an underlying SIP requirement establishes a different method as the exclusive method for certifying compliance. As discussed below in section IV.K., EPA plans to issue a SIP call to cure this problem, but is concerned that there may be some

time period when permits are being issued prior to the correction of the underlying SIP. Section 64.5(a) would allow the source to use the SIP method until the underlying provision is changed. The permitting authority and the owner or operator could also at the time of permit issuance specify in the permit that when the SIP provision is corrected, the approved enhanced monitoring protocol could be used for certifying compliance. Unless that type of provision is included in the permit, the permit would have to be reopened to allow for the enhanced monitoring protocol to be used as a basis for a compliance certification. This topic is discussed in further detail in section IV.K.

Second, a responsible official would have to submit quarterly enhanced monitoring reports. Section 64.5(b) of the proposal would require a report for each enhanced monitoring protocol used at a source.

2. *Content of the Report.* Section 64.5(b) of the proposed regulations would outline the general information that must be included in an enhanced monitoring report. The proposed reporting requirements are based primarily upon the summary monitoring reports required for NSPS sources pursuant to 40 CFR 60.7.

First, § 64.5(b)(1)-(7) would require that a report contain basic information concerning the source, the emissions unit and the enhanced monitoring protocol. Second, the report would have to identify the pollutant and applicable emission limitations or standards for which information is being provided. Finally, the basic information would have to include the calendar period covered by the report and the operating time for the emissions unit during the period. Operating time information is necessary to ensure compliance with applicable monitoring data availability requirements and to provide a normalized basis for assessing the total duration of deviations.

Following the basic data requirements, § 64.5(b) would specify that the report summarize the monitoring results for the quarter. The report would identify the number and duration of deviations detected by enhanced monitoring. The proposed regulations would require that deviations be classified by reason for the deviation, including known causes for which a federally-approved or federally-promulgated exemption from an emission limitation or standard applies, unknown causes, and known causes for which no federally-approved or federally-promulgated exemption from an emission limitation or standard

applies. This approach is consistent with the summary report format under the NSPS general provisions.

Under the proposal, deviations are not necessarily violations and would be reported whether they are in fact violations of the standards. For example, even if deviations are exempt under existing regulations, these deviations would be reported, with an indication that the owner or operator believes the deviations to be from known causes but exempt under applicable requirements. The EPA considers this requirement necessary, in part to ensure that the reports do not omit any potential violation based on an interpretation made by the owner or operator, and in part to help the reviewing agency ensure that proper action was taken to minimize excess emissions or other deviations. The proposed requirement to report exempt deviations is also consistent with EPA's longstanding policy on the reporting of exceedances under the NSPS program pursuant to 40 CFR 60.7.

The proposed regulations would not require that information concerning the magnitude of each deviation be reported, nor would supporting documentation be required in all submissions. However, where the owner or operator identifies any deviation as resulting from a known cause for which no federally-approved or federally-promulgated exemption from an emission limitation or standard applies, or where deviations occur for a certain percentage of the emissions unit's operating time, then §§ 64.5(b)(11) and 64.5(b)(12), respectively, would require that the report include full documentation pertaining to all periods of violations and deviations, including magnitude information.

The proposed rule would allow the permitting authority to establish the appropriate percentage threshold for not including full documentation on a case-by-case basis, but not to exceed five percent. This requirement is similar to the NSPS approach (see 40 CFR 60.7(d)(1)), but provides greater flexibility in establishing the exact operating time percentage. The EPA believes that this flexibility is appropriate given the large variety of sources that will be covered by these proposed rules.

The report would also have to include information on the performance of the enhanced monitoring protocol. First, the report would specify the data availability achieved during the reporting period. Second, the report would have to identify any periods in which the protocol was not operating in accordance with its design while the

emissions unit was in operation, or in which the protocol was operating but producing data that did not meet data quality requirements. Again, this approach would be consistent with NSPS reporting requirements for monitor performance.

Similar to the deviation reporting provisions, § 64.5(b)(13) would require that documentation pertaining to all periods of monitor downtime be submitted only if a monitoring protocol failed to achieve an established percentage of data availability. Again, the permitting authority would establish the percentage on a case-by-case basis, but the percentage could not be less than the data availability requirement established in the permit for the enhanced monitoring protocol.

Following the basic data requirements and the deviation and monitor downtime summaries, § 64.5(b)(10) would require that the report indicate the compliance status of the emissions unit with those emission limitations or standards monitored pursuant to part 64. The report would indicate the compliance status as of the end of the reporting period and whether compliance was continuous or intermittent during the reporting period. This information would act as a summary of compliance based on the reported monitoring data and monitor operation information.

Section 64.5(b)(14) would require that the report also include a narrative description and the results, if applicable, of any other required activity related to compliance with an applicable emission limitation or standard for which information is being provided or to an enhanced monitoring protocol requirement (other than quality assurance activities). This provision is necessary so that all information relevant to compliance with an applicable limitation or standard, or with the enhanced monitoring requirements of the proposed regulation, is obtained in the report.

One example of the information that could be required pursuant to this section is data related to the performance of an enhanced monitoring protocol for fugitive emissions. For instance, for some leak detection and repair programs, the existence of a leak may not constitute a deviation that must be reported under § 64.5(b)(8). However, the permitting authority may need to obtain a summary of the number of leaking points found and the number repaired in order to determine whether a deviation has occurred. (This approach would be consistent with existing NSPS leak detection and repair reporting; see, for example, 40 CFR

60.487.) The proposed language of § 64.5(b)(14) is intended to be broad enough to allow such information to be included in the report where these special circumstances exist.

The proposed regulations would also establish certain other procedural requirements for enhanced monitoring reports. Under § 64.5(c), the report would have to be signed by a responsible official as defined under 40 CFR part 70 who would certify as to the truth, accuracy and completeness of the report reciting verbatim specific certification language in the proposed regulation. This requirement would mirror the certification of reports required under the Acid Rain Program (40 CFR part 72) and the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (see 40 CFR part 122). In addition, § 64.5(d) of the proposal would require that the report be postmarked no later than thirty days following the last day of the reporting period.

As noted above, the reporting elements in proposed § 64.5 are modelled in major part after 40 CFR 60.7, which sets forth reporting requirements for continuous monitoring systems and monitoring devices for NSPS sources. Similar to the approach under § 60.7, EPA has developed a standard summary report format for this program. Although the proposed rules would not require use of this example format, its use by permitting authorities and owners or operators of affected emissions units would be strongly encouraged because the summary format would reduce the burden for owners or operators of affected emissions units that must report and for agencies reviewing the reports.

To facilitate use of this format, EPA has included the format in the draft Enhanced Monitoring Reference Document (see Section III.A.) and, after receiving public comment on that document, intends to place the format on an electronic bulletin board system accessible to both owners or operators of affected emissions units and permitting authorities.

Although these proposed regulations would not require the use of electronic reporting media, the format can be used in conjunction with electronic reporting and States are encouraged to do so whenever possible. Electronic reporting will provide greater flexibility and responsiveness to the needs of different agencies and will simplify the burden of data handling for all concerned. The EPA solicits comment on whether the Agency should add to the proposed regulation a presumption of electronic submission of reports except where

otherwise directed by the permitting authority.

The EPA also solicits comments on the general approach to reporting in the proposed regulations. Specifically, EPA requests comments on how the reporting provisions should address potential overlap with other reporting requirements and whether the proposed requirements, in conjunction with the proposed recordkeeping requirements, provide adequate information to facilitate enforcement of violations of the Act by EPA, States, and citizens.

3. Confidential Information

Section 64.5(f) of the proposed regulations would provide explicitly that an owner or operator may assert a confidentiality claim for information reported under § 64.5 to the extent such information is entitled to protection under section 114(c) of the Act. A number of representatives from industries that would be affected by the proposed regulations have stated that they consider certain information, especially emissions unit operating time, to be confidential information. Section 114(c) of the Act provides explicit protection of information (other than emissions-related information) upon a satisfactory showing that reported information constitutes a trade secret. The provisions of 40 CFR part 2 provide further detail on the procedures an owner or operator must follow to make a confidentiality claim and the procedures EPA will use to act on that claim. This proposed section would simply reiterate that this statutory protection may extend to information submitted in enhanced monitoring reports.

4. Use of Reported Information

The EPA believes that § 114(a)(3) requires the Agency to establish an enhanced monitoring and compliance certification program that will be used to determine compliance and facilitate enforcement. Thus it is the intent of these proposed regulations that where EPA or a permitting authority determines that reported deviations constitute noncompliance, the owner or operator of an emissions unit may be subject to enforcement under sections 113 or 304 of the Act and any similar State enforcement authority. In accordance with the provisions of section 113 of the Act, an owner or operator of an emissions unit may also be subject to enforcement and penalties for other reasons, such as failing to report or keep records, failing to satisfy required monitor performance and operating requirements, omitting

required data, or reporting inaccurate or false data.

F. Section 64.6—Recordkeeping Requirements

Recordkeeping provisions would be included in § 64.6 of the proposed regulations. These provisions would require that all documentation relating to enhanced monitoring, including raw enhanced monitoring data and all documents supporting the enhanced monitoring reports and compliance certifications submitted pursuant to § 64.5, be available to the permitting authority for at least five years after the date that any required activity occurs. For instance, records concerning installation of a system would be kept for five years from the required installation date (or actual installation date, if later), and records supporting a compliance certification would be kept for five years from the date of the certification. The recordkeeping requirements (including the five year period) are consistent with the minimum recordkeeping provisions in 40 CFR 70.6(a)(3).

Although each major area of documentation would be noted in the proposed regulation, detailed formats and specifications would not be included. This is due in part to practical limitations involving the large variety of monitoring approaches and data requirements that would ultimately be included under part 64 as proposed, and in part to a desire to give the permitting authority the flexibility to implement these regulations with reasonable latitude.

The records must be available at the source for inspection or at a different site approved by the permitting authority. The use of a different site would likely be necessary for remote sources (such as some natural gas pipeline compressor stations) where the data may be relayed and stored at a central location. In addition, such records must be maintained so as to permit prompt submittal if requested by EPA or the permitting authority, or if required pursuant to § 64.5. In general, however, EPA has not proposed that records be submitted (except as required under proposed § 64.5 if significant deviations or monitor downtime occurs); this approach would reduce the burden of the proposed regulations on both the regulated community and the regulatory agencies.

G. Section 64.7—Permit Application Requirements

The proposal would include application requirements for preconstruction and operating permits,

including the application requirements discussed in section IV.D. with respect to § 64.4(e) of the proposed regulations.

Section 64.7(c) would require that an owner or operator identify in an application for renewal of a permit any new technologically feasible monitoring methodologies that have become available since the original permit was issued. The application could include a new proposed enhanced monitoring protocol if the owner or operator considers any of the new methodologies to be a more appropriate methodology than the enhanced monitoring protocol previously approved. This provision would assure that as new monitoring technologies are developed, those technologies would be considered for application at existing sources. However, provided that the already approved enhanced monitoring protocol remains in compliance with the requirements of this part, an owner or operator would not be obligated to propose replacing the existing enhanced monitoring protocol with a new protocol.

These application requirements would be supplementary to other permit application requirements under existing permit programs and, as is the case with other provisions in proposed part 64, they would not preempt any other requirements unless they are in conflict and the part 64 requirements are more restrictive. In many cases the permitting authority will have established policies or guidelines to assist each applicant in proposing adequate monitoring. The EM Reference Document published together with the proposal would also provide assistance to the applicant. However, the proposed regulations would allow the applicant to recommend the most cost-effective approach for its particular circumstances, taking into account the policies and guidelines adopted by the permitting authority.

H. Section 64.8—Permit Requirements

Section 64.8(a) of the proposed regulations would specify the operating permit conditions needed to satisfy enhanced monitoring requirements. These conditions would restate and cross reference the applicable requirements of part 64. Under these proposed regulations, the operating permit for every emissions unit would contain all of the requirements needed to implement part 64 and these requirements would be independently enforceable permit conditions. It is not EPA's intent that § 64.8 would create new procedural obligations for the permitting authority. Rather, § 64.8 would instruct the permitting authority on how to adopt the part 64

requirements as permit conditions in a preconstruction or operating permit.

One specific provision in § 64.8 should be noted. In general, an owner or operator would be required to use data from an enhanced monitoring protocol as an enforceable basis for certifying compliance. However, as discussed above in section IV.E.1. and below in section IV.K., there may be certain emission limitations or standards in existing State implementation plans for which the underlying requirement may not allow a certification of compliance to be based on the approved enhanced monitoring. The EPA is planning to issue a SIP Call to address this issue, but there may be permits approved prior to the applicable SIP requirement being corrected. Sections 64.8(a)(3) and (4), and (b) would address this interim concern, as discussed in detail below in section IV.K. concerning the SIP Call.

I. Section 64.9—Prohibitions

Section 64.9 would clarify that any failure to satisfy a requirement of proposed part 64 would constitute a violation of the proposed regulations and of the Act, and would subject the owner or operator to enforcement under the Act. This section would also clarify that each day of a continuing violation would be treated as a separate violation.

J. 40 CFR Parts 51, 52, 60 and 61

The proposal includes several amendments to existing regulations that EPA believes are necessary to effectively implement the statutory mandates of sections 113 and 114 of the Act. Several provisions in 40 CFR parts 51, 52, 60 and 61 appear to establish exclusive methods for determining compliance with an underlying emission limitation or standard. In addition, many sources and States interpret SIP's to limit the methods for determining compliance with emission limitations and standards. The EPA believes that this language is inconsistent with the requirements of sections 110(a)(2), 113(a) and (e), and 114(a). As stated in section III.B., EPA believes that the amended Act significantly revised the process for determining compliance and establishing violations of the Act's requirements. Therefore, EPA is proposing to amend various provisions in 40 CFR parts 51, 52, 60 and 61 so that they will conform with the requirements of the amended Act and with the enhanced monitoring regulations being proposed for promulgation into part 64.

Section 114(a)(3) provides that "[t]he Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require

enhanced monitoring and the submission of compliance certifications." The EPA believes this requires the Administrator to develop regulations requiring major stationary sources to perform enhanced monitoring and to certify compliance with applicable emission limitations and standards. By this provision, EPA believes Congress intended to accomplish two results. First, with respect to monitoring, Congress wanted sources to perform monitoring that was better than is currently being performed. In many instances, sources perform an initial test at start-up, but are not required to follow-up with monitoring or testing that is representative of continuing compliance after the initial compliance demonstration. In other instances, monitoring or testing may be required infrequently in relation to the terms of the emission limitation or standard (e.g., a once a year stack test for a source that has an hourly emission limitation). The EPA believes that Congress' call for enhancement means that sources should perform monitoring that is representative of continuous compliance with applicable emission limitations or standards.

Second, EPA believes that Congress established a link between the enhanced monitoring and compliance certification. In other words, Congress wanted sources to not only perform enhanced monitoring, but also to be able to certify compliance based on the results of that monitoring. See H.R. Rep. 490, 101st Cong. 2d Sess., pt. 1, at 394 (The "amendment clarifies and confirms that EPA has authority under section 114(a) to require enhanced monitoring and to require such monitoring in compliance certifications.").

The proposed enhanced monitoring regulations have been developed with those goals in mind. However, to accomplish those goals, EPA also needs to revise those regulations that EPA previously had promulgated and that could now be interpreted to hinder the use of enhanced monitoring as a basis for determining compliance. Therefore, EPA is proposing revisions to 40 CFR 51.165(a)(2)(ii), 51.166, 51.212, 52.12, 52.21, 60.11 and 61.12 that would clarify that enhanced monitoring data may be used for the purpose of certifying compliance. In order to ensure that underlying requirements will be interpreted consistently with the enhanced monitoring requirement, EPA has based the proposed revisions to these provisions on the language in proposed § 64.5(a). The proposed revisions would state that, in addition to any underlying compliance test methods, compliance certification may

be based on enhanced monitoring or part 70 monitoring. These proposed revisions would allow sources to certify compliance consistent with the terms of parts 64 and 70 which require sources to certify compliance based on the monitoring adopted pursuant to the permitting process.

In addition, section 113(e) of the amended Act now clarifies that for purposes of enforcement actions brought in Federal court, neither EPA nor the source is bound by the method indicated in the underlying regulation for purposes of proving whether a violation of the emission standard or limitation has occurred. In the past, courts have interpreted language in EPA's regulations as well as in SIP's as limiting the evidence that could be used in enforcement cases. In order to ensure that EPA's regulations and the SIP's will be interpreted consistent with section 113(e), EPA is proposing specific language that would address enforcement as well as compliance certification in the Federal regulatory provisions identified above. Section 113(e) provides the basis for EPA to revise its Federal regulations and to call for revisions to SIP's, as Federal law, in order to clarify what will be the basis for establishing a violation of the underlying emission limitation or standard in Federal court.

In order to implement sections 113 and 114, EPA is proposing the following revisions to existing regulations. Revisions to the preconstruction permit program requirements under 40 CFR 51.165, 51.166 and 52.21 would be included to assure that the enhanced monitoring program could be implemented through Federal and State programs for issuing permits under parts C and D of title I of the Act. Many existing preconstruction permit programs already require extensive monitoring that could be used for enhanced monitoring purposes. As stated previously, because EPA is concerned that for certain programs, the permitting authority may consider enhanced monitoring requirements to be beyond the scope of authority granted in their current programs, the proposed amendments would require changes to these existing permit programs to account for the new mandate to adopt enhanced monitoring through the preconstruction permit process.

EPA has determined to make these revisions because of the history of establishing by regulation the requirements for the new source review program. However, these revisions are duplicative of the SIP Call (described below) since it will require a revision to address all SIP provisions including

new source review. EPA believes that the language suggested for purposes of the SIP Call would adequately address new source review to the extent it is adopted into the SIP.

The second set of amendments that would be made under the proposal are to the compliance certification and enforcement provisions in 40 CFR 51.212, 52.12(c), 60.11, and 61.12. As noted earlier, EPA is also planning to issue a call for States to revise their SIP's to be consistent with the authority in section 113(e) and 114(a)(3). EPA is proposing to revise the general provisions of 40 CFR parts 60 and 61 to clarify what the bases are for certifying compliance and for establishing violations for NSPS and NESHAP sources.

It is important to note that these proposed revisions to 40 CFR parts 51, 52, 60 and 61 and SIP's are not changes which in and of themselves would create new methods for certifying compliance or establishing a violation of any emission limitation or standard. Rather these proposed revisions simply would allow EPA to fully implement the compliance certification provisions of parts 64 and 70 and to fully enforce those provisions in accordance with sections 113(e) and 114(a)(3) of the Act.

For purposes of compliance certification, the proposed revisions to 40 CFR parts 51, 52, 60 and 61, as well as the SIP Call, merely would indicate that the regulation or SIP does not establish an exclusive method for determining compliance. The revisions would allow that monitoring methods developed in accordance with part 64 or 70, and approved for the source into a federally enforceable permit, may be used as a basis for certifying compliance with the applicable emission limits.

For purposes of enforcement, the proposed revisions would include changes to several sets of regulatory language concerning methods used for establishing whether the source is in violation of an emission limitation or standard. First, in the proposed rule, EPA would establish that data from certain testing and monitoring methods are presumptively credible evidence that a violation did or did not occur. The methods would be those that have been specifically adopted as compliance test methods for the source (or source category) in a SIP, in Federal regulations (e.g., NSPS) or through the process of developing monitoring or testing in issuing a federally enforceable permit, including both part 70 operating permits and preconstruction permits under part C or D of title I of the Act.

Second, these proposed revisions would identify other testing and

monitoring methods that have been adopted through notice-and-comment rulemaking procedures. These methods would be considered presumptively credible methods, but there would be no automatic presumption as to whether data from these methods indicate that a source did or did not violate an emission limitation or standard. To the extent that EPA offers data from such methods or other credible evidence to the court in a case, the burden would be on EPA to show that data from such methods is credible evidence of a violation and the burden would be on the source to rebut a claim of violation on the basis of data from such methods or other credible evidence.

There are several instances in which EPA may need to rely on evidence that is something other than the monitoring or testing method specified in an operating permit or a regulation in order to establish a violation of an emission limitation or standard. The following is a simplified, hypothetical example. Source A has an operating permit that includes use of a continuous emission monitoring system (CEMS) as the enhanced monitoring method for one of its emissions units. The CEMS fails and must be repaired. During this period, EPA gathers other information concerning the temperatures at which the control system at Source A's emissions unit has been operating. Experts will testify that one critical component of proper operation of the control equipment at that unit is temperature, and that if the control equipment is operated below a specific temperature it will not achieve the control efficiency necessary for Source A to achieve compliance with the applicable emission limit. The EPA has information that shows the control equipment was operated below that temperature on several occasions. The EPA would be able to present that information and the accompanying expert testimony to the court in an enforcement action; the court would determine whether such information was credible evidence of a violation at Source A.

A second example is for a source, Source B, that has an enhanced monitoring system that Source B claims is operating correctly. In fact, Source B's monitoring system is faulty and shows compliance with the emission limitation or standard when, in fact, violations are occurring. The EPA has other information that shows violations of the applicable emission limitation or standard. The EPA would have the opportunity to present such information to the court and the court would

determine whether it was credible evidence of a violation at Source B.

By these proposed revisions, EPA would not be promulgating any new emission limits, test methods or monitoring requirements; rather, EPA would be ensuring that the door is open for adopting part 64 and part 70 monitoring methods for compliance certification and ensuring that for enforcement in Federal court, the court may rely on any evidence admissible under the Federal Rules of Evidence.

New methods for certifying compliance will be adopted through the permitting processes of part 70 and parts C and D to title I of the Act. The revisions to the SIP's and Federal regulatory changes would ensure that these methods may be used by both EPA and sources for compliance certifications and for enforcement. As stated above, however, there may be instances when it is necessary to rely on evidence other than these methods; EPA believes that section 113 of the Act authorizes the use of other evidence in enforcement actions. If such other evidence is used, the court is the arbiter of whether that evidence is credible. A determination of whether evidence other than that specifically identified in the permit for a source is credible may depend in some instances on the language in the underlying regulatory requirement. In such cases, the court will ultimately decide whether the parties have sufficiently demonstrated whether the evidence is credible in light of the regulatory language.

K. SIP Call

In addition to revising 40 CFR 52.12, which establishes the basis for Federal enforcement actions involving SIP's, EPA will issue a SIP Call pursuant to section 110(k)(5) of the Act, requiring States to revise their SIP's on the basis that they are substantially inadequate to comply with the requirements of sections 110(a)(2) (A), (C) and (F), 113 (a) and (e) and 114(a)(3). Paragraphs (A), (C) and (F) of section 110(a)(2) focus on the need for a SIP to provide enforceable emission limitations, to establish an adequate enforcement program by the State and to require "as may be prescribed by the Administrator" owners or operators of stationary sources to implement other necessary steps to monitor emissions from such sources, submit periodic reports of such emissions, and to require States to correlate such reports with the applicable emission limitation or standard. The EPA believes that existing SIP's are inadequate for States (as permitting authorities) or EPA to fully implement section 114(a)(3) added to

the Act as part of the 1990 Amendments (for purposes of compliance certification and enforceability) as required by section 110(a)(2), because the SIP's may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

For the same reason, such SIP provisions may further be interpreted to restrict EPA's enforcement authorities as provided in section 113 (a) and (e). Therefore, EPA is also requiring States to revise their SIP's to clarify that any monitoring under part 64 or part 70 that is approved for the source and included in a federally-enforceable operating permit may form the basis of the compliance certification and that any credible evidence may be used for purposes of enforcement in Federal court. Furthermore, because the SIP becomes Federal law when approved by EPA, EPA is concerned that some courts may inappropriately interpret a SIP to restrict the authority of 113(e) and the Federal regulations promulgated concerning enforcement of SIP's (e.g., 40 CFR 52.12). The EPA believes that all ambiguity with respect to the issue should be eliminated; States must revise their SIP's to ensure consistent interpretation of section 113(e) in all Federal actions.

Therefore, in addition to proposing revisions to 40 CFR parts 51, 52, 60 and 61, EPA will issue a SIP Call by February 15, 1994 pursuant to section 110(k)(5) to require States to clarify in their SIP's that other testing and monitoring methods may be used for determining compliance with and for establishing violations of the underlying emission limitation or standard. Sources will be required to revise their SIP's by the later of the final promulgation of the enhanced monitoring rule on November 15, 1994. In addition, EPA is proposing Federal implementation plan language for those areas that fail to submit a SIP revision in response to the SIP Call or submit a revision that EPA disapproves. The EPA anticipates final action on the SIP's and FIP's by June 30, 1995.

1. Interim Compliance Certification

The EPA has established the above dates for the purpose of ensuring that this language is in the SIP prior to the time the State begins to issue permits. Many emission limits in existing SIP's are not exclusively linked to test methods. In such instances, the permitting authority would be required under §§ 64.5(a) and 64.8(a) to identify in the permit that the enhanced monitoring method is a means of certifying compliance with the emission limitation or standard. However,

because EPA recognizes that some SIP's may not be revised before permits are issued, the proposed enhanced monitoring rule would provide in §§ 64.5(a) and 64.8(b) that, if the existing SIP provides an exclusive means of determining compliance with an applicable emission limitation or standard, the permitting authority may insert that method in the permit as the means of certifying compliance with that limitation or standard for an interim period until the approval of the SIP revision or the promulgation of a FIP by EPA. However, under these circumstances, the permitting authority is not excused from providing an enhanced monitoring protocol in the permit. Although the underlying SIP may prohibit the use of information from enhanced monitoring for purposes of certifying compliance with the underlying emission limitation, the source would still be required to perform enhanced monitoring under part 64. Upon approval of the SIP revision or promulgation of a Federal implementation plan by EPA, the permitting authority would have to reopen the permit in order to require the use of the enhanced monitoring in the permit as a means for certifying compliance.

Although the State may issue a permit, as provided above, on the basis that the SIP prohibits the use of methods other than the compliance method for certifying compliance with the underlying emission limitation or standard, EPA does not believe that this will limit EPA's authority to bring an enforcement action based on any credible evidence. The proposed revisions to EPA's regulations at 40 CFR 52.12(c) would clarify that EPA may use any credible evidence to establish a violation of a SIP requirement and would set forth evidentiary guidelines for EPA's Federal enforcement of SIP requirements. As stated previously, the proposed revisions to 40 CFR 52.12(c) would not establish any substantive requirements, they simply would identify some credible methods that may be used to determine whether a violation of the substantive provisions of the SIP have occurred.

Although EPA is proposing numerous revisions to its regulations to clarify that section 113(e) allows enforcement actions to be brought based on any credible evidence, EPA believes that even in the absence of these proposed regulations section 113(e) would control over limiting language in SIP's, permits or other requirements. Therefore, even though a limited number of permits may not specify the enhanced monitoring method as a means of certifying

compliance with an applicable emission limitation or standard, information from the enhanced monitoring method as well as any other credible evidence may be presented in Federal court to establish whether a violation at that source has occurred; the court would then rule on the credibility of the evidence and the existence of a violation based on all of the evidence before it. As stated before, the proposed revisions to 40 CFR 52.12, as well as to the other regulations in 40 CFR parts 51, 52, 60 and 61, would ensure that EPA's enforcement provisions are consistent with sections 113 (a) and (e) and 114(a)(3) of the Act.

Finally, EPA notes that the part 70 permits rule allows States to create a permit shield, shielding the source in some instances from claims based on violations of emission limits or standards that are not in the permit. (This shield would not apply to emission limitations or standards that were promulgated or established subsequent to the permit being issued.) However, where the emission limitation or standard is already in the permit, EPA does not believe that the permit shield would protect a source from an enforcement action alleging a violation based on a monitoring or testing method not expressly provided in the permit. The EPA believes the permit shield is intended to protect the source in some instances from alleged violations of emission limits or standards not in the permit, but it does not shield the source from enforcement based on evidence not specified in the permit. This interpretation is consistent with section 113(e), which provides that a court may consider any credible evidence—including evidence other than that produced by the applicable test method—in an enforcement action.

V. Other Topics for Discussion

A. Relationship to Nonattainment Area Provisions

The amended Act contains significant new provisions related to those areas that have not yet achieved full compliance with national ambient air quality standards. Many of those provisions require States and sources to improve upon existing data for stationary source emissions, especially with respect to VOC and NO_x emissions. The following discussion provides further detail on the interrelationship of the amended title I nonattainment provisions and the proposed regulations.

1. Economic Incentive Programs

Under section 182(g)(4)(B) of the Act, EPA is required to promulgate rules for economic incentive programs. Other sections of the Act mandate, or identify as one of three options, the use of economic incentive programs in certain cases. For example, section 182(g)(5) requires a State in an extreme ozone nonattainment area to implement an economic incentive program upon the failure of the State to submit a periodic demonstration of reasonable further progress (or to meet applicable milestones for reasonable further progress). Also, section 182(g)(3) lists adoption of an economic incentive program as one option for responding to such failure in serious and severe ozone attainment areas. Section 187(d)(3) also requires a State to adopt an economic incentive program upon the failure of the State to submit a milestone demonstration, to meet a required specific emission reduction milestone, or to attain the standard in serious carbon monoxide (CO) nonattainment areas. The EPA has established guidance to assist States in developing economic incentive programs in these cases (58 FR 11110, February 23, 1993). (This guidance also served as a proposed rulemaking for final economic incentive program rules.)

Section 182(g)(4)(B) of the Act lists some examples of strategies that may be used in the development of an economic incentive program. One such strategy is based on marketable emission limits. In such programs, emission sources may achieve their permitted emission limits either directly or by purchasing emission credits from other sources. Allowing sources with lower cost abatement alternatives to trade emission credits to sources facing more expensive alternatives reduces the overall cost of meeting a given total level of abatement.

Another category of economic incentive programs is based on the use of emission fees. Such programs establish and collect a fee on emissions, providing a direct economic incentive for emitters to decrease emissions to the point where the cost of abating emissions equals the fee.

The monitoring, recordkeeping, and reporting requirements contained in these proposed regulations would be beneficial in helping sources comply with economic incentive programs that are developed by the States. Economic incentive programs, which are inherently more flexible and less prescriptive than traditional technology or performance standards, depend more strongly on monitoring, recordkeeping, and reporting to ensure compliance and

to allow for adequate enforcement. The EPA anticipates that in many instances sources subject to an economic incentive program will be subject to more stringent monitoring and reporting requirements than contained in these proposed regulations. However, the monitoring, recordkeeping, and reporting requirements of this proposed regulation would provide a reliable monitoring baseline that in some instances would require only minor enhancements to satisfy the more stringent requirements of an economic incentive program.

In addition, the requirements of this proposed regulation would establish a level playing field for sources, regardless of their location, and thus maintain regional competitiveness. Without the monitoring, reporting, and recordkeeping requirements of the proposed enhanced monitoring regulations, only those major sources located in areas for which economic incentive programs are mandated would be faced with the costs of complying with the additional monitoring requirements of an economic incentive program. Under this proposal, all major sources would face similar cost burdens. As a result, promulgation of an economic incentive program would be less likely to harm the competitiveness of industries in an area subject to such a program.

2. Reasonable Further Progress and Emission Inventory Efforts

Prior to the 1990 Clean Air Act Amendments, all ozone nonattainment areas were required to make "reasonable further progress" each year toward meeting the national ambient air quality standards. Section 182 of the amended Act now defines this requirement based on the severity of the ozone problem within a specific area. For moderate (and worse) nonattainment areas, an area must reduce VOC emissions by 15 percent over the six year period from November 15, 1990 to November 15, 1996. (Section 182(b)(1)(A).) For serious, severe, and extreme areas, there is an additional 3 percent per year average reduction requirement for emissions of VOC and/or NO_x for each subsequent 3 year period until the attainment date. (Section 182(c)(2)(B).)

In addition, under sections 182(a) (1) and (3)(A) of the Act, States must submit for each ozone nonattainment area a revised inventory of actual emissions within two years after enactment of the 1990 Amendments (by November 15, 1992), and then every three years thereafter until the area is redesignated as attainment. The EPA anticipates that following the inventory

that was due in 1992, subsequent inventories will be performed in conjunction with reasonable further progress milestone demonstrations. (See discussion of this topic in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, April 16, 1992.)

As noted in section III.B., EPA believes that compliance levels would increase significantly if these proposed regulations are implemented. Increased compliance would in turn result in significant emission reductions. In recognition of the benefits of implementing this proposal, EPA is considering the possibility of granting nonattainment areas a credit toward the 15 percent reasonable further progress reduction requirement upon implementation of an enhanced monitoring and compliance certification program. One mechanism for implementing this credit would be to adjust the 80 percent rule effectiveness rate used as the baseline for estimating emission reductions resulting from implementation of VOC rules that apply to source categories in which a significant percentage of emissions units would be subject to enhanced monitoring. For States that apply enhanced monitoring to additional, smaller emissions units on a source category basis, the adjustment to the 80 percent rule effectiveness figure would be increased to reflect the increased percentage of emissions units required to conduct enhanced monitoring. The EPA solicits comment on the feasibility of this option, including the possibility of demonstrating, through a pilot study or other mechanism, the appropriate emission reduction credit that should be allowed under this option.

Even if EPA determines that this option is not appropriate, EPA believes that the data developed pursuant to this proposal would greatly ease the burden of documenting the required emission reductions. Moreover, if added reductions are achieved at already controlled sources, this could potentially alleviate the need for more stringent controls.

The data collected and reported under the proposed regulations would also improve the overall accuracy of a State's emission inventory efforts. In addition, section 182(a)(3)(B)(i) also generally requires sources that emit VOC or NO_x and that are located in a nonattainment area to submit annual statements of actual emissions. The data collected and reported pursuant to these proposed regulations would enable many such sources to comply with the emission statement requirement with little or no

additional effort for those units regulated under part 64.

B. Relationship to Section 112 Regulatory Developments

The hazardous air pollutant provisions in the Act have expanded significantly from the pre-1990 Act. Section 112 of the Act now includes a list of 189 hazardous air pollutants. For many sources of those pollutants, EPA must develop emission standards under section 112. The EPA published a list of source categories or subcategories of major sources (and such area sources as warrant regulation under section 112) that emit these pollutants on July 16, 1992 (57 FR 31576). The EPA must issue maximum achievable control technology (MACT) standards for each listed major source category or subcategory according to a prescribed regulatory schedule. For example, standards for 40 categories must be set within 2 years of enactment. The standards for new sources are to be based on the maximum emissions reductions achieved on the best controlled similar source, while the standards for existing sources must, in general, be at least as stringent as the average of the best controlled 12 percent of the sources in the category. Companies that accomplish early reductions of emissions receive a 6-year compliance extension for meeting the MACT requirements if they reduce their annual emissions of listed hazardous air pollutants by 90 percent over a given baseline (95 percent for particulate pollutants) subject to certain criteria. All major sources subject to section 112 must obtain a permit issued pursuant to a title V permit program. (States are not required to issue operating permits to area sources under 40 CFR part 70 until such time as EPA promulgates revisions to part 70 to cover such sources.) The following subsections discuss the relationship of these section 112 requirements and the proposal.

1. Emission Standards

As noted in sections I.B. and IV.A. of the preamble, part 64 would apply to emissions units at major and non-major hazardous air pollutant sources only to the extent requirements under 40 CFR part 61 apply. Part 61 contains existing NESHAP requirements applicable to several source categories. For sources that are subject to these existing NESHAP requirements, EPA believes that the existing monitoring requirements would in most cases generally satisfy enhanced monitoring protocol requirements with little or no modification. All part 61 NESHAP monitoring would be considered

"established monitoring" as defined in part 64 (see section IV.B. above) and owners or operators would be expected to use their existing monitoring as the starting point for addressing enhanced monitoring.

The EPA also is currently developing general provisions for the new MACT standards to be promulgated at 40 CFR part 63. These general provisions would be based primarily on the existing general provisions for the NESHAP program under 40 CFR part 61, but would also include general enhanced monitoring provisions. As currently envisioned, the new MACT standards in the individual subparts to part 63 will include their own specific enhanced monitoring requirements to comply with section 114(a)(3). Finally, EPA intends that specific enhanced monitoring requirements be adopted as part of establishing case-by-case MACT requirements pursuant to paragraphs (g) or (j) of section 112. Therefore, these new requirements being developed under section 112 will not be subject to the enhanced monitoring requirements established in this part 64.

Because enhanced monitoring requirements will be incorporated directly into these new section 112 rulemakings, part 64 would not apply to such requirements. The benefits and costs associated with applying enhanced monitoring to hazardous air pollutant sources, therefore, will be evaluated as part of the section 112 rulemaking process.

2. Early Reductions

Section 112(i)(5) provides an extension for existing sources to comply with otherwise applicable standards for hazardous air pollutants provided certain criteria concerning early reductions are met. That subsection requires that an operating permit under title V allow an existing source to meet an alternative emission limitation that reflects a 90 percent reduction in hazardous air pollutant emissions (95 percent in the case of particulate hazardous emissions) in lieu of the otherwise applicable standard. The extension would apply for six years from the compliance date for the otherwise applicable standard, provided that the reduction is achieved prior to proposal, or provided that the source makes a federally-enforceable commitment to achieve the reductions by January 1, 1994. The EPA promulgated regulations for determining when reductions are sufficient and verifiable on December 29, 1992 (57 FR 61970).

The EPA anticipates that a source that opts for the early reduction program

will have to adopt adequate monitoring to verify the emission reductions that it achieves. That monitoring would become part of a source's enforceable commitment under the early reduction program. Thus, EPA would expect that a source that has entered the early reduction program would propose, when it is required to obtain a permit, to use the monitoring it uses to verify its reductions. The EPA believes that this monitoring approved under the part 70 permits program is sufficient for the sources that take advantage of the interim early reductions program. The explicit enhanced monitoring for those sources will be included in the MACT standards that will become effective for those sources at the end of the six year extension period.

C. Relationship to Title I Permit Programs

The proposed regulations would be implemented in part through preconstruction permits issued pursuant to parts C and D of title I of the Act. In many cases, States have already been using these permit processes to require the equivalent of enhanced monitoring at new sources. However, there may be certain State preconstruction permit programs that have insufficient authority to effectively implement an enhanced monitoring program. Because of this concern, the proposal includes certain amendments to the preconstruction permit program provisions in 40 CFR parts 51 and 52. These amendments are intended to require States to have adequate authority to require enhanced monitoring in preconstruction permits. Although this approach may cause some short-term burdens on particular States, the long-term result will be coordinated title I and title V permit procedures that will reduce burdens on both the regulated sources and the permitting authorities.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held to discuss the proposed regulations. Persons wishing to make oral presentations at the public hearing should contact EPA at the address given in the ADDRESSES section of this preamble. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the public hearing and all written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see the ADDRESSES section of this preamble).

B. Docket

The docket for this regulatory action is A-91-52. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air Docket, which is listed under the ADDRESSES section of this notice.

C. Office of Management and Budget (OMB) Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major," and therefore subject to the requirement "to the extent permitted by law" to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. Major rules are defined as those likely to result in the following:

- (1) An annual cost to the economy of \$100 million or more.
- (2) A major increase in costs or prices for consumers or individual industries.
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The total cost of implementing the enhanced monitoring and compliance certification requirements for all major sources would incur annualized costs in excess of \$100 million. The requirements for these costs are contained in section 114(a)(3) of the Act, as well as related provisions under section 114(a)(1) and title V of the Act. Although some of these costs may represent some baseline costs due to existing State and Federal monitoring and compliance certification requirements and not new costs, EPA has accounted for these costs in these proposed regulations. Accordingly, a Regulatory Impact Analysis has been prepared.

Given the mandate under section 114 of the Act to develop these regulations, EPA has taken steps to provide for the timely accomplishment of the required objectives. In following the implementation principles previously described in section II., EPA has

proposed to allow flexibility in monitoring selection and has developed a draft EM Reference Document to expedite the selection process for many sources. The flexibility and the EM Reference Document will generally enable some sources to rely on existing monitoring systems with little or no modifications. The EPA has thus reduced the overall societal cost and any adverse economic impact associated with meeting the environmental objectives of section 114. Moreover, EPA's analysis shows that there are net societal benefits to implementing this rule in conjunction with 40 CFR part 70 under the Act. In addition, the permit fee revenue collections from sources under title V will provide State and local agencies the resources to develop and implement an accountable and enforceable enhanced monitoring and compliance certification program.

These regulations and the draft RIA will be submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, will be included in Docket A-91-52.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, whenever an Agency publishes any proposed or final rule in the Federal Register, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state the criteria for determining when the number of affected small entities is "substantial" and whether there is a significant impact. The determination of significant impact for small businesses depends essentially upon compliance costs, production costs, and predicted closures. For small governments, the determination of significant impact depends upon compliance costs, operating costs, and recordkeeping costs.

A regulatory flexibility screening analysis was prepared to examine the potential for significant adverse impacts on small entities associated with specific monitoring and certification provisions. The initial results of this analysis reveal that substantial numbers of small entities will not be adversely

impacted, in large part because EPA has proposed to apply the regulations only to certain emissions units at major sources and to emissions units subject to 40 CFR part 61 (NESHAP) requirements, and to rely on the section 112 standards setting process to determine enhanced monitoring for all other hazardous air pollutant emissions units. In addition, EPA has also allowed for the use of general permits under title V and will provide assistance through the small business assistance program provisions of title V. These initiatives will provide further relief to those small businesses that may be affected by the proposed regulations.

Consequently, EPA does not believe that a substantial number of small entities will be adversely affected or experience significant impacts. As such, EPA proposes to certify that this rule, if promulgated, would not have a significant economic impact on a substantial number of small business entities and thereby does not require an RFA. The EPA, however, solicits any information or data that might affect this proposed certification, and EPA will reexamine this issue if necessary. Any subsequent analysis of information received would also be available in the docket and will be taken into account before promulgation.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1663.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260-2740.

This collection of information is estimated to have an average annual reporting burden ranging from 119 to 503 hours and to require from 1 to 45 hours per recordkeeping annually depending on the enhanced monitoring protocol required. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: 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." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control, Continuous emission monitors, New source review, Prevention of significant deterioration, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Air pollution control, Continuous emission monitors, Prevention of significant deterioration, Reporting and recordkeeping requirements.

40 CFR Part 60

Environmental protection, Air pollution control, Continuous emission monitors, Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Air pollution control, Continuous emission monitors, Reporting and recordkeeping requirements.

40 CFR Part 64

Environmental protection, Air pollution control, Continuous emission monitors, New source review, Operating permits, Prevention of significant deterioration, Reporting and recordkeeping requirements.

Dated: September 30, 1993.

Carol M. Browner,
Administrator, U.S. Environmental Protection Agency.

For the reasons set forth in the preamble chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7401, 7411, 7414, 7470-7479, 7491, 7501-7508, 7601, 7602 and 7661c.

2. Section 51.165 is amended by revising paragraph (a)(2) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(2)(i) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300. Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(ii) A preconstruction permit program or its equivalent required under this section shall include adequate authority and procedures for implementing the enhanced monitoring requirements of part 64 of this chapter, including the authority to require that such enhanced monitoring be used to determine compliance with any emission limitations or standards imposed pursuant to sections 172(b)(6) and 173 of the Act.

* * * * *

3. Section 51.166 is amended by adding new paragraphs (a)(7), (j)(5) and (n)(2)(iv) and revising paragraph (n)(2)(iii) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(a) * * *

(7) *Enhanced monitoring implementation.* A preconstruction permit program or its equivalent required under this section shall include adequate authority and procedures for implementing the enhanced monitoring requirements of part 64 of this chapter, including the authority to require that such enhanced monitoring be used to determine compliance with any emission limitations or standards imposed pursuant to section 160 of the Act.

* * * * *

(j) * * *

(5) For the air pollution control requirements applicable pursuant to this section, the source will monitor, keep records, and provide reports necessary to determine compliance with and deviations from applicable requirements and meet the enhanced monitoring requirements of part 64 of this chapter.

* * * * *

(n) * * *

(2) * * *

(iii) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied; and

(iv) A detailed description as to what continuous monitoring methodology is planned by the source to determine compliance with and deviations from applicable emission limitations or standards, and compliance with emission reductions planned or assurance that emission reductions are achieved, and any information necessary to determine that the enhanced monitoring requirements of part 64 of this chapter would be met.

* * * * *

4. Section 51.212 is revised to read as follows:

§ 51.212 Testing, inspection, enforcement and complaints.

- (a) The plan must provide for:
- (1) Periodic testing and inspection of stationary sources.
 - (2) Establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate emission limitations and for investigating complaints.
 - (3) Enforceable test methods for each emission limit specified in the plan. Inclusion of such methods, however, shall not preclude enforcement based on other credible evidence. As an enforceable method, States may use:
 - (i) Any of the appropriate methods in appendix M of this part, Recommended Test Methods for State Implementation Plans; or
 - (ii) An alternative method following review and approval of that method by the Administrator; or
 - (iii) Any appropriate method in appendix A of part 60 of this chapter.
 - (b) The plan must provide that, for the purpose of submitting compliance certifications, an owner or operator is not prohibited from using the following in addition to any specified compliance test methods:
 - (1) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.
 - (2) Any other monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.
 - (c) The plan must allow for the use of any credible evidence for the purpose of establishing whether a person has violated or is in violation of any such plan and must provide for the following:
 - (1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
 - (i) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.
 - (ii) A monitoring method approved for the source pursuant to § 70.6(a)(3) of

this chapter and incorporated in a federally-enforceable operating permit.

- (iii) Compliance test methods specified in the applicable plan.
- (iv) Testing or monitoring methods approved for the source in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.
 - (2) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:
 - (i) Any federally-enforceable monitoring or testing methods, including those in parts 51, 60, 61 and 75 of this chapter.
 - (ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (c)(1) or (c)(2)(i) of this section.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et. seq.*
2. Section 52.12 is amended by revising paragraph (c) to read as follows:

§ 52.12 Source surveillance.

- * * * * *
- (c) Notwithstanding any other provisions of this part, for purposes of enforcement under sections 113 or 304 of the Act of any plan promulgated or approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.
- (1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
 - (i) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.
 - (ii) A monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.
 - (iii) Compliance test methods specified in the applicable plan approved in this part.
 - (iv) Testing or monitoring methods approved for the source in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.
 - (2) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:
 - (i) Any federally-enforceable monitoring or testing methods,

including those in parts 51, 60, 61 and 75 of this chapter.

- (ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (c)(1) or (c)(2)(i) of this section.
3. Section 52.21 is amended by adding new paragraphs (j)(5), (n)(2)(iii) and (n)(2)(iv) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

- * * * * *
- (j) * * *
- (5) For the air pollution control requirements applicable pursuant to this section, the source will monitor, keep records, and provide reports necessary to determine compliance with and deviations from the applicable requirements and meet the enhanced monitoring requirements of part 64 of this chapter.

- * * * * *
- (n) * * *
- (2) * * *
- (iii) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied; and

(iv) A detailed description as to what continuous monitoring methodology is planned by the source to determine compliance with and deviations from applicable emission limitations or standards, and compliance with emission reductions planned or assurance that emission reductions are achieved, and any information necessary to determine that the enhanced monitoring requirements of part 64 of this chapter would be met.

4. Subpart A of part 52 is amended by adding a new § 52.30 to read as follows:

§ 52.30 Compliance certifications.

- (a) Notwithstanding any other provision in any plan promulgated or approved by the Administrator and listed in paragraph (c) of this section, for the purpose of submission of compliance certifications an owner or operator is not prohibited from using the following in addition to any specified compliance test methods:
- (1) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.
 - (2) Any other monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.
 - (b) For the purposes of enforcement under sections 113 or 304 of the Act of

any plan promulgated or approved by the Administrator and listed in paragraph (c) of this section, § 52.12(c) shall apply.

(c) For the following state and federal implementation plans, paragraphs (a) and (b) of this section are incorporated into the plan:

(1) The federal implementation plan provisions at §§ 52.741-52.742 (Chicago, IL).

(2) The federal implementation plan provisions at § 52.1881 (Cuyahoga, OH).

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601, and 7661c.

2. Section 60.11 is amended by revising paragraphs (a), (b), (e)(5) and (f) and by adding paragraphs (g) and (h) to read as follows:

§ 60.11 Compliance with standards and maintenance requirements.

(a) Compliance with standards in this part, other than opacity standards, may be determined by performance tests established by § 60.8 as required by this part, unless otherwise specified in the applicable subpart. Nothing in this paragraph (a) of this section shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (g) and (h) of this section.

(b) Compliance with opacity standards in this part may be determined by conducting observations as required by this part in accordance with Reference Method 9 in appendix A of this part, any alternative or equivalent method that is approved by the Administrator pursuant to § 60.8, or as provided in paragraph (e)(5) of this section. For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Nothing in paragraph (b) of this section shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (g) and (h) of this section.

* * * *

(5) An owner or operator of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under § 60.8 in lieu of Method

9 observation data. If an owner or operator elects to submit COMS data for compliance with the opacity standard, he shall notify the Administrator of that decision, in writing, at least 30 days before any performance test required under § 60.8 is conducted. For the purpose of determining compliance with the opacity standard during a performance test required under § 60.8 using COMS data, the minimum total time of COMS data collection shall be averages of all 6-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under § 60.8. The owner or operator of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in § 60.13(c), that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way.

(f) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section, provided that no such special provisions shall be deemed to exclude the use of monitoring methods pursuant to paragraph (g) of this section for the purpose of certifying compliance or the use of any credible evidence pursuant to paragraph (h) of this section for the purpose of establishing whether a person has violated or is in violation of a standard in this part.

(g) Notwithstanding any other provision in this part, for the purpose of submission of compliance certifications for any standard under this part, an owner or operator is not prohibited from using the following methods in addition to any appropriate specified test methods in this section or the applicable subpart:

(1) An enhanced monitoring protocol approved for an affected facility pursuant to part 64 of this chapter.

(2) Any other monitoring method approved for an affected facility pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(h)(1) Notwithstanding any other provisions of this part, for purposes of an enforcement action under section 113 or 304 of the Act, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of a requirement in this part.

(2) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at an affected facility:

(i) An enhanced monitoring protocol approved for the affected facility pursuant to part 64 of this chapter.

(ii) A monitoring method approved for the affected facility pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(iii) Testing or monitoring methods approved for the affected facility in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.

(iv) Compliance test methods established in the applicable subpart of this part, including observations conducted in accordance with Reference Method 9 in appendix A of this part for the purpose of opacity standards.

(v) Alternative or equivalent test methods approved by the Administrator and established pursuant to § 60.8, or a continuous opacity monitoring system as provided for in § 60.11(e)(5).

(vi) Compliance test methods specified in an applicable plan approved pursuant to subpart B of this part with respect to designated facilities as defined in § 60.21.

(3) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:

(i) Any federally-enforceable monitoring or testing methods, including those in parts 51, 60, 61 and 75 of this chapter.

(ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (h)(2) or (h)(3)(i) of this section.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601, and 7661c.

2. Section 61.12 is amended by revising paragraphs (a) and (b), and adding paragraphs (e) and (f), to read as follows:

§ 61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits may be determined by emission tests established in § 61.13 or as otherwise specified in an individual subpart. Nothing in paragraph (a) of this section shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (e) and (f) of this section.

(b) Compliance with design, equipment, work practice or operational

standards may be determined as specified in an individual subpart. Nothing in paragraph (b) shall preclude the use of other methods and procedures for the purposes set forth in paragraphs (e) and (f) of this section.

* * * * *

(e) Notwithstanding any other provision in this part, for the purpose of submission of compliance certifications for any standard under this part, an owner or operator is not prohibited from using the following in addition to any specified test methods in § 61.13 or the applicable subpart:

(1) An enhanced monitoring protocol approved for an affected facility pursuant to part 64 of this chapter.

(2) Any other monitoring method approved for an affected facility pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(f)(1) Notwithstanding any other provisions of this part, for purposes of an enforcement action under section 113 or 304 of the Act, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of a standard in this part.

(2) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at an affected facility:

(i) Emission tests established in § 61.13 or as otherwise specified in the applicable subpart.

(ii) An enhanced monitoring protocol approved for the source pursuant to part 64 of this chapter.

(iii) A monitoring method approved for the source pursuant to § 70.6(a)(3) of this chapter and incorporated in a federally-enforceable operating permit.

(iv) Testing or monitoring methods approved for the affected facility in a federally-enforceable permit issued pursuant to part C or D of title I of the Act.

(3) The following testing, monitoring or information-gathering methods are presumptively credible testing, monitoring or information-gathering methods:

(i) Any federally-enforceable monitoring or testing methods, including those in parts 51, 60, 61 and 75 of this chapter.

(ii) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in paragraph (f)(2) or (f)(3)(i) of this section.

Part 64 is added to read as follows:

PART 64—ENHANCED MONITORING PROGRAM

- Sec.
- 64.1 Applicability.
- 64.2 Definitions.
- 64.3 Implementation requirements.
- 64.4 Enhanced monitoring protocol requirements.
- 64.5 Reporting requirements.
- 64.6 Recordkeeping requirements.
- 64.7 Permit application requirements.
- 64.8 Permit requirements.
- 64.9 Prohibitions.

Appendix A to Part 64—General Performance Specifications for Enhanced Monitoring Protocols

Appendix B to Part 64—General Equipment, Installation, and Calibration Gas Specifications for Enhanced Monitoring Protocols

Appendix C to Part 64—General Performance Verification Test Procedures for Enhanced Monitoring Protocols

Appendix D to Part 64—General Quality Assurance Plan Specifications for Enhanced Monitoring Protocols

Authority: 42 U.S.C. 7414 and 7661c.

§ 64.1 Applicability.

(a) *Regulated hazardous air pollutant sources.* The requirements of this part shall apply to each emissions unit that is subject to an emission limitation or standard under part 61 of this chapter and is required to obtain a permit, but only with respect to such emission limitation or standard.

(b) *Other regulated air pollutant sources.* Except as provided in paragraph (a) of this section with respect to emissions units subject to requirements under part 61 of this chapter, the requirements of this part shall apply to the following emissions units at a major source, but only with respect to emission limitations or standards applicable to a regulated air pollutant for which the stationary source is classified as a major source:

(1) Each emissions unit that has the potential to emit any such regulated air pollutant in amounts equal to or greater than thirty percent of the minimum potential emissions, in tons per year, required for the source to be classified as a major source under the Act for that regulated air pollutant.

(2) Each group of emissions units at a major source for which compliance with an applicable emission limitation or standard is achieved by aggregating, averaging, apportioning or trading emissions among such units if, collectively, the group of emissions units has the potential to emit any such regulated air pollutant in amounts equal to or greater than thirty percent of the minimum potential emissions, in tons

per year, required for the source to be classified as a major source under the Act for that regulated air pollutant.

(c) *Exemptions.* The provisions of this part shall not apply to any emission limitations or standards established pursuant to the following:

(1) Sections 404, 405, 406, 407(a), and 407(b) of the Act.

(2) Section 603 of the Act.

(3) Section 112 of the Act, except for standards established in part 61 of this chapter. The requirements for enhanced monitoring under section 114(a)(3) of the Act for emission limitations or standards under section 112 of the Act, other than standards established in part 61 of this chapter, shall be specified in the individual emission limitations or standards established pursuant to section 112 of the Act.

(4) Part 61 of this chapter, Subpart M—National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard of Demolition and Renovation.

(5) Part 60 of this chapter, Subpart AAA—Standards of Performance for New Residential Wood Heaters.

(d) *Additional requirements.* Unless explicitly stated otherwise, nothing in this part shall:

(1) Excuse the owner or operator of a source from any other monitoring, recordkeeping or reporting requirement that may apply pursuant to any other provision of the Act.

(2) Restrict the authority of the Administrator or the permitting authority to impose additional or more restrictive monitoring, recordkeeping, testing, or reporting requirements on any owner or operator of a source under any other provision of the Act, including section 114(a)(1), or State law, as applicable.

§ 64.2 Definitions.

The following definitions apply to part 64. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable provisions of the Act.

Act means the Clean Air Act, as amended by Public Law 101-549, 42 U.S.C. 7401 *et seq.*

Applicable emission limitation or standard means an emission limitation or standard subject to the requirements of this part, including:

(1) An emission limitation or standard applicable to a regulated hazardous air pollutant under part 61 of this chapter; or

(2) An emission limitation or standard applicable to a regulated air pollutant, other than a hazardous air pollutant under section 112 of the Act, for which the source is classified as a major source.

Continuous compliance means, with respect to an applicable emission limitation or standard, that:

(1) An owner or operator has obtained quality-assured data from an enhanced monitoring protocol for all periods in a reporting period during which the enhanced monitoring protocol is required to operate;

(2) Such data demonstrate that an owner or operator has complied with the applicable emission limitation or standard during all monitored periods during the reporting period; and

(3) Any other data collected for the purpose of determining compliance during the period demonstrate that an owner or operator has complied with an applicable emission limitation or standard during the periods in which such data were collected.

Demonstrated compliance parameter level means a minimum or maximum value (or range of values between a minimum and maximum value) established for a control device or process parameter which, if achieved by itself or in combination with one or more other demonstrated compliance parameter levels, demonstrates that an owner or operator has complied with an applicable emission limitation or standard. A demonstrated compliance parameter level is established pursuant to the correlation test procedures in appendix C of this part.

Deviation means any condition determined by data from an enhanced monitoring protocol, or any other data collected that can be used to determine compliance, that identifies that an emissions unit subject to this part has failed to meet an applicable emission limitation or standard. A deviation includes a condition that either violates an applicable emission limitation or standard or that would constitute a violation except for a provision promulgated or approved by the Administrator pursuant to the Act that exempts such condition from being a federally-enforceable violation. Included within the meaning of "deviation" are any of the following:

(1) Emissions that exceed an emission limitation or standard.

(2) A process or control device parameter value which demonstrates that an emission limitation or standard has not been met.

(3) Any other condition in which data collected that can be used to determine compliance identifies that an applicable emission limitation or standard has not been met.

Emission limitation or standard means any federally-enforceable emission limitation, emission standard, standard of performance or means of

emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., lbs. of SO₂/hr, lbs. of SO₂/mmBtu, or kilograms of VOC/liter of applied coating solids) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO₂). An emission limitation or standard may also be expressed either as a work practice (e.g., leak detection and repair programs for VOC or mercury emissions), process or control device parameter (e.g., incinerator temperature for VOC destruction efficiency), or other form of design, equipment, operational or operation and maintenance requirement.

Emissions unit means any part or activity of a source that emits or has the potential to emit any regulated air pollutant for which an emission limitation or standard has been established. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act or of the term "emissions unit" for purposes of title V of the Act.

Enhanced monitoring means the methodology used by an owner or operator to detect deviations with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness in order to determine if compliance is continuous during a reporting period. Such monitoring shall be conducted through an enhanced monitoring protocol established in accordance with § 64.4.

Enhanced monitoring protocol means the methodology, and all installation, equipment, performance, operation and quality assurance requirements applicable to such methodology, developed by the owner or operator and approved by the permitting authority for the purpose of conducting enhanced monitoring.

Established monitoring means a monitoring methodology that has been demonstrated to be a feasible means of assessing compliance with emission limitations or standards for a specific type of emissions unit. In considering whether established monitoring is applicable to a particular emissions unit, limitations in the applicable requirement in which the monitoring is established that relate to the date of construction or modification of an emissions unit shall not be taken into account. Monitoring methodologies developed pursuant to the following requirements shall be considered established monitoring methodologies:

(1) Monitoring requirements established under part 60 or 61 of this chapter.

(2) Monitoring requirements established in appendix P of part 51 of this chapter.

(3) Monitoring requirements in implementation plans approved or promulgated by the Administrator pursuant to title I of the Act that reflect a Control Technique Guideline published by the Administrator under section 108 of the Act.

(4) Monitoring requirements established in any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I, including part C or D, of the Act.

(5) Monitoring requirements established in part 75 of this chapter.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

Intermittent compliance means, with respect to an applicable emission limitation or standard, that an owner or operator has either:

(1) Deviated from the applicable emission limitation or standard for a period in which no federally-approved or promulgated exemption from such deviation applies; or

(2) Failed to obtain quality-assured enhanced monitoring protocol data during a period in which obtaining such data was required to be obtained under an approved enhanced monitoring protocol.

Major source means any major source as defined in § 70.2 of this chapter, excluding any hazardous air pollutant source included in paragraph (1) of that definition.

Owner or operator means any person who owns, leases, operates, controls or supervises a stationary source subject to this part.

Permit means any applicable permit issued, renewed, amended, revised, or modified under part C or D of title I of the Act, or title V of the Act.

Permitting authority means either of the following with respect to any permit program:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to manage a permit program under part C or D of title I of the Act, or title V of the Act.

Potential to emit means the maximum capacity of a stationary source or an emissions unit to emit any air pollutant under its physical and operational design. Any physical or operational

limitation on the capacity of an emissions unit to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act or the regulations promulgated thereunder.

Regulated air pollutant shall have the same meaning as provided under part 70 of this chapter.

Responsible official shall have the same meaning as provided under part 70 of this chapter.

§ 64.3 Implementation requirements.

(a) *Implementation through permits.* The enhanced monitoring requirements of this part shall be implemented through the regulations established for issuing permits pursuant to part C or D of title I of the Act, or title V of the Act, and as further specified in §§ 64.7 and 64.8.

(b) *Effective date.* The requirements of this part shall become effective [Insert date 30 days from the date of publication of the final rule].

(c) *Previously submitted part C or D permit applications.* If a source has submitted a permit application for a permit required under part C or D of title I of the Act prior to the effective date of the regulations under this part, the requirements of this part shall not apply to such source until such source is required to obtain an operating permit pursuant to title V of the Act.

(d) *Permit modifications.* In accordance with the requirements specified in § 70.7 of this chapter, subsequent to the issuance of an operating permit pursuant to a program approved under title V of the Act, an owner or operator shall submit a proposed enhanced monitoring protocol and be required to obtain a significant permit modification pursuant to the procedures in § 70.7(e)(4) of this chapter (or any corresponding procedures included in any Federal permit program promulgated under title V of the Act) prior to modifying an approved enhanced monitoring protocol, or modifying any emissions unit in such a manner that:

(1) The emissions unit becomes subject to the requirements of this part; or

(2) The enhanced monitoring protocol previously approved for such emissions unit would fail to satisfy the

requirements of this part after such modification.

§ 64.4 Enhanced monitoring protocol requirements.

(a) *General requirements.* (1) An owner or operator shall use an enhanced monitoring protocol that meets the requirements of this section for each emissions unit subject to this part in order to determine continuous or intermittent compliance with each applicable emission limitation or standard. To meet this requirement, the enhanced monitoring protocol shall be sufficiently representative, accurate, precise, reliable, frequent and timely to determine whether a deviation from an applicable emission limitation or standard occurs.

(2) An enhanced monitoring protocol may include existing, modified or new monitoring systems or other monitoring procedures at an emissions unit.

Depending on the type of emission limitation or standard, regulated air pollutant and emissions unit, an enhanced monitoring protocol could include one or more of the following upon a demonstration that the requirements in this part are satisfied:

(i) Continuous emission monitoring systems.

(ii) Continuous process or control device parameter monitoring systems or procedures.

(iii) Emission calculations based on accepted engineering estimation techniques.

(iv) Maintenance and analysis of records of fuel or raw materials usage.

(v) Periodic verification of emissions, process parameters or control device parameters using portable or in situ measurement devices.

(vi) Recording results of a program or protocol to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices.

(vii) Any other form of measuring emissions, process parameters or control device parameters that can achieve the requirements of this part.

(b) *Protocol performance and operating requirements.* The owner or operator shall:

(1) Satisfy applicable performance, equipment, installation and calibration gas specifications in accordance with the specifications and procedures provided in appendices A and B of this part.

(2) Conduct applicable performance verification test procedures in accordance with the procedures provided in appendix C of this part.

(3) Conduct a program of quality assurance activities in accordance with

the quality assurance procedures provided in appendix D of this part.

(4) Obtain quality-assured data from the enhanced monitoring protocol, consistent with the measurement frequency specification for, and the other design elements of, the protocol, for all periods of emissions unit operating time that is sufficient to satisfy:

(i) Any minimum data availability requirement that an owner or operator must satisfy with respect to an applicable emission limitation or standard pursuant to part 60 or 61 of this chapter; or

(ii) If no such provision applies to an applicable emission limitation or standard, a minimum data availability requirement that reflects obtaining quality-assured data for all emissions unit operating time periods excluding a fixed percentage of operating time that the owner or operator justifies to the permitting authority as necessary to conduct quality assurance procedures pursuant to paragraph (b)(3) of this section, including routine maintenance activities.

(5) A permitting authority may allow an owner or operator to use alternative performance specifications, equipment, installation and calibration gas specifications, performance verification procedures or quality assurance procedures that are comparable to the specifications and procedures set forth in appendices A, B, C and D of this part, provided that such alternative specifications and procedures:

(i) Contain elements that correspond to the elements in the specifications, tests and procedures included in the appendices of this part;

(ii) Require relative accuracy, calibration error and measurement frequency specifications that are at least as stringent as the specifications included in appendix A of this part; and

(iii) In all other respects provide, at a minimum, the same degree of confidence in the representativeness, accuracy, precision, reliability, frequency and timeliness of the data from the enhanced monitoring protocol as the performance and operating requirements set forth in appendices A, B, C and D of this part.

(c) *Parameter monitoring.* (1) If the owner or operator proposes to use the monitoring of process or control device parameters as part of an enhanced monitoring protocol, the owner or operator shall:

(i) Establish and demonstrate a correlation specification between the monitored parameters and the applicable emission limitations or

standards in accordance with appendices A and C of this part.

(ii) If necessary, propose to establish demonstrated compliance parameter levels in accordance with section 7 of appendix C in order for the measurements taken by the parameter monitoring system to act as surrogate measurements of compliance with the applicable emission limitation or standard.

(2) If an enhanced monitoring protocol includes the use of one or more demonstrated compliance parameter levels, a failure to achieve such parameter level (or any one such level if the proposed enhanced monitoring protocol involves the monitoring of more than one parameter) shall constitute a deviation from the applicable emission limitation or standard being monitored. Nothing in this part shall require that a failure to achieve a demonstrated compliance parameter level constitutes a deviation of a requirement of this part in addition to a deviation from the applicable emission limitation or standard.

(d) *Fugitive emissions monitoring.* Where an owner or operator must conduct enhanced monitoring of fugitive emissions of a regulated air pollutant, an owner or operator may use a single enhanced monitoring protocol for multiple fugitive emissions points at a source. Such protocol shall provide assurance that representative periods of deviation from an applicable emission limitation or standard will be detected and recorded at all fugitive emissions points monitored by such protocol.

(e) *Selection and proposal requirements for proposed enhanced monitoring protocols—(1) Established monitoring—(i) Use of best established monitoring.* The owner or operator may propose to use the best established monitoring for the particular emissions unit for purposes of an enhanced monitoring protocol if the established monitoring can satisfy the requirements of this part.

(ii) *Determining the best established monitoring.* In determining what is the best established monitoring for a particular emissions unit, an owner or operator may take into account any of the circumstances at the particular emissions unit that affect the ability of the proposed enhanced monitoring protocol to determine continuous or intermittent compliance, including:

(A) The terms of the applicable emission limitation or standard.

(B) Design and process operating circumstances.

(C) The demonstrated margin of compliance at the emissions unit in conjunction with the potential

variability of emissions from the emissions unit.

(iii) *Modifications to Established Monitoring.* The owner or operator may consider modifying or adding to the established monitoring in order to meet the requirements of this part, including:

(A) Performance and operating specifications and procedures to satisfy paragraph (b) of this section; and

(B) Requirements for demonstrated compliance parameter levels to satisfy paragraph (c) of this section.

(2) *Use of other potential protocols.* Unless the owner or operator proposes to use the best established monitoring for the particular emissions unit pursuant to paragraph (e)(1) of this section, the owner or operator shall identify all technologically feasible monitoring methodologies for a particular emissions unit in order to select as a proposed enhanced monitoring protocol the best other monitoring methodology for providing sufficiently representative, accurate, precise, reliable, frequent and timely data to satisfy the requirements of this part at the particular emissions unit. The owner or operator may consider the particular circumstances at the emissions unit, as provided in paragraph (e)(1)(ii) of this section, in determining what is the best other monitoring methodology for the particular emissions unit.

(3) *Permit application submittal requirements.* The owner or operator shall have the burden of proof that a proposed enhanced monitoring protocol, if approved, will satisfy all of the requirements of this part. In accordance with § 64.7, the owner or operator shall submit as part of a permit application all of the descriptions, explanations, justifications and supporting data necessary to justify that a proposed enhanced monitoring protocol can satisfy the requirements of this part, including documentation of all monitoring methods and procedures evaluated pursuant to this section.

(f) *Performance verification test requirements—(1) Test plan requirements.* The owner or operator shall submit a test plan with a permit application that describes the procedures, reference methods, test preparations, locations, and other pertinent information for all performance verification tests required pursuant to appendix C of this part. For correlation tests involving parameter monitoring, the owner or operator also shall, pursuant to section 7 of appendix C of this part, describe any significant parameters that are not included in the proposed enhanced monitoring protocol, demonstrate that the tests

being conducted will account for the potential effect of variations in such parameters, and demonstrate that the validity of the correlation will not be affected by the maximum potential variations in such parameters.

(2) *Test schedule.* The owner or operator shall propose in a permit application a schedule for conducting the performance verification tests required in appendix C of this part. The schedule shall provide for the commencement and completion of such tests and the submittal of all test results as expeditiously as practicable after issuance of a permit. Approval of an enhanced monitoring protocol in a permit shall be conditional until all performance verification tests are completed in accordance with the schedule and the results of such tests demonstrate that the enhanced monitoring protocol achieves the performance requirements of this part. The permitting authority may approve the enhanced monitoring protocol on the condition that the owner or operator modifies such schedule as the permitting authority considers appropriate. The permitting authority also may designate the form for submittal of test results.

(3) *Completion of tests.* After the date on which performance verification tests are completed, the owner or operator shall operate the enhanced monitoring protocol in accordance with the requirements of this part and shall record and report data measured and recorded by the enhanced monitoring protocol in accordance with § 64.5 and § 64.6. Unless the permitting authority or the Administrator determines that the test results demonstrate that the enhanced monitoring protocol fails to achieve compliance with this part, all such data will be considered valid, quality-assured data retroactive to the completion date of the performance verification tests.

(4) *Failure to achieve compliance.* After issuance of a permit specifying enhanced monitoring requirements pursuant to this part, the owner or operator shall be considered to have failed to achieve compliance with this section if any of the events set forth in paragraph (f)(4) of this section occur. The events deemed to constitute a violation of this section that are listed in paragraph (f)(4) of this section shall be supplemental to, and not be a limitation of, any other events that could constitute a violation of this part. The following events shall constitute a violation of this section:

(i) The owner or operator fails to submit complete test results as required

in this section in accordance with the approved schedule.

(ii) The test results submitted by the owner or operator demonstrate that the enhanced monitoring protocol has failed to achieve the performance requirements of this part.

(iii) Upon information available to the permitting authority or the Administrator after approval of the test results submitted by the owner or operator, the permitting authority or the Administrator determines that the enhanced monitoring protocol fails to satisfy the requirements of this part.

(5) *Permit reopenings.* (i) In the event an enhanced monitoring protocol fails to achieve compliance with this part for any of the reasons provided in paragraph (f)(4) of this section, the Administrator or the permitting authority may reopen a permit for cause pursuant to § 70.7(f)(1)(iv) of this chapter to assure compliance with the requirements of this part.

(ii) Reopening of a permit shall be supplemental to, and shall not be a defense to any alleged violation of, the requirements of this part.

(g) *Monitor failures.* (1) If the normal operation of an enhanced monitoring protocol is interrupted as a result of a monitor failure, and such interruption has the potential to continue in excess of 48 consecutive hours, the owner or operator shall report such failure to the permitting authority and comply with other notification requirements as specified in § 64.5(e).

(2) In the event that an enhanced monitoring protocol fails to perform in accordance with this section because of a monitor malfunction that results from a sudden and unforeseeable event beyond the control of the owner or operator, such event shall be a defense to any alleged violation of this part with respect to an applicable data availability requirement pursuant to § 64.4(b)(4). This defense shall not apply to the extent a monitor failure is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error. The owner or operator shall have the burden of proof in demonstrating that a monitor malfunction was sudden and unforeseeable through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) A sudden and unforeseeable malfunction occurred and that the owner or operator can identify the cause(s);

(ii) The monitoring systems and procedures had been properly operated and maintained at the time of and prior to the malfunction; and

(iii) During the period of the monitor malfunction, the owner or operator took all reasonable steps to minimize the period of inoperation of the monitoring systems and procedures.

(3) In the written two-week notice or corrective action plan required by § 64.5(e), the owner or operator shall describe any monitor malfunction subject to paragraph (g)(2) of this section and demonstrate to the permitting authority that such monitor malfunction was sudden and unforeseeable. Such demonstration shall include, at a minimum, the information required in paragraph (g)(2) of this section. In any enforcement proceeding, the owner or operator seeking to establish the occurrence of a sudden and unforeseeable malfunction has the burden of proof.

§ 64.5 Reporting requirements.

(a) *Compliance certifications.* (1) Except as provided in paragraph (a)(2) of this section, for each applicable emission limitation or standard at an emissions unit subject to the requirements of this part, a responsible official shall use the data collected from the enhanced monitoring protocol, and any other data collected for the purpose of determining compliance during the period, to certify compliance in accordance with section 114(a)(3) of the Act pursuant to part 70 of this chapter or pursuant to any Federal permit program promulgated under title V of the Act.

(2) If at the time of issuance of the permit a requirement in an applicable implementation plan approved or promulgated by the Administrator pursuant to title I of the Act specifies an exclusive means of determining compliance, the permitting authority and the source may establish that method as the sole basis for certifying compliance. In addition to specifying that method as the sole basis for certifying compliance, the permit may also establish that a compliance certification will be based upon the enhanced monitoring data upon revision of the applicable requirement to allow for a certification of compliance on such basis.

(3) If under paragraph (a)(2) of this section the permitting authority and the source do not identify the enhanced monitoring method as a basis for certifying compliance with an applicable emission limitation or standard, the permit must be reopened pursuant to § 70.7(f)(1)(iv) of this chapter upon revision of the applicable requirement to provide that the enhanced monitoring method or other additional means of determining

compliance with the emission limitation or standard must be used for purposes of certifying compliance.

(b) *Enhanced monitoring reports.* On and after the effective date of this part, the responsible official of a source subject to this part shall submit to the permitting authority, no less frequently than quarterly, an enhanced monitoring report for each enhanced monitoring protocol required. The enhanced monitoring report shall include all of the following information:

(1) The company name and mailing address, the facility name and street location, if different, and the identification code for the facility assigned by the Administrator.

(2) The name, daytime telephone number and facsimile number (if available) of the responsible official submitting the report, and of the facility site manager or contact, if different.

(3) The emissions unit(s) (or fugitive emissions points) and regulated air pollutant for which information is being provided.

(4) Specific identification of the applicable regulation and permit condition, and the emission limitation or standard for which information is being provided.

(5) A brief identification of the enhanced monitoring protocol.

(6) The calendar period covered by the report.

(7) The number of hours during the reporting period that the emissions unit operated.

(8) A summary of the number and duration of deviations during the reporting period, classified by reason, including known causes for which a federally-approved or promulgated exemption from an emission limitation or standard may apply.

(9) Identification of the data availability achieved during the reporting period, including a summary of the number and total duration of incidents that the enhanced monitoring protocol failed to operate in accordance with the design of the protocol or produced data that did not meet minimum data accuracy and precision requirements, classified by reason.

(10) Identification of the compliance status as of the last day of the reporting period and whether compliance was continuous or intermittent during the reporting period.

(11) If, pursuant to paragraph (b)(8) of this section, the owner or operator identifies any deviation as resulting from a known cause for which no federally-approved or promulgated exemption from an emission limitation or standard applies, the enhanced monitoring report shall also include a

copy of the records required to be maintained pursuant to § 64.6(a)(3) (i) and (v) that pertain to the periods during which such deviation occurred.

(12) If the total duration of deviations for the reporting period exceeds a percentage of the total enhanced monitoring time for the reporting period established by the permitting authority (not to exceed five percent), the enhanced monitoring report shall also include a copy of the records required to be maintained pursuant to § 64.6(a)(3) (i) and (v) that pertain to the periods during which a deviation occurred.

(13) If the total data availability for an enhanced monitoring protocol during the reporting period is less than a percentage of the total source operating time for the reporting period established by the permitting authority (not less than the data availability requirement for the enhanced monitoring protocol established pursuant to § 64.8(a)(2)), the enhanced monitoring report shall also include a copy of the records required to be maintained pursuant to § 64.6(a)(3) (iii) and (iv).

(14) The enhanced monitoring report shall summarize the results of any other required activity during the reporting period (other than any required quality assurance activity) which was required to attain or demonstrate compliance with an applicable emission limitation or standard, or with an enhanced monitoring protocol requirement.

(c) *Signature requirement.* Each enhanced monitoring report submitted pursuant to this part shall be signed by a responsible official. The responsible official shall certify, by his or her signature, the following statement: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(d) *Due date.* Each enhanced monitoring report shall be postmarked no later than thirty days following the last day of the reporting period.

(e) *Monitor failure notification and corrective action plan requirements—(1) Initial Notice.* In the event a monitor failure occurs pursuant to § 64.4(g), the owner or operator shall notify the permitting authority in accordance with

any applicable notification requirements established by the permitting authority or if no such requirements exist then within twenty-four hours of such failure.

(2) *Certification of failure correction.* Except as provided in paragraph (e)(3) of this section, within two weeks of a failure subject to § 64.4(g) the owner or operator shall submit to the permitting authority a statement certifying that the monitor failure has been corrected and the enhanced monitoring protocol has resumed operation and production of quality-assured data.

(3) *Corrective action plan.* In the event that a failure subject to § 64.4(g) cannot feasibly be repaired within the two week period required for the certification statement in paragraph (e)(2) of this section, the owner or operator shall submit in place of such statement a proposed corrective action plan that includes all of the following elements:

(i) A schedule with appropriate milestones to perform one of the following activities as expeditiously as practicable but within a period not to exceed six months from the date of the failure:

(A) Correction of the failure; or
(B) Development, installation (if necessary), testing, maintenance and operation of a new enhanced monitoring protocol.

(ii) Collection and reporting of data from other monitoring systems or procedures to detect deviations with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness to determine whether compliance is continuous or intermittent with applicable emission limitations or standards during the period that quality-assured data from the enhanced monitoring protocol are not available. During this interim period, the permitting authority may accept data from monitoring systems or procedures that do not satisfy all of the enhanced monitoring protocol performance and operating requirements of § 64.4(b).

(4) The owner or operator shall comply with the proposed corrective action plan until such plan is denied, modified or approved by the permitting authority. If the plan is approved or modified by the permitting authority, the owner or operator shall comply with such approved or modified plan. If the plan is denied by the permitting authority, notwithstanding any other provisions of this part, operation of an emissions unit without the use of an approved enhanced monitoring protocol shall be a violation of this part until

such time as a corrective action plan is approved by the permitting authority.

(5) *Sudden and unforeseeable monitor malfunction information.* The description of any sudden and unforeseeable monitor malfunction required pursuant to § 64.4(g)(3) shall accompany either the certification statement or proposed corrective action plan required pursuant to paragraph (e)(2) or (e)(3) of this section.

(6) *Nonwaiver of remedies.* Except for a sudden and unforeseeable monitor malfunction as set forth in § 64.4 (g)(2) and (g)(3), compliance with the requirements of this paragraph (e) shall be supplemental to, and shall not be a defense to any alleged violation of, the other requirements of this part.

(f) *Confidentiality requirements.* The provisions of section 114(c) of the Act shall apply to the protection from public disclosure of information (other than emission data) submitted pursuant to this section.

§ 64.6 Recordkeeping requirements.

(a) *General requirements.* On and after the effective date of this part, the owner or operator of a source subject to this part shall maintain records of all monitoring data and supporting information for a minimum of five years from the date of any monitoring sample, measurement, testing, certification, report or other activity required under this part. These records shall include:

(1) All documentation relating to the design, installation and testing of all elements of the enhanced monitoring protocol and all required corrective action or compliance plan activities.

(2) All maintenance logs, calibration checks, and other required quality assurance activities, and all records of corrective and preventive action.

(3) All documentation supporting the enhanced monitoring report required under § 64.5 and those elements of a compliance certification submitted pursuant to part 70 of this chapter (or pursuant to any Federal permit program promulgated under title V of the Act) that are based upon data from an enhanced monitoring protocol, including documentation of all of the following:

(i) Each period that the enhanced monitoring protocol identified deviations from the applicable emission limitations or standards, including:

(A) The date and time that each period of deviation began and ended;

(B) The magnitude of each deviation (or of each failure to achieve a demonstrated compliance parameter level, where applicable);

(C) The reason for each deviation; and

(D) A description of the corrective action taken for each deviation, including action taken to minimize each deviation and action taken to prevent recurrence.

(ii) The date and time of the beginning and ending of each period that the emissions unit was not in operation.

(iii) Each period that any element of the enhanced monitoring protocol was not operating in accordance with its design while the emissions unit was in operation, and each period that the enhanced monitoring protocol was in operation but producing unacceptable data (as determined by applicable quality assurance procedures established pursuant to appendix D of this part), including:

(A) The date and time that each period began and ended;

(B) An indication for each period of whether the monitoring protocol was not in operation or was producing unacceptable data;

(C) The reason for inoperation or unacceptable data; and

(D) A description of the corrective action that was taken for each incident, including action taken to prevent a recurrence.

(iv) All calibrations and other quality assurance activities performed on any element of the enhanced monitoring protocol.

(v) All calculation factors and equations.

(vi) All measurements and calculations.

(vii) All other data collected or recorded as part of the enhanced monitoring protocol.

(b) *Availability.* The owner or operator of a source subject to this part shall maintain the records required by this section at the source, or at such other site approved by the permitting authority, in a manner so that they may be inspected by the permitting authority or the Administrator, and so that they may be submitted expeditiously to the permitting authority or the Administrator, if so requested or required.

§ 64.7 Permit application requirements.

(a) *General requirements.* On and after the effective date of this part, each application for a permit shall include a proposed enhanced monitoring protocol that can meet the requirements of this part for every applicable emission limitation or standard at each emissions unit subject to the requirements of this part.

(b) *Content.* The application shall contain all of the information, descriptions, explanations, justifications, and supporting

documentation required by any provision of this part, including the following:

(1) A description of all elements, components and procedures of the enhanced monitoring protocol, including all proposed performance specifications, equipment, installation and calibration gas specifications, data reduction and calculation procedures, quality assurance procedures, and data availability requirements.

(2) A description of the physical and operational characteristics of the emissions unit that may affect the performance of the enhanced monitoring protocol.

(3) A justification for all proposed performance specifications, equipment, installation and calibration gas specifications, quality assurance procedures, and data availability requirements to the extent necessary under the requirements of this part.

(4) A list of all technologically feasible monitoring methodologies identified pursuant to § 64.4(e)(2).

(5) Documentation of monitoring methodologies evaluated for use as an enhanced monitoring protocol.

(6) An explanation of how the proposed enhanced monitoring protocol best provides for the particular emissions unit sufficiently representative, accurate, precise, reliable, frequent and timely data to determine whether a deviation occurs in order to determine whether compliance is continuous or intermittent.

(7) A test plan and schedule for conducting performance verification tests required pursuant to appendix C of this part that contain the elements described in § 64.4(f).

(8) Such other supporting information as may be necessary to justify that the proposed enhanced monitoring protocol can satisfy the requirements of this part.

(c) *Permit renewal applications.* Prior to submitting an application for renewal of a permit, an owner or operator shall identify technologically feasible monitoring methodologies that have become available since approval of the current enhanced monitoring protocol used by the owner or operator. The application shall include a list of all such potential protocols, and, if appropriate, a revised or new proposed enhanced monitoring protocol.

(d) *Additional requirements.* Nothing in this section shall excuse the owner or operator of a source from complying with any other permit application requirement established by Federal regulation or by a permitting authority under a federally-approved permit program.

§ 64.8 Permit requirements.

(a) *Permit conditions.* On and after the effective date of this part, each permit shall include, as applicable, enforceable conditions that shall require the owner or operator to comply with all of the requirements of this part by the date of permit issuance, or, as applicable, the scheduled date for completion of performance verification tests and submittal of test results, including:

(1) Implementation of an enhanced monitoring protocol that satisfies the requirements of this part for determining the compliance status of each emissions unit subject to this part.

(2) Performance and operating requirements applicable to an enhanced monitoring protocol, including a minimum data availability requirement that reflects the requirements of § 64.4(b)(4).

(3) Certification of compliance for each emissions unit and each applicable emission limitation or standard as required in § 64.5(a), using data collected from the enhanced monitoring protocol required in § 64.4, except as otherwise provided in § 64.5(a).

(4) If applicable pursuant to § 64.5(a), a condition specifying that the enhanced monitoring data will be used to certify compliance upon revision of an applicable requirement that specifies a method different from the enhanced monitoring protocol as the sole means of determining compliance.

(5) Submission of enhanced monitoring reports required pursuant to § 64.5 and maintenance of records required pursuant to § 64.6.

(6) An enforceable condition requiring an owner or operator to comply with a test schedule in accordance with § 64.4(f) for conducting performance verification tests and submitting the test results.

(7) Where necessary pursuant to § 64.4(c) for enhanced monitoring protocols that involve parameter monitoring, a permit condition specifying the use of demonstrated compliance parameter levels as a surrogate measurement of compliance with an applicable emission limitation or standard upon the establishment and verification of such parameter levels pursuant to the test procedures in section 7 of appendix C of this part.

(b) *Permit reopenings.* If, at the time of issuance of a permit, an applicable requirement specifies as an exclusive means of determining compliance a method other than the approved enhanced monitoring protocol, and a permit does not include a condition pursuant to paragraph (a)(4) of this section that provides for certifying compliance based upon the enhanced

monitoring data upon revision of the applicable requirement, then a permit issued pursuant to part 70 of this chapter must be reopened under § 70.7(f)(1)(iv) of this chapter upon revision of the applicable requirement to provide for the additional means of determining compliance.

§ 64.9 Prohibitions.

(1) Failure to comply with any requirement of this part shall be a violation of this part and the Act for each day that a violation occurs or continues.

Appendix A to Part 64—General Performance Specifications for Enhanced Monitoring Protocols

1. Introduction

This appendix provides direction on the basic performance specification requirements of an enhanced monitoring protocol (EMP). An EMP may include, provided that the criteria in § 64.4 are satisfied:

- (a) Continuous emission monitoring systems (CEMS's) or continuous opacity monitoring systems (COMS's);
- (b) Continuous process or control device parameter monitoring systems or procedures;
- (c) Emission calculations based on accepted engineering estimation techniques;
- (d) Maintenance and analysis of records of fuel or raw materials usage;
- (e) Periodic verification of emissions, process parameters or control device parameters using in situ or portable measurement devices;
- (f) Recording results of a program to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices;
- (g) Other forms of monitoring emissions, process parameters or control device parameters such as continuous emission rate monitoring systems (CERMS's); and
- (h) Any combination of the above.

1.1 An EMP proposed in an operating permit application by an owner or operator of an affected emission unit must be accompanied by proposed performance specifications (PS's) which define the criteria for an acceptable EMP and shall consist of the following, as applicable:

- (a) Measurement frequency;
 - (b) Relative accuracy (RA);
 - (c) Calibration error (CE);
 - (d) Instrument span (range);
 - (e) Response time;
 - (f) Parametric relationship limits; and
 - (g) Measurement technique procedures.
- In accordance with § 64.4, the ability of the EMP to achieve the performance specifications will be verified in accordance with the procedures in appendix C of this part after issuance of a permit.

1.2 This appendix also provides specific Performance Specifications (PS 101 and 102) for volatile organic compound monitoring systems being proposed for an EMP. These specifications are included because appendix A is anticipated to be a repository of specific performance specifications as those

specifications are developed in the event that particular monitoring systems are used to satisfy part 64. However, the presence of these performance specifications are not intended to require that such monitoring systems be used for enhanced monitoring or intended to prohibit the use of monitoring systems for which no specific performance specifications are provided.

1.3 Owners or operators proposing an EMP which includes recordkeeping, or qualifying under § 64.4(d) for monitoring multiple fugitive emission points, must address the following aspects of performance specifications:

- (a) Measurement frequency;
- (b) Calibration error;
- (c) Response time; and
- (d) Measurement technique procedures.

1.4 Unless otherwise specified in this part, owners or operators proposing an EMP which includes a parameter monitoring system, CEMS, COMS or CERMS must address the following aspects of performance specifications:

- (a) Measurement frequency;
- (b) Relative accuracy (RA);
- (c) Calibration error (CE);
- (d) Instrument span (range);
- (e) Response time; and
- (f) Parametric relationship limits for a parameter monitoring system.

In addition to the general requirements contained in this appendix A, the following monitoring systems shall use the following referenced specifications:

1.4.1 *CEMS's and COMS's.* All CEMS's and COMS's that are included as part of an enhanced monitoring protocol shall follow the corresponding performance specifications provided in appendix B of part 60 of this chapter. Unless a CEMS or COMS is subject to part 60 pursuant to a Federal regulation (other than this part or part 51 of this chapter), where reference is made to the "Administrator" in appendix B of part 60, the term "permitting authority" should be inserted for the purpose of this appendix; and where the term "Reference Method" is used in appendix B of part 60, a permitting authority may allow the use of either the reference method approved by the permitting authority or the federally-approved reference method included in part 60 of this chapter. The owner or operator also can elect to follow the specifications provided in appendix A of part 75 of this chapter for a gas CEMS, with the same modifications in terms as provided in the previous sentence. In addition, all such systems shall:

1.4.1.1 Conduct zero and span check procedures as provided in § 60.13(d) of this chapter;

1.4.1.2 Satisfy the frequency of measurement requirements contained in § 60.13(e) of this chapter; and

1.4.1.3 Reduce data and calculate averages in accordance with procedures in § 60.13(h) of this chapter.

1.4.2 *VOC monitoring systems.* All continuous monitoring systems designed to measure VOC that are included as part of an enhanced monitoring protocol shall meet Performance Specifications 101 or 102, as applicable, included in this appendix A.

1.4.3 *CERMS's.* All continuous emission rate monitoring systems shall meet the

performance specifications in appendix B of part 60 of this chapter. The owner or operator also can elect to follow the specifications provided in appendix A of part 75 of this chapter for a CERMS. Modifications to the terms "Administrator" and "Reference Method" in the referenced appendices shall be made as specified in section 1.4.1 of this appendix A.

2. Measurement Frequency

2.1 *Definition of "continuous."* Although the term "continuous" means "at all times," the Agency has determined that less frequent measurements can be used to determine continuous compliance. The potential variability of the emissions or parameters about a mean value is a primary factor in establishing frequency of measurements, especially when considered in conjunction with the demonstrated margin of compliance under normal operating conditions at a source. If the potential variability is high relative to the margin of compliance, measurements must be done more frequently than if the potential variability is low. For example, 40 CFR 60.13(e)(2) requires measurements once every 15 minutes for gas CEMS's. In subpart Db of 40 CFR part 60, distillate fuel sulfur analysis conducted by the vendor according to American Society for Testing and Materials procedures can be submitted on an as-received basis. Measurements, however, must be performed frequently enough to allow the owner or operator to certify whether the owner or operator achieved compliance with an applicable emission limitation or standard on a continuous or intermittent basis, consistent with the averaging time period of the permitted emission limitation or standard.

2.2 *Objective.* In addition to the potential variability of the emissions or parameters, the specification for measurement frequency must consider the averaging time of the emission limit and must show the method for calculating the average. Some examples are: average four 15-minute measurements to obtain a 1-hour average, average three 1-hour averages to obtain a 3-hour average, average thirty-six 10-second readings to obtain a 6 minute average, and average the results of fifteen days of 24-hour samples for a rolling daily average emission limitation.

2.3 *Specification.* The owner or operator shall specify in the permit application a proposed frequency of measurements for the elements of an EMP and for calculating averages of data points that are commensurate with the averaging time of the emission limit. Measurement frequency must be sufficient such that the enhanced monitoring protocol will provide data for each averaging period during operation of an emissions unit, except as follows:

2.3.1 *QA activities.* The requirements for measurements within each averaging period shall not apply if measurements are not obtainable because of periods of allowable monitor downtime to perform quality assurance and routine maintenance as provided in § 64.4(b).

2.3.2 *Potential emissions variability.* The permitting authority may approve less frequent measurements than would otherwise be required pursuant to this

section 2.3 where the owner or operator demonstrates that the potential variability of emissions, when considering the margin of compliance demonstrated for the emissions unit, is sufficiently low so that a determination of continuous or intermittent compliance does not require data to be collected within each averaging period of an emission limitation or standard during operation of an emissions unit. In such

circumstances, measurement frequency shall, at a minimum, be established at a level that can reliably determine if compliance is achieved on a continuous basis.

3. Relative Accuracy

3.1 *Definition.* The RA test (see appendix C of this part) evaluates the EMP accuracy by correlating data from the EMP with that of a specified reference emission testing method

(RM) over a series of measurements under actual source conditions. Relative accuracy is "the absolute mean difference between the EMP output values and the RM output values plus a 2.5 percent error confidence coefficient divided by the mean of the RM values expressed as a percentage." The RA test consists of a series of at least nine comparison measurements. In mathematical terms:

$$RA = \frac{|\text{Mean Difference}| + \text{Confidence Coefficient}}{\text{Reference Method Average}} \times 100$$

In cases where a source's measured emission levels are less than 50 percent of the permitted emission standard, the emission standard value may be substituted into the equation in place of the RM average to allow EMP acceptance flexibility in the lower measurement range.

3.1.1 Requirements for relative accuracy do not apply to a COMS (unless the owner or operator proposes to use the COMS as a parameter methodology to predict particulate emissions), to a parameter monitoring system that is used to determine compliance with an emission limitation or standard expressed in terms of the monitored parameter, or to a parameter monitoring system that involves establishing a demonstrated compliance parameter level pursuant to Section 7 of appendix C of this part.

3.2 *Specification.* The owner or operator shall specify in the permit application a proposed RA specification in terms of a range of measurement or the permitted emission limitations or standards. The RA must be at least as stringent as the RA required for a CEMS pursuant to appendix B of part 60 of this chapter. The RA must be determined as part of the validation demonstration of appendix C by the owner or operator prior to approval of the EMP.

4. Calibration Error

4.1 *Definition.* The calibration error (CE) test demonstrates the stability of the EMP measurements or calibration over time and documents the calibration (or measurement ability) of the EMP equipment over the entire emission or parameter measurement range. Calibration error is the difference in the average of a certain number of reported responses from an established reference value (e.g., known concentration of the cylinder gas, value of a parameter, or concurrent emission measurements) after a stated period of operation during which no unscheduled maintenance, repair, or adjustment to the monitoring protocol takes place. No one response shall exceed ± 5 percent of the reference value.

4.2 *Specification.* To assure accuracy over the measurement range, the owner or operator of an affected emissions unit shall specify in the permit application a proposed level of CE and procedures for periodic (e.g., daily) CE checks at low and high measurement levels. Initial and periodic (see appendices C and D of this part) checks shall also be specified in the permit application and include CE checks at low, mid, and high measurement levels.

4.3 The demonstration of the CE levels of the EMP shall be conducted immediately prior to or after any RA demonstration.

5. Measurement Span

5.1 *Definition.* Measurement span is the anticipated range of emissions or parameters that must be measured to determine the compliance status of the affected emissions unit with the applicable emission limitations or standards.

5.2 *Specification.* The owner or operator should consider the measurement span in the existing regulation and shall specify in the permit application a proposed EMP span which meets any existing measurement span requirement or the anticipated range of emissions or parameter that must be measured. There are two types of span specifications:

5.2.1 Spans that include all potential concentrations. This type of specification may require multiple range pollutant or flow analyzers and parameter instrumentation in the EMP to meet the required accuracy. The frequency of measurements also may be affected.

5.2.2 Spans that include a limited range of emission concentrations or correlated parameter ranges. This type of specification sets an upper limit that normally includes the permitted levels plus a range or value beyond the permitted emission standard or parameter limitation (e.g., 1.25 times the parameter or emission limitation).

6. Response time

6.1 *Definition.* Response time is the time interval between the start of a step change in the system input (e.g., change of calibration gas or change in source concentration) and the time when the data acquisition and handling system (DAHS) displays 95 percent of the final value. A response time also may be the time interval between the initial accumulation of information to assess the affected emissions unit's compliance status and the availability of the information for emission level status review (e.g., a daily VOC emission limit based on the evaluation of three coating analyses and daily coating use records). Response times are most important when time-sharing of EMPs among two or more measurement locations occurs, or when the regulations require the EMP to measure short duration permit limitation exceedances, e.g., concentration spikes.

6.2 *Specification.* The owner or operator shall specify in a permit application a

proposed response time for the EMP which will include: upscale and downscale response times for all instrumental components of the EMP and a combined response time for the system output. A demonstration of the associated response time(s) shall be performed under normal operation, including all EMP components to be used in obtaining and recording measurements, and, if applicable, during time sharing operations. Since response time is inherently rapid with some instruments, the permitting authority may waive the individual component specification. The combined EMP response time shall be commensurate with the measurement frequency requirements. Where an EMP includes recordkeeping procedures to assess compliance, the response time specification shall reflect the time interval appropriate for analyzing such records and providing an output that relates to the compliance status of the monitored emissions unit.

7. Parametric Relationship

7.1 *Definition.* The parametric relationship for a parameter monitoring system is the correlation between the monitored parameters and the affected emissions units' permitted emission limitations or standards (other than emission limitations or standards that are already expressed in terms of the monitored parameters, e.g., use of a fuel sampling and analysis protocol to monitor compliance with a sulfur in fuel standard). The correlation can be described in the form of an equation or graph if a parameter monitoring system is used to predict emissions, emission rates, or control efficiency rates. If a parameter monitoring system involves the use of a demonstrated compliance parameter limitation established pursuant to section 7 of appendix C of this part in order to determine compliance with an applicable emission limitation or standard, then the correlation can be described, for each parameter included in the EMP, in the form of a minimum or maximum value (or a range of values), depending on the type of parameter monitored.

7.2 Specification.

7.2.1 *Initial specification.* For each parameter monitoring system EMP, the owner or operator shall describe in the permit application the known relationship between the parameters and emission rates, propose a range of applicability, and limit its application to these ranges. The known

relationship may be based on site-specific studies, other empirical studies, or theoretical considerations based on generally accepted engineering principles. The permit application must describe how the known relationship can be further defined through correlation tests performed pursuant to section 7 of appendix C of this part and shall include a correlation test plan in accordance with § 64.4.

7.2.2 Verified specification. The correlation of the monitored parameters to the emission limitations or standards being monitored shall be established and verified pursuant to performance verification tests conducted pursuant to appendix C of this part. The final specification for the parametric relationship shall be described in the form of a parametric equation, graph, or demonstrated compliance parameter level(s), as applicable.

8. Measurement Technique Procedures

8.1 An EMP which includes recordkeeping or qualifies under § 64.4(d) as multiple fugitive emissions point monitoring must include appropriate measurement technique procedures. Measurement technique procedures may include, but are not limited to: Methods 9 or 22 of appendix A of part 60 of this chapter for opacity or particulate emission limitations; Method 21 of appendix A of part 60 of this chapter for volatile or toxic organic compound leak detection and repair programs; Method 19 of appendix A of part 60 of this chapter for sulfur dioxide emissions from combustion devices without control devices; and Method 24 of appendix A of part 60 of this chapter for VOC content of coatings.

8.2 Specification. The owner or operator should consider the measurement technique procedures in the existing regulation and shall include in a permit application a proposed EMP measurement technique procedure based on the affected emissions unit's operation.

Performance Specification 101—Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability.

1.1.1 These requirements apply to continuous emission monitoring systems (CEMS's) that measure volatile organic compound (VOC) emissions. The analyzer may operate by flame ionization detection (FID), photoionization detection (PID), non-dispersive infrared (NDIR) absorption, or other detection principles that respond to VOC levels. The requirements include procedures to evaluate the acceptability of the CEMS at the time of its installation and whenever specified in regulations or permits. The procedures evaluate CEMS performance at the time of installation and not over an extended period of time. Quality assurance procedures for calibrating, maintaining, and operating the CEMS properly at all times are given in appendix D of this part.

1.1.2 In most cases, VOC monitors provide only a measure of the relative concentration level of a mixture of organics, rather than quantitation of the organic

species present. This trait necessitates the use of VOC CEMS's more as a relative indicator than a conventional emissions monitor. However, it may be possible to consider the VOC monitor as a conventional CEMS in some instances. These instances include cases where only one organic species is present, or where equal incremental amounts of each of the organic species present generate equal instrument responses.

1.2 Principle. Calibration error, response time, and performance audit tests are conducted to determine conformance of the CEMS with these specifications. The requirements include specifications for installation and measurement location, equipment and performance, and procedures for testing and data reduction.

2. Definitions

The definitions are the same as in the other portions of appendix A of this part and the following:

2.1 Instrument range. The minimum and maximum concentrations that can be measured by a specific instrument. The range statement often assumes the minimum to be zero and expresses the range only as the maximum.

2.2 Instrument span or span value. Full scale range of interest.

3. Installation and Measurement Location Specifications

3.1 CEMS installation and measurement locations. Same as in section 3.1 of appendix B of this part. The CEMS shall be installed in a location where measurements give representative indication of the source's emissions.

3.2 Stratification test procedure. To determine whether VOC stratification exists, use a dual probe system as follows: Measure the VOC concentration at each traverse point according to Method 1 (40 CFR part 60, appendix A) with one probe and the VOC concentration at the stack or duct centroid with the other probe. Alternatively measure 5-minute VOC concentrations at each traverse point and at the centroid. Normalize the data using the measurements at the centroid. Then calculate the deviation of the VOC concentration at each traverse point from the overall average. The installation location is unacceptable if the VOC concentration deviation at any point more than two inches from the duct or stack wall exceeds 10 percent. If the location is acceptable, then locate the CEMS probe at a point of average concentration that is within or closest to the centroidal area.

4. CEMS Performance and Equipment Specifications

4.1 Presurvey sample analysis. Use Method 18 (40 CFR part 60, appendix A), process chemistry, or previous studies to determine at least 90 percent of the VOC components in the effluent stream. Then select an appropriate CEMS for measuring the VOC. If applied in highly explosive areas, exercise caution in choosing and installing the CEMS.

4.2 Sampling system. Unless the owner or operator can demonstrate otherwise to the satisfaction of the permitting authority, the sampling system shall require heating to

maintain the temperature of the sample gas above 150°C (300°F) throughout the system. This means heating all system components such as the probe, calibration valve, filter, sample lines, pump, and the analyzer to prevent moisture from condensing. In addition, the sampling system shall include an in-stack or heated out-of-stack filter.

4.3 Instrument span. For a CEMS intended to measure uncontrolled emissions, the instrument span must be between 1.1 and 1.3 times the average potential emission. For a CEMS installed to measure controlled emissions or emissions that comply with an applicable regulation, the instrument span must be between 1.5 and 2 times the level of the emission limit.

4.4 Calibration gases.

4.4.1 Zero gas. High purity air with less than 0.1 ppm by volume of hydrocarbons as methane or carbon equivalent or less than 0.1 percent of the span, whichever is greater.

4.4.2 Upscale calibration gases. Same as in section 4.1.3 in appendix B of this part. Have the manufacturer of the cylinder provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change by more than 2 percent from the certified value. Prepare mid-level (40 to 60 percent of span) and high-level (80 to 100 percent of span) calibration gases by source type containing the following components:

4.4.2.1 Process source. Use the VOC components in the same proportion that make up 90 percent of the VOC in the effluent stream.

4.4.2.2 Combustion source. Use propane gas.

4.5 Performance audit gas. A certified EPA audit gas shall be used, when possible. A Protocol 1 gas mixture within the calibration range may be used when EPA performance audit materials are not available.

4.6 Data recorder scale. The strip chart recorder, computer, or digital recorder must be capable of recording all readings within the CEMS measurement range and shall have a resolution of 0.5 percent of span.

4.7 Response time. The response time for the CEMS must not exceed 2 minutes to achieve 95 percent of the final stable value.

4.8 Calibration error. The CEMS must allow the determination of daily calibration error (CE) at all three calibration levels. For the initial 7-day CE test, the CEMS calibration response must not differ by more than 5 percent from the calibration gas value at each level after each 24-hour period.

4.9 Performance audit specification. The instrument relative error shall be less than or equal to 10 percent.

4.10 Measurement and recording frequency. The sample shall flow continuously through the measurement section of the analyzer. The detector shall measure the sample concentration at least once every minute, and the data acquisition system shall compute and record from these determinations an average hourly VOC concentration.

5. Performance Specification Test (PST) Periods

5.1 Pretest preparation period. Install the CEMS, prepare the test site according to the

specifications in Section 3, and prepare the CEMS for operation and calibration according to the manufacturer's written instructions. To verify the operational status of the CEMS, the owner or operator should conduct a pretest conditioning period similar to that of the 7-day CE test.

5.2 *7-Day CE test period.* Same as in section 3.3.1 of appendix C of this part.

5.3 *Response time test period.* Conduct the response time test once during the 7-day CE test period and quarterly thereafter.

5.4 *Performance audit test periods.* Conduct the performance audit once during the initial CE test and quarterly thereafter.

6. Performance Specification Test Procedures

6.1 7-Day CE test.

6.1.1 *Sampling strategy.* Conduct the 7-day CE test at 24-hour intervals for seven consecutive days following Section 4.1 of appendix C of this part, except determine CE at the specified three levels.

6.1.2 *Calculations.* Summarize the results on a data sheet. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate three CE results according to Equation 1 of appendix C of this part. The CE calculations do not use a confidence coefficient.

6.2 *Response time.* Same as in section 5.1 of appendix C of this part.

6.3 Performance audit.

6.3.1 *Testing strategy.* Conduct the performance audit following the daily calibration of the instrument. Introduce the audit gases into the sampling system at the sampling probe. The gas shall pass through all CEMS components used during normal sampling.

6.3.2 *Calculation.* Calculate the CEMS relative error using the following Equation 1:

$$RE = \frac{C_m - C_a}{C_a} \times 100$$

where:

RE = Relative error of the performance audit test, percent.

C_m = Average CEMS response, ppm.

C_a = Audit gas reference value, ppm.

Performance Specification 102— Performance Specifications for Gas Chromatographic Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 *Applicability.* These requirements apply to continuous emission monitoring systems (CEMS's) that use gas chromatography (GC) to measure gaseous organic compound emissions. The requirements include procedures intended to evaluate the acceptability of the CEMS at the time of its installation and whenever specified in regulations or permits. The procedures evaluate CEMS performance at the time of installation and not over extended periods of time. Quality assurance procedures for calibrating, maintaining, and operating the CEMS properly at all times are given in appendix D of this part. A GC CEMS may not be suitable for applications where the number of VOC components to be monitored exceeds five.

1.2 *Principle.* Calibration error, calibration precision, and performance audit tests are conducted to determine conformance of the CEMS with these specifications. The requirements include specifications for installation and measurement location, equipment and performance, and procedures for testing and data reduction.

2. Definitions

The definitions are the same as in the other parts of appendix A of this part, including Performance Specification (PS) 101, and also include the following:

2.1 *Gas chromatograph (GC).* That portion of the system that separates and detects organic analytes and generates an output proportional to the gas concentration. The GC must be temperature programmable.

2.1.1 *Column.* An analytical column capable of separating the analytes of interest.

2.1.2 *Detector.* A detection system capable of detecting and quantifying all analytes of interest.

2.1.3 *Integrator.* That portion of the system that quantifies the area under a particular sample peak generated by the GC.

2.2 *Calibration precision.* The agreement between triplicate injections of each calibration standard.

3. Installation and Measurement Location Specifications

These specifications are the same as in section 3 of PS 101.

4. CEMS Performance and Equipment Specifications

4.1 *Presurvey sample analysis and GC selection.* Use Method 18 (40 CFR part 60, appendix A), process chemistry, or previous studies as a guide to determine at least 98 percent of the organic components by mass in the effluent stream. Then select an appropriate GC configuration to measure the organic compounds. The GC components shall include a heated sample injection loop, separation column, temperature-programmable oven, and detector. If this method is applied in highly explosive areas, caution should be exercised in selecting the equipment and method of installation.

4.2 *Sampling system.* Same as in section 4.2 of PS 101, except the sample loop and chromatograph shall also be heated.

4.3 *Calibration gases.* Same as in section 4.1.3 of appendix B of this part. The techniques specified in section 6.2 of Method 18 (40 CFR part 60, appendix A) may also be used. A gas dilution system may be used if its operation is consistent with section 4.3 of appendix B of this part. The calibration gases may be mixtures of the compounds of interest. Prepare three different concentrations of each organic analyte in the following ranges:

4.3.1 *Low-level.* 40–60 percent of measured concentration.

4.3.2 *Mid-level.* 90–110 percent of measured concentration.

4.3.3 *High-level.* 140–160 percent of measured concentration, or select highest expected concentration.

(Note: Measured concentration is from section 4.1.)

4.4 *Performance audit gas.* Same as in section 4.5 of PS 101.

4.5 *Data recorder scale.* Same as in section 4.6 of PS 101.

4.6 *Calibration error.* The CEMS must allow the determination of CE daily at all three calibration levels. For the initial 7-day CE test, the CEMS calibration response must not differ by more than 5 percent from the calibration gas value at each level after each 24 hour period.

4.7 *Calibration precision and linearity.* The deviation from the measured average at each level shall not exceed 5 percent for each compound per triplicate injection. The linear regression curve for each organic compound at all three levels shall have an $r^2 \geq 0.995$.

4.8 *Performance audit.* The instrument relative error shall be less than or equal to 10 percent.

4.9 *Measurement frequency.* The sample to be analyzed shall flow continuously through the sampling system. The analytical system shall be capable of measuring the effluent stream at the frequency specified in the appropriate regulation or permit.

5. Performance Specification Test (PST) Periods

5.1 *Pretest preparation period.* Using the procedures described in Method 18 (40 CFR part 60, appendix A), perform initial tests to determine GC conditions that provide good resolution and minimum analysis time for the compounds of interest. Potential resolution interferences can be eliminated by choosing the appropriate GC column and detector or by shifting the retention times by changing the column flow rate or using temperature programming. Use Procedure 1 (40 CFR part 61, appendix C) to verify adequate peak resolution.

5.2 *7-Day CE test period.* Same as in Section 3.3.1 of appendix C of this part.

5.3 *Performance audit test periods.* Conduct the performance audit once during the initial CE test and quarterly thereafter.

6. Performance Specification Test Procedures

6.1 *Calibration error, precision, and linearity tests.*

6.1.1 *Sampling strategy.* Conduct the 7-day CE test at 24-hour intervals for seven consecutive days following section 4.1 of appendix C of this part, except use the calibration gases at the three concentration levels specified in section 4.3.

6.1.2 *Calculations.* Summarize the results on a data sheet. Calculate the differences between the CEMS responses and the reference values. Calculate the deviation from the average and the coefficient of determination (r^2) using Equation 1 in section 7 of this PS 102. Calculate CE using Equation 1 of appendix C of this part.

6.2 *Performance audit.* The performance audit test procedure and calculation are the same as in section 6.3 of PS 101.

7. Equations

7.1 *Coefficient of determination.* Calculate r^2 using linear regression analysis and the average concentrations obtained at three calibration points as shown in the following Equation 1:

$$r^2 = \left(\frac{n \sum x_i y_i - (\sum x_i)(\sum y_i)}{\sqrt{(n \sum y_i^2 - \sum y_i \sum y_i)(n \sum x_i^2 - \sum x_i \sum x_i)}} \right)^2$$

where:

r^2 = Coefficient of determination

n = Number of measurement points

x = CEMS response

y = Actual value of calibration standard

8. Reporting

The owner or operator of the affected emissions unit shall submit with the permit application a summary in tabular form of the results of the CE tests, as appropriate. Include all data sheets, calculations, CEMS data records, and cylinder gas or reference material certifications.

Appendix B to Part 64—General Equipment, Installation, and Calibration Gas Specifications for Enhanced Monitoring Protocols

1. Introduction.

This appendix covers the equipment, installation, and (if applicable) calibration gas specifications for an enhanced monitoring protocol (EMP).

2. Equipment Specifications

2.1 CEMS and COMS EMP's.

2.1.1 The CEMS includes the pollutant (e.g., SO₂, VOC or NO_x) concentration monitor and the data acquisition and handling system (DAHS). The design of the equipment shall allow for checking the entire system for sample line losses and calibration changes. The pollutant monitor and DAHS must be able to measure and record information over the measurement span. In addition, the CEMS must allow the detection of changes in the instrument calibration and applicable accuracy requirement.

2.1.2 The design of the pollution concentration monitor shall include an injection port for calibration gases to check all components of the entire measurement system. The components include, as applicable, sample lines, filters, scrubbers, conditioners, and as much of the probe as is practicable. For in situ type monitors, the design of the monitor must allow for a calibration check against the optical filter or cell values for the performance of all active electronic and optical components (e.g., transmitter, receiver, analyzer). For extractive monitors, the injection port must be at a point no closer to the analyzer than the back of the probe. For dilution probe equipped monitors, the injection port must be placed before dilution occurs to allow a check of the dilution system. For educator or aspirator equipped monitors, the injection port must be before the port for the sample slip stream.

2.1.3 A COMS shall comply with the design specifications provided in Performance Specification 1 of appendix B of part 60 of this chapter.

2.2 *Parameter monitoring systems or CERMS's.* The parameter monitoring system or CERMS includes the parameter or flow sensor and the DAHS. The design of the

equipment shall allow for checking the entire system for calibration changes, which affect measurement accuracy and precision. The parameter monitoring system and CERMS must be able to measure and record information over the measurement span. In addition, the parameter monitoring system or CERMS must allow the detection of changes in the instrument calibration and applicable accuracy requirement.

2.3 Calibration error (CE) determination.

The design of the EMP must allow determinations of CEs, positive or negative, at the low and high measurement levels. For a CEMS, daily determinations are required and are done using the calibration gas injection ports. For a COMS or CERMS, daily determinations are required. For a parameter monitoring system, determinations shall be conducted prior to installation. Thereafter, CE determinations for a parameter monitoring system shall be as frequently as practicable. If the EMP automatically adjusts (mechanically or electronically) the calibration, the EMP must record:

(a) The amount of adjustment in measurement units (i.e., the difference of data output before adjustments from the reference value); or

(b) The output in measurement units before calibration adjustments to allow the determination of the amount of adjustment in the measurement units.

2.4 *Data acquisition and handling system.* The DAHS must record the desired data over the range of operation. The DAHS must allow the detection of changes in the instrument calibration and applicable accuracy requirement.

2.5 *Measurement frequency.* Refer to sections 1.4.1.2 and 2 of appendix A of this part.

3. Installation and Measurement Location Specifications

Sections 3 and 4 are primarily for a CEMS or a COMS and, as applicable, a CERMS. Where an EMP is composed of parameter measurements, periodic sampling, or recordkeeping, locations and measurements are to be finalized as they are verified through the validation demonstrations of appendix C of this part and §64.4. These specifications assure that the EMP will provide measurements that are representative of the source's compliance status with emission limitations or standards. Representativeness is defined by the performance verification test procedure (see appendix C of this part). These specifications are guidelines, except for those cases where reference method (RM) tests are not required.

3.1 *Installation.* Install the CEMS, COMS, CERMS, or components of the EMP in a location where the measurements are representative as defined in appendix C of this part. Several other factors determine the optimum location. These include ease of access for calibration, quality control (QC)

checks, maintenance, readability and the degree of sample conditioning required. The location should be as free from in-leakage influences as possible. For CEMS, the exhaust gas sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameter upstream from the exhaust or control device. Method 1 of 40 CFR part 60, appendix A provides the equation for calculating the equivalent duct diameter. For COMS, follow the procedures contained in Performance Specification 1 of appendix B of part 60 of this chapter.

3.2 *Stratification check.* Pollutant concentration or flow rate stratification may cause the selection of non-representative locations. Therefore, the owner or operator should check the location for possible stratification before installing the CEMS, CERMS, or exhaust gas parameter instrumentation.

4. CEMS Calibration Gas Specifications

4.1 *Calibration gases.* Gases used for initial and quarterly 3-point CE tests shall be traceable to the National Institute of Standards and Technology (NIST), Gaithersburg, MD 20899 whenever possible.

4.1.1 The highest quality NIST standards are Standard Reference Materials (SRMs). These can be obtained from the Office of Standard Reference Materials NIST at (301) 975-6776, which maintains an inventory of SRMs.

4.1.2 When an SRM does not exist, NIST can develop NIST-certified materials through its NIST Traceable Reference Material (NTRM) and Research Grade Material (RGM) programs. The requestor reimburses NIST for the cost of developing and certifying NTRMs and RGMs. For more information, contact Dr. Willie May of NIST at (301) 975-3108.

4.1.3 Other gaseous reference materials that are traceable to a NIST certification are the EPA Protocol Gases. These can be obtained from specialty gas suppliers at a cost considerably less than that of SRMs and NTRMs. Protocol Gases are individually assayed using SRMs and NTRMs as the reference standards and in accordance with the requirements in EPA's "Protocol for Assay and Certification of Calibration Standards." If an SRM or NTRM exists, a Protocol Gas can be made.

4.2 *Dilution systems for calibration gases.* Gas dilution systems may be used if their operation is consistent with the protocol distributed through the EPA Emission Measurement Technical Information Center entitled "Verification of Gas Dilution Systems for Field Instrument Calibrations," by Rima Dishakjian. A copy of the protocol may be obtained by calling (919) 541-0200 and asking for EMTIC CTM-007 (April 2, 1991), or by contacting the EMTIC Bulletin Board System at (919) 541-5742.

Appendix C to Part 64—General Performance Verification Test Procedures for Enhanced Monitoring Protocols

1. Introduction

This appendix provides (a) the procedures to be used by an owner or operator for validating the representativeness of an Enhanced Monitoring Protocol (EMP) to emission standards or limitations and (b) performance verification procedures for continuous process or control device parametric monitoring systems or procedures, continuous emission monitoring systems (CEMS's), continuous opacity monitoring systems (COMS's), continuous emission rate monitoring systems (CERMS's), periodic emission or parameter monitoring systems, or other systems and procedures used in EMP's. All EMP's proposed in a permit application by an owner or operator shall include a test plan and schedule for validation of the representativeness of the EMP to the emission limitations or standards within the time period specified pursuant to § 64.4.

1.1 *CEMS's and COMS's.* In addition to the general procedures contained in this appendix C, any CEMS or COMS that is included as part of an EMP shall follow the performance specification test procedures provided in appendix B of part 60 of this chapter. Alternatively, where applicable for gas CEMS's, the owner or operator can elect to use the performance specification test procedures provided in appendix A of part 75 of this part. Where appropriate, modifications to terms used in the referenced appendices shall be made in accordance with section 1.4.1 of appendix A of this part.

2. Reference Method (RM) Test Location

The reference method testing locations for EMP validation may include: stacks; ducts; application or storage containers for coatings; leak detection locations; or other appropriate sampling locations. Where exhaust gas emission testing is necessary to validate the EMP, the following requirements shall apply to the EMP performance verification demonstration:

2.1 *Measurement location.* The RM location must provide a representative measurement of the source emissions or effluent flow rates. The location must be: (1) Accessible, (2) at least two equivalent diameters downstream from the nearest control device or other point at which a change in the pollutant concentration or flow rate may occur, and (3) at least one-half equivalent diameter upstream from the effluent exhaust. An owner or operator may select other locations if the Permitting Authority is satisfied that the locations provide a representative measurement over the stack or duct cross-section. The EMP (as appropriate) and RM measurement locations need not be coincident.

2.2 *Relative accuracy (RA) traverse points.*

2.2.1 *Gas concentration measurements.* For gas concentration measurements, locate three traverse points at 16.7, 50.0, and 83.3 percent of a "measurement line" that passes through the centroid. If the location of this

measurement line affects the EMP measurements, the tester may displace the measurement line by up to 12 inches (or 5 percent of the equivalent diameter of the cross-section, whichever is less) from the centroidal area. Conduct the RM measurements within an inch (but no less than an inch from the stack or duct wall) of the three traverse points.

2.2.2 *Effluent flow rates.* Locate the traverse points according to Method 1 of 40 CFR part 60, appendix A.

3. Test Periods

3.1 *Pretest preparation period.* The owner or operator shall identify the reference method test and test location procedures according to the general specifications in Section 2, and prepare the EMP (as appropriate) for operation and calibration according to either the manufacturer's, or, where no manufacturer exists, the owner or operator's, written instructions as specified in the approved test plan for the EMP.

3.2 *Operating conditions for RA and EMP validation testing.* The owner or operator shall conduct the RA test during periods representative of the affected emission unit's normal operating conditions as approved by the permitting authority.

3.3 *CEMS's and CERMS's.* The owner or operator shall ensure that the following provisions are met in addition to other requirements as specified by the permitting authority.

3.3.1 *7-Day CE test period.* While the emissions unit is operating under normal permitted operating conditions, determine the CE of the EMP at 24-hour intervals for 7 consecutive days according to the procedure given in section 4.1. All CE determinations must be made following a 24-hour period during which no unscheduled maintenance, repair, or manual adjustment of the EMP took place. Where periodic automatic or manual adjustments are made routinely to the EMP zero and calibration settings, conduct the CE test immediately before these adjustments, or conduct it in such a way that the longest period of nonadjustment can be measured. If the emissions unit is taken out of service during the test period, record the onset and duration of the downtime and continue the CE test when the unit resumes operation.

3.3.2 *Three-Point CE test and response time test periods.* Conduct the three-point CE test under section 4.2 of this appendix and response time test under section 5 of this appendix once during the initial 7-day CE test period of the EMP.

3.4 *Parameter monitoring systems.* The owner or operator shall demonstrate and validate the representativeness of a parameter monitoring system in accordance with the following requirements and those additional requirements specified by the permitting authority.

3.4.1 The test period of the parameter monitoring system shall consist of the operating period during which the parameter system output is directly compared to RM emission levels during a correlation test (see section 6, Relative Accuracy Tests and section 7, Parameter Monitoring System Validation Requirements, below) comprised of a minimum series of 9 reference method test runs or samples.

3.4.2 The operation of the parameter monitoring system shall be uninterrupted during the test period. During this period, there will be no unscheduled maintenance, repair, or adjustment of the parameter monitoring system.

3.5 *Periodic material sampling, recordkeeping, and multiple point monitoring.* An EMP which relies on a combination of periodic material sampling and analysis, and material use recordkeeping procedures must include demonstration of its known relationship to the permitted emission limitations (e.g., ink VOC content and gallons used to determine VOC emissions in pounds per day). Multiple point monitoring protocols must utilize appropriate measurement technique procedures. Examples of appropriate measurement technique procedures are: Method 9 of appendix A of 40 CFR part 60 for opacity and particulate emission limitations; Method 21 of appendix A of 40 CFR part 60 for VOC leak detection and repair programs; use of emission factors; and a demonstrated relationship between production and emissions.

3.6 If the above test periods are interrupted because of EMP failure, restart the entire test when the EMP becomes operational.

4. Calibration Error (CE) Test

4.1 *7-Day CE test procedure.* Determine the magnitude of the CEs at the low- and high-level values once each day (at 24-hour intervals) for 7 consecutive days. Before making any periodic automatic or manual adjustments to the EMP zero and calibration settings, determine the CE at the low- and high-measurement levels of the EMP. Record the EMP responses of each (i.e., the output from the data recorder).

4.2 *3-Point CE test procedure.* Determine the CE at the low-, medium-, and high-measurement levels three non-consecutive times at each measurement point. Operate the EMP in its normal sampling, analysis, and data recording mode as nearly as possible. Record the EMP responses (i.e., the output from the data recorder or DAHS). To demonstrate sampling system integrity, conduct these tests after a conditioning period of at least one hour of parametric, emission, or flow measurements.

4.3 *Calculations.* Summarize the results on a data sheet. Average the differences between the instrument responses and the certified calibration values. Calculate the CE results according to Equation 1. The CE calculation does not use a confidence coefficient.

$$\text{Equation 1: CE} = \frac{(R_m - R_v)}{R_v} \times 100$$

where:

CE = Calibration error of the EMP, percent.
 R_m = Average EMP response.
 R_v = Reference value.

5. EMP Response Time Test

5.1 *CEMS's.* The owner or operator shall conduct the following requirements for the proposed EMP in addition to conformance with any corresponding existing

requirements. Conformance only with such existing requirements may be used at the discretion of the permitting authority as demonstrating conformance with these requirements.

5.1.1 Introduce the calibration gases through the injection port. For time shared systems, use the system with the shortest cycle mode and with the longest line from injection to the analyzer (this may involve two systems). Introduce the low-level gas into the system. When the system output stabilizes (no change greater than 1 percent of full scale for 30 seconds), switch to monitor stack effluent and wait for a stable value. Record the time required (upscale response time) from the moment of switching until 95 percent of the final stable value is achieved.

5.1.2 Next, introduce the high level gas and repeat the above procedure. Record the time (downscale response time) required from the moment of switching until 95 percent of the final stable value is achieved.

5.1.3 Repeat the entire procedure three times and determine the mean upscale and downscale response times. The longer of the two means is the system response time.

5.2 *Parameter monitoring systems and CERMS's.* In most cases, these monitors have such rapid response times that a response time test is not necessary. The owner or operator shall evaluate each monitor and provide justification to the Permitting Authority that a response time test is not necessary.

5.3 *Other EMP's.* The owner or operator shall demonstrate to the permitting authority's satisfaction that the system produces a valid output that represents the emissions unit's emission level, considering averaging time, within the specified response time of the emissions unit's operating permit.

6. Relative Accuracy Tests

The owner or operator shall provide a determination of the relative accuracy of the EMP (excluding those EMP's identified in Section 3.2 of appendix A of this part as not requiring an RA specification). The relative accuracy determination shall form the basis for identification of the known relationship of the EMP to the emission limitation or standard being monitored.

6.1 *Performance verification methods.* The permitting authority and the performance specifications of these appendices specify the reference methods (RM) for the RA tests (see appendix A of this part).

6.2 Number of RM measurements.

6.2.1 Conduct a minimum of nine sets of all necessary RM runs (e.g., pollutant, moisture, O₂, etc). Conduct each set for 30 to 60 minutes in duration. The owner or operator may choose to perform more than nine sets of RM runs. If more than nine RM runs are performed, the owner or operator may reject a maximum of three sets of the test measurements as long as the total number used to determine the RA is equal to or greater than nine. All data including the rejected data must be reported.

6.2.2 For parameter monitoring system EMP's that provide predicted emissions data output to determine compliance with an

emission limitation or standard, the owner or operator shall compare the EMP data output obtained in terms of the emission limitation or standard (as determined using the equation or graph required to be established pursuant to section 7 of appendix A of this part to represent the known relationship between the parameters and emissions being monitored) to the concurrent RM results.

6.2.2.1 *Variable parameter monitoring systems.* Generally, a parameter monitoring system used to predict emissions in terms of the emission limitation or standard is practical if the number of variable parameters is minimal. Using the specified range of applicability, select at least three points over the range, and conduct at least three measurements of the RA test at each point. If the owner or operator wishes to extend the parameter monitoring system applicability and relationships beyond the tested range, the owner or operator must provide empirical data based on past studies or predicted data based on theory to justify the extension.

6.3 *Correlation of RM and EMP.* The owner or operator shall conduct the specified RM measurements to obtain results representative of the emissions from the affected emission unit and to correlate the results to the output data of the EMP. Mark the beginning and end of the test period and each RM measurement (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s) for the EMP recorder. Take into account appropriate response times.

6.4 Calculations.

6.4.1 *Arithmetic mean (\bar{d}).* The owner or operator shall calculate, record, and report on the difference of a paired EMP and RM data set using Equation 2. If applicable, correct the data for moisture.

$$\text{Equation 2: } \bar{d} = \frac{1}{n} \sum_{i=1}^n d_i$$

where

n = Number of pairs.

$\sum_{i=1}^n d_i$ = Algebraic sum of

the individual differences d_i between the pair of EMP and RM values.

6.4.2 *Standard deviation (S_d).* The owner or operator shall calculate, record, and report S_d using Equation 3.

$$\text{Equation 3: } s_d = \sqrt{\frac{\sum_{i=1}^n x_i^2 - \frac{(\sum_{i=1}^n x_i)^2}{n}}{n-1}}$$

6.4.3 *Confidence coefficient (CC).* The owner or operator shall calculate, record, and report the 2.5 percent error CC (one-tailed) using Equation 4.

$$\text{Equation 4: } CC = t_{0.975} \frac{S_d}{\sqrt{n}}$$

where:

$t_{0.975}$ = t-value (see Table 1).

TABLE 1.—T-VALUES

n^a	$t_{0.975}$
2	12.706
3	4.303
4	3.182
5	2.776
6	2.571
7	2.447
8	2.365
9	2.306
10	2.262
11	2.228
12	2.201
13	2.179
14	2.160
15	2.145
16	2.131

^aThe values in this table are already corrected for $n-1$ degrees of freedom. Use n equal to the number of individual values.

6.4.4 *Relative accuracy.* The owner or operator shall calculate, record, and report the RA of the set of data using Equation 5.

$$\text{Equation 5: } RA = \frac{|\bar{d}| + |CC|}{RM} \times 100$$

where:

\bar{d} = Absolute mean of the differences (Equation 2).

CC = Confidence coefficient (Equation 4).

RM = Average reference value or applicable standard.

6.5 *Notes.* If the 3-point RM result differs greatly from the CEMS or CERMS result, make a 1-point RM measurement close to the CEMS or CERMS measurement point to check for stratification. Agreement between the 1 point RM result and the CEMS or CERMS result would indicate that stratification might exist; therefore, relocate the CEMS or CERMS measurement point to a point of average value. If there is disagreement, the cause for the high mean difference might be significant losses of pollutant in the sample lines. A way to check for line losses is to calibrate the CEMS or CERMS at the analyzer and through the probe and compare the results. Other causes of high mean differences include erroneously labeled calibration gases, interferences, and errors in conversion factors or assumed values (e.g., moisture content) used in calculations. Also, check NO_x CEMS's for NO₂ losses.

7. Parameter Monitoring System Validation Requirements

In order for a parameter monitoring system to be used as part of an enhanced monitoring protocol, the owner or operator must establish a correlation (a known relationship between the output of a parameter monitoring system and the applicable emission limitation or standard), except where the emission limitation or standard itself is expressed in terms of the monitored

parameter. A correlation can either be a predictive relationship in which parameter output values are given predicted emission values or a demonstrated compliance relationship in which a parameter value (or range of parameter values) is established at which compliance with the applicable emission limitation or standard is achieved without attempting to predict and verify that such parameter value will result in a specified emission value.

7.1 Validation requirements for a predictive parameter monitoring system. In addition to the relative accuracy verification test procedures under section 6 of this appendix C, the owner or operator that chooses to use a parameter monitoring system to predict emissions must provide additional documentation that establishes the correlation between the monitored parameters and the predicted emission values.

7.1.1 Except for parameter monitoring systems that involve fuel sampling and analysis, fuel supplier certification procedures, calculations of VOC emissions based on a combination of manufacturer formulation data and reference method data, or other parameter monitoring systems that predict emissions output solely on the content of process materials, the correlation shall require additional site-specific testing involving comparisons of concurrent RM and parameter monitoring system measurements performed prior to the RA test required pursuant to Section 6 of this appendix C. The permitting authority may accept testing performed at other emissions units with equivalent design and operating conditions in place of site-specific data upon a demonstration by the owner or operator that such prior test results on similar emissions units document that site-specific conditions would not affect the parametric relationship.

7.1.2 The number of tests shall be, at a minimum, three concurrent RM and parameter monitoring system measurements at three process operating loads (low, mid, and high loads). The owner or operator must identify any other process or operating conditions that may affect the parametric relationship, and, for each such condition, the owner or operator must conduct at least three test runs at representative points over the maximum potential range for the applicable process or operating condition. The results of these site-specific tests will be used to develop the predictive relationship (expressed as an algorithm or graph) which will then be tested using the RA procedures in Section 6 of this appendix C.

7.2 Validating other parameter monitoring systems.

Section 64.4(c) allows an owner or operator that proposes to use a parameter monitoring system to establish parameter levels that assure compliance with the applicable emission limitations or standards. Such a parameter level is defined in part 64 as a demonstrated compliance parameter level (DCPL).

7.2.1 Establishing a demonstrated compliance parameter level (DCPL). If the owner or operator elects not to use the parameter monitoring system as a predictive monitoring method, the owner or operator

shall identify through testing, and report with the EMP validation demonstration, a DCPL. The DCPL may be established at a minimum or maximum parameter level, or within a range of values, depending upon the type of parameter monitored. The owner or operator must conduct at least three concurrent parameter and RM measurements at the specified levels of these parameters that provide an assurance that any applicable emission limitations or standards that are monitored by the parameter monitoring system are achieved at such parameter levels. If the RM tests demonstrate a significant margin of compliance at the concurrently measured parameter levels, the permitting authority may approve a DCPL that varies from the measured demonstrated compliance parameter level upon a demonstration by the owner or operator that such variation will satisfy the requirements for a DCPL in this part. The owner or operator shall use empirical relationships based on previous studies or theoretical relationships with sensitivity analyses to make such demonstration.

7.2.2 Additional demonstration requirements. The owner or operator must identify any other process or operating conditions that may affect the parametric relationship. Where such other process and operating conditions may affect the correlation of the parameter EMP output to compliance with the applicable emission limitation or standard, the owner or operator must either:

7.2.2.1 Establish DCPL's limiting variations in such other process and operating conditions so that the parameter monitoring system can provide a valid demonstration of compliance with the applicable emission limitation or standard; or

7.2.2.2 Conduct such additional site-specific concurrent RM and parameter monitoring system testing as may be necessary to demonstrate that the DCPL remains a valid demonstration of compliance with the applicable emission limitations or standards being monitored under maximum potential variations in such other process and operating conditions. At a minimum, the number of concurrent RM and parameter monitoring system measurements shall be comparable to the specifications in section 7.1 of this appendix.

Appendix D to Part 64—General Quality Assurance Plan Specifications for Enhanced Monitoring Protocols

1. Introduction

The quality assurance (QA) plan is the basis for assessing and maintaining the quality of data for enhanced monitoring protocols (EMP's). Quality-assured EMP data are essential since EMP data are used for certifying compliance with permitted emission limitations or standards. A quality assurance plan has two functions: (1) Assessment of the quality (accuracy and precision) of the EMP data, and (2) quality control (QC), which involves activities to maintain or improve data quality. Both functions form a control loop. When accuracy or precision is unacceptable, QC must increase until the quality of the EMP data is acceptable.

1.1 CEMS and COMS EMP's. In addition to the general requirements provided in this appendix D, if a gas CEMS or a COMS is used as part of an EMP, the owner or operator shall follow the quality assurance and quality control procedures provided in appendix F of part 60 of this chapter and in Method 203 in appendix M of part 51 of this chapter, respectively. As an alternative for gas CEMS's, the owner or operator can elect to use the quality assurance requirements in appendix B of part 75 of this chapter. Where appropriate, modifications of terms in the referenced appendices shall be made in accordance with section 1.4.1 of appendix A of this part.

2. Basic Elements of a QA Plan

The quality assurance plan must include a program of frequent (e.g., daily) and less frequent (e.g., quarterly and annual) checks of the EMP. Quality control programs used for the certification of emissions and EMP output verification may include daily, quarterly and annual evaluations. Such programs are not limited to just instrumental sampling and analysis, but also quality assessments of material inventories or other non-instrumental procedures used for providing EMP data. The rigorosity and frequency of assessment must be commensurate with the EMP and shall be proposed by the source owner or operator at the time of permit application for incorporation into the permit.

2.1 Quality control (QC) checks and error assessments. QC checks and error assessments (e.g., temperature and pressure recording devices have failed) shall be done daily, unless the permit applicant can justify less frequent assessments to the permitting authority.

2.1.1 For recordkeeping components of an EMP, the QC checks shall involve checking the data forms to see that all required information is recorded and the information is recorded correctly.

2.1.2 For an EMP that involves instrumental measurements, the QC checks shall describe the procedure for checking the calibration error of each instrument at the zero (low) and span (high) levels. Alternatives may be used subject to the approval of the permitting authority.

2.1.3 The criteria for excessive error, i.e., when the EMP's data are invalid (e.g., outside performance specifications including recording of insufficient information), shall be stated in the QC plan. The plan proposed by the owner or operator shall ensure that the beginning and ending times of the invalid data period are identified.

2.2 Data accuracy assessment. The QA plan must include procedures (e.g., calibration error, relative accuracy testing, inventory assessment, or fugitive emission assessment plan review) for a quarterly and annual assessment of the EMP's data accuracy and must specify the criteria for excessive error (e.g., does not meet the relative accuracy requirement, failed to statistically prove that leaks were less than 1 percent of all potential leaks).

2.3 Minimum data availability. 40 CFR 64.4 requires owners or operators to operate and maintain an EMP to ensure quality data

during all times when an emissions unit is operating, except during defined periods of calibration, routine maintenance, and QA activities. The QA plan submitted by the owner or operator as a part of the EMP shall include an identification of and justification for the periods of EMP downtime associated with QA activities and accounting for and responding to mechanical breakdowns.

2.4 *Reporting and recordkeeping.* The requirements for reporting and recordkeeping for EMP's are provided in §§ 64.5 and 64.6. The QA plan proposed by the owner or operator and approved by the permitting authority shall assure that the information necessary for conformance with §§ 64.5 and 64.6 are obtained and maintained. The plan should also include the following provisions as applicable to the QA plan for the EMP:

2.4.1 Recording of parameter data and downtime of the process and control systems and reasons for downtime.

2.4.2 Recording of reasons for deviations from permit terms and conditions.

2.4.3 Recording of downtime, adjustments, and repairs of EMP components or procedures.

2.4.4 Reviewing and editing of the EMP data.

3. *Reverification of Parametric Relationship*

The owner or operator shall include procedures and a schedule in the QA plan for reverifying over time that data from an EMP that includes the use of parameter monitoring correlate to compliance with the emission limitations or standards.

4. *Quality assurance*

4.1 *QA plan organization.* The owner or operator shall submit with the permit application a description of the QA plan. This document shall include at a minimum the following: (a) QA responsibilities

(including maintaining records, preparing reports, and reviewing reports) among the various departments, groups, or individuals at the facility; (b) schedules for the daily checks, periodic audits, and preventive maintenance; (c) check lists, data sheets, and a spare parts inventory; (d) preventive maintenance procedures specified by the monitor manufacturer; and (e) description of the media, format, and location of all records and reports for submission to the Permitting Authority.

4.2 *QA plan revision.* The QA plan shall include provisions for a review at least once a year of all data generated by the EMP. Based on the results of the annual review, the owner or operator shall revise or update the QA plan, if necessary.

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Part III

**Environmental
Protection Agency**

40 CFR Part 300
National Oil and Hazardous Substances
Pollution Contingency Plan; Proposed
Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

(FRL-4544-8)

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or "the Agency") is today proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Oil Pollution Act of 1990 (OPA) amends existing provisions of the Clean Water Act (CWA) and creates major new authorities addressing oil and, to a lesser extent, hazardous substance spill response. The revised CWA requires the President to revise the NCP to reflect these changes. The OPA specifies a number of revisions to the NCP that are intended to enhance and expand upon the current framework, standards, and procedures for response. The last revisions to the NCP were promulgated on March 8, 1990. The proposed revisions will affect all NCP subparts except F (State Involvement in Hazardous Substance Response) and I (Administrative Record for Selection of Response Action).

DATES: Comments must be received on or before December 20, 1993.

ADDRESSES: Comments: Comments should be submitted in triplicate to Emergency Response Division, Attn: Superfund Docket Clerk, Docket Number NCP-R2/A, Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of materials relevant to the rulemaking are contained in the Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (Docket Number NCP-R2/A) This docket is available for inspection between the hours of 9 am and 4 pm, Monday through Friday, excluding federal holidays. Appointments to review the docket may be made by calling 202-260-3046. The public may copy a maximum 267 pages from any regulatory docket at no cost. If the number of pages copied exceeds 267, however, a charge of \$0.15 will be incurred for each page after page 100.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Zeller, Emergency Response Division (5202-G), U.S. Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460, or call 703-603-8780.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction

- A. Statutory Authority
- B. Background of This Rulemaking

II. Revisions to the NCP

- Subpart A: Introduction
- Subpart B: Responsibility and Organization for Response
- Subpart C: Planning and Preparedness
- Subpart D: Operational Response Phases for Oil Removal
- Subpart E: Hazardous Substance Response
- Subpart G: Trustees for Natural Resources
- Subpart H: Participation by Other Persons
- Subpart J: Use of Dispersants and Other

III. Regulatory Analyses

- A. Executive Order 12291
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Introduction

A. Statutory Authority

Under section 311(d) of the Clean Water Act (CWA), as amended by section 4201 of the Oil Pollution Act of 1990 (OPA), Public Law No. 101-380, and pursuant to authority delegated by the President in Executive Order (E.O.) No. 12777, the U.S. Environmental Protection Agency (EPA), in consultation with the member agencies of the National Response Team (NRT), is today proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. Some of the major goals of the OPA that affect the NCP include expanding prevention and preparedness activities and enhancing the response capability of the federal government.

One of the primary purposes of the NCP is to provide for efficient, coordinated, and effective action to minimize adverse impact from oil discharges and hazardous substance releases.¹ Today's revisions are intended to incorporate changes made by the OPA that have expanded federal removal authority, added responsibilities for federal on-scene coordinators (OSCs), and broadened coordination and preparedness planning requirements.

The OPA was enacted to strengthen the national response system. The OPA provides for better coordination of spill contingency planning among federal, state, and local authorities. The addition of the National Strike Force

Coordination Center (NSFCC), for example, would relieve equipment and personnel shortages that have interfered with response to oil spills posing particularly significant environmental or human health threats. Today's rule proposes to revise the NCP to implement a strongly coordinated, multi-level national response strategy. The national response strategy, contained primarily in subparts B and D of the NCP, would contain the framework for notification, communication, logistics, and responsibility for response to discharges of oil, including worst-case discharges and discharges that pose a substantial threat to the public health or welfare of the United States.² The amended NCP would further strengthen the federal OSC's ability to coordinate the response on scene and would also incorporate a new level of contingency planning—Area Committees and area contingency plans (ACPs). These committees and plans are designed to improve coordination among the national, regional, and local planning levels and to enhance the availability of trained personnel, necessary equipment, and scientific support that may be needed to adequately address all discharges.

The major revisions to the NCP being proposed today reflect changes the OPA made to section 311 of the CWA. These changes increase Presidential authority to direct oil spill and hazardous substance cleanup and augment preparedness and planning activities on the part of the federal government, as well as vessel and facility owners and operators. For example, revised CWA section 311(c) requires the President to direct removal actions for discharges and substantial threats of discharges posing a substantial threat to the public health or welfare. Revised section 311(d) requires a number of specific changes to the NCP, including the establishment of "criteria and procedures to ensure immediate and effective [f]ederal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States."

Section 311(d) also mandates the establishment of procedures and standards for removing a worst-case discharge of oil and for mitigating or preventing a substantial threat of such a discharge. Furthermore, this section requires the NCP to establish a fish and wildlife response plan "for the

¹ Throughout the NCP, "discharge" also includes "substantial threat of discharge," and "release" also means "threat of release."

² Throughout the NCP, the term "substantial threat to the public health or welfare" is used interchangeably with "substantial threat to the public health or welfare of the United States."

immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge." Section 311(d)(2)(G) authorizes consideration of "other spill mitigating devices and substances" for inclusion on the NCP Product Schedule, and section 311(d)(2)(L) requires the establishment of procedures for the coordination of activities of OSCs, Area Committees, U.S. Coast Guard (USCG) strike teams, and District Response Groups (DRGs).

Section 311(j)(2) of the CWA requires that a national response unit, included in today's proposed revisions as the NSFCC, be established in Elizabeth City, North Carolina. The NSFCC "shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment" and "shall provide technical assistance" to federal OSCs. Section 311(j)(2) provides that the NSFCC will also coordinate efforts to remove worst-case discharges. Pursuant to section 311(j)(3), the USCG must establish DRGs in each of the 10 USCG districts to provide "technical assistance, equipment, and other resources" to federal OSCs to assist their response activities. Pursuant to section 311(d)(2)(K), OSCs must be designated for each area for which an ACP is required to be prepared.

Section 311(j)(4) addresses the development of an expanded national oil spill response planning system. Under this section, Area Committees, which are composed of qualified federal, state, and local agency personnel, are directed to develop ACPs that will address planning and response-related issues and concerns, including removal of worst-case discharges, responsibilities of owners and operators and government agencies in removing discharges, and procedures for obtaining an expedited decision regarding the use of dispersants.

Section 4202(b)(4) of the OPA requires that the President issue regulations within two years of enactment for owners or operators of certain vessels and facilities to prepare response plans to address, among other matters, response to a worst-case discharge to the maximum extent practicable. These facility response plans must be consistent with the NCP. For onshore facilities that can cause "significant and substantial harm" in the event of a worst-case spill, these plans must be approved by the federal government. Pursuant to E.O. 12777, EPA is developing regulations that include the criteria for determining which onshore, non-transportation-

related facilities are to submit response plans and which of these plans are to be reviewed and approved by EPA, requirements for the preparation of those plans, and criteria for EPA's review and approval of the submitted plans. The Agency proposed these regulations on February 17, 1993 (58 FR 8624). EPA will develop a data base to track both facilities and facility response plans. USCG and the Department of the Interior (DOI) will develop similar regulations, requirements, criteria, and a data base for offshore and transportation-related facilities and vessels.

B. Background of This Rulemaking

The President signed the OPA on August 18, 1990, after both houses of Congress passed the Act unanimously. After several similar proposals had been unsuccessful over the past 15 years, Congress enacted this legislation partly in response to the Exxon Valdez spill and several other incidents, including the Mega Borg and the American Trader spills.

The NCP was most recently revised on March 8, 1990 (55 FR 8666) pursuant to the Superfund Amendments and Reauthorization Act of 1986 (SARA). The 1990 revisions, focusing on hazardous substance response, reorganized the NCP to describe more accurately the sequence in which response actions are taken pursuant to the NCP, clarified existing language on roles, responsibilities, and activities of affected parties, and incorporated changes required by SARA as well as those suggested by program experience.

II. Revisions to the NCP

Subpart A—Introduction

Subpart A, the preface to the NCP, contains statements of purpose, authority, applicability, and scope. It also explains the abbreviations and defines the terms used in the NCP.

Authority and Applicability (Section 300.2)

The citation of section 311 of the CWA as an authorizing statute for the NCP is proposed to be revised to reflect the amendment of the CWA by the OPA and the implementing Executive Order.

Scope (Section 300.3)

This section has been revised to reflect a change in CWA section 311(c) by adding a reference to the exclusive economic zone and deleting certain other language that describes the geographic coverage of the NCP.

A reference to on-scene coordinator (OSC) contingency plans is proposed to be replaced by a reference to ACPs.

Further information regarding this change can be found in the discussion of § 300.110, National Response Team, and § 300.210, Federal contingency plans.

EPA also is including a discussion of the Federal Response Plan (FRP) in several sections of today's revisions to the NCP, including § 300.3(d). The FRP, signed by 27 federal departments and agencies in April 1992, was developed under the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988. The FRP establishes a foundation for coordinating federal assistance to supplement state and local response efforts to save lives, protect public health and safety, and protect property in the event of a natural disaster, catastrophic earthquake, or other disaster incident declared a major disaster by the President.

The delivery of federal assistance is facilitated through 12 annexes, or Emergency Support Functions (ESFs), which describe a single functional area of response activity: Transportation, communications, public works, fire fighting, information and planning, mass care, resources support, health and medical services, urban search and rescue, hazardous materials, or food. The Hazardous Materials annex, ESF #10, addresses releases of oil and hazardous substances that occur as a result of a natural disaster or catastrophic event and incorporates preparedness and response actions carried out under the NCP. EPA serves as the Chair of ESF #10 and is responsible for overseeing all preparedness and response actions associated with ESF #10 activities. All NRT/RRT departments and agencies serve as support agencies to ESF #10.

The current NCP in § 300.3(c) indicates that actions taken pursuant to the NCP shall "conform to the provisions of the international joint contingency plans." EPA is proposing to modify this section to clarify that response actions taken pursuant to an international joint contingency plan must be consistent with the NCP, to the greatest extent possible.

Abbreviations (Section 300.4)

EPA is proposing to add new abbreviations used in the NCP to this section.

Definitions (Section 300.5)

EPA is proposing a number of changes to definitions currently included in the NCP. The term "Biological additives" is proposed to be changed to "Bioremediation agents" to reflect that "nutrient additives," which are bioremediation agents currently

available in the marketplace, are included under the term. EPA is also preparing changes to the definition to reflect the current definition of bioremediation in the scientific community and to focus on the discernible effect of the agent, rather than the purpose of its use.

The definition of "Chemical agent" has been revised in today's proposed rule to provide examples of chemical agents and to clarify that the term does not include sorbents.

"Claim" has been expanded in today's proposed rule to include separate definitions for purposes of a discharge under the CWA and a release under CERCLA.

Currently, the definition of "Discharge" includes threats of discharges. Today's proposal would add the word "substantial" before the phrase "threat of discharge" in order to more closely match the language in the OPA.

"Miscellaneous oil spill control agent" is proposed to be revised to clarify that the term does not include bioremediation agents, sorbents, or surface washing agents.

EPA is proposing to modify the definition of "Preliminary assessment" to clarify that it applies only in the CERCLA context.

"Remove or removal" has been expanded in today's proposal as a result of the OPA's change to the CWA definition to include the containment of oil or hazardous substances. Additional detail from the CWA definition further explaining the term "welfare" also has been included. Further, monitoring of action to remove a discharge has been added to the definition to clarify that costs of those activities designed to evaluate the effectiveness of CWA removal actions are considered to be part of the removal and give rise to liability in cost recovery cases. Scientific research and development specifically has not been included in this definition.

"Specified ports and harbors" is proposed to be revised to include the requirement that they be identified in area contingency plans.

The definition of "State" is proposed to be revised to clarify that § 300.515(b) addresses treatment of Indian tribes as states for purposes of CERCLA.

The definition of "Trustee" has been expanded in today's proposed rule to reflect the fact that, in the case of discharges covered by the OPA, trustee may also refer to a foreign government official who may pursue claims for damages under the OPA.

The definitions of "Facility," "Oil," and "Person" have been expanded in today's proposal to include their

definitions under section 1001 of the OPA in addition to their current CERCLA definitions.

The term "Oil pollution fund" has been replaced by "Oil Spill Liability Trust Fund" in today's proposed rule.

The definition of "United States" now references the OPA, in addition to CERCLA, in today's proposal.

Finally, EPA is proposing to incorporate in the NCP new definitions based on provisions in the OPA, provisions added to the CWA by the OPA, and other changes being proposed for the NCP today. Thus, in today's rule, EPA is proposing the addition of the following new definitions: "Area Committee," "Area contingency plan," "Claimant," "Coast Guard District Response Group," "Damages," "Exclusive economic zone," "Federal Radiological Emergency Response Plan," "Federal Response Plan," "Indian tribe," "Lead administrative trustee," "National Pollution Funds Center," "National response system," "National Strike Force," "National Strike Force Coordination Center," "Removal costs," "Responsible party," "Sorbents," "Spill of national significance," "Surface washing agent," "Tank vessel," and "Worst case discharge."

Subpart B—Responsibility and Organization for Response

Subpart B describes the responsibilities of federal agencies for response and preparedness planning and describes the organizational structure within which response takes place. It lists the federal participants in the response organization, their responsibilities for preparedness planning and response, and the means by which state and local governments, Indian tribes, and volunteers may participate in preparedness and response activities. The term "federal agencies" is meant to include the various departments and agencies within the Executive Branch of the federal government.

The changes being proposed in subpart B reflect specific changes to response organization and responsibilities made by the OPA, as well as revisions to clarify existing provisions and conform to changes being made elsewhere in this proposal.

There are a number of important changes to the organization for planning and response being proposed, reflecting the creation of a new national response strategy in the OPA. These changes include the addition of several new entities, each of which is discussed in detail in this preamble. A brief overview of this organization and how the various

entities involved are expected to interact is provided here to introduce the more detailed, comprehensive discussions that follow.

The OSC (§ 300.120) is the key actor in the national response system. The OSC is the lead federal official at the scene of a discharge, responsible for taking whatever actions are necessary, consistent with federal law, to remove the threat posed. All other entities in the national response system are intended to utilize their expertise to support the OSC during a response action. Coordination between the OSC and other components of the national response system is critical to the success of the oil spill response program.

The national response system functions as an incident command system, which is an organized approach to effectively control and manage operations at an emergency incident. The individual in charge of an incident command system is the senior official responding to the incident; for the national response system, this individual is the OSC.

The national response system, typical of an incident command system, can expand or contract to accommodate the response effort required based on the size and complexity of a particular discharge. Responses for small discharges may be performed by a relatively small number of individuals who together assume all functions of the national response system. Responses to larger, more complex discharges may require additional personnel to fill each position in the national response system and carry out the difficult time-consuming efforts to control the discharge. Whatever the complexity of an incident may be, requiring implementation of the national response system ensures there will be one individual who makes decisions and provides instructions. This system should result in reduced confusion, improved safety, better organized and coordinated response actions, and more effective management of the incident.

National policy making, preparedness planning, and coordination are the responsibility of the multi-agency NRT (§ 300.110). In carrying out these responsibilities, the NRT addresses issues of general applicability across agencies, sites, and programs. In some situations, particularly those that transect regional boundaries, the NRT may be activated as an incident-specific team to support the OSC's emergency response efforts. In that capacity, its role generally will consist of bringing the widest possible range of resources to bear and providing expertise and insight consistent with its position as the senior

level support organization in the national response structure.

The Regional Response Teams (RRTs) (§ 300.115) are designed to function in much the same way as the NRT, except on a regional level. The standing RRT serves as a planning and coordination body, while incident-specific RRTs are formed from appropriate RRT member agencies in a limited number of situations, such as when a discharge transects state boundaries or poses a substantial threat to the public health or welfare. Key responsibilities of the incident-specific RRT are monitoring the response, providing communications support, making recommendations to the OSC consistent with the RRT's expertise, and mobilizing resources available in the region, as requested by the OSC in specific response situations.

The NSFCC (§ 300.145(a)), administered by the USCG, is a new entity that will focus its efforts on identifying, coordinating, and mobilizing all public and private spill removal resources, both personnel and equipment. The NSFCC administers the USCG strike teams (§ 300.145(a)), which are available to the OSC for a variety of response needs, including the provision of specialized knowledge and equipment. The NSFCC will support the activities of and serve as a resource for the OSC, NRT, and RRT to ensure that all appropriate resources are brought to bear in a given response situation.

The new DRGs created by the OPA (§ 300.145(g)) provide a framework for each USCG district to deliver its entire response capability to the removal of a spill within its borders. These groups will provide an efficient mechanism for the OSC to call upon the wide-ranging skills, experience, and equipment of the USCG district staff. Because DRGs represent strictly USCG resources, they will not eliminate the need for incident-specific RRTs, which can provide expertise and resources from any of the RRT's member agencies. When spills cross USCG district lines, DRGs can work with the NSFCC to ensure that their response efforts are fully coordinated.

In addition to the response-oriented entities described above, the OPA creates a new system of Area Committees and ACPs within the national planning structure (see subpart C). The Area Committees are composed of federal, state, and local representatives; their primary responsibility is ACP development. Area Committees are planning bodies, not response entities, although members of the Area Committees may have specific roles during response

operations. ACPs are intended to provide detailed information on the geographic area covered by the plan and the response resources available within the area. They should complement other required planning activities by providing a level of localized site-specific detail unavailable in either the National or regional contingency plans. ACPs will be prepared under the direction of an OSC, who should draw on the expertise of the above described entities (in addition to state and local resources).

Use of the Term "Direct"

The NCP currently uses the term "direct" to describe broadly and generally the OSC's role in removal response operations, particularly those that are, at least initially, federally funded. The term is a shorthand expression for a wide range of management responsibilities of the OSC. The term "direct" is used in this sense in §§ 300.115(b)(2), 300.120(a), 300.120(e), and 300.135(a).

The OPA amends section 311(c) of the CWA to strengthen federal removal authority. One new feature of this authority is the ability to "direct" response actions under sections 311(c)(1)(B)(ii) and (c)(2)(A). Today's proposed changes also use the term "direct" to describe a potential OSC role in situations other than federally funded actions or private party cleanups being monitored by the OSC. "Direct," in this latter sense, is intended to convey more than management responsibility, and includes specific legal authority of the OSC to guide the activities of all parties responding to a discharge. This revised and expanded response authority is described in greater detail in the preamble discussions to subpart D, Operational Response Phases for Oil Removal, and subpart E, Hazardous Substance Response.

Duties of President Delegated to Federal Agencies (Section 300.100)

This section is proposed to be revised to incorporate references to the OPA and its implementing Executive Order.

General Organization Concepts (Section 300.105)

This section is proposed to be revised to incorporate Area Committees and ACPs into the list of organizational elements in § 300.105(c) and to make minor editorial changes. Figure 1 also is proposed to be revised to reflect changes made in today's proposal.

National Response Team (Section 300.110)

Section 300.110 proposes to include a number of changes that reflect new language contained in the OPA and revisions to other provisions in the proposed rule. Modifications are proposed to reflect the addition of Area Committees to the national response structure. The term "area contingency plan," for example, is proposed to be used in place of the existing "OSC contingency plan" (see preamble discussion of § 300.210, Contingency Plans Under the National Response System).

The functions of the NRT, such as developing recommendations for response training, reviewing regional responses, and activation to support response actions, remain unchanged for the most part. However, a number of changes are proposed. Section 300.110(e) is proposed to be revised to clarify the role of the NRT with regard to recommending changes to the NCP. Specifically, the NRT is now expected to recommend, to the Administrator of EPA, changes to the NCP including drafting of regulatory language.

Paragraph (h), which details the direct planning and preparedness responsibilities of the NRT also is proposed to be revised. Section 300.110(h)(5) is proposed to be modified to indicate that coordination procedures should be developed "in coordination with the NSFCC, as appropriate." Coordination with the NSFCC is appropriate in the case of discharges of oil and releases of hazardous substances under CWA section 311. Section 300.110(h)(6) is proposed to be modified to make the NRT responsible for facilitating research in support of response activities. This change is proposed to enhance the NRT's role in research activities in light of the emphasis placed on such activities by the OPA. The NRT is also now responsible for developing a national exercise program, in coordination with the NSFCC, to ensure nationwide preparedness and coordination (§ 300.110(h)(9)). This new responsibility reflects the new CWA requirement (section 311(j)(7)) for periodic area response drills.

A conforming change is proposed in paragraph (j) of this section. The language of § 300.110(j)(1)(iii) currently states that the NRT should be activated as an emergency team when an oil discharge or hazardous substance release involves a "significant threat to the public health or welfare or the environment." This last phrase is proposed to read "substantial threat to

public health or welfare or the environment" to reflect revisions made to CWA section 311(c) by the OPA.

In addition to circumstances where discharges or releases pose a substantial threat to the public health or welfare or the environment, the OSC may, depending on the circumstances of the discharge or release, request activation of the NRT to assist in responding to worst case discharges. In the event of a worst case discharge, the OSC shall "take whatever additional response actions are deemed appropriate" (see § 300.324). Because the OPA definition of worst case discharge (see § 300.5) focuses on weather conditions and relative amounts of discharged contents from a vessel or facility, not on the absolute size of a discharge, the size of a worst case discharge and its effects on the public health or welfare or the environment could vary greatly. For example, in the case of a discharge during a severe thunderstorm from an onshore facility that contained 150 gallons of fuel oil, the effects of a discharge of all 150 gallons might be confined to a relatively small area. Under these circumstances, local response capability probably would be sufficient. By contrast, if multiple onshore facilities located along major rivers containing 100,000 gallons of fuel oil ruptured during a hurricane, discharging their entire contents into the river, the OSC could request activation of the NRT to assist in coordinating local and regional response resources, or otherwise supporting the response.

Regional Response Teams (Section 300.115)

The language in § 300.115 is proposed to be changed to reflect the new language contained in the OPA and revisions to other provisions in the proposed rule. Furthermore, the language in § 300.115 (a) and (b) will be changed to ensure consistency between ACPs and regional contingency plans (RCPs). This includes tasking the RRTs with providing guidance to Area Committees to ensure inter-area consistency within each region.

Section 300.115(g) also is proposed to be changed to reflect the addition of the Area Committee structure. New CWA section 311(j)(4) gives the President the responsibility to appoint members to the Area Committees. The President delegated this authority to the Secretary of Transportation and the EPA Administrator in Executive Order 12777. However, because RRT members are well positioned to determine who from their own agencies are most qualified to work with OSCs in

developing and maintaining ACPs, today's proposed rule gives the RRTs the opportunity to nominate Area Committee candidates.

Further conforming changes have been made to § 300.115(i)(9) to reflect the addition of ACPs to the national response system. It is important to note that RRTs will not merely consider changes to ACPs, as they do for OSC contingency plans in the existing rule. Rather, the proposed NCP would provide that the RRT recommend modifications to ACPs.

Several other changes are proposed for § 300.115. The language of § 300.115(h) is proposed to be changed to clarify that Indian tribes are not governed by state law. Section 300.115(i)(6) is proposed to be modified to conform to new § 300.910. Thus, RRTs and Area Committees would share responsibility for creating preauthorization plans for the use of dispersants, surface washing agents, and bioremediation agents. This new language reflects the incorporation of Area Committees into the preexisting planning process concerning the use of chemical agents. Section 300.115(i)(11) is proposed to be added to reflect the RRT's role in the national exercise program (see preamble discussion of § 300.110, *supra*, for explanation of this program).

Finally, § 300.115(j) would state that RRTs may be activated as incident-specific response teams if a spill is a worst case discharge as described in § 300.324.

On-scene Coordinators and Remedial Project Managers: General Responsibilities (Section 300.120)

New CWA section 311(d)(2)(K) will require the NCP to designate a federal OSC for each area for which an ACP is required. Section 300.120 of the NCP currently requires EPA and the USCG to pre-designate OSCs for all portions of each region.

In a Federal Register notice of April 24, 1992 (57 FR 15201), USCG Captains of the Port (COTPs) were designated OSCs for coastal areas for which an ACP is required under CWA section 311(j). These new designations are the same as existing OSC designations made by the USCG. EPA Regional Administrators are authorized to designate OSCs for inland areas for which an ACP is required. The EPA Regions will consider their existing designations when making these newly required designations to minimize or avoid duplication or overlap of responsibilities among OSCs. These new designations are discussed in a new § 300.120(b). Remaining subsections have been re-lettered accordingly.

Newly designated § 300.120(e) also is proposed to be changed to reflect the OSC's responsibilities concerning the new area planning concept. Specifically, the proposed NCP would indicate that OSCs are responsible for overseeing development of ACPs in cooperation with RRTs.

Notification and Communications (Section 300.125)

Section 300.125(a) is proposed to be revised to eliminate the need for the NRC to notify FEMA of evacuation situations. As discussed later in the preamble (§ 300.135), FEMA no longer performs evacuations.

Determinations to Initiate Response and Special Conditions (Section 300.130)

Prior to the OPA, CWA section 311(d) gave the federal government the discretionary authority to take certain actions in cases where a marine disaster created a substantial threat of a pollution hazard to the public health or welfare of the United States (including, but not limited to, fish, shellfish, wildlife, and the public and private shorelines and beaches). These actions included: (1) Coordinating and directing all public and private efforts to remove a discharge, or an imminent discharge of large quantities of oil or a hazardous substance from a vessel; and (2) removing, and if necessary, destroying the vessel without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. This CWA response authority for marine disasters was deleted by the OPA, thus existing § 300.130(b)(3) and (c) are deleted in today's proposal.

CWA section 311(c)(2), as amended by the OPA, now requires the federal government to direct removal actions in response to a similar, but broader class of events—any discharge of oil or a hazardous substance (regardless of whether it qualifies as a "marine disaster," and whether it is from a vessel, offshore facility, or onshore facility) that is of such a size or character as to be a substantial threat to the public health or welfare of the United States. In directing removal actions in the case of a discharge that poses a substantial threat to public health or welfare of the United States, the President may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government and may destroy the vessel that is discharging or threatening to discharge. Section 311(c)(1), as amended by the OPA, continues to provide discretionary authority to the President to direct or

monitor all federal, state, and private actions to remove any discharge of oil or a hazardous substance that does not pose a substantial threat to the public health and welfare of the United States.

These changes, as well as an effort to clarify the distinction between CWA and CERCLA authorities are reflected in new § 300.130(b) and redesignated § 300.130(c) (formerly (b)(2)). Specifically, proposed § 300.130(b) describes the new OPA authorities (discussed above) in the case of a discharge of oil or a CWA hazardous substance. Re-designated § 300.130(c) discusses existing authority for responding to releases of CERCLA hazardous substances.

Additionally, § 300.130(d) is proposed to be revised to reflect the new language on the authority to issue administrative orders that is contained in CWA section 311(e), as amended by the OPA. Section 311(e) authorizes the President, upon determining that there may be an imminent and substantial threat to the public health or welfare of the United States, to take any other action, including issuing an administrative order, that may be necessary to protect the public health and welfare of the United States. This new authority allows EPA and USCG officials to issue an order to protect public health expeditiously, without pursuing the relatively time-consuming process of having the Attorney General initiate a civil judicial action. This section also has been modified to clarify the distinction between authorities for oil and CWA hazardous substance discharges on the one hand (§ 300.130(d)(1)), and CERCLA hazardous substance releases on the other (§ 300.130(d)(2)). Finally, the language in § 300.130(d)(1) has been changed to track new language in the OPA. Specifically, the phrase "that there is an imminent and substantial threat * * *" has been changed to "that there may be an imminent and substantial threat * * *."

A number of clarifying changes are proposed for § 300.130(f) in order to eliminate any possible confusion about the applicability of the FRERP. The FRERP is activated during any peacetime radiological emergency that is or will be expected to have a significant radiological effect in the U.S. or its territories requiring multi-federal agency support. Non-FRERP radioactive releases should be addressed in accordance with the NCP as appropriate, but it is important for EPA and USCG officials to work in coordination with the FRERP if that plan is in effect.

A new § 300.130(i) is proposed to be added to describe the role of Federal Response Plans. More detail on the Federal Response Plan is included in today's proposal under the preamble discussion of proposed § 300.3.

Response operations (Section 300.135)

In addition to several minor editorial changes made in §§ 300.135(d) and 300.135(e), a number of clarifying changes are proposed in these sections. Paragraph (c) describes the requirement for the OSC/RPM to collect information about discharges and releases. As part of this duty, under today's proposed revisions the OSC/RPM would be required, to the extent practicable, to determine whether a discharge is a worst case discharge and whether the discharge or release poses a substantial threat to the public health or welfare of the United States. This change has been proposed to reflect the incorporation of these OPA concepts into the revised NCP (worst case discharges and substantial threats to the public health or welfare are discussed in detail in the preamble discussion of §§ 300.322 and 300.324).

The first sentence in paragraph (g) concerning FEMA is proposed to be deleted because FEMA no longer performs evacuations. In addition, the language requiring the OSC/RPM to evaluate incoming information and immediately advise FEMA of potential major disaster situations has been changed from "shall" to "should." This revision has been proposed because the relationship between the OSC/RPM and FEMA is now detailed in the new Federal Response Plan.

Section 300.135(h) is proposed to be modified to provide for a potentially greater role for OSHA and HHS on worker health and safety issues. Specifically, their role can now go beyond "advice" and include whatever "assistance" is necessary and appropriate.

Section 300.135(j) is proposed to be revised to reflect more accurately the policy on notification of natural resource trustees and a new OPA requirement for consultation with affected trustees on the appropriate removal action to be taken in connection with an oil spill. Specifically, the policy requires that trustees be notified of all discharges and releases, not only those that are injuring or may injure natural resources; the OPA requires trustees to assess natural resource damage resulting from discharges, which necessitates that they be notified of every discharge or release.

This requirement need not be met by the OSC/RPM personally, but he or she

must ensure that trustees are notified. Thus, the NCP states "[t]he OSC/RPM shall ensure that the trustees for natural resources are promptly notified of discharges or releases."

In the event of an oil discharge, the OSC is also required, pursuant to OPA Section 1011, to consult with the affected trustees on the appropriate removal action to be taken. This requirement is reflected in new language contained in § 300.135(j)(2).

Section 300.135(k) is proposed to be revised to clarify the requirement that the OSC/RPM consult with the Department of the Interior or the Department of Commerce (NOAA) and, if appropriate, the cognizant federal land managing agency, in the event of a discharge or release that may affect endangered or threatened species. This change from discretionary to mandatory consultation is proposed to reflect an Endangered Species Act requirement that the responsible federal agency be notified after such an occurrence.

Multi-regional response (Section 300.140)

Conforming changes are proposed in this section to reflect the new provisions addressing ACPs and the elimination of OSC Contingency Plans.

Special teams and other assistance available to OSCs/RPMs (Section 300.145)

This section is proposed to be revised and reorganized to better describe existing resources and incorporate new resources available as a result of the OPA. Special teams are federally funded and may provide resources locally to the OSC/RPM. These teams may provide the following: scientific information, manpower, equipment, support information systems, training, cleanup expertise, and public information coordination assistance. Section 300.145 details these special teams and other assistance available to OSCs/RMs.

National Strike Force (NSF)

The discussions of the strike teams and Public Information Assist Team (currently §§ 300.145(a) and (g)) are proposed to be revised and consolidated with a new discussion of NSFCC. Combined, they are now presented as the National Strike Force in proposed § 300.145(a).

Strike Teams

Revised CWA section 311(d)(2)(C) authorizes the establishment of Coast Guard strike teams consisting of (1) personnel "trained, prepared, and available to provide necessary services to carry out the National Contingency

Plan;" (2) "adequate oil and hazardous substance pollution control equipment and material;" and (3) "a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife." The Conference Committee Report accompanying the OPA states that strike teams are to be available upon request by any OSC to provide assistance, guidance, and training (H.R. Rep. No. 101-653, 101st Cong. 2d Sess. at p. 149). Strike teams are considered to be part of the NSF "special team" within the meaning of § 300.145.

Each strike team is designed to airlift highly skilled pollution response experts to the scene of a discharge to assist and advise the OSC. They can assist in coordination with contractors, private party responders, civic volunteers, state and local government responders, and the media. Their expertise in vessel salvage and inventory of specialized oil response equipment can be critical to initial first aid response.

Under the current NCP, a single strike team covers the Atlantic and Gulf coast regions, and a second covers the Pacific coast. Immediately following the Exxon Valdez spill, the USCG conducted a study to determine the need, if any, for additional strike teams. The study determined that an additional strike team was required, with a configuration similar to the two existing teams. The proposed revisions to § 300.145(a) would create a new strike team for the Atlantic coast, retain the current Atlantic and Gulf Coast strike team solely for the Gulf coast, and retain the current strike team on the Pacific coast. OSCs can request strike team support through the RRT, NSFCC, National Response Center (NRC), or directly through the commanding officer of the appropriate strike team.

National Strike Force Coordination Center

Revised CWA section 311(j)(2) establishes a National Response Unit at Elizabeth City, North Carolina. Today's proposed revisions would add the NSFCC, in § 300.145(a), as part of the NSF special team, satisfying the requirement for the National Response Unit. All requirements, responsibilities, and duties of the National Response Unit are assumed by the NSFCC. The name is proposed to be changed to reflect more accurately its function in coordinating response resources rather than participating directly in response operations.

CWA section 311(j)(2) provides that this entity: (1) Shall compile and maintain a comprehensive list of spill

removal resources, personnel, and equipment that is available worldwide and within each designated area; (2) shall provide technical assistance, equipment, and other resources requested by an OSC; (3) shall coordinate use of private and public personnel and equipment to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge; (4) may provide technical assistance in the preparation of ACPs; (5) shall administer Coast Guard strike teams and provide technical assistance; and (6) shall review and maintain on file ACPs. The OPA Conference Report explains that this provision is intended to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area (H.R. Rep. No. 653, 101st Cong. 2d Sess. at p. 148 (1990)). In addition, the NSFCC is designed to reduce the OSC's time demands for logistical organization by coordinating use of private and public response personnel and equipment for a worst case discharge. The Report emphasizes that the National Response Unit (i.e., the NSFCC), in its coordination of private and public response resources, should avoid duplication of private initiatives (Id.).

The NSFCC will provide technical assistance to the OSC in: (1) Selecting, locating, and employing specialized pollution response equipment (such as booms and skimmers) that would be effective in responding to specific problems at the site; (2) establishing site-specific equipment and manpower requirements to monitor and conduct clean-up operations; (3) establishing the necessary site-specific logistics requirements for the local transportation of equipment into spill area receiving and staging areas; and (4) planning day-to-day response operations after a spill.

Scientific Support Coordinators

A revised discussion of scientific support coordinators (SSCs) is included as § 300.145(d) which more accurately describes the roles and capabilities of these individuals. Section 300.145(d) also would introduce into the NCP the concept of the lead administrative trustee who would be a federal natural resource trustee who is designated on an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee would facilitate effective and efficient communication between the OSC and the other federal natural resource trustees during response operations. The lead administrative trustee also would be responsible for

applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources. These response resources include both response equipment and financial resources. (The lead administrative trustee also is discussed in §§ 300.155, 300.305, and 300.615 of this proposed rule.)

Radiological Emergency Response Teams

The current NCP in § 300.145(f) refers to Radiological Assistance Teams. This paragraph is proposed to be modified to update this reference to "Radiological Emergency Response Teams" and to clarify that requests for their support may be made through the NRC or directly to the EPA Radiological Response Coordinator in the Office of Radiation Programs.

District Response Groups

New CWA section 311(j)(3) mandates the establishment of Coast Guard DRGs for each of the Coast Guard districts. Today's proposal incorporates the DRGs in § 300.145(g) as "other assistance." CWA section 311(j)(3) provides that each DRG shall consist of USCG personnel and equipment for each port within the district, additional pre-positioned equipment, and a district response advisory staff. Section 311(j)(3) also indicates that each DRG: (1) Shall provide technical assistance, equipment, and other resources when required by an OSC through the RRT co-chair; (2) shall maintain all USCG response equipment within its district; (3) may provide technical assistance in the preparation of ACPs; and (4) shall review each of those plans that affect its area of geographic responsibility. The entity referred to in the OPA as the "district response advisory staff" will be known as the District Response Advisory Team (DRAT) and will consist of several full-time spill professionals who will be available to provide technical assistance to the OSC through the RRT co-chair in the event a spill exceeds local response capabilities. The DRAT staff will help ensure that ACPs in different areas within the district are compatible and that pre-staged response equipment is available to address spills exceeding local response capabilities. The pre-staged equipment would include equipment owned by contractors and other private parties, as well as the USCG.

The Conference Report states that the USCG should give priority emphasis to several factors in determining where to locate the DRG personnel and pre-positioned equipment, including: (1)

The availability of facilities for loading and unloading heavy or bulky equipment by barge; (2) the proximity to an airport capable of supporting large military transport aircraft; (3) the flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties; (4) the availability of trained local personnel capable of responding in an oil spill emergency; and (5) areas where large quantities of petroleum products are transported (H.R. Rep. No. 101-653, 101st Cong., 2d Sess., at p. 149).

Each of these factors is important in ensuring adequate capability to respond to oil spills requiring a substantial commitment of clean-up resources. During the response to the *Exxon Valdez* spill, equipment adequate to contain and clean up the spilled oil was not available during the initial days of the incident. In addition, staging (i.e., assembly) of equipment had to be performed at the scene of the spill from mobile platforms, requiring that the equipment be lowered from aircraft or delivered by boat. The small airstrip at Valdez could not accommodate large transport planes that are capable of carrying booms, skimmers, and other oil spill response equipment. Furthermore, personnel trained to move such equipment were not available locally. All of these factors exacerbated the slow delivery of clean-up equipment, allowing the oil spill to spread across larger areas.

The new DRGs create a framework by which each USCG district is able to deliver its full resources in the most efficient manner to respond to an actual discharge or to a substantial threat of a discharge.

National Pollution Funds Center (NPFCC)

Title I of the OPA sets out requirements and procedures for the Oil Spill Liability Trust Fund (OSLTF). Executive Order 12777, section 7, delegates those OPA functions respecting payment of removal costs and claims and determining consistency with the NCP to the Secretary of the Department in which the Coast Guard is operating. The NPFCC has been established by the Secretary of Transportation and the USCG Commandant to implement these functions. Today's proposal would make the NPFCC a special team under § 300.145. The NPFCC's responsibilities include:

- Providing OSLTF moneys for removal actions and to initiate natural resource damage assessments;
- Implementing procedures for presentation, filing, processing,

settlement, and adjudication of claims against the OSLTF;

- Paying appropriate costs, damages, and claims, including activities to process, settle, and administratively adjudicate such costs, damages, and claims, resulting from oil discharges;
- Issuing Certificates of Financial Responsibility to those owners and operators that have demonstrated the ability to pay for costs and damages that may be incurred by their vessel in the event of a discharge;
- Recovering money from responsible parties for costs and damages resulting from oil discharges to the full extent of liability under the law; and
- Establishing procedures for assigning project numbers, fund ceilings, and related accounting data for: (1) incident-specific removal activities performed by federal OSCs; (2) incident-specific removal activities by states as described in the preamble discussion of § 300.180; (3) the initiation of natural resource damage assessment activities as described in the preamble discussion of subpart G; and (4) claims, as described in § 300.700(h).

Concentrating OSLTF responsibilities in the NPFCC should help to ensure that the OSC is not preoccupied with funding issues during a response. In this sense, the NPFCC is similar to the other special teams described in § 300.145 that provide specialized expertise to support the OSC's response efforts.

Emergency Task Forces

Section 300.145(b) is proposed to be deleted in today's rule and the subsequent sections would be renumbered. This change is proposed because the requirement formerly contained in section 311(c)(2) of the CWA has been revised by the OPA to eliminate the language addressing requirements for emergency task forces in major ports. As noted in the preamble discussion of "specific requirements for inland and coastal zones" in subpart C, the duties of these emergency task forces have been assumed by Area Committees in the coastal zone.

Worker Health and Safety (Section 300.150)

Section 300.150(a) is proposed to be revised to clarify that the national response system is an incident command system (see discussion of incident command system elsewhere in the preamble discussion of subpart B). The phrase "with plans approved under section 18 of the OSH Act" is proposed to be moved from paragraph (e) to paragraph (c).

Public Information and Community Relations (Section 300.155)

The language of today's proposed rule reflects the proposed role of the lead administrative trustee in coordinating information dissemination relating to natural resource damage assessments. (See discussion of lead administrative trustee in the preamble discussion of § 300.145(d).)

The implementation of § 300.155 may vary across sites as a result of the OPA and associated changes made elsewhere in this proposal. Specifically, §§ 300.322(c) and 300.415(c) now provide greater opportunities for the OSC to seek support in disseminating information to the public in the case of substantial threats to the public health or welfare. Specific OSC responsibilities described in § 300.155 may be delegated by the OSC to lead agency or RRT officials to permit the OSC to focus his or her efforts on directing activities associated with the actual removal actions being taken. For more detail on how responses to substantial threats to the public health or welfare will be conducted, see the preamble discussions for §§ 300.322(c) and 300.415(c).

Documentation and Cost Recovery (Section 300.160)

Language in § 300.160(a)(2) concerning OSC reports is proposed to be deleted because of the decreased importance of these reports in the revised NCP. (See preamble discussion of § 300.165, immediately following.)

OSC Reports (Section 300.165)

Today's proposed revisions to the NCP would delete the current requirement in § 300.165 to prepare OSC reports for all responses to major discharges or releases. The original purpose of the OSC report was to summarize activities at the site and to communicate lessons learned, discuss any problems encountered in the response, and recommend improvements which need to be shared throughout the response community. In the March 8, 1990, revisions to the NCP (55 FR 8666), EPA recognized that OSCs have extensive responsibilities and that responding to discharges and releases is a higher priority than drafting the OSC report. Consequently, the Agency extended the deadline for completing OSC reports from 60 days to one year after completion of the response action or when requested by the RRT.

Recently, EPA has reassessed the desirability of requiring an OSC report for all responses to major discharges or releases. The already considerable time

demands placed on the OSC have increased dramatically with the enactment of the OPA. New OSC responsibilities under the OPA include chairing the Area Committees, overseeing the drafting of ACPs, and directing responses to discharges that pose a substantial threat to the public health or welfare. Preparing the OSC report is an additional paperwork burden that is not statutorily mandated. Furthermore, the most important information contained in the OSC report—lessons learned in specific responses—is expected to be available from other materials prepared by the OSC, including the pollution report and the OSC log book. These documents could also be used for enforcement purposes in lieu of the OSC report. Today's rule, therefore, proposes to delete the § 300.165 requirement to prepare OSC reports following a major discharge or release. Section 300.165, however, retains the authority of the RRT to request that an OSC report be prepared on a case-by-case basis. The authority of the NRT to do likewise has been added.

Paragraph (c), which details the format of the OSC report, is proposed to be deleted. This change is consistent with a decreased importance of OSC reports in the revised NCP.

Federal Agency Participation (Section 300.170)

The introduction to this section is proposed to be modified to track more closely the language used in OPA section 1006(c) and CERCLA section 107(j) regarding the functions of natural resource trustees. Also, references to Area Committees and ACPs are proposed to be added. Finally, the words "facilities or" are proposed to be added to § 300.170(d) to correct an apparent oversight in previous NCP revisions.

Federal Agencies: Additional Responsibilities and Assistance (Section 300.175)

Language in this section is proposed to be clarified to make the agency descriptions listed in the NCP more complete and up-to-date. For example, the DOC description is proposed to be expanded to include providing information on the sensitivity of coastal environments to clean-up and mitigation methods. The DOI description is proposed to be expanded to include its expertise in determining the effects of oil and hazardous substances on natural resources through the Fish and Wildlife Service. In addition, the Minerals Management Service description is proposed to be

changed to reflect its expertise regarding oil spill response technology research and oversight of offshore oil/gas exploration and production facilities. Finally, the description of the National Park Service is proposed to be expanded to detail its expertise in responding to threats to park system lands and resources.

Section 300.175(b) is proposed to be revised to include a description of the General Services Administration, which has been added to the list of participating federal agencies since the NCP was last revised. This section is proposed to be further revised to clarify, in the Department of Justice description, the role of agency counsel and to include a more detailed and accurate description of FEMA's roles and responsibilities. In addition, the description of OSHA's responsibilities is proposed to be changed to better reflect OSHA's commitment to active participation in response. Finally, the description of HHS is proposed to be rewritten to better reflect the duties of that department.

State and Local Participation in Response (Section 300.180) and Nongovernmental Participation (Section 300.185)

Section 300.180(b) is proposed to be added to clarify the significant role played by state and local officials in preparing ACPs. The term "state" in § 300.180 is also meant to encompass Indian tribes. This understanding reflects the definition of "state" contained in § 300.5, which states that Indian tribes are included as states for the purposes of the NCP. Also, the reference to subpart D of the NCP in proposed § 300.180(e) will be eliminated. This was apparently an oversight in previous NCP revisions that eliminated references to section 311 of the CWA from this provision. Conforming changes are proposed to be made to §§ 300.180 and 300.185 to reflect the new language of CWA section 311(j) as amended by the OPA, particularly with regard to the preparation of facility and vessel response plans and the integration into ACPs of technical and scientific information. Finally, it should be noted that, in accordance with OPA section 1012(d)(1) and (d)(2) and E.O. 12777, the USCG, upon request of a state Governor or pursuant to an agreement with a state, not including Indian tribes, may obligate the OSLTF for payment in an amount not to exceed \$250,000 per incident for removal costs consistent with the NCP. These funds may be used only for the immediate removal of a discharge, or the mitigation or

prevention of a substantial threat of a discharge of oil.

Subpart C—Planning and Preparedness

Subpart C describes the levels of contingency planning under the national response system and cross-references state and local emergency preparedness activities under SARA title III. The changes being proposed in subpart C today reflect OPA requirements for Area Committees and ACPs as well as for a Fish and Wildlife and Sensitive Environments Plan.

Area Committees/Area Contingency Plans

The OPA expands the existing planning and response framework in several ways. As discussed earlier, the OPA establishes the NSFCC and USCG DRGs and also creates a new requirement for facility and tank vessel response plans. In addition, the OPA creates an area-level planning and coordination structure to supplement national, regional, state, and local contingency planning efforts. Amended CWA section 311(j)(4) establishes Area Committees and ACPs as the primary components of this structure. OPA section 4202(b) requires the President to designate areas for which the Area Committees are established. Through Executive Order 12777 (56 FR 54757, October 18, 1991), the President delegated to the Administrator of EPA responsibility for designating the areas and appointing the committees for the "inland zone" (as defined in NCP § 300.5). The USCG was given responsibility for designating areas and appointing Area Committees for the "coastal zone" (as defined in § 300.5).

This section of the preamble describes the general requirements for Area Committees and ACPs. The next section describes how these requirements are to be implemented in the inland and coastal zones, respectively.

Area Committees

Area Committees are to consist of members appointed by the President from qualified personnel of federal, state, and local agencies. Area Committees have three primary responsibilities: (1) Preparation of ACPs; (2) working with state and local officials to enhance contingency planning and "assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife;" and (3) working with state and local officials "to expedite decisions for the use of

dispersants and other mitigating substances and devices."

Including local, state, and federal representatives on Area Committees would facilitate the development of a comprehensive plan, ensure coordination among various response plans, and discourage unnecessary duplication of planning efforts. In addition, the Area Committee structure will allow response experts, as well as persons, groups, and agencies with concerns and responsibilities for the environmental integrity of an area, to play a role in the planning process. In today's proposal, a new § 300.205(c) has been added to incorporate Area Committees into the existing planning and coordination structure and to describe their responsibilities.

Area Committees are encouraged to solicit advice, guidance, and expertise from all appropriate sources (e.g., facility owners and operators, shipping company representatives, cleanup contractors, emergency planning and response officials, marine pilots associations, members of academia, environmental advocacy groups, response organizations, and concerned citizens). The Area Committees may establish subcommittees as necessary to accomplish the preparedness and planning tasks. The SSC, an NSF representative, and members of the DRAT also will be available to assist the Area Committee as consultants.

Area Contingency Plans

CWA section 311(j)(4) requires each Area Committee, under the direction of the OSC for its area, to prepare an ACP for its area. The statute requires that each ACP:

(1) When implemented in conjunction with the NCP be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(2) Describe the area covered by the plan, including the areas of special economic or environmental importance that might be adversely affected by a discharge. In describing areas of special economic and environmental importance, several factors should be considered, including but not limited to the presence and proximity of natural resources, environmentally sensitive areas, and population concentrations; the location of drainage basins and appropriate geographic and/or topographic features; the location of water supplies; and beaches, ports, recreational areas, areas of seasonal significance, and migratory bird flyways. Compliance with this

requirement may be accomplished in part through the Fish and Wildlife and Sensitive Environments Plan (discussed later in this preamble), which is to be a part of an ACP;

(3) Describe in detail the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge. These responsibilities should include specific duties, tasks, personnel, and equipment expected, and the stage of response in which they are expected (i.e., initial response, long-term remediation);

(4) List the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

(5) Describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(6) Describe in detail how the plan is integrated into other ACPs and vessel, offshore facility, and onshore facility response plans approved under CWA section 311(j), and into operating procedures of the NSFCC; and

(7) Include any other information the President requires.

The contents of an ACP are not limited to these elements but may include other information relevant to the statutory requirements (e.g., the geographical area's facilities, vessel traffic, oil transportation industry, and environmental characteristics).

CWA section 311(j)(4)(D) requires that each ACP be reviewed and approved by the President (delegated to EPA and the USCG in Executive Order 12777) and be periodically updated by the Area Committee.

Today's proposal would create a new § 300.210(c) that describes the requirement to prepare ACPs and the required contents of such plans.

ACPs are similar in purpose to the OSC contingency plans described in current § 300.210(d). OSC contingency plans identify probable locations of discharges or releases, the available resources to respond to multi-media incidents, where such resources can be obtained, waste disposal methods and facilities consistent with local and state plans, and a local structure for responding to discharges or releases. Existing OSC contingency plans in the coastal zone may already describe an area and plan similar to the ACPs required by the CWA. In addition, EPA

Regions generally have not exercised their authority to draft OSC contingency plans for the inland zone because other plans, including RCPs and title III local emergency response plans, were considered to be adequate to provide for a well-coordinated response. For these reasons, EPA proposes to delete § 300.210(d). Nonetheless, Area Committees may wish to use existing OSC contingency plans and/or RCPs in developing ACPs. As part of today's proposed revisions, all references to "OSC Contingency Plans" in the NCP would be changed to "area contingency plans."

The existing requirement in § 300.210(d)(2) that OSC plans be coordinated with all appropriate response plans—especially with title III local emergency response plans—has been incorporated in § 300.210(c)(2) of today's proposal to apply to ACPs. Today's proposed § 300.210(c)(3)(C) notes that lengthy equipment lists need not be included in the body of the ACP, but may be provided in an appendix or by reference to other relevant emergency plans.

As one part of an overall preparedness program, CWA section 311(j)(7) requires periodic unannounced drills of removal capability in areas for which ACPs are required and under relevant tank vessel and facility response plans. These drills may include participation by federal, state, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The NSFCC, together with the cognizant program managers of the USCG and EPA, would act as a clearinghouse for these exercises, participating in the development, execution, and evaluation process. The Administrator and the Secretary of the department in which the Coast Guard is operating may publish annual reports on these drills, including an assessment of the effectiveness of the plans and a list of amendments made to improve plans. The NSFCC may, in conjunction with the cognizant program managers of the USCG and EPA, conduct unannounced area or multi-area exercises. Today's proposal would create a new § 300.212 that describes the requirement for these area response drills.

Specific Requirements For Inland and Coastal Zones

Under the current NCP, EPA and the USCG have taken different approaches to planning and preparedness in the inland and coastal zones respectively. For example, the USCG has Emergency Task Forces required under CWA section 311(c)(2)(c). "Multiple-Agency Local Response Teams" (MALRTs) exist

in several ports. As noted above, EPA has relied more on RCPs and Title III local emergency response plans rather than develop numerous OSC contingency plans. Similarly, EPA and the USCG have now chosen to build upon different features of the existing oil spill planning and response structure in ensuring that all navigable waters and adjoining shorelines are subject to an ACP. Specifically, while the USCG is using its Captain of the Port structure for the coastal zone, EPA is initially using the 13 RRTs and their associated geographical areas for the inland zone.

Inland zone—EPA. The existing NCP divides the United States, its territories, and its possessions, including portions of the high seas, into 13 areas of responsibility (40 CFR 300.105(b) and (d)). These areas correspond to the ten standard federal regions with the exception of the separate areas established for (1) Puerto Rico and the U.S. Virgin Islands of Region II; (2) Alaska of Region X; and (3) Hawaii, Guam, Northern Mariana Islands, Pacific Island Governments, and American Samoa of Region IX. Each of these areas is covered by its own RRT and RCP. Each of the 13 areas of responsibility is divided further into coastal and inland zones.

EPA has designated these 13 "RRT areas" as the initial areas for which ACPs must be prepared in the inland zone (57 FR 15198, April 24, 1992). EPA Regional Administrators may designate new subregional geographic areas and appoint Area Committees for them. In the process of designating subregional areas in the inland zone, every section within a region may be screened. If smaller or subregional areas are designated within a region, EPA intends to publish the subregional designations in the *Federal Register* at a later date.

Designation of subregional areas is to be based on an analysis of the potential risk of oil spills and the environmental sensitivity of areas within each region. Analysis of these geographic areas would include consideration of the following criteria: The pattern of past spills and the likelihood of future spills; the presence and proximity of natural resources, environmentally sensitive areas, and population concentrations; the concentration of facilities, pipelines, and transportation routes within the region; the location of drainage basins and appropriate geographic and/or topographic features; the location of water supplies; and the location and capabilities of existing preparedness and response organizations. These criteria are consistent with the requirements in CWA section 311(j)(4)(C) that each ACP "describe the

area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge." EPA believes that the relevant information is generally available.

Pursuant to E.O. 12777, the EPA Administrator has designated the 13 RRTs to serve as the initial Area Committees for each region (57 FR 15200, April 24, 1992). RRTs have the desired composition, functions, and experience initially to fulfill the role of Area Committees. RRTs are composed of representatives of the 15 federal agencies having a broad range of environmental responsibilities, state agency representatives, members of Indian tribes, and local representatives (as arranged by the state's representative). RRTs are officially designated for interagency and intergovernmental planning and coordination of preparedness and response actions at the regional level. They are responsible for developing RCPs to address oil and hazardous substance spills (see NCP § 300.115).

The EPA Administrator has delegated to the Regional Administrators authority to designate a different Area Committee or committee members. OSCs should develop the ACP in close collaboration with the Area Committee; Area Committee members must be active in the planning process if the plan is to be effective.

For all subregional areas, each RRT agency will recommend representatives to EPA Regional Administrators for appointment to Area Committees. In addition to the RRT agency representatives, there will be appropriate representatives from each state and Indian tribe and from local government in the area, including representatives of State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs).

The RRT will serve as the Area Committee for the balance of the region not covered by any newly designated subregional areas and their committees, unless the Regional Administrator designates a different committee for the balance of the region. This will ensure that all navigable waters and adjoining shorelines are subject to an ACP.

As provided in OPA section 4202(b)(1)(B), ACPs for the inland zone are to be submitted to EPA. The Regional Administrator shall approve ACPs for the inland zone. In cases where the RRT is not serving as the Area Committee or where subregional areas have been designated, the Regional Administrator will request the RRTs to

review proposed ACPs and provide recommendations regarding approval.

Coastal zone—USCG. The USCG has designated areas for the coastal Area Committees and noted the designation of COTPs as OSCs for the coastal zones (57 FR 15201, April 24, 1992). The USCG designated contingency planning areas based on the 47 COTP areas. The areas covered by the COTPs are smaller than the RRT areas and include major river systems associated with ports. Each COTP zone is described in USCG regulations at 33 CFR part 3. The USCG designated as areas those portions of the COTP zone that are within the "coastal zone," as defined by the NCP.

In E.O. 12777, the USCG was delegated authority to appoint Area Committees for the coastal zone. Area Committees will replace the Emergency Task Forces formerly required under section 311(c)(2)(c) of the CWA and the MALRTs, which currently exist in several ports. Although the Area Committee is not a response organization, it is anticipated that most committee members will have specific roles in the response structure.

Federal agency members of the Area Committee should be recommended by the RRT member agencies for appointment by the OSC. Primary state representatives to the Area Committee should be chosen by the lead agency designated by each governor for pollution preparedness and response. For states with more than one agency involved in pollution-related missions, the OSC should ask each agency to consider representatives from these agencies. For local membership, the OSC should coordinate with LEPCs.

As part of their planning activities, the Area Committees should address the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. The ACPs should, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. The preauthorization plans should address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. RRTs have the authority to review and approve, disapprove, or approve with

modification the preauthorization plans, as appropriate. Approved preauthorization plans should be included in the ACP. For dispersants and other mitigating substances, devices, or technologies not pre-approved, the ACP should outline the process established by the RRT for that region for an expedited decision regarding the use of these items.

For areas in the coastal zone, the Area Committee should forward the completed ACP to the District Commander via the District Chief of the Marine Safety, Security, and Environmental Protection Division for review and approval. The district will be responsible for distributing the ACP to the NSFCC and the RRT for review and comment. The district will compile and review the comments received and recommend to the District Commander that the plan be approved or returned for correction. The ACP review process will verify that all issues are addressed, including consistency with the NCP, adjacent coastal and inland zone ACPs, and other federal, state, and regional plans.

Fish and Wildlife and Sensitive Environments Plan

Today's proposed revisions to the NCP set forth the requirements for a response strategy addressing fish and wildlife and sensitive environments. The Fish and Wildlife and Sensitive Environments Plan would be an annex to each ACP and would include new provisions for the RRTs, OSCs, and Area Committees regarding appropriate planning and preparation for potential spills. Pursuant to CWA section 311(d)(2)(M), as amended by OPA section 4201(b), the President is required to include in the revisions to the NCP a "fish and wildlife response plan * * * for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge." Also, CWA section 311(j)(4)(B) (i) and (ii) and section 311(j)(4)(c)(ii), added by the OPA section 4202(a), call for the assurance of joint preplanning by the Area Committees, including " * * * protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife" and a description of "the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge." Based on the experience and recommendations of the U.S. Fish and Wildlife Service (FWS) and NOAA,

today's proposal integrates a broad range of factors to incorporate into this new response plan. The new Fish and Wildlife and Sensitive Environments Plan would include a "fish and wildlife" component addressing the specific criteria contained in new CWA section 311(d)(2)(M). Based on general authority contained in CWA section 311(d)(2), there also would be a "sensitive environments" component that incorporates consideration of broader factors designed to complement the specific fish and wildlife criteria in order to better ensure achievement of the goals underlying the new requirements.

Sensitive environments for the purposes of this section are considered to be those areas identified in the EPA's Hazard Ranking System (HRS), Appendix A of 40 CFR part 300, without their associated HRS weights. In addition to those areas recognized in the HRS list, additional areas have been identified for inclusion in the definition of sensitive environments under this section. They include wetlands, national forests, national conservation areas, various state lands, biological resource areas, and sources of drinking water. These additional inclusions are considered sensitive environments under this section because they offer habitat to fish and wildlife, are critical habitat, are areas designated for protection under a state or federal policy, contain significant biological resources other than fish and wildlife, or are more susceptible to adverse impacts from oil or specific countermeasures. Water bodies that are utilized for drinking water are considered a sensitive environment because of the direct and dependent relationship of the water bodies to the overall quality of the ecosystem.

The requirement in CWA section 311(d)(2)(M) is proposed to be met through an annex to each ACP developed by the Area Committees, in consultation with the FWS, NOAA, and other interested parties, including state fish and wildlife conservation officials and Indian tribes. Today's proposed rule is intended to provide the framework for the Area Committees to develop consistent and compatible annexes for the protection of and mitigation of injury to fish and wildlife resources and sensitive environments.

Each annex is to:

- Identify and establish priorities for protection of fish and wildlife resources and habitats, and other sensitive environments;
- Provide a mechanism for use during response to a discharge to expeditiously define protection priorities;

- Identify the potential effects of response and countermeasure activities on fish and wildlife, their habitats, and sensitive environments and prioritize the appropriateness of such activities in specific areas;

- Provide for preapproval of appropriate removal actions in specific areas;

- Plan for monitoring to evaluate the effectiveness of response activities in protecting fish and wildlife, their habitats, and sensitive environments;

- Identify and provide for the acquisition and use of necessary response capabilities to protect fish and wildlife, their habitats, and sensitive environments;

- Identify appropriate state and federal agency contacts responsible for fish and wildlife rescue and rehabilitation as well as necessary permits or other legal requirements to carry out fish and wildlife response activities;

- Identify training required under the Occupational Safety and Health Administration (OSHA) and SARA for volunteers in fish and wildlife response activities and the means for securing such training during a response; and
- Define the requirements for evaluating the compatibility between this annex and non-federal response plans on issues affecting fish and wildlife, their habitats, and sensitive environments.

In addition to the framework provided in the proposed rule, guidance will also be developed by NOAA and the FWS, in consultation with other federal natural resource agencies, and provided to the Area Committees. This guidance will cover collection and management of annex-related information and requirements, classification and sensitivity of different environments to oil or hazardous substances, and the environmental considerations of different defensive measures used to mitigate the impacts of a discharge.

The existing spill response system under the NCP already addresses many of the provisions of the OPA and has many components that address protection of fish and wildlife and their habitats. For example, § 300.330 addresses Phase III wildlife rescue and conservation planning and response activities. In addition, § 300.310 addresses minimizing the threat to the environment during removal actions and selection of defensive actions, such as chemical or physical countermeasures (see § 300.900) that are most consistent with protection of the environment. Coordination among the RRT, state fish and wildlife conservation agencies, OSCs, federal

SSCs, as well as federal, state, and Indian tribal trustees, and other public and private response agencies, both during contingency planning and actual spill response activities presently includes steps to: (1) Identify resources and habitats at risk; (2) establish priorities for areas of protection; (3) rescue and rehabilitate wildlife; and (4) facilitate consistency and compliance with laws for protection of fish and wildlife.

The integration into the Fish and Wildlife and Sensitive Environments Plan of the numerous objectives listed in the CWA, as amended by the OPA, is designed to ensure consideration of the various elements that comprise a comprehensive approach to ensuring "the immediate and effective protection" of fish and wildlife, their habitat, and other sensitive environments. Inclusion of the sensitive environments component would offer the most effective approach for planning to avoid or mitigate spill-induced injuries in areas that have been identified under this designation and therefore have an elevated level of importance in addition to fish and wildlife populations and their habitat. Sensitive environments may include a human-use component which can translate to economically important environmental areas, such as national and state seashore recreational areas. These sensitive environments also may be susceptible to the direct impacts of oil or susceptible to the effects of response actions. These areas may be determined to be sensitive because of the economic value of the natural resource (e.g., from both a recreational or commercial perspective), or they may be habitat that is considered "unique" (such as aquaculture areas, fishing grounds, or seasonal habitats). For example, in the *Exxon Valdez* spill in 1989, one of the richest marine fisheries habitats in the United States was contaminated. Both the fish and shellfish of this area form a complex ecosystem that supports other species, including man. Many of the species affected by the spill had a commercial, recreational, and subsistence value.

Other examples of sensitive environments identified under this section are archeological and Indian tribal sites. During the *Exxon Valdez* oil spill, such sites were destroyed from the direct effects of the oil and from the effects caused by response actions. Many of these sites were originally located in specific areas because of a particular characteristic in nature. The inclusion of these sites under the definition of sensitive environments will help to preserve the historical and

cultural importance found in these sites and their original association with the environment.

Sensitive environments may also include bodies of water that are of importance for fish and wildlife habitat and human use, such as areas that include drinking water supplies. For example, in January 1988, the rupture of an aboveground storage tank owned by the Ashland Oil Company allowed 750,000 gallons of diesel oil to spill indirectly into the Monongahela River at Floreffe, Pennsylvania. As a result of the contamination of the Monongahela River by the spill, more than 70 communities had to shut down their drinking water supplies. Identification of these areas as sensitive would lead to the appropriate preplanning necessary to protect the natural resource.

This proposed rule is designed to provide the framework for Area Committees to develop consistent and compatible annexes to the ACPs for the protection and mitigation of injury to fish and wildlife resources, their habitat, and sensitive environments. These ACPs will contain criteria for use by the OSC for the "protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife." The resources identified in the ACPs should be prioritized regarding their sensitivity to oil and specific countermeasures. Such a prioritization would allow the OSCs to better address the threats to fish and wildlife, their habitat, and sensitive environments. Preplanning for dispersants and bioremediation products and burning agents is required for inclusion in the ACP by subpart J. Such planning must reflect local environmental conditions. Such issues are within the purview of the RRTs and should be coordinated with them.

Additional guidance regarding collection and management of annex-related information and requirements, the classification and sensitivity of different environments to oil or hazardous substances, and the environmental considerations of different defensive measures used to mitigate the impacts from a discharge will be developed by NOAA and the FWS, in consultation with other qualified federal agencies, and provided to the Area Committees. The process of developing Fish and Wildlife and Sensitive Environments Plans for ACPs should involve the appropriate qualified federal, state, and Indian tribal trustees. The creation of this annex is not intended to duplicate existing coordination mechanisms nor to replicate plans and other data that have already been developed to protect fish

and wildlife resources. Rather, the intent is to strengthen response capability, and make more compatible the multiple efforts that are initiated to protect, rescue, and rehabilitate those resources and to minimize risk or impact to their habitats from a discharge.

The Fish and Wildlife and Sensitive Environments Plan, which is to be an annex to the ACP, is intended to ensure compatibility between various possible response activities and measures to protect fish and wildlife resources, their habitat, and other special areas of ecological sensitivity that may be adversely affected by a discharge. As a consequence, the effectiveness of the OSC in removing a discharge and mitigating oil spill effects in a timely fashion should be enhanced through coordinated and integrated efforts. Experience has shown that pre-planning and response activities are most effective when accomplished at the local level because coordination and response activities can more accurately focus on local fish and wildlife, their habitats, and sensitive environments of an area.

Mechanisms that currently exist to accomplish the necessary identification, ranking, planning, and assignment of duties in order to carry out effective response activities (e.g., RRTs, RCPs, EPA Regional Offices, LEPCs, and the USCG Marine Safety Office) will exist through the Area Committees and ACPs. In addition, many federal and state agencies, as well as many private organizations, have tools available to identify resources and habitats at risk and can support the identification and prioritization of fish and wildlife resources and sensitive environments, both during contingency planning and incident response. For example, NOAA's coastal environmental sensitivity index maps rank shoreline area sensitivities to spilled oil. The FWS and state wildlife resource agencies facilitate and implement rescue and rehabilitation efforts as well as consult with the OSC on wildlife protection activities during a discharge. In addition, the federal SSCs synthesize technical information for the RRTs and the OSCs on the effects of defensive actions (see § 300.145). They also assist in planning for and responding to discharges of oil or hazardous substances to minimize environmental impacts, including impacts to fish and wildlife, their habitats, and sensitive environmental areas.

The Conference Committee's Report on the OPA indicates that the provision adding a new requirement for a fish and wildlife plan was added by section 2002

of the House bill (H.R. Rep. No. 653, 101st Congress, 2nd Session at p. 147 (1990)). The language of the House bill, which was not included in the statute as enacted, included a number of specific provisions addressing the actual contents of a fish and wildlife plan. For example, the House bill specified that the plan incorporate procedures assigning responsibilities and facilitating communication among federal, state, and local agencies with expertise in these matters. In addition, the House bill required the plan to provide for early identification and prioritization of fish and wildlife and their habitat threatened by a spill.

The specific provisions of the House bill that were to be included in the plan clearly were intended to ensure that fish and wildlife priorities would be taken into account when conducting immediate and effective response actions. As enacted, the statute reflects this intent, but does so through a more general requirement that leaves the details of implementation to the discretion of federal agencies (in coordination with appropriate state officials) developing the revised NCP. To the extent these provisions can best effectuate the goals of the OPA's requirement to develop a fish and wildlife plan, the proposed rule adopts in part the approach reflected by some of the specific provisions that would have been required by the House bill. Other elements—such as the identification and ranking of sensitive environmental areas, defining environmental consequences of different kinds of response actions, and coordinating various response plans with regard to aspects concerning fish and wildlife resources and habitat—have been added because of their interrelation with the protection of fish and wildlife and their habitats. This approach satisfies the intent of the OPA for a comprehensive approach in preparing Fish and Wildlife and Sensitive Environments Plans.

This comprehensive approach is of particular importance because the requirement for a Fish and Wildlife and Sensitive Environments Plan will be implemented primarily at the level of ACPs developed under CWA section 311(j)(4). The biological diversity of fish and wildlife and their habitat between different regions and areas of the country necessitates a thorough consideration of all relevant factors that are critically important.

OPA not only expands planning requirements for dischargers by requiring that certain onshore facilities, offshore facilities, and tank vessels prepare and submit response plans, but

also reinforces the importance of environmental protection by requiring that such plans consider the environmental consequences of a worst case discharge or a substantial threat of such a discharge (CWA section 311(j)(5)). It also requires that ACPs prepared under section 311(j)(4) describe how vessel and facility response plans will be integrated with the ACPs.

An annex addressing various components of the Fish and Wildlife and Sensitive Environments Plan would be prepared on a scale appropriate to various scenarios as defined by OPA and implementing regulations. Some Area Committees may need to prepare several Fish and Wildlife and Sensitive Environments Plans because of the size or environmental complexity/diversity of their area. However, it is critical that consistent or standardized evaluation methodologies and terminology be used among these annexes, within a region, and, as appropriate, between adjacent regions. In addition, there should be consistency on these environmental issues with vessel and facility response plans, including those for pipelines, that are within the purview of the Area Committee. Although the OPA considers pipelines within the definition of "facility," the environmental considerations required in planning for a pipeline spill can be more complex than those of fixed facilities because of the potential variety of habitats traversed by a long-distance pipeline. Past experience has shown that very sensitive environments can be impacted by pipeline leakage, as happened in the Santa Clara River in 1991 when 76,000 gallons of oil impacted 12 miles of endangered species habitat in California. Consequently, because of the variety of sources of discharges and the potentially wide range of geographic areas to be included in a response plan by a single source (e.g., single pipeline or vessel with several ports), it is essential to have consistency in methodology, terminology, and classification of sensitive environments among all facility, pipeline, and vessel plans within the area covered by an ACP and between adjacent areas and regions.

Because effective response countermeasures are dependent upon timely decisions and actions, this proposed revision places a new emphasis upon preplanning for approval of removal actions. Because appropriate and rapid removal actions are intended to avoid or lessen injuries to fish and wildlife, their habitats, and other sensitive environments, pre-

approval of such actions, many of which are dependent upon application within the first 1–2 days following a discharge, should allow an OSC more options in implementing an effective response strategy and thus minimize adverse environmental impact. It is also being proposed that for certain removal or mitigation strategies, a plan for monitoring the effects of countermeasures be included in the annex to ensure that the benefits of oil removal are not offset by the adverse effects of the specific application of the removal action. Research on past spills has suggested that the removal action can sometimes cause more harm than the oil spill itself; therefore, monitoring and evaluating the environmental benefit of certain response countermeasures is justified.

Discharges of oil may give rise to potential liability under the CWA, as revised by the OPA. The discharger is also subject to prosecution under both civil and criminal provisions of several federal and state laws regulating fish and wildlife. The "taking" of fish and wildlife is defined in various ways under the laws which protect these species, but generally includes not only non-permitted hunting or fishing, but also deaths and injuries caused by other means, including discharges of oil, as well as harassment, live capture, handling, and holding in captivity (or attempting to engage in any such activity), which may be elements of a response action. Some of these laws regulating fish and wildlife "taking" provide for emergency permit authorities. Thus, the proposed rule calls for the Fish and Wildlife and Sensitive Environments Plan to address advance planning to identify legal constraints and provide for appropriate permitting and law enforcement investigative support regarding fish and wildlife, including the Endangered Species Act (ESA) section 7 consultations and permits issued under the authority of the ESA, the Marine Mammal Protection Act and Migratory Bird Treaty Act, the Marine Protection, Research, and Sanctuary Act, related state laws, and laws regulating activity in other sensitive environments. This would facilitate response actions and reduce the risk that agencies responsible for fish and wildlife are unable to carry out their responsibilities, which could be detrimental to rescue and rehabilitation of wildlife, as well as interfering with potential law enforcement and damage assessment activities.

Other Changes in Subpart C

In § 300.200 of today's proposed rule the phrase "describes the federal, state, and local planning structure; provides for levels of federal contingency plans" has been changed to "describes the three levels of contingency planning under the national response system" to more accurately describe the contents of this subpart. Similar references to the national response system have been added to § 300.210.

Throughout this subpart, EPA is proposing to change all references to the "Emergency Planning and Community Right-to-Know Act of 1986" to "title III" (see § 300.200). The title III requirement for the LEPC to designate a community emergency coordinator is proposed to be added to § 300.205(e) of today's proposed rule to make the NCP consistent with title III.

Title III requires LEPCs to prepare a comprehensive emergency plan and review the plan annually or more frequently as needed. EPA has consistently encouraged LEPCs (e.g., see *Hazardous Materials Emergency Planning Guide*) to consider chemical hazards at all facilities—not just those "subject" to section 302 of title III—when developing the comprehensive emergency plan. Today's proposal would delete the word "subject" from § 300.215(a) in recognition of the fact that other facilities (e.g., those submitting material safety data sheets (MSDSs) under section 311 and tier I and II reports under section 312) should be included in a comprehensive plan under title III.

Subpart D—Operational Response Phases for Oil Removal

Subpart D of the NCP generally sets forth requirements for procedures to respond to discharges of oil. These requirements are intended to clarify the responsibilities of OSCs, other federal and state government personnel, and responsible parties in ensuring that responses to oil discharges are sufficient to protect public health and welfare and the environment.

The OPA requires revisions to several sections in subpart D. The most significant changes are the requirements that the NCP include criteria and procedures for response to discharges that result in substantial threats to public health or welfare of the United States, and procedures and standards for preventing, mitigating, and removing a worst-case discharge. These changes are included in two new sections of today's proposed rule, §§ 300.322 and 300.324, respectively. Additional proposed revisions include a provision dealing

with spills of national significance (SONS) (§ 300.323), the deletion of § 300.330 ("Wildlife conservation"), which is being replaced by new language in § 300.210, and revisions to conform to changes being made elsewhere in today's proposed rule.

In revising the NCP, the desirability of further distinguishing between the response requirements for oil discharges on one hand and releases of hazardous substances, pollutants, and contaminants on the other hand became evident. In order to assist participants and responders under the national response system, as well as other interested persons, in implementing and understanding the NCP, EPA is proposing to include a new appendix to the rule. This appendix to the NCP would consolidate in one place all provisions of the NCP relevant to oil spill response, including the organizational structure and procedures to prepare for and respond to oil discharges. It can serve as a single source of direction and guidance to OSCs, as well as a consolidated source of information for other interested parties regarding the requirements and procedures applicable to oil spill response. The wording may vary in some instances between the appendix and the various subparts of the NCP. Generally, this has resulted from the need to paraphrase or restructure certain passages to address oil discharges only. Nothing in the appendix changes the substantive requirements, meaning, or policy contained in the body of the NCP.

Phase I—Discovery or Notification (Section 300.300)

Pursuant to OPA section 4301(a), revised section 311(b)(5) of the CWA provides that the "[f]ederal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil * * *." A state that may reasonably be expected to be affected by a discharge would include any state that water current, prevailing weather patterns, and other factors indicate is in the direct path of a discharge or any state in which response personnel will be activated or used. To ensure the proper notification of state agencies, today's proposal would modify the language of § 300.300(d) to indicate that the OSC must notify the appropriate state agency.

Section 300.300(d) also has been revised in today's proposal to reference the ACP along with the RCP as plans that will guide the OSC's activities.

Phase II—Preliminary Assessment and Initiation of Action (Section 300.305)

New section 311(c) of the CWA describes federal removal authority for discharges or substantial threats of discharges. This section authorizes the President to: (1) Conduct or arrange for the removal of a discharge, or mitigate or prevent the threat of a discharge; (2) monitor cleanup by state or private personnel; (3) direct federal, state, or private actions to remove a discharge, or mitigate or prevent the threat of a discharge; and (4) remove and, if necessary, destroy a vessel by whatever means are available. Pursuant to E.O. 12777, this authority was delegated to EPA for discharges occurring in the inland zone and to the USCG for discharges occurring in the coastal zone.

Furthermore, CWA section 311(c)(2) now requires the President to direct federal, state, and private removal actions if the discharge or substantial threat of a discharge may pose a "substantial threat to the public health or welfare of the United States." This requirement replaces and expands upon former section 311(d), which authorized the federal government, in the case of a marine disaster, to coordinate and direct all public and private efforts directed at the removal or elimination of a threat, and to summarily remove and, if necessary, destroy the vessel.

Section 300.305(c) describes the process by which the OSC decides the appropriate extent of federal involvement in response actions. Currently, § 300.305(c) provides that the OSC must make reasonable efforts to have the responsible party take proper response actions; if this is not successful or appropriate, the OSC must decide whether to initiate a federal response. Today's proposed revisions retain as an option the possibility of allowing the responsible party to take the lead where the OSC determines this approach will result in immediate and effective response action. The reason for this change is that under the amended CWA, it is clear that the OSC rather than the responsible party determines the appropriate course of action for response. In an effort to prevent cost recovery problems, proposed § 300.305(c) would add the provision that an OSC should "notify the responsible party of the potential liability for federal response costs." At the same time, the proposed rule incorporates the changes described above, including giving the OSC authority to direct response actions.

The OSC's authority with respect to directing the actions of the responsible party applies equally to "private

resources" hired by the responsible party to assist in responding to a discharge. When an OSC directs an oil discharge response, the responsible party's contracted private resources will take direction from the OSC on-scene. OSC direction shall have the same primacy for private resources as it does the responsible party's resources involved in an oil discharge response.

The authority of the President to "direct" removal of discharges allows the OSC to fashion the federal role, as appropriate, to ensure that removal activity is adequate to protect public health or welfare, without necessarily requiring the federal government to use its own resources exclusively to perform the cleanup. "Directing" the removal activity could involve a range of federal roles, from taking over all response action (and seeking cost recovery later), to ordering action to imposing specific procedures and requirements on the response effort and directly supervising their implementation, to coordinating all federal, state, and private party efforts involved in the response through more general oversight and guidance. The OSC may direct the response to require the responsible party to use proper cleanup techniques or resources, to prevent further impact to the environment caused by the response, or to mitigate the threat to the public health or welfare of the United States. Today's changes are intended to reserve for the OSC broad and flexible authority to direct the removal of all discharges, including those that may pose a substantial threat to the public health or welfare of the United States. Section 300.322, discussed below, would provide a complete discussion of the criteria for identifying a substantial threat to the public health or welfare of the United States and the requirement that the OSC direct the response in all such cases. In all cases where the OSC elects or is required to direct the response, the OSC should declare unequivocally to spill response participants as soon as practicable that the federal government will direct the response.

It should be noted that federal agencies from which the OSC requests assistance may be reimbursed in accordance with the provisions of 33 CFR subchapter M. Specific interagency reimbursement agreements may be used when necessary to ensure that the federal resources will be available for a timely response to a discharge of oil.

OPA section 1011 addresses the issue of consultation on the selection and termination of removal actions. Of relevance to NCP § 300.305 is the requirement that the President consult

with affected natural resource trustees on the appropriate removal action to be taken in connection with any discharge of oil. This requirement would be implemented in the NCP by revising § 300.305(d) to include the requirement to consult with the affected trustees. In this regard, certain lands specially designated by Congress may require a greater degree of care in carrying out response activities than in normal circumstances. These special needs should be addressed in area contingency planning, specifically the Fish and Wildlife and Sensitive Environment Plan annexes to ACPs. Special designations include units of the National Park System, National Wildlife Refuges, and Wilderness areas. In such cases, consultation with affected trustees should, at a minimum, include discussion of barrier placement, debris burning, and any use of biological and chemical treatments.

Today's proposal would revise § 300.305(d) to incorporate an expanded notification requirement to better effectuate the purposes of the OPA. Thus, natural resource trustees are to be notified in the case of any discharge of oil, not only those where the OSC believes natural resources are or may be injured. EPA anticipates that details of notification protocols will be included in the Fish and Wildlife and Sensitive Environments Response Plan annex to the ACPs. It should also be noted that the USCG will promulgate regulations detailing the lead administrative trustee's authority to access federal response resources on behalf of all trustees.

Section 300.305(b)(4), which required the OSC to ensure that authority exists for undertaking additional response actions, has been deleted in its entirety in today's proposed rule. The OPA amendments to CWA section 311 and subsequent delegations grant the OSC the authority to take whatever removal action he or she deems necessary upon notification or discovery of a discharge.

Phase III—Containment, Countermeasures, Cleanup, and Disposal (Section 300.310)

Today's proposed changes to the NCP include new language in § 300.310. The new text references the ACP prepared under § 300.210(c), and directs that the ACP should be consulted for appropriate procedures to obtain an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule. These procedures are one of the elements of ACPs addressed in revised CWA section 311(j)(4).

Today's proposal also modifies the list of examples of defensive actions in paragraph (a) to indicate that the use of physical barriers should be considered when necessary to protect not only natural resources, but sensitive ecosystems as well.

Finally, language has been proposed to be added to § 300.310(c) to provide guidance on how RRT and ACP guidelines might address disposal plans for oil spill response.

Phase IV—Documentation and Cost Recovery (Section 300.315)

This section has been revised in today's proposed rule to reflect the establishment of the OSLTF and to ensure consistency with the USCG's own regulations on documentation (33 CFR subchapter M), which are undergoing revision and are expected to be promulgated before promulgation of today's proposed revisions to the NCP. Also, new paragraph (c) reflects proposed changes in § 300.165 regarding the preparation of OSC reports.

National Response Priorities (Section 300.317)

In addition to the general procedures and patterns for response, today's proposal includes a description of the overall priorities for responding to discharges of oil. New § 300.317 formalizes the following priorities that the OSC should consider during an oil discharge:

- The safety of human life, including search and rescue efforts;
- The stabilization of the situation to prevent further damage, including securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional spillage; and
- Coordination of containment, removal, and disposal efforts.

These priorities should facilitate the OSC's ranking the importance of response actions. These priorities reflect the fact that every event is multifaceted and must be approached in a step-by-step, logical manner. The language of proposed § 300.317 is broad and does not preclude the consideration of other priorities that may arise on a site-specific basis.

The safety of human life must be the top priority during every response action. Training, expertise, forethought, and experience all contribute to developing a response approach that ensures the safety of all. Search and rescue efforts directed toward crew members or response personnel fall within this category. Responders must ensure their own safety in order to avoid greater threats to public health and

welfare from a discharge. Next, the site of the discharge must be stabilized. All efforts expended during stabilization should focus on saving a vessel, facility, or other source that is discharging oil so that it is not damaged further (for example, by collision, fire, or explosion). Any of these situations can threaten response personnel and the environment and compound the effects of the incident. Securing the source of the spill could involve a range of actions as simple as closing a valve or as complicated as removing a substantial amount of oil from a leaking tank. The goal is to reduce the need for follow-up response action. Finally, the OSC should use containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes damage to the environment.

All priorities in this section should be considered concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions and should take appropriate actions to prevent additional discharges because environmental damage begins as soon as a discharge occurs.

The priorities outlined above are not intended to restrict the discretion of the OSC in directing or monitoring responses to oil discharges. The OSC must quickly assess all facets of an incident and immediately commence appropriate response actions. Each incident will present some unique problems for the OSC to address. These problems should be viewed in conjunction with the priorities outlined above, and the OSC should act accordingly. Therefore, although the priorities in this section outline the general model for a response, they do not preclude the OSC from developing individual tactics for responding to individual incidents. The national response priorities should help those outside the response community to recognize that response efforts to address an oil discharge include critical elements beyond containment and removal activities.

General Pattern of Response (Section 300.320)

Section 300.320(a) has been revised and reorganized in today's proposal for greater clarity, to reflect changes made to the CWA by the OPA, and to reflect revisions being made elsewhere in this proposal. For example, § 300.320(a)(1), the procedures to be followed in the event of an actual or potential major discharge, was moved to § 300.320(a)(2)(i) to present an OSC's responsibilities in a more orderly fashion.

Because of the changes required by the OPA amendments to CWA section 311, existing subsection (b) no longer adequately addresses all spill scenarios. Therefore, today's rule proposes to incorporate former subsection (b) into subsection (a) to present a clear and concise general pattern of response that an OSC should follow after receiving a report of a discharge. The new spill scenarios created by the CWA section 311, as amended, are a part of this framework.

To make this section more clear, EPA is proposing to add "type" to "size" as spill classification characteristics. These "types" (i.e., substantial threat to the public health or welfare and worst case discharge) are discussed extensively in their own preamble sections (§§ 300.322 and 300.324, respectively).

Although size and type of discharge involve some overlap, there are cases where a particular spill will demand the response action only one size or type classification addresses. For this reason, EPA believes that all of these spill types and sizes are necessary to guarantee effective spill response.

Currently, paragraph (b) describes four response scenarios in the case of a discharge. As written, it essentially consolidates requirements discussed in various other sections of the NCP, particularly §§ 300.305, 300.310, and 300.315. At the same time, the CWA now includes two new response scenarios (i.e., substantial threats to the public health or welfare, and worst case discharges) and provides the OSC with a broader range of potential actions in the case of a discharge. These new response scenarios are addressed in §§ 300.322 and 300.324, and the OSC's expanded authorities have been included in § 300.305. As a result, EPA concluded that, because current paragraph (b) would require significant restructuring to accurately reflect the OPA's amendments to CWA section 311 and because its essential provisions were addressed in other sections (e.g., former § 300.320(b)(3)(iii) would now be addressed in § 300.335), it could be eliminated from the NCP without affecting the document's explanation of response to oil discharges.

EPA is proposing to add a new paragraph (b) to incorporate the language of section 1011 of the OPA regarding completion of removals. That language indicates that a removal shall be considered completed when so determined by the President (here delegated to the OSC) in consultation with the Governor or Governors of the affected states. Section 1011 goes on to indicate that this determination shall not preclude additional removal actions

under applicable state law. As described in the Conference Report, "(o)rdinarily, removal costs incurred by a Governor after the President has determined that cleanup is complete will not be recoverable from the Fund unless the President determines that the additional costs were necessary to maintain the level of cleanup previously approved by the President. Reimbursement may be sought, however, from the responsible party, or from the responsible party's guarantor, for all removal costs covered by this (provision)" (H.R. Rep. No. 101-653, 101st Cong., 2d Sess. at p. 112). Along with this provision, an additional sentence has been added in today's proposal (i.e., "(w)hen the OSC considers removal complete, OSLTF removal funding shall end") to clarify the availability of the OSLTF.

Further discussion of the requirements of § 300.320 is included below in order to facilitate a comprehensive discussion of new § 300.322, Response to substantial threats to public health or welfare:

Three Release Scenarios: Substantial Threats to Public Health or Welfare (Section 300.322); Spills of National Significance (Section 300.323); and Worst Case Discharges (Section 300.324)

As noted above, the CWA now includes two new response scenarios, i.e., substantial threats to public health or welfare and worst case discharges. EPA is today proposing a third scenario for inclusion in the NCP: spills of national significance. This overview explains the relationship among the three; each one is described separately in detail below.

As discussed below, discharges posing substantial threats to public health or welfare are to be identified by looking at a number of factors, including size and character of the discharge and the potential effects on public health and the environment. Thus, it is not only how much oil is discharged, but also its proximity to humans and sensitive environmental systems. Discharges classified as substantial threats may be both large and small, depending upon where they occur and other factors. Most discharges are not expected to be identified by OSCs as substantial threats to public health or welfare.

Spills of national significance are a rare subset of those discharges defined as posing substantial threats to public health or welfare. Generally, these will be only those spills where the potential impacts are extremely severe. The key difference that would set them apart from other spills posing substantial threats is the need for particularly

extensive coordination and communication in order to respond adequately in a timely manner. SONS has been established as a distinct scenario to address this need to support the OSC in these areas.

Worst case discharges may be substantial threats to public health or welfare (and SONS), but may differ from spills posing substantial threats to public health or welfare in at least several ways. For example, worst case discharges are measured specifically in relation to other possible spills at that same facility or vessel, rather than all spills generally. In other words, each facility or vessel has its own worst case scenario, which is not dependent on spills occurring at other facilities or vessels. In addition, worst case discharges are not characterized in terms of the threat they pose to public health or welfare, but rather by size in relation to a vessel's or facility's capacity. Finally, the OPA suggests that a vessel or facility has only one event that would be its worst case, whereas there may be many different specific circumstances and factual settings that could pose a significant threat to public health or welfare.

Response to Substantial Threats to Public Health or Welfare (Section 300.322)

CWA section 311(d)(2)(I), added by section 4201(b) of the OPA, requires the NCP to include "criteria and procedures to ensure immediate and effective federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States." Today's proposal would add a new § 300.322 to address identification of and response to oil discharges posing a substantial threat to the public health or welfare. Discussion of response to substantial threats to public health or welfare from hazardous substance releases is included later in this preamble under subpart E.

The proposed approach combines proven procedures with additional requirements that together will ensure that Congressional objectives in adding this provision are fully addressed. This new section also reflects CWA section 311(c)(2)(B), which authorizes the President to act "without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal government" in removing or arranging for the removal of the discharge, or mitigating or preventing the substantial threat of the discharge, and removing and, if necessary, destroying a vessel

discharging, or threatening to discharge, by whatever means are available.

Identification of Discharges That May Pose a Substantial Threat to the Public Health or Welfare

CWA section 311(c)(2)(A), as amended by the OPA, indicates that a "substantial threat to the public health or welfare" is defined by the size or character of the discharge and that "public health or welfare" includes, but is not limited to, "fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States." The Conference Report on the OPA provides some insight into the types of incidents that could be characterized as a substantial threat to public health or welfare by citing three examples: (1) The *Exxon Valdez* spill in Alaska's Prince William Sound; (2) the *American Trader* incident in California's coastal waters; and (3) the spill and substantial threat of a larger spill from the *Mega Borg* in the Gulf of Mexico (H.R. Rep. No. 101-653, 101st Congress, 2d Sess., at p. 146). These three incidents exhibited the following characteristics:

- The *Exxon Valdez* spilled over 10 million gallons of oil, resulting in large fish and bird kills and extensive oil deposits on beaches and the shoreline.
- The *American Trader* discharged 397,000 gallons of oil, threatening California's largest wildlife sanctuary.
- The *Mega Borg* released 50,000 gallons of oil, with a threatened spill of 38 million gallons. This incident posed a threat to bays and estuaries containing birds and shellfish.

Although these examples involve coastal spills and threats of spills, substantial threats to public health or welfare could also result from spills or threats of spills to inland waters. For example, at an Ashland Oil Company facility in Floreffe, Pennsylvania, 750,000 gallons of diesel oil were discharged into the Monongahela River. This incident disrupted the water supply of approximately 2.7 million residents of communities along the Monongahela and Ohio Rivers and caused the death of an estimated 10,000 fish and 2,000 birds, as well as other serious ecological damage. The spill also resulted in schools and businesses being closed in many of these communities. These effects are comparable to the effects associated with the examples cited in the Conference Report.

In addition, the Senate noted that some smaller spills, such as those that occurred in June 1989 off the Rhode Island coast and in the Delaware River, can pose substantial threats to public

health and welfare (S. Rep. No. 94, 101st Cong., 1st Sess., at p. 18). The Greek tanker *World Prodigy* grounded on Brenton Reef, spilling 6,873 barrels of No. 2 fuel oil near Newport, Rhode Island. The Uruguayan tanker *Presidente Rivera*, carrying 452,000 barrels of fuel oil, grounded and leaked 7,310 barrels into the Delaware River.

New § 300.322(a) focuses on the broad factor categories cited in the legislation for identifying "substantial threats," i.e., size of the discharge, character of the discharge, and public health or welfare (including fish, wildlife, other natural resources, and beaches and shorelines). However, the language leaves open the possibility that other factors may be considered as well. EPA's intent is to provide a reliable framework for determining which spills may present a "substantial threat," but to leave the OSC with the discretion to decide, on a case-by-case basis, whether a specific discharge or threat of discharge may pose a substantial threat to the public health or welfare.

The factor categories mentioned above encompass many specific elements that may be considered if relevant, based on the circumstances of the discharge. For instance, in evaluating the size of the discharge, the OSC should consider factors such as the quantity of oil discharged, the quantity threatened to be discharged, and the rate of discharge. In considering the character of the discharge, the OSC should, as appropriate, evaluate the characteristics (e.g., toxicity) of the oil discharged, the potential for explosion or fire, and the rate at which the oil is likely to spread and dissipate considering weather and water conditions. In assessing the potential effect on public health or welfare, the OSC should, as appropriate, take into account the threat of serious, irreparable, or immediate harm or damage to human populations, drinking water, and food supplies (including subsistence resources), and proximity to environmentally sensitive areas, including fish and wildlife and their habitats (including breeding areas, feeding grounds, nurseries, wetlands, significant concentrations of birds, mammals, threatened or endangered species, and other living resources).

The proposed revision authorizes the OSC to consider other factors, as appropriate. One such factor that may be considered by the OSC is the capacity of locally available response resources. If such response capacity is limited, the time necessary to bring adequate response equipment and personnel to the scene of the discharge may be increased substantially and the discharge may become more severe and

affect a larger area. For example, in the *Exxon Valdez* incident, response equipment and personnel were at least 36 hours from the discharge. By the time these resources arrived at the scene, the discharge had become much more extensive and difficult to control. Another factor that may be appropriate is the response record of the discharger. For example, if the OSC is aware of significant spills that have not been addressed adequately by the discharger in the past, the OSC may conclude that a substantial threat would be more likely to result.

Upon considering the relevant information concerning the characteristics of the discharge, the OSC shall, under today's proposal, conduct an evaluation of the threat posed based on (1) the OSC's experience assessing other discharges, and (2) consultation, as appropriate, with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise. The senior official would likely be the District Commander in the case of USCG-lead responses. The appropriate senior official in EPA-lead response would be the Regional Administrator. An example of a situation where such senior-level consultation may be appropriate would be if the OSC believes that there is an unusually high level of public interest in the incident, and policy guidance and other insight from senior management may be useful. Examples of technical consultations would include situations where other lead agency OSCs have specialized knowledge of, or experience responding to the type of oil discharged from the same or similar facilities.

Based on the examples provided in the legislative history and experience over the years, EPA anticipates that the majority of discharges, or threats of discharges, will not be identified by OSCs as substantial threats to the public health or welfare within the meaning of CWA sections 311(c)(2) and 311(d)(2)(I); rather, only those discharges or threats of discharges with the most serious potential consequences will qualify.

Response to Substantial Threats to Public Health or Welfare

Currently, § 300.320(a) of the NCP outlines a general pattern of response that an OSC should follow after receiving a report of a discharge. The process described leaves considerable discretion with the OSC in carrying out response efforts. First, if the discharge is an actual or potential major discharge, the OSC should immediately notify the RRT, including the trustees of affected natural resources in accordance with the applicable ACP, the affected state, if

appropriate, and the NRC. The OSC should then investigate the report to determine the threat posed to public health or welfare, the type and quantity of the polluting material, and the source of the discharge. The OSC should officially classify the size of the discharge and determine the course of action to be followed. The OSC also should determine whether the discharger is properly carrying out removal (i.e., the cleanup is sufficient to minimize or mitigate threats to public health and welfare and the environment, and removal actions are consistent with applicable regulations, including the NCP).

As part of this general response process, the NCP uses a series of discharge classifications to delineate appropriate activities in each situation. This existing classification system currently includes consideration of substantial threats to public health or welfare. Section 300.5 of the NCP describes three size categories of discharges: (1) A minor discharge is a discharge to inland waters of less than 1,000 gallons or a discharge to coastal waters of less than 10,000 gallons; (2) a medium discharge is a discharge of 1,000 to 10,000 gallons to inland waters or 10,000 to 100,000 gallons to coastal waters; and (3) a major discharge is a discharge of more than 10,000 gallons to inland waters or more than 100,000 gallons to coastal waters. This section provides that "[a]ny oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge, regardless of (these size classifications)."

EPA has carefully re-examined these response procedures and concluded that for discharges that may pose substantial threats to the public health or welfare, additional measures would further enhance the ability of the federal government to ensure immediate and effective response. Section 300.322 has been added in today's proposal to describe response procedures for these situations. Specifically, proposed § 300.322(c) would require that if the discharge is identified as posing a substantial threat to the public health or welfare, the OSC must specifically assess opportunities for the use of various special teams and other assistance described in § 300.145. These special teams are capable of providing public affairs assistance, communications support, advice, and assistance for oil removal; have knowledge of shipboard damage control; have access to specialized containment and removal equipment; and have rapid

transportation available. Special teams also include the Environmental Response Team (ERT), established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering. Other available assistance includes the NSFCC, established under section 311(j)(2) of the CWA (and described more fully in § 300.145), and USCG DRGs established under section 311(j)(3) (also described in § 300.145), both of which can provide technical assistance, equipment, and other resources that may be needed by an OSC. NOAA can also provide SSCs, who have specialized expertise on coastal environmental considerations for spill response and planning, including spill trajectory modeling, environmental consequences of removal countermeasures, chemical analyses, information management, and response strategies that minimize environmental impact.

Proposed § 300.322(c) also requires the OSC to request that the RRT be activated immediately. This differs from the current requirement for medium or major discharges that the OSC recommend activation of the RRT, if appropriate. The RRT has two major components: (1) A standing team that consists of representatives of each federal agency that is a member of the NRT, state government representatives, and local government representatives; and (2) an incident-specific team that is formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by RRT member agencies is directed toward the technical nature of the incident and its geographic location (see § 300.115(b)).

Beyond these two obligations, proposed § 300.322(c) also authorizes the OSC to take whatever additional response actions are deemed appropriate, including but not limited to, implementation of the ACP as required by section 311(j)(4) of the CWA or the relevant tank vessel or facility response plan required by section 311(j)(5) of the CWA.

Proposed § 300.322(c) also provides that in the case of a substantial threat to the public health or welfare, the lead OSC may request the agency or RRT to dispatch appropriate personnel to the scene of the discharge to assist the OSC with technical support and public information and interagency coordination efforts. It is anticipated that the OSC will identify in advance those activities that can be performed by others and then assign such activities to appropriate personnel.

The function of these personnel is to relieve the OSC of duties indirectly related to actual removal actions so that the OSC can focus on directing response operations. This added support is particularly important when a substantial threat to the public health or welfare exists, because such a situation is likely to be of increased interest and concern to the media and the public. In these situations, the significant effort required to keep all parties adequately informed of the circumstances of the discharge and the response measures that are being taken should not fall on the OSC. During the first hours and days following the grounding of the *Exxon Valdez*, competing demands of this nature strained the OSC's ability to control the response effort. Typically in response operations, there is a relatively brief period of time in which action must be taken to minimize potential damage within any given specific set of conditions. If action is not taken decisively during this "window of opportunity," the ability to control the response most effectively may be lost.

As an example, when the USCG is the lead agency for the response and lead agency senior level involvement has been deemed appropriate, the added support for public information and interagency coordination efforts may be provided by the District Commander. The presence and participation of the District Commander reflects the Coast Guard's military chain of command with respect to its response structure; however, the OSC will remain in charge of operational aspects of the response. The function of the senior level officials will be to serve as a focal point for satisfying the demands for information on the status of the response from the press, local, state, and national elected officials, and the public. Thus, the additional staffing can help insulate the OSC from competing time demands that might otherwise divert the OSC's attention from directing response operations.

Finally, proposed § 300.322(c) also requires the lead agency to send a contracting officer to the scene of the discharge at the request of the OSC. Although EPA recognizes that CWA section 311(c)(2)(B), as amended by OPA section 4201(a), renders invalid all customary contractual procurement restrictions, this requirement is included to facilitate expedited contracting agreements that may be required due to the nature of the incident.

Spills of National Significance (Section 300.323)

EPA is today proposing a new section intended to enhance the federal government's ability to manage the response to SONS. A SONS is defined in § 300.5 of today's proposed rule as a spill that, due to its extreme severity, size, location, or actual or potential impact on the public health, welfare, or the environment, requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up. EPA expects these spills to be infrequent. Over the past 20 years, only two oil spills might have been designated as SONS: The 1979 *Ixtoc* well blowout in the Gulf of Mexico and the 1989 *Exxon Valdez* spill.

In situations such as these, coordinating resources at the national level and managing relations among various government officials and the public requires significant time and effort. This may divert attention away from the actions necessary to respond to the spill itself, which, in the case of a SONS, would be expected to be particularly complicated. Furthermore, while OSCs are thoroughly familiar with their regions or districts, they may be less knowledgeable about areas outside their regions or districts. The OSC in charge of responding to a spill that affects several regions, districts, or countries may benefit from communication assistance to identify and coordinate resources, evaluate site-specific conditions, and assess threats to the environment.

For these reasons, EPA is today proposing a "strategic management" framework designed to assist the OSC in dealing with resource administration, government coordination, public relations, and communication. The Administrator of EPA and the Commandant of the USCG may declare a discharge to be a SONS. In the case of a SONS in the inland zone of the United States, the Administrator may designate a senior Agency official to assist the OSC in: (1) Communicating with affected parties, the public, and the media, and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination would involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), the mayor(s) or other chief executive(s) of local government(s), and the responsible party. The "assistance" in support of the OSC is intended to relieve the OSC of certain communication/coordination burdens associated with directing response efforts. It does not mean the designated senior Agency official is

subordinate to the OSC. This official will simply fill the role of the OSC for these specific, limited activities.

For a SONS in the coastal zone, the Commandant may activate a National Incident Task Force (NITF). Membership on the NITF would be determined by the USCG, who will include a National Incident Commander (NIC), a flag officer (e.g., admiral or above) appointed by the Commandant; a chief of staff, filled by the commanding officer of the NSFCC; an area operations coordinator, the predesignated OSC for the area affected by the SONS; and federal, state, local, and responsible party representatives.

The USCG will develop a protocol to establish lines of authority for SONS response activities and facilitate coordination between the USCG OSC and the NITF. This protocol will delineate lines of communication and identify critical functions and key personnel in the case of a SONS, and provide standard operating procedures for administrative management.

Response to Worst Case Discharges (Section 300.324)

CWA section 311(d)(2)(J), added by OPA section 4201(b), requires the NCP to include "procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge." New § 300.324 would be added by today's proposal to address this new requirement.

Section 4201(b) adds a new definition for "worst case discharge" to CWA section 311(a)(24) as follows: "(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and (B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions."

According to the OPA Conference Report (H.R. Rept. No. 653, 101st Cong., 2nd Sess. at p. 147 (1990)), Congress phrased the definition of a worst case discharge from a facility more generally than the definition of a worst case discharge from a vessel because it may be more difficult to describe the entire contents of some kinds of facilities, such as pipelines. The Report indicates that the term "largest foreseeable discharge" from a facility is intended to characterize "a case that is worse than either the largest spill to date or the maximum probable spill for that facility type." An example of a facility worst case would be the loss of the entire contents of a facility's single oil storage tank into navigable waters.

A number of other OPA provisions also include planning and response requirements for worst case discharges:

- OPA section 4202(a) adds new CWA section 311(j)(5) authorizing the President to issue regulations that require owners or operators of tank vessels and certain facilities to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge.

- OPA section 4202(a) adds new section 311(j)(4) to the CWA, which provides that each Area Committee must prepare an ACP for its area that, when implemented in conjunction with the NCP, will be adequate to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.

- New CWA section 311(j)(2)(C) requires that the National Response Unit (i.e., the NSFCC) "shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge."

Currently, § 300.320 in subpart D describes a general process for response to discharges of oil. Today's proposed rule would expand this process with additional procedures to be followed in the case of substantial threats to the public health or welfare (§ 300.322). EPA continues to believe that the existing process, with today's proposed changes regarding substantial threats to the public health or welfare, would in large part adequately address all discharge situations. Use of this revised process, in conjunction with implementation of the other CWA "worst case discharge" requirements listed directly above, should provide, in virtually all cases, the appropriate framework for removing worst case discharges, and for mitigating or preventing substantial threats of such discharges. There may be a few cases, however, (e.g., situations of unforeseeably large discharges), where the implementation of these various requirements would prove to be inadequate. In those cases, the OSC would be expected to take whatever additional actions are necessary to ensure effective and immediate removal of the discharge by whatever means are available.

Specifically, today's proposal would modify the response structure by adding a new § 300.324 directing the OSC (in the case of a worst case discharge) to: (1) Notify the NSFCC; (2) require implementation of the tank vessel and facility-specific response plans required

under the OPA that are intended to specifically address response to worst case discharges and substantial threats of such discharges; (3) implement the ACP designed to work in conjunction with the NCP to remove worst case discharges and substantial threats of such discharges; and (4) take whatever additional actions are necessary to respond to the situation at hand. These proposed additions to the current response process would provide an appropriate response framework for removing worst case discharges. In the event that a worst case discharge also results in a substantial threat to the public health or welfare or the environment, the proposed requirements of § 300.322, as well as the requirements of § 300.324, would apply.

Wildlife Conservation (Section 300.330)

Today's proposal would delete this section and replace it with a new § 300.210(c)(4) regarding the Fish and Wildlife and Sensitive Environments Plan. CWA section 311(d) requires the NCP to include "a fish and wildlife response plan, developed in consultation with the FWS, the National Oceanic and Atmospheric Administration (NOAA), and other interested parties (including state fish and wildlife conservation affiliates) for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge." The Fish and Wildlife and Sensitive Environments Plan is more fully described in the preamble to § 300.210.

Funding (Section 300.335)

Section 9001 of the OPA provides that the revolving fund established under CWA section 311(k) and the funds authorized by the Deepwater Port Act, the Outer Continental Shelf Lands Act, and the Trans-Alaska Pipeline Authorization Act are transferred to the OSLTF established pursuant to section 9509 of the Internal Revenue Code of 1986. The proposed revisions to the language of § 300.335(c) reflect the OPA amendments.

Under section 1012 of the OPA, the OSLTF is available to pay for certain removal costs, other specified costs determined by the President to be consistent with the NCP, and costs associated with implementation, administration, and enforcement of the OPA, including the costs of monitoring removal actions. Section 1001 defines "removal costs" for purposes of the OPA to encompass costs related only to a discharge or threat of a discharge of

oil. These removal costs include: Costs of containment and removal of oil from water and shorelines and monitoring state and private action to remove a discharge; and costs of taking other related actions necessary to minimize or mitigate a threat to the public health and welfare or the environment, including, but not limited to adverse impact to fish, shellfish, wildlife, public and private property, shorelines and beaches.

The OPA definition of the term "oil" is similar to the broad definition in CWA section 311, except that any petroleum specifically listed or designated as a hazardous substance under CERCLA is excluded. As a consequence, it appears that there is no overlap in the funding and liability provisions of CERCLA and title I of the OPA. Certain petroleum refining industry wastes, for example, are specifically listed CERCLA hazardous substances; response to discharges of such wastes normally would be paid for under CERCLA, not the OPA, even if the wastes might also come within the CWA definition of "oil."

Proposed changes to § 300.335(a) are intended to clarify that the decision to access the OSLTF and conduct federal removal actions is solely the OSC's and may be taken at any time that, in his or her judgment, it is required. Also, separate, comprehensive procedures for accessing the OSLTF (33 CFR subchapter M) are referenced. Subchapter M is itself undergoing revision to reflect new provisions contained in the OPA and those changes are expected to be in place before today's revisions to the NCP are issued as a final rule.

Proposed changes to § 300.335(b) would remove the requirement that federal agencies be the sole funding source for their removal activities. Under the OPA, certain costs may be eligible for reimbursement from the OSLTF.

EPA is proposing to delete the original text of § 300.335(c) in its entirety to reflect the establishment of the OSLTF, which replaces several previously existing funding sources. In addition, language regarding cost documentation procedures has been deleted from this section, and now is addressed in proposed § 300.315. Section 300.335(c) now indicates that procedures for funding natural resource damage assessments may be found in 33 CFR subchapter M.

Section 300.335(e) would be revised by today's proposed rule to clarify that funding of a response to a discharge from facilities and vessels owned by the federal government is, like funding for

response at facilities and vessels operated or supervised by the federal government, the responsibility of the owning agency. EPA deleted much of the language previously included in § 300.335(f) because those funding issues are now addressed in 33 CFR subchapter M.

Subpart E—Hazardous Substance Response

This subpart contains a detailed plan covering authorized activities involved in abating and remedying releases or threats of releases of hazardous substances or pollutants or contaminants. Certain provisions of the OPA address releases of hazardous substances. These provisions include amendments to section 311 of the CWA, which establishes federal planning and response authority for both oil discharges and CWA hazardous substance releases.³

The NCP establishes a framework for response to releases of hazardous substances. The term "hazardous substance" is defined in NCP § 300.5, and generally includes substances designated as hazardous or toxic under section 311(b)(2)(A) of the CWA, section 102 of CERCLA, section 3001 of the Resource Conservation and Recovery Act, section 307(a) of the CWA, section 112 of the Clean Air Act, or section 7 of the Toxic Substances Control Act. Today's proposal does not alter the definition of "hazardous substance."

The OPA expands federal response authority within the framework established by the CWA for discharges of oil and releases of CWA hazardous substances; CWA section 311(c) authority does not extend to substances designated only under the other statutes listed above. The CWA authorizes the designation of hazardous substances in sections 307(a) and 311(b)(2)(A). Since the CWA became law in 1972, some 400 substances have been listed as hazardous under its provisions (see 40 CFR part 116).

CWA section 311(c) authorizes the President to direct the response to a discharge of oil or release of a CWA hazardous substance "(i) into or on the

navigable waters; (ii) on the adjoining shorelines to the navigable waters; (iii) into or on the waters of the exclusive economic zone; or (iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States." (A release that meets the above criteria will hereafter in this preamble be referred to as a release "to navigable waters.") Under CWA section 311(c)(2), if an actual or threatened discharge or release poses a substantial threat to the public health or welfare of the United States, the President is required to direct the response.

General (Section 300.400)

To acknowledge the statutory authority for the changes to CWA section 311 regarding hazardous substances discussed immediately above, EPA has added in today's proposal a reference to CWA section 311(c) to clarify that it is a source of authority for some of the requirements set forth in this subpart.

Discovery or Notification (Section 300.405)

EPA is proposing to add language to this section that clarifies how a release may be discovered and how certain releases may be reported. New § 300.405(a)(7) would recognize that certain hazardous substance releases may be discovered through reports submitted in accordance with section 311(b)(5) of the CWA. Section 300.405(f)(3) would state that notification of the Radiological Response Coordinator in the case of a release involving radioactive material may be accomplished directly by the OSC or through the NRC.

Removal Site Evaluation (Section 300.410)

In the event of an actual or threatened release of a hazardous substance to navigable waters, § 300.410(e) (1) and (2) of today's proposed rule would require the OSC to determine (1) if the hazardous substance is a CWA hazardous substance; and (2) if so, whether the actual or threatened release may pose a substantial threat to the public health or welfare of the United States. If the first condition is met, the OSC may choose to direct all federal, state, and private actions to remove the release. If both conditions are met, the OSC is required to direct response efforts. The OSC must make these determinations for every release of a hazardous substance to navigable waters that is being evaluated for a possible removal action.

The framework provided in today's proposal for identifying and responding to actual or threatened releases of CWA hazardous substances to navigable waters that may pose a substantial threat to the public health or welfare of the United States is consistent with the proposal included in subpart D, where the same process is described with respect to oil discharges.

Identifying a Release Posing a Substantial Threat to the Public Health or Welfare of the United States

In determining whether the actual or potential release may pose a substantial threat to the public health or welfare of the United States, the OSC should focus on the broad factor categories cited in the legislation for identifying "substantial threats." These are the size of the release, character of the release, and public health or welfare of the United States (including fish, wildlife, other natural resources, and beaches and shorelines). However, the new CWA authority leaves open the possibility that other factors may be considered, as well. EPA's intent is to provide a reliable framework for determining which releases may present a "substantial threat," but to give the OSC discretion to decide whether a specific release or threat of release results in a substantial threat to the public health or welfare of the United States. A more expansive discussion of identifying substantial threats is given in the preamble discussion to § 300.322 in subpart D. That discussion is applicable in the case of a release of a CWA hazardous substance to navigable waters as well, because EPA believes the response procedures discussed there generally are effective for hazardous substance releases.

This conceptual framework would be included in proposed § 300.410(e), which describes procedures for determining whether an actual or threatened CWA hazardous substance release to navigable waters may pose a substantial threat to the public health or welfare of the United States. The remaining paragraphs in this section have been renumbered accordingly. (Changes made to new § 300.410(h) are the result of other changes made by the OPA in the area of natural resources. Discussion of natural resource-related changes is in the preamble discussion for subpart G.)

Removal Action (Section 300.415)

Currently NCP § 300.415 describes a general pattern of response that an OSC must follow in conducting a hazardous substance removal action. However, the process outlined leaves considerable

³ The OPA actually refers to "discharges" of hazardous substances, rather than "releases." The NCP has for some time, however, defined "discharge" to refer only to oil and "release" to refer to hazardous substances, pollutants, and contaminants. This was done to simplify the regulatory language and eliminate the need to continually modify the term "discharge" with "of oil" or "of CWA hazardous substances." Thus, the NCP will use the term "release" when discussing OPA requirements regarding CWA hazardous substances, but will modify it as appropriate to clarify that those requirements do not apply to the complete universe of CERCLA hazardous substances.

discretion with the OSC in carrying out response efforts. First, the lead agency reviews the removal site evaluation. If a responsible party is known, an effort is made to determine whether it can and will perform the necessary removal action promptly and properly. If the responsible party does not perform the removal, the lead agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

EPA has re-examined these response procedures and concluded that, for actual or threatened releases of CWA hazardous substances to navigable waters that may pose a substantial threat to the public health or welfare of the United States, additional measures would further enhance the ability of the federal government to ensure immediate and effective response. A new paragraph (c) is proposed to be added to § 300.415 (and the remaining paragraphs renumbered accordingly) to describe additional response procedures for actual or threatened "substantial threat" releases. Specifically, proposed § 300.415(c) requires that if the actual or threatened release is identified as posing a substantial threat to the public health or welfare of the United States, the OSC shall assess opportunities for the use of various special teams and other assistance described in § 300.145, as appropriate. These special teams are capable of providing public affairs assistance, communications support, advice, and assistance for oil and hazardous substance removal; have knowledge of shipboard damage control; have access to specialized containment and removal equipment; and have rapid transportation available. Special teams also include the ERT, established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering. Other available assistance includes the NSFCC and USCG DRGs (see § 300.145), both of which can provide technical assistance, equipment, and other resources that may be needed by an OSC. NOAA can also provide SSCs, which provide specialized expertise on coastal environmental considerations for spill response and planning, including spill trajectory modeling, environmental consequences of removal countermeasures, chemical analyses, information management, and response strategies that minimize environmental impact.

In addition, proposed § 300.415(c) would require the OSC to request that the RRT be activated immediately and

authorizes whatever additional response actions are deemed appropriate.

Proposed § 300.415(c) also provides that, in the case of a substantial threat to the public health or welfare, the OSC may request the lead agency or RRT to dispatch appropriate personnel to the scene of the release to assist the OSC with technical support and public information and interagency coordination efforts. It is anticipated that the OSC will identify in advance those activities that can be performed by others, and then assign such activities to appropriate personnel.

This added support is particularly important when a substantial threat to the public health or welfare of the United States exists because such a situation is likely to be of increased interest and concern to the media and the public. In these situations, the significant effort required to keep all parties adequately informed of the circumstances of the release and the response measures taken should not fall on the OSC. These other officials will be able to serve as a focal point for satisfying the demands for information on the status of the response from the press, local, state, and national elected officials, and the public. Thus, the additional staffing can help insulate the OSC from competing time demands that might otherwise divert the OSC's attention from directing response operations.

Proposed § 300.415(c) would require the lead agency to send a contracting officer to the scene of the release at the request of the OSC. Although EPA recognizes that CWA section 311(c)(2)(B), as amended by OPA section 4201(a), eliminates the obligation to comply with all customary contractual procurement restrictions, this requirement is included to facilitate expedited contracting agreements that may be required due to the nature of the incident.

EPA is proposing to add the word "CERCLA" to all relevant removal action references in order to distinguish these actions from CWA removal actions.

Finally, worst case discharges and SONS are not discussed in subpart E, as they are in subpart D. The OPA created worst case discharges only in relation to oil discharges, not releases of hazardous substances or pollutants or contaminants. Similarly, the new spill classification of SONS, as proposed in § 300.323 of today's rule, would apply only to oil discharges.

Subpart G—Trustees for Natural Resources

Section 1006 and other sections of the OPA address natural resource damages resulting from oil spills and the role of trustees. These new statutory provisions necessitate certain changes to subpart G and other subparts of the NCP, and also require the promulgation of new damage assessment regulations. The latter regulations were promulgated by NOAA, in consultation with EPA, FWS, and the heads of other affected agencies, in a separate advance notice of proposed rulemaking (see 55 FR 53478, December 28, 1990).

Section 1006 of the OPA provides that liability for natural resource damages shall be to the United States Government, a state government, an Indian tribe, or to a foreign government. Natural resource trustees can claim monetary damages from responsible parties for injury to, destruction of, loss of, or loss of use (including subsistence use and revenues) of such resources. Federal officials authorized by the President and the authorized representatives of Indian tribes, state, and foreign governments act as public trustees to recover damages for injury to natural resources under their trusteeship.

The OSLTF can be used for initiating the assessment of natural resource damages and for developing and implementing plans for restoration by federal, state, and Indian tribal trustees. OPA section 6002(b) provides for immediate funding to initiate the assessment of natural resource damages without appropriation. All requests to the NPFC for payment for this activity must be made through the lead federal trustee designated at the time of the incident. Procedures for funding the initiation of natural resource damage assessment are covered in 33 CFR subchapter M.

Foreign trustees are newly designated under OPA section 1006(b). The trustees assess natural resource damages and develop and implement plans for restoring, rehabilitating, replacing, or acquiring equivalent natural resources under their trusteeship. Restoration plans developed by OPA trustees are subject to public notice, comment, and opportunity for hearing.

Designation of Federal Trustees (Section 300.600)

Currently, subpart G lists section 311(f)(5) of the CWA as one of the relevant authorities for trustee activities. Section 2002(a) of the OPA excludes the applicability of section 311(f) to oil spills governed by the liability

provisions in section 1002. At the same time, OPA section 1006 provides new authority for trustee designation and functions under the OPA. Therefore, today's revision proposes to add references to OPA section 1006. The current CWA provision in section 311(f) continues to provide authority in the case of discharges for which there is CWA liability, rather than OPA liability.

The language concerning natural resources in § 300.600 (a) and (b) is proposed to be changed to track more closely the definition of natural resources contained in section 1001 of the OPA. In addition, the term "protected" is proposed to be replaced by "controlled" throughout this section to more accurately reflect the trustees' responsibilities for natural resources.

Section 300.600(b) describes the situations under which natural resource trustees are authorized to act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, and section 1006 of the OPA. Each trustee has responsibilities for protection of resources; mitigation and assessment of damage; and restoration, rehabilitation, replacement, or acquisition of resources equivalent to those affected. In these roles, trustees are responsible for providing advice to the OSC on environmental issues, including appropriate removal countermeasures, that should be considered in the ACP; for providing timely recommendations to the OSC during an incident for the application of various removal countermeasures; for initiating a preliminary survey of the area affected by a discharge to determine if trust resources are, or potentially may be, affected; and for carrying out a damage assessment of the area in order to recover monies to restore, rehabilitate, replace, or acquire equivalent natural resources. Preplanning and coordination for both response and damage assessment activities are specifically required at the regional and area levels, both during the area and regional plan preparation and during specific incidents when coordination must be with the predesignated OSC.

The Department of Commerce description of trustee responsibilities in § 300.600(b)(1) is also proposed to be changed. The phrase "or using" is proposed to be added to indicate that many migrating and/or pelagic species do use the waters navigable by deep draft vessels and tidally influenced waters that are not necessarily found year round, or specifically, in or under the water at all times. This phrase is meant to include natural resources that spend a portion of their life cycle in waters of the U.S. exclusive economic

zone feeding, migrating, breeding, or using the area as critical habitats. An example of "using" would be marine mammals that migrate in and out of U.S. waters, feed and breed in U.S. waters, and feed in the open sea and foreign waters. Many species that inhabit or utilize the marine ecosystem, may not be acknowledged as a natural resource protected by the Department of Commerce under the NCP without this language. Finally, the language concerning anadromous fish is proposed to be changed to more accurately reflect the Secretary of Commerce's trusteeship.

State Trustees (Section 300.605)

Today's proposed regulation expands § 300.605, "State trustees," to encourage governors to designate a lead representative to coordinate among all state offices with trustee responsibilities and the RRT and OSC. The lead state trustee's representative (who may serve on the Area Committee) should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. This mechanism will help avoid parallel state damage assessment activities by providing a means for state representatives to have input into federal planning and response efforts.

Foreign Trustees (Section 300.612)

This new provision is proposed to be added to address the language in section 1006 of the OPA recognizing the role of foreign trustees. These trustees are to act on behalf of their governments for natural resources belonging to, managed by, controlled by, or appertaining to those governments.

Responsibilities of Trustees (Section 300.615)

Sections 300.615(c)(2) and 300.615(c)(3) are proposed to be added to reflect the trustee's responsibilities in the event of an oil spill that affects natural resources pursuant to section 1006 of the OPA.

In addition, § 300.615(d)(4) is proposed to be added to reflect the authority of the federal trustees to initiate damage assessments pursuant to OPA section 6002.

Subpart H—Participation by Other Persons

Addition of Statutory Authorities for the Recovery of Oil Response Costs

The focus of this subpart is on those authorities that allow persons other than governments to respond to releases and to recover necessary response costs. Currently, subpart H only addresses

participation by individuals, private entities, potentially responsible parties, and foreign entities eligible to submit claims for reimbursement for response actions from the Hazardous Substance Superfund (for example, claims made under CERCLA sections 111(a)(2) and 122(b)(1)). The current subpart H does not address claims for response to discharges of oil.

However, section 1013 of the OPA authorizes reimbursement for responses to discharges of oil from the OSLTF. In today's rule, EPA is proposing to incorporate in subpart H a reference to the procedures that apply to claims made by other persons responding to such discharges (§ 300.700(h)).

The current subpart H is supplemented by 40 CFR part 307, which contains the forms and detailed procedures required by section 112(b)(1) of CERCLA for filing CERCLA response claims. The USCG will in the near future promulgate a similar supplement to today's proposed subpart H, as required by OPA section 1013(e), describing the procedures and operation of the NPFC.

The NPFC can pay uncompensated removal costs and uncompensated damages from the OSLTF pursuant to section 1012(a)(4) of the OPA. Claimants should submit claims to either the designated responsible party or NPFC as specified in advertising. If the responsible party declines to pay the claim or fails to settle the claim within 90 days, then the claim may be submitted to the NPFC. Any claims received by agencies other than the NPFC should be immediately forwarded to the NPFC.

Questions regarding claims should be referred to the NPFC. However, if a responsible party/guarantor has advertised for claims, potential claimants can be referred directly to the responsible party/guarantor. If any third party interest in filing claims is noted or expected as a result of an incident, the NPFC case officer should be notified promptly.

The language in § 300.700(a) concerning both OPA and CERCLA response actions is also proposed to be changed. Section 300.700(a) currently provides that any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant. Today's proposed rule would place limits on this authority pursuant to language contained in CWA section 311(c)(2) which requires the Federal Government to direct discharges posing a substantial threat to the public health or welfare of the United States.

Subpart J—Use of Dispersants and Other Chemicals

Section 311(d)(2)(G) of the CWA, as amended by the OPA, requires that the NCP include a schedule identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the NCP. Currently, the use of dispersants, other chemical agents, and bioremediation agents to respond to oil spills in U.S. waters is governed by subpart J of the NCP (40 CFR 300.900).

Section 300.910 of subpart J concerns the authorization of the use of products on the NCP Product Schedule and specifies the conditions under which OSCs may authorize the use of dispersants, other chemicals, and other spill control agents. Under existing § 300.910(a), OSCs may authorize the use of products on the Product Schedule, with the concurrence of the EPA and state representatives to the RRT and, when practicable, in consultation with the DOC and DOI natural resource trustees.

Sections 300.915 and 300.920 describe the data requirements and the process for adding products to the Product Schedule. To list a product on the Schedule, subpart J currently requires a manufacturer to submit technical data on the product to EPA. Data on dispersants, surface collecting agents, and miscellaneous oil spill control agents must include the results of the Revised Standard Dispersant Toxicity Test set for these products in appendix C of the NCP. Data on dispersants must also include the results of the Revised Standard Dispersant Effectiveness Test, also set forth in appendix C. These tests may be conducted at the expense of the manufacturer and may be performed by any qualified laboratory.

The raw data and a summary of the results from these tests are then submitted to EPA, where they are reviewed to confirm that the data are complete and that the specified procedures were followed. Generally, EPA does not confirm these data in independent tests. The data requirements for placement of a product on the Product Schedule are designed to provide sufficient data for OSCs to judge whether and in what quantities a product may be used to control a particular discharge.

Inclusion of a product on the Product Schedule means only that the data submission requirements have been satisfied. The listing of a product on the Schedule does *not* mean that the product is recommended or authorized for use on an oil discharge. In addition,

placement of a product on the Product Schedule does not imply that EPA has confirmed the safety or effectiveness of the product or in any other way endorsed the product for the use listed or for other uses. The purpose of the standardized testing procedures set forth in appendix C is to ensure that OSCs have comparable data regarding the toxicity, effectiveness, and other characteristics of different products.

Other Spill Mitigating Devices and Substances

Section 4201 of the OPA amends CWA section 311(c)(2)(G) (now section 311(d)(2)(G)) to add "other spill mitigating devices and substances" to the items that may be identified by the NCP Product Schedule. Consequently, EPA is proposing to revise subpart J to include "other spill mitigating devices and substances." Specifically, the phrase "other spill mitigating devices and substances" is being added to § 300.900(a).

EPA interprets the phrase "other spill mitigating devices and substances" to include certain products that are currently listed under the miscellaneous oil spill control agent category on the Product Schedule. EPA believes that Congress' primary intent in regulating products under the NCP Product Schedule is to protect the environment from possible deleterious effects caused by the application of these products. As stated in the Conference Report for the OPA (H.R. Rep. 101-653, 101st Cong., 2d Sess. at p. 147 (1990)), in preparing the NCP Product Schedule, "the President should consider the long- and short-term effects on the environment of spill mitigating devices and substances, and select those which are least harmful to the environment." Therefore, EPA is not interpreting the phrase "other spill mitigating devices and substances" to include mechanical devices such as pumps, booms, or skimmers, which present no such environmental dangers through their use. Although EPA believes that the use of mechanical devices, by themselves, will not create deleterious effects on the environment, commenters are encouraged to provide information on whether and how the improper use of these devices could result in negative environmental effects.

Preauthorization of Product Use and the Role of Area Committees

Section 300.910 sets forth the provisions for the authorization of the use of products on the NCP Product Schedule by OSCs in response to oil spills. Under existing § 300.910(e), RRTs are encouraged, as part of their contingency planning efforts, to make

preauthorization decisions with respect to the use of certain dispersants or chemical agents in their area of geographical responsibility. If the appropriate state RRT representatives and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances, the OSC may authorize the use of the products when a spill occurs without obtaining specific concurrences. The preauthorization of the use of regulated products by OSCs is currently an optional process. In the past, the preauthorization option under § 300.910(e) has been used relatively infrequently. Although some RRTs have developed preauthorization plans for the use of products in response to oil spills, the overall election to make use of this option has been less comprehensive than EPA envisioned when this provision was developed.

As discussed previously, the OPA amended the CWA to create a system of Area Committees, which are to consist of members appointed by the President from qualified personnel of federal, state, and local agencies. The statute expands the existing planning and response framework by creating an area-level planning and coordination structure, with the Area Committees and ACPs as the primary features of this structure. Under the CWA, Area Committee responsibilities include enhancing contingency planning and ensuring preplanning of joint federal, state, and local response efforts, and expediting decisions on the use of dispersants and other spill mitigating devices and substances. The ACPs must, among other things, include a list of the equipment, dispersants or other spill mitigating devices and substances, and personnel available to ensure an effective and immediate removal of a discharge and to ensure mitigation or prevention of a substantial threat of a discharge, and a description of the procedures to be followed for obtaining an expedited decision regarding the use of dispersants (see CWA section 311(j)(4)).

Because preauthorization can promote timely action in response to an oil spill, EPA is proposing to make the existing preauthorization option mandatory. Existing § 300.910(e) would be revised and moved to become new § 300.910(a). Given the creation of the system of Area Committees mandated by the OPA, EPA is proposing to revise new § 300.910(a) to require that the Area Committees be actively involved in the preauthorization process. Under this new paragraph, RRTs and Area Committees, as part of their planning activities, must address the desirability

of using appropriate products on the Product Schedule and the desirability of using appropriate burning agents. In addition, the results of this planning should address, in either the RCP, ACP, or a corresponding preauthorization plan, the specific contexts in which these products should and should not be used. This provision, however, would not require RRTs and Area Committees to specifically address the use of every product on the Product Schedule in their RCPs, ACPs, or corresponding preauthorization plans.

Section 300.910(a) also is proposed to be revised to authorize the RRTs to review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. EPA believes that the RRTs should serve in an advisory and approval role regarding preauthorization plans developed by the Area Committees because the RRTs' expertise in oil spill response would be a valuable asset in the development of these preauthorization plans. In conducting the preauthorization process described in new § 300.910(a), the RRTs and Area Committees should work together closely. In order to facilitate the best possible response, it is important that the regional-level and area-level contingency planning efforts of the RRTs and Area Committees, respectively, are coordinated closely with each other and are consistent.

In addition, for the sake of consistency with the case-by-case authorization process described in new paragraphs (b), (c), and (d) of § 300.910, EPA is proposing to revise § 300.910(a) to require approval by the EPA RRT representative (in addition to the state representative's approval now required) for certain products under specified circumstances, as described in the preauthorization plan. This would allow the OSC to authorize the use of these products when a spill occurs without having to obtain specific concurrences in situations where time is of the essence.

In a number of instances (e.g., in the inland waters), RRTs may fulfill the role of the Area Committees. In these instances, coordination between the two separate entities will be facilitated to the extent the RRT addresses both regional-level and area-level contingency planning.

Revised § 300.910(a) states that preauthorization plans may address, but should not be limited to, factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available dispersants and

storage locations, available equipment and adequately trained operators, and the available means to monitor dispersant application and effectiveness. RRTs and Area Committees also may want to consider the use of a zoned approach in the development of preauthorization plans. A number of existing preauthorization plans use criteria to classify coastal waters into three dispersant use zones that are defined by ocean depth, currents, biological parameters, nearshore human activities, and time required for response. When developing preauthorization plans, RRTs and Area Committees also should take into account the provisions in the Fish and Wildlife and Sensitive Environments Plans that will be incorporated into each ACP.

EPA also would like to stress that the OPA seeks to expedite preauthorization decisions. These decisions can be negative; for example, areas may be designated in which the use of certain dispersants or other spill mitigating devices and substances is prohibited.

As a result of the proposed reorganization of § 300.910 to emphasize preauthorization in the use of products on the NCP Product Schedule, existing § 300.910(a) would be moved to become new § 300.910(b). This paragraph is proposed to be revised to clarify that the case-by-case authorization provisions apply only to spill situations that are not addressed in a preauthorization plan. Existing paragraphs (b), (c), and (d) of § 300.910 would be moved to become new paragraphs (c), (d), and (e) of the same section, respectively. The language of new § 300.910(d) is proposed to be reworded for the sake of clarity.

Additional Testing and Data Requirements

EPA is proposing to add new § 300.910(f) to clarify the authority of the RRTs regarding the testing and data requirements for listing products on the NCP Product Schedule. This new provision would specifically allow the RRTs, when developing preauthorization plans, to require the performance of supplementary toxicity and effectiveness testing in addition to the test methods specified in § 300.915 and described in appendix C. For example, RRTs could require manufacturers to conduct additional dispersant effectiveness testing using grades of oil other than that which is specified by the dispersant effectiveness test method or could require additional toxicity testing on test species other than those designated under the stipulated toxicity test method. This

supplementary testing might be required because of existing site-specific or area-specific concerns, such as the existence of a sensitive indigenous species that plays a critical role in the local sensitive environment or has special commercial value.

EPA is clarifying the authority of the RRTs concerning product testing requirements to provide more relevant information to RRTs for their response and contingency planning efforts. The test methods described in appendix C are intended to provide a basic set of test procedures that will provide baseline data for comparison of products on a national basis. The new provision now would specifically provide that RRTs may require supplementary effectiveness and toxicity testing in order to obtain data that will be more specific and relevant to the area-specific and site-specific conditions of spills for which they are responsible.

NCP Product Schedule Listing Process

Since the *Exxon Valdez* spill, nearly 60 products have been added to the NCP Product Schedule, bringing the total number of products on the Schedule to nearly 100. Because of this proliferation of products on the Schedule, there has been increased interest among users, particularly OSCs, for the establishment of some type of criteria to limit the products considered in a given spill situation. As a result, EPA is today proposing to revise the process under which some products, specifically dispersants, are listed on the Product Schedule. These proposed revisions to the listing process, which may result in a reduction of the number of products on the Schedule, are designed to provide more useful and reliable data to OSCs.

In order to place a dispersant on the NCP Product Schedule, subpart J currently requires that the manufacturer conduct specific toxicity and effectiveness tests and submit the corresponding technical product data to EPA. However, subpart J does not require that any minimum standards or criteria be met for a dispersant to be listed on the Schedule. Given the recent proliferation of products on the Schedule, including dispersants, EPA is proposing to establish an effectiveness⁴ threshold or acceptability criterion for listing dispersants on the NCP Product Schedule.

Only those dispersants that meet or exceed the established effectiveness

⁴The effectiveness of an oil dispersant is measured by its ability to disperse a surface slick of oil into the water column and to hold the emulsion there.

threshold would be listed on the Schedule. EPA is not proposing to establish a threshold or acceptability criterion for dispersant toxicity because toxicity tends to be more relative. Also, EPA believes that the best approach to regulating dispersants is to provide OSCs and Area Committees with the toxicity data and allow them to make decisions on dispersant use by weighing the toxicity data against the effectiveness data for those dispersants that meet or exceed the effectiveness threshold. For example, in a particular location of possible dispersant use, an OSC may opt to use or an Area Committee may preplan for the use of a highly effective, but highly toxic dispersant. In a different location, the OSC or Area Committee may decide to use a moderately toxic, but less effective dispersant. In either situation, the OSC and Area Committee would know that the selected dispersant, at the very least, meets the level of effectiveness established by the effectiveness acceptability criterion.

EPA is also proposing to change the manner in which the required dispersant effectiveness and toxicity tests are performed. Subpart J currently requires that dispersant manufacturers arrange with qualified laboratories to conduct the specified effectiveness and toxicity tests for their products. However, given the establishment of an effectiveness acceptability criterion for dispersants, EPA believes it is necessary to maintain as much consistency and reproducibility in the dispersant effectiveness testing results as possible. Therefore, EPA believes that it is appropriate for EPA to conduct the required effectiveness tests for dispersants.

Only those dispersants that meet or exceed the established effectiveness acceptability criterion, and are therefore eligible to be listed on the Schedule, would be tested for toxicity, in accordance with the required toxicity testing protocol discussed below. Due to the fact that toxicity tests would be performed only on those dispersants that attain or exceed the effectiveness threshold, EPA is also proposing that EPA conduct the required dispersant toxicity tests.

Dispersant manufacturers are still required to submit to EPA the other technical product data specified in § 300.915(a), along with a two-liter sample of their product for the purposes of EPA performing the required effectiveness and toxicity tests.

EPA is focusing its efforts concerning revisions to the listing process and the establishment of effectiveness acceptability criteria on dispersants

because these products constitute a large portion of the products on the Schedule (i.e., there are over 40 dispersants currently listed on the Schedule). In addition, effectiveness testing protocols for dispersants are more numerous and well established. EPA envisions that the proposed listing process for dispersants will serve as a model or pilot program, and that effectiveness acceptability criteria for the other categories of products (such as surface washing agents or bioremediation agents) will be established under subpart J when the effectiveness testing protocols for these products are standardized or validated. Accordingly, effectiveness testing protocols are currently being developed for other categories of products, but are not being proposed today.

Dispersant Acceptability Criterion

As discussed above, under existing subpart J there is no requirement that the percent effectiveness of a dispersant be above a certain threshold value in order for the dispersant to be listed on the Schedule. When compared to the requirements of other countries, this lack of an established minimum effectiveness level for dispersants represents the exception rather than the rule. For example, Brazil and Canada require effectiveness values of 50 percent or greater, while France and Norway require values of 60 percent or greater. In China and Japan, dispersant effectiveness must be 60 percent or greater after a 30-second mix time, and 20 percent or greater after a 10-minute mix time.

EPA is proposing to establish a 50 percent effectiveness acceptability criterion for listing dispersants on the NCP Product Schedule. EPA believes that the 50 percent threshold strikes an effective balance between restrictiveness and leniency in listing dispersants on the Schedule, is generally consistent with the effectiveness thresholds established by other countries, and allows for a broad range of dispersants at various levels of technical development to be used. Also, Paragraph 1 of Article 604 of the 1988 U.S.-Canada Free Trade Agreement states that "to the greatest extent possible, and taking into account international standardization activities, each Party shall make compatible its standards-related measures and procedures for product approval with those of the other Party." As discussed above, Canada uses a dispersant effectiveness threshold of 50 percent.

EPA recognizes that some degree of variability will be inherent in the dispersant effectiveness test results. In

order to allow for this variability, EPA is proposing to establish the dispersant effectiveness acceptability criterion at 50 percent, plus or minus 5 percent. In other words, a dispersant tested in accordance with the required Swirling Flask testing protocol (discussed below) would have to attain an effectiveness value of 45 percent or greater (i.e., 50 percent minus 5 percent) to be listed on the Product Schedule.

It should be noted that dispersants currently listed on the Product Schedule also would have to attain an effectiveness value of 45 percent or greater to continue to be listed on the Schedule. Dispersants currently listed on the Schedule would remain on the Schedule until EPA has conducted the necessary tests. After these tests have been performed, manufacturers of those dispersants that do not attain an effectiveness value of 45 percent or greater would be notified in writing by EPA that, within a specified period of time, their dispersants will be removed from the Product Schedule.

EPA is proposing to add new § 300.920(a) to revise the listing process for placing dispersants on the Product Schedule and to establish the 45 percent effectiveness acceptability criterion. Existing paragraphs (a) and (b) of § 300.920 are being revised to become new § 300.920(b). As is currently the case, manufacturers of products other than dispersants need only submit the technical product data required by § 300.915 to have those products listed on the Product Schedule.

After EPA has received the required technical product data and a two-liter sample of the dispersant from the manufacturer, EPA would conduct the required Swirling Flask effectiveness test, as specified in appendix C to the NCP. EPA would then conduct the required dispersant toxicity test, as specified in appendix C, but only for those dispersants that attained an effectiveness value of 45 percent or greater.

EPA is also proposing to add new § 300.920(a)(5) to establish a process for those dispersant manufacturers that may disagree with EPA's decision to not list their dispersants on the Product Schedule. Within 30 days of receipt of EPA's notification to not list the dispersant on the Schedule, the manufacturer would have to submit in writing to the Administrator of EPA a clear and concise statement with supporting facts and technical analysis demonstrating that EPA's decision was incorrect. The Administrator or a designee may request additional information from the dispersant manufacturer, or any other person, and

may provide for a conference between EPA and the manufacturer, if appropriate. The Administrator or a designee would render a final Agency decision within 60 days of receiving the statement (or within 60 days of receiving requested additional information, if appropriate).

Existing paragraphs (a)(7), (8), and (12) of § 300.915 are proposed to be revised, and new § 300.920(a) is proposed to be added, to state that EPA will perform the required effectiveness and toxicity tests for dispersants. In addition, the order of existing paragraphs (a)(7) and (8) of § 300.915 is proposed to be reversed to reflect the order in which the tests will be performed by EPA (i.e., the dispersant effectiveness test will be performed before the dispersant toxicity test). Consistent with current EPA policy, manufacturers of products other than dispersants will be required to arrange for qualified laboratories to perform the specified effectiveness and toxicity tests for their products.

Dispersant Effectiveness Testing Protocol

Dispersants are defined in § 300.5 of the NCP as "those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column." Section 300.920 of the NCP currently requires that the Revised Standard Dispersant Effectiveness Test (RSDET) be performed and the test data be submitted to EPA in order for a dispersant to be placed on the NCP Product Schedule. The objective of this test is to measure the degree of dispersion that each particular chemical produces.

EPA, USCG, and other federal agencies have expressed a number of concerns regarding this effectiveness

testing protocol, including: Skepticism about whether No. 6 fuel oil is readily dispersible; concern that the oil/water ratios are unrealistic; questions regarding the stability of the dispersion during the testing procedure; and concern that the energy levels utilized in the test are unrealistic. Also, the test is classified as a pumped tank type of test, which can create local regions of extremely high shear conditions that may cause misleading test results. The RSDET procedure is also cumbersome and relatively expensive because it requires specialized laboratory equipment, relatively skilled laboratory technicians, and a substantial amount of laboratory time, and it results in a large volume of wastewater.

A number of laboratory studies have been performed to compare the test results from different effectiveness testing apparatus and procedures. Reviews of these results demonstrate that there are poor correlations in effectiveness data among the various test methods. Several recent studies have indicated that this lack of correlation is a function of settling time, energy applied, natural dispersion, and the oil-to-water ratio used in the apparatus.⁵ When these parameters are adjusted, however, test results from most apparatus are similar. This suggests that a simple, repeatable, and fast test can be chosen to make determinations of dispersant effectiveness.

Currently, over 35 dispersant effectiveness testing protocols have been developed, and approximately ten are used worldwide today. Approximately five dispersant effectiveness field tests have also been developed.⁶

Considering the wide range of effectiveness tests available, and the relative advantages and disadvantages of each, EPA convened a panel of experts to address the issue of dispersant

effectiveness. In April 1991, U.S. and international experts were invited to EPA's facility in Edison, NJ to discuss the current state-of-the-art on dispersant use and effectiveness. Over 45 scientists attended, representing the U.S., Canada, the United Kingdom, France, Norway, and the Netherlands. As a result of this meeting, EPA initiated a laboratory evaluation of three dispersant effectiveness testing protocols that were recommended by the meeting participants.

The three effectiveness tests that were reviewed in detail were the RSDET, the Swirling Flask test (used by researchers in Canada and expected to be adopted as the Canadian standard regulatory test), and the IFP-Dilution test (used in France and Norway). Six test oils and three dispersants were evaluated in varying combinations using these three effectiveness testing protocols. Screening efforts were used to focus on the most appropriate oil/dispersant combination for detailed study; that combination was determined to be Prudhoe Bay crude oil and the dispersant Corexit 9527. This combination is also the most likely to be encountered in real-world situations in U.S. coastal waters.

The conclusions reached by EPA through this research were that the three testing protocols produce similar effectiveness results, but that the Swirling Flask test is faster, less expensive, simpler, and requires less operator skill. Table 1 presents a summary of the data obtained by EPA through its evaluation of the dispersant effectiveness testing protocols. A copy of the report documenting this research, entitled *Chemical Oil Spill Dispersants: Evaluation of Three Laboratory Procedures for Estimating Performance*, is available in the public docket for today's proposed rule.

TABLE 1.—SUMMARY DATA FOR DISPERSANT EFFECTIVENESS TESTING PROTOCOLS

Test method	Estimate of dispersant effectiveness (% RSD)	Test runs/8 hours	Total equipment costs	Cost/test run	Complexity of protocol	Required operator skill level
RSDET	<35	2	\$2,280	\$600	High	High.
Swirling Flask	<35	24-36	1,225	21	Low	Low.
IFP-Dilution	<35	4-5	3,160	195	Medium	Medium.

⁵ See: Fingas, Mervin F., Mark A. Bobra, and Ronald K. Velicogna, *Laboratory Studies on the Chemical and Natural Dispersability of Oil. Proceedings of the 1987 Oil Spill Conference*, American Petroleum Institute, Washington, D.C., 1987, pp. 241-246; and Clayton, John R. Jr. and James R. Payne, *Chemical Oil Spill Dispersants: Update State-of-the-Art on Mechanisms of Actions*

and Factors Influencing Performance with Emphasis on Laboratory Studies, Final Report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992.

⁶ See: Clayton, John R. Jr., Siu-Fai Tsang, Victoria Frank, Paul Marsden, and John Harrington, *Chemical Oil Spill Dispersants: Evaluation of Three*

Laboratory Procedures for Estimating Performance, Final Report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992; available in the public docket for this rulemaking.

Based on the results of this research, EPA is proposing to change the dispersant effectiveness testing protocol required by subpart J from the RSDET to the Swirling Flask test. The Swirling Flask test specifies the use of both Prudhoe Bay crude and South Louisiana crude oils. The final percent effectiveness value under this testing protocol is an average of the values achieved for each of these two test oils. New § 300.915(a)(7) and appendix C to the NCP is proposed to be revised to reflect this change; appendix C would include a description of the Swirling Flask testing protocol.

EPA recognizes that there may be other dispersant effectiveness testing protocols, either for laboratory or field use, that may warrant further investigation. Commenters are encouraged to provide information regarding any such testing protocols.

Dispersant Toxicity Testing Protocol

The major objective of toxicity testing is to provide data on the relative toxicities of chemicals on commonly used test species under standardized conditions. Subpart J of the NCP currently requires that toxicity tests be conducted on dispersants, surface collecting agents, and miscellaneous oil spill control agents using the Revised Standard Dispersant Toxicity Test.

For this test, saltwater mummichogs (*Fundulus heteroclitus*) and brine shrimp (*Artemia salina*) are used to determine the toxicity of the chemical being tested. In addition, tests are conducted to determine the toxicity of No. 2 fuel oil alone and in a 1:10 mixture of chemical to oil. In order to determine the toxicity of the test chemicals, various concentrations of these chemicals are prepared using a synthetic seawater solution as a standard medium. As an aid in comparing results from different laboratories, a toxicity test is also conducted using a reference chemical toxicant, dodecyl sodium sulfate (DSS). Control tests, which expose the organisms to the seawater solution alone, are also conducted.

At the end of the specified test period, a Median Lethal Concentration, or LC₅₀, is calculated using the observed mortalities of the organisms from the toxicity tests. An LC₅₀ is the concentration of a particular test material (chemical, oil, or mixture) that is lethal to 50 percent of the organisms over the course of the test. Using the LC₅₀ data, the toxicity of a chemical can be compared to that of oil and a mixture of the two. The relative toxicities of various chemicals (dispersants, surface collecting agents, and miscellaneous oil

spill control agents) can also be compared.

As discussed above, the Revised Standard Dispersant Toxicity Test utilizes the saltwater mummichog and the brine shrimp as its required test species for fish and invertebrates, respectively. Analytical laboratories, in solicited letters to EPA⁷ and industry participants, raised questions at a workshop on dispersant toxicity testing held in New Orleans in 1989⁸ concerning the validity and advisability of using these species as the test species for the toxicity testing required by subpart J. Specifically, they suggested that the test species for fish be changed from *Fundulus* to a more commercially available and easily cultured species. The suitability of *Artemia* as the invertebrate test species was also questioned.

The 1990 American Society for Testing and Materials (ASTM) annual publication states that test species should be selected based on availability; commercial, recreational, and ecological importance; past successful use; and ease of handling in the laboratory. In addition to these criteria, the 1989 *Standard Methods for the Examination of Water and Wastewater* notes that the availability of methods for rearing organisms in the laboratory and a knowledge of their requirements should be considered. Although the mummichog is a generally available species in the wild, it is not widely cultured in the laboratory. Consequently, these fish may be obtained from environmentally diverse natural sources and, as a result, have differing sensitivities to, and tolerances of, pollutants. Using such fish as the test species introduces genetic differences, seasonal variations, differences in nutritional state and susceptibility to disease, and variation in availability over the course of a year. This introduces an additional source of variability into the tests, and toxicity data based on such tests are questionable.

As a result, EPA is proposing to change the required fish toxicity test species from *Fundulus heteroclitus* to *Menidia beryllina*, the silverside. Silversides are widely found along the entire United States east and Gulf

coasts. A comparable variety of the east and Gulf coast silverside is found along the Pacific coast. In contrast to mummichogs, silversides are easily farmed and cultured in the laboratory, which allows for greater comparability of toxicity data generated by testing silversides. Silversides are also significantly more sensitive to pollutants than are mummichogs, and EPA has existing data concerning the sensitivity of silversides to pollutants.

Conducting toxicity tests on invertebrates is important because of their diversity and abundance in the marine environment, their commercial importance, and their sensitivity to oil and oil-related compounds. There has been some concern expressed by industry that the brine shrimp specified in EPA's standard toxicity test is not a sufficiently sensitive organism. Again, this issue was raised at the 1989 New Orleans workshop on dispersant toxicity testing. Also, the Minerals Management Service noted at this workshop that *Artemia* would not be considered an endemic species for most spills.

Consequently, EPA is proposing to change the required invertebrate toxicity test species from *Artemia salina* to *Mysidopsis bahia*, the mysid shrimp. Mysids are more sensitive to pollutants than are brine shrimp. Mysids are also widely found in U.S. coastal waters and can be easily farmed and cultured in the laboratory.

EPA is proposing to revise the required dispersant toxicity testing protocol contained in appendix C to reflect this change in the specified toxicity test species and to make corresponding technical revisions. The proposed revisions also would require the use of larval fish instead of adult fish. The current requirement that dispersants, surface collecting agents, and miscellaneous oil spill control agents undergo the specified toxicity testing would not be changed. In addition, products proposed for listing under the new surface washing agent category would be required to undergo this toxicity testing. In an attempt to provide OSCs and Area Committees with the most up-to-date and useful data regarding products on the Schedule, EPA also proposes to require that dispersants, surface collecting agents, and miscellaneous oil spill control agents presently listed on the Schedule undergo toxicity testing in accordance with the revised testing protocol.

Surface Washing Agents

Products currently listed on the NCP Product Schedule are divided into four basic categories: Dispersants, surface collecting agents, biological additives,

⁷ Copies of these letters may be inspected at the public docket for this rulemaking at Room 2424, U.S. EPA, 401 M St., SW., LG, Washington, DC 20460.

⁸ See: Duke, Thomas and Gary Petrazzolo, eds., *Oil and Dispersant Toxicity Testing, Proceedings of a Workshop on Technical Specifications*, U.S. Department of the Interior, New Orleans, January 1989; available for inspection in the public docket for this rulemaking.

and miscellaneous oil spill control agents. Dispersants are those agents that have approximately the same solubility in water and oil and will cause oil to be dispersed into the water column in the form of fine droplets. A number of the products currently listed under the dispersant category on the Product Schedule are surface washing agents (also known as beach cleaning agents) that remove oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and do not involve dispersing or solubilizing the oil into the water column. The mechanisms of dispersion and detergency are quite different, and research has shown that a product that is a good surface washing agent is a poor dispersant and vice versa.⁹ Therefore, in order to provide a more accurate and comprehensive list of products available to OSCs during a spill event, EPA is proposing to add a separate category to the NCP Product Schedule for surface washing agents. Those surface washing agents that are currently listed under the dispersant category would be moved to the new surface washing agent category.

EPA is proposing to add new § 300.915(b) to establish the surface washing agent category on the Product Schedule and to define the data requirements that must be satisfied in order to list a surface washing agent on the Schedule. The technical product data requirements for surface washing agents are similar to those required for dispersants, with the exception of the required effectiveness testing protocol. EPA has conducted research on various surface washing agent effectiveness testing protocols and may propose a required effectiveness testing protocol for surface washing agents at a later date.

Existing paragraphs (b), (c), (d), and (e) of § 300.915 would be moved to become new paragraphs (c), (d), (e), and (f) of the same section, respectively. Also, a definition of surface washing agents is proposed to be added to § 300.5.

Bioremediation Agents

Existing § 300.915(c) sets out the data requirements that must be satisfied in order to have a biological additive listed on the Product Schedule, specifically

either "microbiological cultures" or "enzyme additives." The regulation, however, does not include specific data requirements for "nutrient additives," which are bioremediation agents currently available in the marketplace. In fact, a number of the products currently listed on the Schedule under the biological additive category are nutrient additives. Therefore, for the sake of accuracy and completeness, EPA is proposing to rename new § 300.915(d) "Bioremediation Agents" and to add new § 300.915(d)(10) to create a subcategory on the Schedule for "nutrient additives."

New § 300.915(d)(10) would provide specific data requirements for nutrient additives, requiring submission to EPA of a listing of each component of the total formulation, by chemical name and percentage by weight, and the optimum storage conditions. These data are important for OSCs, particularly when making decisions on whether to use a nutrient additive at a particular location.

New § 300.915(d)(9) would combine the data requirements for microbiological cultures and enzyme additives, which are contained in existing paragraphs (c)(8) and (9) of § 300.915, under the heading of "biological additives." EPA is proposing to add new paragraphs (d)(9)(i)(A) and (ii)(A) to § 300.915 to require submission to EPA of a listing of each component of the total formulation of biological additives, other than microorganisms or enzymes, respectively. This data requirement is being added because biological additives currently available in the marketplace are rarely pure microbiological cultures or enzyme additives, and the additional components may be potentially toxic or harmful to the environment.

Also, the definition of "biological additives" in § 300.5 would be revised for clarification and to reflect the changes discussed above. In particular, " * * * for the specific purpose of encouraging biodegradation * * *" would be changed to " * * * and that will significantly increase the rate of biodegradation * * *" to reflect the current definition of bioremediation in the scientific community and to focus on the discernible effect of the agent, rather than on the purpose of its use.

Bioremediation Agent Testing Protocols

Bioremediation agents are defined in the NCP as microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to

mitigate the effects of the discharge. Currently, to list a bioremediation agent on the NCP Product Schedule, there are no requirements concerning specified effectiveness and toxicity tests. EPA today is proposing to establish required effectiveness and toxicity testing protocols for listing bioremediation agents on the Schedule.

The ability of bacteria to degrade petroleum hydrocarbons has been recognized for decades. Immediately following the *Exxon Valdez* oil spill in March of 1989, EPA and other federal and state agencies received numerous offers of assistance from bioremediation agent manufacturers and vendors. Research conducted by EPA in Prince William Sound, Alaska, following the *Exxon Valdez* spill demonstrated that fertilizer-enhanced microbial communities were highly effective in their ability to degrade the Alaska North Slope crude oil spilled on the beaches.

Since the *Exxon Valdez* spill, there has been an increased focus on the use of bioremediation agents to respond to oil spills. Over 30 bioremediation agents have been listed on the Product Schedule since the *Exxon Valdez* spill. Given this increased focus on the use of bioremediation agents, EPA recognized the need for some type of standard testing protocols to provide baseline data for the comparison of the effectiveness and toxicity of the different bioremediation agents available in the marketplace. At the time of the *Exxon Valdez* spill, however, there were no existing or accepted bioremediation agent testing protocols.

In November 1989, EPA requested that the National Environmental Technology Applications Corporation (NETAC) assemble a panel of scientific experts from all areas involved with bioremediation research to develop standard testing protocols for comparing the effectiveness and toxicity of different bioremediation agents. NETAC is a non-profit corporation created in 1988 under a cooperative agreement between EPA's Office of Research and Development (ORD) and the University of Pittsburgh Trust to assist in the commercialization of innovative environmental technologies.

The laboratory-scale bioremediation testing protocols being proposed today are the first in a series of methods being developed by the Oil Spill Bioremediation Products Protocol Development Panel, which operates under the auspices of the Treatability Protocol Development Subcommittee of the Bioremediation Action Committee (BAC). The BAC is an affiliation of academia, government, and industry representatives who are working

⁹ See Fingas, Mervin F., Robert Stoodley, Nancy Stone, Russel Hollins, and Ian Bier, *Testing the Effectiveness of Spill-Treating Agents: Laboratory Test Development and Initial Results. Proceedings of the 1991 International Oil Spill Conference*, Sponsored by U.S. Coast Guard, American Petroleum Institute, U.S. EPA, San Diego, CA, 1991, pp. 411-414; and Fingas, Merv, Gord Stoodley, Gary Harris, and Arlane Hsia, *Evaluation of Chemical Beach Cleaners*, Environment Canada, Ottawa, Ontario.

collectively to expand the responsible use of biotechnology for the prevention and remediation of environmental contamination. The Products Development Panel was assembled and is directed through the efforts of NETAC. NETAC also serves as the chair of the Treatability Protocol Development Subcommittee, and as such, works to facilitate the development of a screening process to determine the remediation capabilities of bioremediation agents or methods. A copy of the report documenting this research, entitled *Oil Spill Bioremediation Products Testing Protocol Methods Manual*, is available in the public docket for today's proposed rule.

The format of the bioremediation agent testing protocols being proposed today is designed to be a generic approach. This results in test parameters, such as shaker speed, water temperature, water composition, and oil type, being set at specific values. Where possible, average or "middle of the road values" were selected for these parameters to allow these protocols to screen a broad product base and to account for a variety of environmental conditions. The objective of these protocols is to provide empirical laboratory evidence that evaluates a bioremediation agent's ability to enhance biodegradation as compared to the natural population and indicates the toxicity of the combined product, oil, and any metabolic by-products.

The bioremediation agent effectiveness testing protocol evaluates product efficacy in the laboratory using shaker-flask studies and standard bioassay analyses. The protocol uses Alaska North Slope crude oil and Gulf Breeze coast seawater, which are both available from NETAC's Bioremediation Products Evaluation Center (BPEC). The effectiveness testing protocol uses both chemical and microbiological analyses to determine product effectiveness at a standard temperature, salinity, and oxygenation by evaluating the following criteria: (1) The relative change in aliphatic and aromatic oil constituents at various time intervals; and (2) the total hydrocarbon degrading microbial activity. The chemical analysis uses a high resolution gas chromatograph/mass spectrometer (GC/MS) because of its high degree of chemical separation and spectral resolution. The microbiological analysis is conducted to determine and monitor the viability of the microbial cultures being studied. Under this procedure, microbial enumerations of hydrocarbon degraders are performed at each sampling event using a microliter

Most Probable Number (MPN) determination.

Under the bioremediation agent toxicity testing protocol, toxicity tests are conducted for specific fish (*Menidia beryllina*, silversides) and invertebrate (*Mysidopsis bahia*, mysid shrimp) species on the combined product and oil effluent using 7-day chronic estimator methods. This test represents the least complex dosing regimen suited for the estimation of the chronic effects of a bioremediation agent. The 7-day chronic test will provide an estimate of toxicity relative to survival of the organism and provide measures of toxicity in the form of a no observed effective concentration (NOEC) and lowest observed effective concentration (LOEC). Products are tested alone and in combination with a water-soluble fraction (WSF) of crude oil. The test does not account for toxicity as a function of the physical adherence/trapping of the organism by the product plus an oil slick, and makes the assumption that toxicity to organisms not associated with the slick will be a function of the direct interaction of the organism with the slick and the associated product. The product constituents are reviewed using existing mammalian toxicity data to determine if any special precautions need be taken with application methods, rates, or timing to protect indigenous wildlife.

Based on the results of the research discussed above, EPA is proposing to establish the bioremediation agent testing protocols under subpart J. Paragraphs (7) and (8) of new § 300.915(d) and appendix C to the NCP would be revised to reflect this change; appendix C would include a description of the new effectiveness and toxicity testing protocols. In order to have their products listed on the Product Schedule, manufacturers of bioremediation agents would have to provide to EPA the effectiveness and toxicity data specified by these protocols. In an attempt to provide OSCs and Area Committees with the most up-to-date and useful data regarding products on the Schedule, EPA would also require that biological additives presently listed on the Schedule undergo effectiveness and toxicity testing in accordance with the new bioremediation agent testing protocols.

NETAC has established a facility, the BPEC, that is available for conducting these tests. Product manufacturers or vendors may choose to have their products tested at commercial testing laboratories. If manufacturers or vendors choose to have the required tests performed by commercial laboratories,

quality control/quality assurance procedures established by EPA must be met.

The bioremediation agent testing protocols discussed above have undergone verification testing and have been reviewed by an expert panel. EPA is proposing these protocols today and including them in appendix C so that the public may review and comment on them. EPA recognizes that there may be other bioremediation agent effectiveness and toxicity testing protocols, either for laboratory or field use, that may warrant further investigation. Commenters are encouraged to provide information regarding any such testing protocols.

Miscellaneous Oil Spill Control Agents

Existing § 300.915(e) (new § 300.915(f)) sets out the data requirements that must be satisfied in order to have a miscellaneous oil spill control agent listed on the Product Schedule. EPA is proposing to add new § 300.915(f)(4), which requires that manufacturers of miscellaneous oil spill control agents submit to EPA a brief description of the recommended uses of their product and how their product works. EPA believes that, due to the wide range of products included under the miscellaneous category, this is important and valuable information for OSCs to have in their decisionmaking capacity. As a result of this addition, existing paragraphs (e)(4) to (12) of § 300.915 would be moved to become new paragraphs (f)(5) to (13) of the same section, respectively.

Sorbents

EPA does not interpret the phrase "other spill mitigating devices and substances" to include sorbents. EPA believes that the use of sorbents, by themselves, does not create deleterious effects to the environment, and for the same reasons stated above, believes it is inappropriate to include sorbents on the NCP Product Schedule. Consequently, as has been EPA policy in the past, EPA will not regulate sorbents under subpart J. EPA is proposing to add a definition of sorbents to § 300.5, to revise the definitions of chemical agents and miscellaneous oil spill control agents in § 300.5, and to add new § 300.915(g) to clarify that sorbents will not be listed on the Product Schedule.

Sorbents are essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through a variety of sorption mechanisms. Specifically, sorbents work through adsorption (in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it), absorption (in which the oil or

hazardous substance penetrates the pores of the sorbent material), or a combination of these two mechanisms. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms.

Currently available sorbents usually consist of one or more of the following materials: (1) Organic products, such as peat moss or straw, cellulose fibers or cork, corn cobs, or chicken, duck, or other bird feathers; (2) mineral compounds, such as volcanic ash or perlite, or vermiculite or zeolite; or (3) synthetic products, such as polypropylene, polyethylene, polyurethane, or polyester. Synthetic sorbents are presently more abundant than sorbents composed of either organic products or mineral compounds. A large majority of synthetic sorbents are composed of polypropylene, a plastic-based fiber made from petroleum products.

EPA believes that the use of sorbents does not create deleterious effects to the environment because these materials are essentially inert and insoluble in water and because the basic components of sorbents are non-toxic. The use of sorbents has been part of response efforts to virtually all past oil spills, without causing problems or deleterious effects to the environment. Sorbent materials of some kind are presently used in all phases of oil spill cleanups.

By their very nature, the components of organic and mineral sorbents are non-toxic. EPA conducted a review of several lists and data bases of hazardous substances and toxic materials to analyze the toxicity of the primary components of synthetic sorbents; i.e., polypropylene, polyethylene, polyurethane, and polyester. The results of this review indicate that these substances are also non-toxic.

None of these four substances are included in the first or second 100 substances listed under SARA section 110. They are not listed as extremely hazardous substances (EHSs) under SARA section 302 or as toxic chemicals under SARA section 313. In addition, they are not designated as hazardous substances under CERCLA. The Aquatic Information Retrieval data base (AQUIRE), which provides information on the aquatic toxicity of various substances, does not include any of these substances. Also, the Integrated Risk Information System (IRIS) and the Health Effects Assessment Summary Tables (HEAST)¹⁰ do not include any of these substances. Although three of

these four substances (polypropylene, polyethylene, and polyurethane) are listed in the Registry of Toxic Effects of Chemical Substances (RTECS), the data for mice and rat studies¹¹ appear to indicate that the toxicity of these substances is low or negligible.

As stated above, the large majority of synthetic sorbents are composed of polypropylene. According to various manufacturers' Material Safety Data Sheets (MSDSs),¹² the polypropylene products are non-toxic, pose no acute or chronic health hazards, and are not expected to create any adverse environmental impacts. In addition, the MSDSs indicate that the polypropylene products are expected to: (1) Have a low biological oxygen demand and cause little oxygen depletion in aquatic systems; (2) have a low potential to affect aquatic organisms, secondary waste treatment micro-organisms, and the germination and growth of some plants; and (3) be resistant to biodegradation, but are unlikely to bioconcentrate.

Because the primary components of synthetic sorbents are essentially insoluble and not biodegradable,¹³ the breakdown of these products is not a concern. Although sunlight or ultraviolet light could cause a degradation of the synthetic sorbent material, it is very unlikely that the sorbent material would remain in the water long enough to allow for this to occur because sorbent materials are usually removed from the water after a short period of time.

EPA also intends to continue its policy of not listing sorbents on the NCP Product Schedule because EPA believes that there are no added benefits in listing sorbents and because listing sorbents would create an overly large and unwieldy Schedule. There are currently hundreds of different sorbents available in the marketplace. Listing all of these products on the Product Schedule would increase the size of the Schedule by a factor of at least two or three. This would create a significantly less useful Product Schedule because of the substantially increased quantity of data that OSCs would have to evaluate in spill situations.

¹¹ Copies of these data may be inspected at the public docket for this rulemaking.

¹² Copies of these MSDSs may be inspected at the public docket for this rulemaking.

¹³ See Mark, Herman and Donald Othmer, eds., *Kirk-Othmer Encyclopedia of Chemical Technology*, John Wiley and Sons, New York, 1982; Gosselein, Robert E., Roger P. Smith, and Harold C. Hodge, *Clinical Toxicology of Commercial Products*, Williams and Wilkins, Baltimore, 1984; and Windholz, Martha, ed., *The Merck Index*, Merck & Co., Inc., Rahway, NJ, 1980.

Recent technological advances in the field of oil spill control agents have led to the development of products that, in some cases, are difficult to distinguish between sorbents or spill control chemicals. In addition, several of the products currently listed on the Product Schedule under the miscellaneous oil spill control agent category could be considered "chemisorbents" and have been informally referred to as sorbents by their manufacturers. These products, specifically viscoelastic enhancing agents, are added to oil spills to alter the physical behavior of the spilled oil and thereby facilitate its removal.

EPA would like to clarify that it considers viscoelastic enhancing agents to be spill control chemicals, and not sorbents.¹⁴ These agents do not meet the definition of sorbents being proposed to be added to § 300.5. Consequently, these agents will be listed on the Product Schedule under the miscellaneous oil spill control agent category.

EPA recognizes that evolving technologies may result in the production of sorbent materials that do not necessarily fit the definition of sorbents being proposed in § 300.5. In such cases, EPA believes that it is important and necessary for EPA to review technical product data, including toxicity data, for these sorbent materials. As a result, EPA is proposing to add new § 300.915(g)(3), which requires manufacturers of sorbent materials that consist of materials other than those listed in EPA's definition of sorbents to submit to EPA the technical product data specified for miscellaneous oil spill control agents in new § 300.915(f). EPA will review these data and determine whether specific sorbents should be listed on the Product Schedule under the miscellaneous oil spill control agent category. EPA will inform sorbent manufacturers in writing, within 60 days of the receipt of the technical product data, of its decision. If EPA determines that a specific sorbent material does not have to be listed on the Schedule, EPA will provide a letter stating this decision to the sorbent manufacturer. EPA is also proposing to revise § 300.920(c) to include the technical product data submissions for sorbents discussed above under the provisions allowing assertions of confidential business information.

EPA is proposing to add new § 300.915(g)(4), which requires manufacturers of sorbent materials that

¹⁴ See the classification of viscoelastic enhancing agents, such as Elastol, in the *Oil Spill Intelligence Report—The International Oil Spill Control Directory, Eleventh Edition 1991-92*, Cutter Information Corp., Arlington, MA.

¹⁰ IRIS and HEAST are published by EPA's Office of Research and Development.

consist solely of the materials listed in EPA's definition of sorbents to sign a written certification stating this fact. When making a decision on the use of a specific sorbent material, an OSC may request a copy of this written certification and the sorbent manufacturer or vendor would have to provide this certification to the OSC. This new paragraph contains a model statement that should be included in the written certification. Any person who knowingly and willfully provides any false information as part of a sorbent written certification may, upon conviction, be fined and/or imprisoned in accordance with 18 U.S.C. 1001. If the sorbent material in question consists of materials other than those listed in EPA's definition of sorbents, but EPA has determined that the sorbent does not need to be listed on the Product Schedule, the manufacturer or vendor should provide to the OSC the letter from EPA stating this fact.

In the past, EPA has received complaints from sorbent manufacturers that they are being put at a disadvantage in the marketplace because their products are not being listed on the Product Schedule. EPA does not believe that this is the case. The listing of a product on the Product Schedule does not mean that EPA approves, recommends, licenses, certifies, or authorizes the use of that product on an oil spill; rather, the listing of a product means only that data have been submitted to EPA as required by subpart J of the NCP.

Section 311(d)(2)(G) of the CWA requires that the NCP include a schedule identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the NCP. As explained above, EPA does not interpret "dispersants, other chemicals, and other spill mitigating devices and substances" to include sorbents and, therefore, sorbents are not listed on the Product Schedule. This does not mean, however, that sorbents cannot be used by OSCs in response to discharges of oil. On the contrary, the fact that sorbents are not listed on the Product Schedule means that OSCs can use these products without being subject to the provisions in § 300.910 governing the authorization of use of products listed on the Product Schedule. In order to clarify this, EPA is proposing to add new § 300.915(g)(2), which states that EPA does not require technical product data submissions for sorbents and does not include sorbents on the NCP Product Schedule.

As stated above, EPA believes that the use of sorbents, by themselves, does not create deleterious effects to the

environment. However, EPA solicits comment and information on whether the improper use of these products could result in negative environmental effects.

Mixed Products

EPA is proposing to add new § 300.915(h), which would require that manufacturers of products that consist of materials that meet the definitions of two or more of the product categories contained on the Product Schedule would have to submit to EPA the technical product data specified for each of those categories. For example, the manufacturer of a product that contains both dispersant and bioremediation agent materials would be required to submit to EPA the technical product data specified for both of these categories. In general, EPA would handle mixed products on a case-by-case basis and may not require that all of the specified product data be submitted. Consequently, EPA recommends that manufacturers of mixed products consult with EPA before submitting any technical product data. For the example given above, EPA may determine that, for the dispersant material, only toxicity data is necessary. After EPA has reviewed the submitted technical product data and performed any required dispersant effectiveness and toxicity tests, if appropriate, it would make a determination on whether and under which category the mixed product should be listed on the Schedule.

Other Changes

EPA is proposing to revise the data requirements in § 300.915 to update and correct citations to specific testing protocols. Section 300.915(a)(11)(iii) would be revised to state that EPA test methods 601 (Purgeable Halocarbons (Standard Method 6230 B)) and 608 (Organochlorine Pesticides and PCBs (Standard Method 6630 C)) should be used for chlorinated hydrocarbon analyses. This change would clarify an existing requirement in an attempt to avoid the confusion experienced by product manufacturers in the past. EPA is also proposing to streamline the data requirement language for surface collecting agents and miscellaneous oil spill control agents in new paragraphs (c)(8) and (f)(9) of § 300.915, respectively, to reference the data requirements for dispersants in § 300.915(a)(9), rather than listing the exact same data requirements several times for different product categories.

III. Regulatory Analysis

A. Executive Order 12291

E.O. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

- (1) An annual effect on the economy of \$100 million or more; or
- (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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, shows that this proposed rule is non-major because it would result in estimated costs of approximately \$33.4 million during the first year that the rule is in effect and approximately \$11.5 million in each subsequent year. At a 10 percent interest rate over 10 years, the annualized costs are approximately \$16.2 million. Virtually all costs are incurred by the federal government and, in particular, by the USCG and EPA.

The economic analysis prepared in support of this rule also includes a qualitative assessment of the environmental benefits associated with the proposed revisions. The NCP revisions are expected to lead to quicker, more efficient, and more appropriate responses to discharges of oil and releases of hazardous substances. The benefits that would result from such improvements (i.e., preventing oil spills from occurring or mitigating the severity of the spills that do occur) are assumed to be substantial. Benefits include avoided clean-up costs and natural resource damages as well as reductions in other damages caused by oil spills, such as damage to private property, lost profit by business, public health risks, and foregone existence/option values. This proposed rule has been submitted to OMB for review as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a

Regulatory Flexibility Analysis was necessary for this proposed rule, a preliminary analysis was conducted (see the "Economic Impact Analysis of the Proposed Revisions to the National Oil and Hazardous Substance Pollution Contingency Plan," Chapter 5, October 1992, available for inspection in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460). The results of the preliminary analysis indicate that this proposed rule will not have significant adverse impacts on small businesses because such entities are unlikely to be affected by revisions to the federal planning and response mechanism for pollution incidents. Proposed revisions to subpart J would impose certain additional requirements on small manufacturers of dispersants and bioremediation agents seeking to list products on the NCP Product Schedule. However, the analysis revealed that the proposed revisions would not significantly impact the economic viability of such concerns as the market is currently structured. Under the proposed revisions, certain local government agencies (e.g., LEPCs) would be required to play a supporting role in developing ACPs. The analysis revealed that fulfilling this role would not place a significant burden on a substantial number of such entities. Therefore, EPA certifies that this proposed rule is not expected to have a significant impact on small entities, and therefore that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) has been prepared by EPA (ICR No. 1664.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260-2740. The collection of information required to prepare and submit materials for listing a product on the NCP Product Schedule is estimated to have a public reporting burden varying from 12 to 38 hours per response in the first year and subsequent years, with an average of 25 hours per response. This includes time to review instructions and guidance, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. There is no recordkeeping

burden associated with listing a product on the NCP Product Schedule.

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 (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." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 30, 1993.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, Part 300 of the Code of Federal Regulations as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 is revised to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757.

2. Subparts A, B, C, D, G, H, and J are revised; Subpart E is amended by revising paragraph (a) of § 300.400, by revising paragraph (a) and paragraph (f)(3) of § 300.405, and by revising §§ 300.410 and 300.415.

Subpart A—Introduction

- Sec.
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- 300.2 Authority and applicability.
- 300.3 Scope.
- 300.4 Abbreviations.
- 300.5 Definitions.
- 300.6 Use of number and gender.
- 300.7 Computation of time.

Subpart B—Responsibility and Organization for Response

- 300.100 Duties of President delegated to federal agencies.
- 300.105 General organization concepts.
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- 300.120 On-scene coordinators and remedial project managers: General responsibilities.
- 300.125 Notification and communications.
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- 300.140 Multi-regional responses.
- 300.145 Special teams and other assistance available to OSCs/RPMs.
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- 300.200 General.
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- 300.300 Phase I—Discovery or notification.
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- 300.317 National response priorities.
- 300.320 General pattern of response.
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Subpart G—Trustees for Natural Resources

- 300.600 Designation of federal trustees.
- 300.605 State trustees.
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- 300.900 General.
- 300.905 NCP Product Schedule.
- 300.910 Authorization of use.
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- 300.920 Addition of products to schedule.

Subpart A—Introduction

§ 300.1 Purpose and objectives.
The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is to provide

the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

§ 300.2 Authority and applicability.

The NCP is required by section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499, (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA), Public Law 101-380. In Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991), the President delegated to the Environmental Protection Agency (EPA) the responsibility for the amendment of the NCP. Amendments to the NCP are coordinated with members of the National Response Team (NRT) prior to publication for notice and comment. This includes coordination with the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. The NCP is applicable to response actions taken pursuant to the authorities under CERCLA and section 311 of the CWA, as amended.

§ 300.3 Scope.

(a) The NCP applies to and is in effect for:

(1) Discharges of oil into or on the navigable waters of the United States, on the adjoining shorelines, the waters of the contiguous zone, into waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. (See sections 311(c)(1) and 502(7) of the CWA.)

(2) Releases into the environment of hazardous substances, and pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The NCP provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) The national response organization that may be activated in response actions. It specifies responsibilities among the federal, state, and local

governments and describes resources that are available for response.

(2) The establishment of requirements for federal, regional, and area contingency plans. It also summarizes state and local emergency planning requirements under SARA Title III.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Procedures for undertaking response actions pursuant to CERCLA.

(5) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions, pursuant to CERCLA.

(6) Designation of federal trustees for natural resources for purposes of CERCLA and the CWA.

(7) Procedures for the participation of other persons in response actions.

(8) Procedures for compiling and making available an administrative record for response actions.

(9) National procedures for the use of dispersants and other chemicals in removals under the CWA and response actions under CERCLA.

(c) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking any action which may affect its activities.

(d) Additionally, the NCP applies to and is in effect when the Federal Response Plan and some or all its Emergency Support Functions (ESFs) are activated.

§ 300.4 Abbreviations.

(a) *Department and Agency Title Abbreviations:*

ATSDR—Agency for Toxic Substances and Disease Registry
 CDC—Centers for Disease Control
 DOC—Department of Commerce
 DOD—Department of Defense
 DOE—Department of Energy
 DOI—Department of the Interior
 DOJ—Department of Justice
 DOL—Department of Labor
 DOS—Department of State
 DOT—Department of Transportation
 EPA—Environmental Protection Agency
 FEMA—Federal Emergency Management Agency
 GSA—General Services Administration
 HHS—Department of Health and Human Services

NIOSH—National Institute for Occupational Safety and Health

NOAA—National Oceanic and Atmospheric Administration

RSPA—Research and Special Programs Administration

USCG—United States Coast Guard

USDA—United States Department of Agriculture

Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.

(b) Operational Abbreviations:

AC—Area Committee
 ACP—Area Contingency Plan
 ARARs—Applicable or Relevant and Appropriate Requirements
 CERCLIS—CERCLA Information System
 CRC—Community Relations Coordinator
 CRP—Community Relations Plan
 DRAT—District Response Advisory Team
 DRG—District Response Group
 ERT—Environmental Response Team
 ESF—Emergency Support Function
 FCO—Federal Coordinating Officer
 FRERP—Federal Radiological Emergency Response Plan
 FRP—Federal Response Plan
 FS—Feasibility Study
 HRS—Hazard Ranking System
 LEPC—Local Emergency Planning Committee
 NCP—National Contingency Plan
 NPFC—National Pollution Funds Center
 NPL—National Priorities List
 NRC—National Response Center
 NRS—National Response System
 NRT—National Response Team
 NSF—National Strike Force
 NSFCC—National Strike Force Coordination Center
 O&M—Operation and Maintenance
 OSC—On-Scene Coordinator
 OSLTF—Oil Spill Liability Trust Fund
 PA—Preliminary Assessment
 PIAT—Public Information Assist Team
 RA—Remedial Action
 RCP—Regional Contingency Plan
 RD—Remedial Design
 RERT—Radiological Emergency Response Team
 RI—Remedial Investigation
 ROD—Record of Decision
 RPM—Remedial Project Manager
 RRC—Regional Response Center
 RRT—Regional Response Team
 SAC—Support Agency Coordinator
 SERC—State Emergency Response Commission
 SI—Site Inspection
 SMOA—Superfund Memorandum of Agreement
 SONS—Spill of National Significance
 SSC—Scientific Support Coordinator
 USFWS—United States Fish and Wildlife Service

§ 300.5 Definitions.

Terms not defined in this section have the meaning given by CERCLA, the OPA, or the CWA.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Alternative water supplies as defined by section 101(34) of CERCLA, includes, but is not limited to, drinking water and household water supplies.

Applicable requirements means those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site. Only those state standards that are identified by a state in a timely manner and that are more stringent than federal requirements may be applicable.

Area Committee (AC) as provided for by CWA sections 311(a)(18) and (j)(4), means the entity appointed by the President consisting of members from qualified personnel of federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President.

Area contingency plan (ACP) as provided for by CWA sections 311(a)(19) and (j)(4), means the plan prepared by an Area Committee that is developed to be implemented in conjunction with the NCP and RCP, in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President.

Bioremediation agents means microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge.

Burning agents means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

CERCLIS is the abbreviation of the CERCLA Information System, EPA's comprehensive data base and management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS contains the official inventory of CERCLA sites and supports

EPA's site planning and tracking functions. Sites that EPA decides do not warrant moving further in the site evaluation process are given a "No Further Response Action Planned" (NFRAP) designation in CERCLIS. This means that no additional federal steps under CERCLA will be taken at the site unless future information so warrants. Sites are not removed from the data base after completion of evaluations in order to document that these evaluations took place and to preclude the possibility that they be needlessly repeated. Inclusion of a specific site or area in the CERCLIS data base does not represent a determination of any party's liability, nor does it represent a finding that any response action is necessary. Sites that are deleted from the NPL are not designated NFRAP sites. Deleted sites are listed in a separate category in the CERCLIS data base.

Chemical agents means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, and burning agents, but do not include sorbents.

Claim for purposes of a release under CERCLA, means a demand in writing for a sum certain; for purposes of a discharge under CWA, it means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

Claimant as defined by section 1001 of the OPA means any person or government who presents a claim for compensation under title I of the OPA.

Coastal waters for the purposes of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements

and identified in federal regional contingency plans.

Coast Guard District Response Group (DRG) as provided for by CWA sections 311 (a)(20) and (j)(3), means the entity established by the Secretary of the department in which the USCG is operating, within each USCG district, and shall consist of: The combined USCG personnel and equipment, including marine firefighting equipment, of each port in the district; additional prepositioned response equipment; and a district response advisory team.

Community relations means EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns. The term "public" includes citizens directly affected by the site, other interested citizens or parties, organized groups, elected officials, and potentially responsible parties.

Community relations coordinator means lead agency staff who work with the OSC/RPM to involve and inform the public about the Superfund process and response actions in accordance with the interactive community relations requirements set forth in the NCP.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Cooperative agreement is a legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose in which substantial EPA involvement is anticipated during the performance of the project.

Damages as defined by section 1001 of the OPA means damages specified in section 1002(b) of the Act, and includes the cost of assessing these damages.

Discharge as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems.

For purposes of the NCP, discharge also means substantial threat of discharge.

Dispersants means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

Drinking water supply as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

Environment as defined by section 101(8) of CERCLA, means the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

Exclusive economic zone, as defined by OPA section 1001, means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Facility as defined by section 101(9) of CERCLA, means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area, where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel. As defined by section 1001 of the OPA, it means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: Exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Feasibility study (FS) means a study undertaken by the lead agency to develop and evaluate options for

remedial action. The FS emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI), using data gathered during the RI. The RI data are used to define the objectives of the response action, to develop remedial action alternatives, and to undertake an initial screening and detailed analysis of the alternatives. The term also refers to a report that describes the results of the study.

Federal Radiological Emergency Response Plan (FRERP) means the inter-agency agreement for coordinating the response of various agencies, under a variety of statutes, to a large radiological accident. The Lead Federal Agency (LFA), defined by the FRERP, activates the FRERP for any peacetime radiological emergency which, based upon its professional judgment, is expected to have a significant radiological effect within the United States, its territories, possessions, or territorial waters and that could require a response by several federal agencies.

Federal Response Plan (FRP) means the agreement signed by 25 federal departments and agencies in April 1987 and developed under the authorities of the Earthquake Hazards Reduction Act of 1977 and the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988.

First federal official means the first federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the pre-designated OSC. A state with primary jurisdiction over a site covered by a cooperative agreement will act in the stead of the first federal official for any incident at the site.

Fund or Trust Fund means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Ground water as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

Hazard Ranking System (HRS) means the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

Hazardous substance as defined by section 101(14) of CERCLA, means: Any substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous

waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Indian tribe as defined by section 101(36) of CERCLA, means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. **Indian tribe**, as defined by OPA section 1001, means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe.

Inland waters, for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Lead administrative trustee means a federal natural resource trustee who is designated on an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates

effective and efficient communication between the OSC and the other federal natural resource trustees during response operations and is responsible for applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

Lead agency means the agency that provides the OSC/RPM to plan and implement response actions under the NCP. EPA, the USCG, another federal agency, or a state (or political subdivision of a state) operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA, or designated pursuant to a Superfund Memorandum of Agreement (SMOA) entered into pursuant to subpart F of the NCP or other agreements may be the lead agency for a response action. In the case of a release of a hazardous substance, pollutant, or contaminant, where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of Department of Defense (DOD) or Department of Energy (DOE), then DOD or DOE will be the lead agency. Where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of a federal agency other than EPA, the USCG, DOD, or DOE, then that agency will be the lead agency for remedial actions and removal actions other than emergencies. The federal agency maintains its lead agency responsibilities whether the remedy is selected by the federal agency for non-NPL sites or by EPA and the federal agency or by EPA alone under CERCLA section 120. The lead agency will consult with the support agency, if one exists, throughout the response process.

Management of migration means actions that are taken to minimize and mitigate the migration of hazardous substances or pollutants or contaminants and the effects of such migration. Measures may include, but are not limited to, management of a plume of contamination, restoration of a drinking water aquifer, or surface water restoration.

Miscellaneous oil spill control agent is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

National Pollution Funds Center (NPFC) means the entity established by the Secretary of Transportation whose function is the administration of the Oil Spill Liability Trust Fund (OSLTF).

Among the NPFC's duties are: Providing appropriate access to the OSLTF for federal agencies and states for removal actions and for federal trustees to initiate the assessment of natural resource damages; providing appropriate access to the OSLTF for claims; and coordinating cost recovery efforts.

National Priorities List (NPL) means the list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response.

National response system (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC/RPM. The NRS is composed of the NRT, RRTs, OSC/RPM, IRPM, Area Committees, and Special Teams and related support entities. During oil spill response or a hazardous substance removal action, the NRS functions as an incident command system (ICS) under the direction of the OSC. Typical of an ICS, the NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge or release.

National Strike Force (NSF) is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the National Strike Force Coordination Center. The NSF is available to assist OSCs/RPMs in their preparedness and response duties.

National Strike Force Coordination Center (NSFCC), authorized as the National Response Unit by CWA sections 311 (a)(23) and (j)(2), means the entity established by the Secretary of the department in which the USCG is operating at Elizabeth City, North Carolina with responsibilities that include administration of the USCG Strike Teams, maintenance of response equipment inventories and logistic networks, and conducting a national exercise program.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Navigable waters as defined by 40 CFR 110.1, means the waters of the

United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Offshore facility as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil as defined by section 311(a)(1) of the CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42

U.S.C. 9601) and which is subject to the provisions of that Act.

Oil Spill Liability Trust Fund (OSLTF) means the fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-scene coordinator (OSC) means the federal official predesignated by EPA or the USCG to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal actions under subpart E of the NCP.

Onshore facility as defined by section 101(18) of CERCLA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and, as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

Operation and maintenance (O&M) means measures required to maintain the effectiveness of response actions.

Person as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, state, municipality, commission, political subdivision of a state, or any interstate body. As defined by section 1001 of the OPA, *person* means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Pollutant or contaminant as defined by section 101(33) of CERCLA, shall include, but not be limited to, any element, substance, compound, or

mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas). For purposes of the NCP, the term *pollutant or contaminant* means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare.

Post-removal site control means those activities that are necessary to sustain the integrity of a Fund-financed removal action following its conclusion. Post-removal site control may be a removal or remedial action under CERCLA. The term includes, without being limited to, activities such as relighting gas flares, replacing filters, and collecting leachate.

Preliminary assessment (PA) under CERCLA means review of existing information and an off-site reconnaissance, if appropriate, to determine if a release may require additional investigation or action. A PA may include an on-site reconnaissance, if appropriate.

Public participation, see the definition for community relations.

Public vessel as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Quality assurance project plan (QAPP) is a written document, associated with all remedial site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance (QA) and quality control (QC) activities designed to achieve the data quality objectives of a specific project(s) or continuing operation(s). The QAPP is prepared for each specific project or continuing operation (or group of similar projects or continuing operations). The QAPP will be prepared

by the responsible program office, regional office, laboratory, contractor, recipient of an assistance agreement, or other organization. For an enforcement action, potentially responsible parties may prepare a QAPP subject to lead agency approval.

Release as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For purposes of the NCP, release also means threat of release.

Relevant and appropriate requirements means those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site. Only those state standards that are identified in a timely manner and are more stringent than federal requirements may be relevant and appropriate.

Remedial design (RD) means the technical analysis and procedures which follow the selection of remedy for a site and result in a detailed set of plans and specifications for implementation of the remedial action.

Remedial investigation (RI) is a process undertaken by the lead agency to determine the nature and extent of the problem presented by the release. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the feasibility study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

Remedial project manager (RPM) means the official designated by the lead agency to coordinate, monitor, or direct remedial or other response actions under subpart E of the NCP.

Remedy or remedial action (RA) means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities. The term includes the costs of permanent relocation of residents and businesses and community facilities (including the cost of providing "alternative land of equivalent value" to an Indian tribe pursuant to CERCLA section 126(b)) where EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. For the purpose

of the NCP, the term also includes enforcement activities related thereto.

Remove or removal as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife, public and private property, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes monitoring of action to remove a discharge. As defined by section 101(23) of CERCLA, remove or removal means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, post-removal site control, where appropriate, and any emergency assistance which may be provided under the Disaster Relief Act of 1974. For the purpose of the NCP, the term also includes enforcement activities related thereto.

Removal costs as defined by section 1001 of the OPA, means the costs of removal that are incurred after a discharge of oil has occurred, or in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Respond or response as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action, including enforcement activities related thereto.

Responsible party as defined by section 1001 of the OPA, means the following:

(a) **Vessels**—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) **Onshore facilities**—In the case of an onshore facility (other than a pipeline), any person owning or

operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) **Offshore facilities**—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) **Deepwater ports**—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(e) **Pipelines**—In the case of a pipeline, any person owning or operating the pipeline.

(f) **Abandonment**—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

SARA is the Superfund Amendments and Reauthorization Act of 1986. In addition to certain free-standing provisions of law, it includes amendments to CERCLA, the Solid Waste Disposal Act, and the Internal Revenue Code. Among the free-standing provisions of law is Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" and Title IV of SARA, also known as the "Radon Gas and Indoor Air Quality Research Act of 1986." Title V of SARA amending the Internal Revenue Code is also known as the "Superfund Revenue Act of 1986."

Sinking agents means those additives applied to oil discharges to sink floating pollutants below the water surface.

Site inspection (SI) means an on-site investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected in the preliminary assessment and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D of this part. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) *Minor discharge* means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) *Medium discharge* means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) *Major discharge* means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Size classes of releases refers to the following size classifications which are provided as guidance to the OSC for meeting pollution reporting requirements in subpart B of this part. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of the particular release (e.g., size, location, impact, etc.):

(a) *Minor release* means a release of a quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses minimal threat to public health or welfare or the environment.

(b) *Medium release* means a release not meeting the criteria for classification as a minor or major release.

(c) *Major release* means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare or the environment or results in significant public concern.

Sorbents means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it; absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material; or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

(a) Organic products—

- (1) Peat moss or straw;
- (2) Cellulose fibers or cork;
- (3) Corn cobs;
- (4) Chicken, duck, or other bird feathers.

- (b) Mineral compounds—
 - (1) Volcanic ash or perlite;
 - (2) Vermiculite or zeolite.
- (c) Synthetic products—
 - (1) Polypropylene;
 - (2) Polyethylene;
 - (3) Polyurethane;
 - (4) Polyester.

Source control action is the construction or installation and start-up of those actions necessary to prevent the continued release of hazardous substances or pollutants or contaminants (primarily from a source on top of or within the ground, or in buildings or other structures) into the environment.

Source control maintenance measures are those measures intended to maintain the effectiveness of source control actions once such actions are operating and functioning properly, such as the maintenance of landfill caps and leachate collection systems.

Specified ports and harbors means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in Federal Regional Contingency Plans and Area Contingency Plans.

Spill of national significance (SONS) means a spill that due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and cleanup the discharge.

State means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian tribes as defined in the NCP except where specifically noted. Section 126 of CERCLA provides that the governing body of an Indian tribe shall be afforded substantially the same treatment as a state with respect to certain provisions of CERCLA. Section 300.515(b) of the NCP describes the requirements pertaining to Indian tribes that wish to be treated as states under CERCLA.

Superfund Memorandum of Agreement (SMOA) means a nonbinding, written document executed by an EPA Regional Administrator and the head of a state agency that may establish the nature and extent of EPA and state interaction during the removal, pre-remedial, remedial, and/or enforcement response process. The SMOA is not a site-specific document although attachments may address specific sites. The SMOA generally defines the role and responsibilities of both the lead and the support agencies.

Superfund state contract is a joint, legally binding agreement between EPA and a state to obtain the necessary assurances before a federal-lead remedial action can begin at a site. In the case of a political subdivision-lead remedial response, a three-party Superfund state contract among EPA, the state, and political subdivision thereof, is required before a political subdivision takes the lead for any phase of remedial response to ensure state involvement pursuant to section 121(f)(1) of CERCLA. The Superfund state contract may be amended to provide the state's CERCLA section 104 assurances before a political subdivision can take the lead for remedial action.

Support agency means the agency or agencies that provide the support agency coordinator to furnish necessary data to the lead agency, review response data and documents, and provide other assistance as requested by the OSC or RPM. EPA, the USCG, another federal agency, or a state may be support agencies for a response action if operating pursuant to a contract executed under section 104(d)(1) of CERCLA or designated pursuant to a Superfund Memorandum of Agreement entered into pursuant to subpart F of the NCP or other agreement. The support agency may also concur on decision documents.

Support agency coordinator (SAC) means the official designated by the support agency, as appropriate, to interact and coordinate with the lead agency in response actions under subpart E of this part.

Surface collecting agents means those chemical agents that form a surface film to control the layer thickness of oil.

Surface washing agent is any product that removes oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing or solubilizing the oil into the water column.

Tank vessel as defined by section 1001 of the OPA means a vessel that is constructed or adapted to carry, or that carries oil or hazardous material in bulk as cargo or cargo residue, and that: (1)

is a vessel of the United States; (2) operates on the navigable waters; or (3) transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Threat of discharge or release, see definitions for discharge and release.

Threat of release, see definition for release.

Treatment technology means any unit operation or series of unit operations that alters the composition of a hazardous substance or pollutant or contaminant through chemical, biological, or physical means so as to reduce toxicity, mobility, or volume of the contaminated materials being treated. Treatment technologies are an alternative to land disposal of hazardous wastes without treatment.

Trustee means an official of a federal natural resources management agency designated in subpart G of the NCP or a designated state official or Indian tribe or, in the case of discharges covered by the OPA, a foreign government official, who may pursue claims for damages under section 107(f) of CERCLA or section 1006 of the OPA.

United States when used in relation to section 311(a)(5) of the CWA, means the states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands, and the Pacific Island Governments. *United States*, when used in relation to section 101(27) of CERCLA and section 1001(36) of the OPA, includes the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

Vessel as defined by section 101(28) of CERCLA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Volunteer means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (examples: See 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

Worst case discharge as defined by section 311(a)(24) of the CWA, means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo, and, in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.

§ 300.6 Use of number and gender.

As used in this regulation, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 300.7 Computation of time.

In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

Subpart B—Responsibility and Organization for Response

§ 300.100 Duties of President delegated to federal agencies.

In Executive Orders 12580 and 12777, the President delegated certain functions and responsibilities vested in him by the CWA, CERCLA, and the OPA.

§ 300.105 General organization concepts.

(a) Federal agencies should:

- (1) Plan for emergencies and develop procedures for addressing oil discharges and releases of hazardous substances, pollutants, or contaminants;
- (2) Coordinate their planning, preparedness, and response activities with one another;
- (3) Coordinate their planning, preparedness, and response activities

with affected states, local governments, and private entities; and

(4) Make available those facilities or resources that may be useful in a response situation, consistent with agency authorities and capabilities.

(b) Three fundamental kinds of activities are performed pursuant to the NCP:

(1) Preparedness planning and coordination for response to a discharge of oil or release of a hazardous substance, pollutant, or contaminant;

(2) Notification and communications; and

(3) Response operations at the scene of a discharge or release.

(c) The organizational elements created to perform these activities are:

(1) The National Response Team (NRT), responsible for national response and preparedness planning, for coordinating regional planning, and for providing policy guidance and support to the Regional Response Teams (RRTs). NRT membership consists of representatives from the agencies specified in § 300.175(b).

(2) RRTs, responsible for regional planning and preparedness activities before response actions, and for providing advice and support to the OSC or RPM when activated during a response. RRT membership consists of designated representatives from each federal agency participating in the NRT together with state and (as agreed upon by the states) local government representatives.

(3) The OSC and the RPM, primarily responsible for directing response efforts and coordinating all other efforts at the scene of a discharge or release. The other responsibilities of OSCs and RPMs are described in § 300.135.

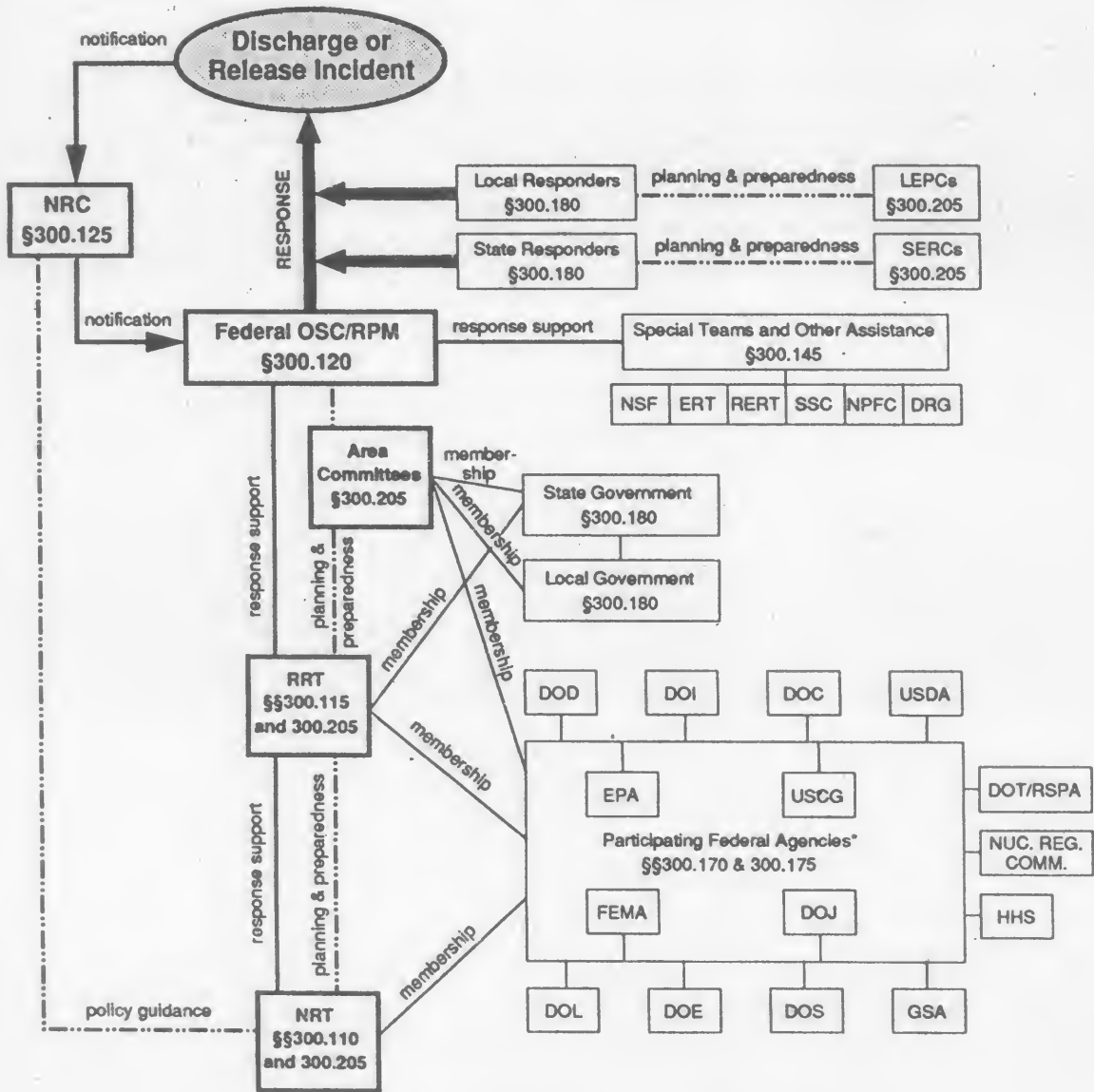
(4) Area Committees, responsible for developing, under direction of the OSC, Area Contingency Plans (ACPs) for each area designated by the President. Responsibilities of Area Committees are described in § 300.205(c).

(d)(1) The organizational concepts of the national response system are depicted in the following Figure 1:

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Figure 1

National Response System Concepts

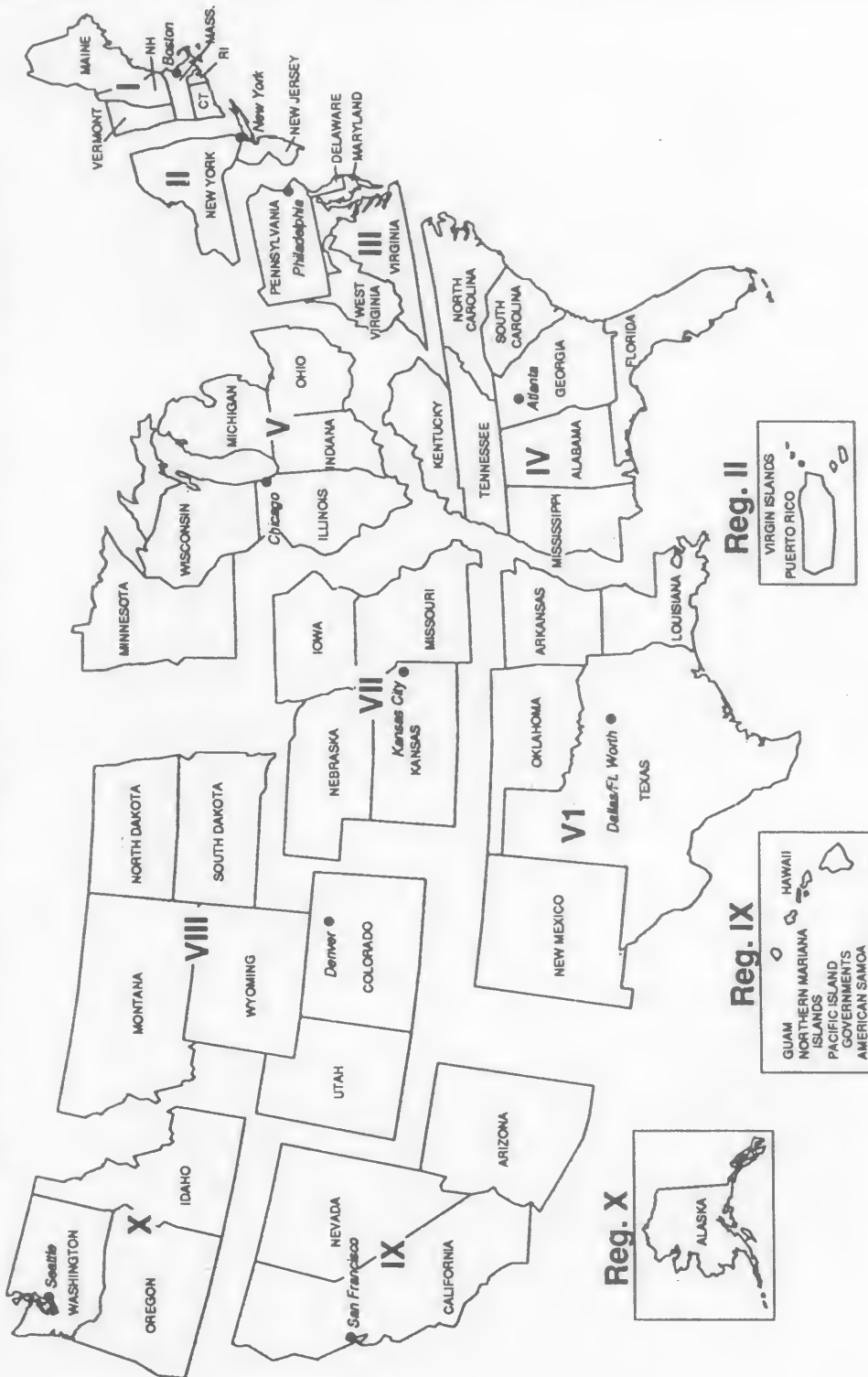


* The same federal agencies participate on both the National Response Team (NRT) and the Regional Response Team (RRT). Federal agencies on the RRT are represented by regional staff. Abbreviations used in this figure are explained in §300.4.

(2) The standard federal regional boundaries (which are also the geographic areas of responsibility for the RRT RRTs) are shown in the following Figure 2:

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Figure 2 -- Standard Regional Boundaries for Ten Regions



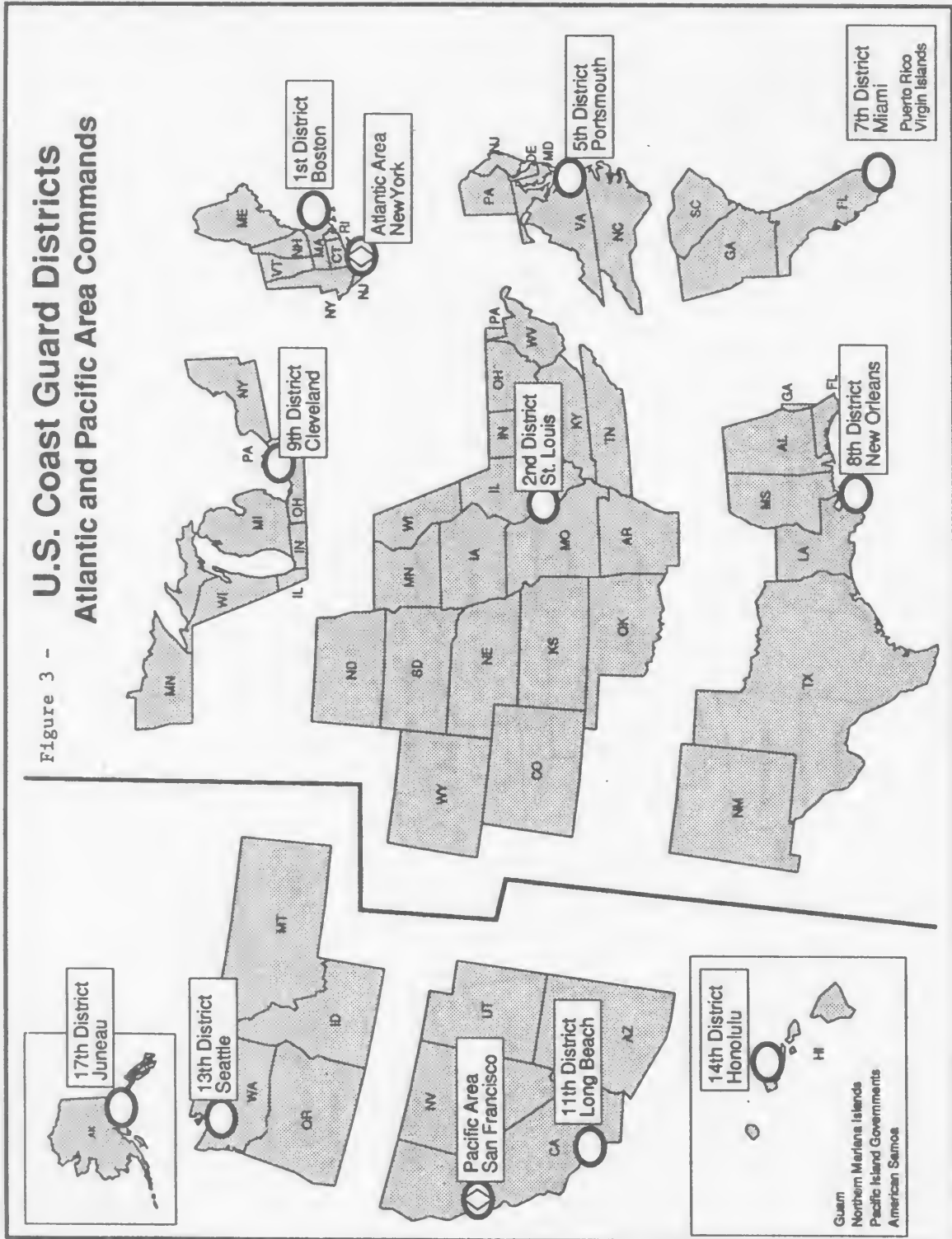
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(3) The USCG District boundaries are shown in the following Figure 3:

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U.S. Coast Guard Districts Atlantic and Pacific Area Commands

Figure 3 -



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§ 300.110 National Response Team.

National planning and coordination is accomplished through the NRT.

(a) The NRT consists of representatives from the agencies named in § 300.175(b). Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT.

(b) The chair of the NRT shall be the representative of EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC/RPM. The vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(d) The NRT may establish such bylaws and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges or releases; shall recommend any changes needed in the response organization; and shall recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil or release of a hazardous substance, pollutant, or contaminant that is beyond regional capabilities;

(2) Publishing guidance documents for preparation and implementation of SARA Title III local emergency response plans;

(3) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(4) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(5) Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of federal, state, and local governments, and private response to oil discharges and releases of hazardous substances, pollutants, or contaminants;

(6) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

(7) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

(8) Reviewing regional responses to oil discharges and hazardous substance, pollutant, or contaminant releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(9) Assist in developing a national exercise program, in coordination with the NSFCC, to ensure preparedness and coordination nationwide.

(i) The NRT will consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge or hazardous substance release:

(i) Exceeds the response capability of the region in which it occurs;

(ii) Transects regional boundaries; or

(iii) Involves a substantial threat to the public health or welfare or the environment, substantial amounts of property, or substantial threats to natural resources;

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT shall meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC/RPM and recommend to the OSC/RPM, through the RRT, actions to combat the discharge or release;

(2) Request other federal, state, and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.115 Regional Response Teams.

(a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. In the case of a discharge of oil, preparedness activities will be carried out in conjunction with Area Committees, as appropriate. The RRT agency membership parallels that of the NRT, as described in § 300.110, but also includes state and local representation. The RRT provides:

(1) The appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC/RPM during such response actions; and

(2) Guidance to Area Committees, as appropriate, to ensure inter-area consistency and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a nationwide basis. It also includes coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge or release. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by state and local governments, shall be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC/RPM. The designated OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release.

(c) The representatives of EPA and the USCG shall act as co-chairs of RRTs except when the RRT is activated. When the RRT is activated for response

actions, the chair shall be the member agency providing the OSC/RPM.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange for representation with the RRT appropriate to their geographical location. All agencies and states may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and membership on incident-specific teams in support of the OSCs/RPMs.

(f) Federal RRT members or their representatives should provide OSCs/RPMs with assistance from their respective federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC/RPM as specified in the RCP and ACP.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining ACPs.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state governor is requested to assign an office or agency to represent the state on the appropriate RRT; to designate representatives to work with the RRT in developing RCPs; to plan for, make available, and coordinate state resources; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep the State Emergency Response Commission (SERC), described in § 300.205(d), apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes are also invited to participate in such activities.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating

agencies and the effectiveness of ACPs for the federal response to discharges and releases, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges or releases on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the NRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and ACPs are effective;

(5) Encourage the state and local response community to improve its preparedness for response;

(6) In coordination with Area Committees, conduct advance planning for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents in accordance with subpart J of this part;

(7) Be prepared to provide response resources to major discharges or releases outside the region;

(8) Conduct or participate in training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period, consider changes in RCPs, and recommend changes in ACPs;

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve state and local coordination; and

(11) Ensure maximum participation in the national exercise program for announced and unannounced exercises.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge or release:

(i) Exceeds the response capability available to the OSC/RPM in the place where it occurs;

(ii) Transsects state boundaries;

(iii) May pose a substantial threat to the public health or welfare or the environment, or to regionally significant amounts of property; or

(iv) Is a worst case discharge, as described in § 300.324. RCPs shall

specify detailed criteria for activation of RRTs.

(2) The RRT will be activated during any discharge or release upon a request from the OSC/RPM, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chair and may:

(i) Monitor and evaluate reports from the OSC/RPM, advise the OSC/RPM on the duration and extent of response, and recommend to the OSC/RPM specific actions to respond to the discharge or release;

(ii) Request other federal, state, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations;

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT;

(iv) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated; and

(v) Submit pollution reports to the NRC as significant developments occur.

(5) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(6) When the RRT is activated, affected states may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any federal member of the RRT.

(7) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC/RPM no longer requires RRT assistance.

(8) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to

assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT, described in § 300.110, for advice.

§ 300.120 On-scene coordinators and remedial project managers: General responsibilities.

(a) The OSC/RPM directs response efforts and coordinates all other efforts at the scene of a discharge or release. As part of the planning and preparedness for response, OSCs shall be pre-designated by the regional or district head of the lead agency. EPA and the USCG shall pre-designate OSCs for all areas in each region, except as provided in paragraphs (c) and (d) of this section. RPMs shall be assigned by the lead agency to manage remedial or other response actions at NPL sites, except as provided in paragraphs (c) and (d) of this section.

(1) The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. The USCG shall also provide OSCs for the removal of releases of hazardous substances, pollutants, or contaminants into or threatening the coastal zone, except as provided in paragraph (b) of this section. The USCG shall not provide pre-designated OSCs for discharges or releases from hazardous waste management facilities or in similarly chronic incidents. The USCG shall provide an initial response to discharges or releases from hazardous waste management facilities within the coastal zone in accordance with Department of Transportation (DOT)/EPA Instrument of Redefinition (May 27, 1988) except as provided by paragraph (b) of this section. The USCG OSC shall contact the cognizant RPM as soon as it is evident that a removal may require a follow-up remedial action, to ensure that the required planning can be initiated and an orderly transition to an EPA or state lead can occur.

(2) EPA shall provide OSCs for discharges or releases into or threatening the inland zone and shall provide RPMs for federally funded remedial actions, except in the case of state-lead federally funded response and as provided in paragraph (b) of this section. EPA will also assume all remedial actions at NPL sites in the

coastal zone, even where removals are initiated by the USCG, except as provided in paragraph (b) of this section.

(b) In general, USCG Captains of the Port (COTP) shall serve as the designated OSCs for areas in the coastal zone for which an ACP is required under CWA section 311(j) and EPA Regional Administrators shall designate OSCs for areas in the inland zone for which an ACP is required under CWA section 311(j).

(c) For releases of hazardous substances, pollutants, or contaminants, when the release is on, or the sole source of the release is from, any facility or vessel, including vessels bareboat-chartered and operated, under the jurisdiction, custody, or control of DOD, DOE, or other federal agency:

(1) In the case of DOD or DOE, DOD or DOE shall provide OSCs/RPMs responsible for taking all response actions; and

(2) In the case of a federal agency other than EPA, DOD, or DOE, such agency shall provide OSCs for all removal actions that are not emergencies and shall provide RPMs for all remedial actions.

(d) DOD will be the removal response authority with respect to incidents involving DOD military weapons and munitions or weapons and munitions under the jurisdiction, custody, or control of DOD.

(e) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. ACPs shall, as appropriate, be accomplished in cooperation with the RRT, and designated state and local representatives. The OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

(f) The RPM is the prime contact for remedial or other response actions being taken (or needed) at sites on the proposed or promulgated NPL, and for sites not on the NPL but under the jurisdiction, custody, or control of a federal agency. The RPM's responsibilities include:

(1) Fund-financed response: The RPM coordinates, directs, and reviews the work of EPA, states and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with the NCP. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency

officials. The RPM's period of responsibility begins prior to initiation of the remedial investigation/feasibility study (RI/FS), described in § 300.430, and continues through design, remedial action, deletion of the site from the NPL, and the CERCLA cost recovery activity. When a removal and remedial action occur at the same site, the OSC and RPM should coordinate to ensure an orderly transition of responsibility.

(2) Federal-lead non-Fund-financed response: The RPM coordinates, directs, and reviews the work of other agencies, responsible parties, and contractors to assure compliance with the NCP, Record of Decision (ROD), consent decree, administrative order, and lead agency-approved plans applicable to the response. Based upon the reports of these parties, the RPM shall recommend action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS, described in § 300.430, and continues through design and remedial action and the CERCLA cost recovery activity. The OSC and RPM shall ensure orderly transition of responsibilities from one to the other.

(3) The RPM shall participate in all decision-making processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other federal agencies and the state. The RPM may also review responses where EPA has preauthorized a person to file a claim for reimbursement to determine that the response was consistent with the terms of such preauthorization in cases where claims are filed for reimbursement.

(g)(1) Where a support agency has been identified through a cooperative agreement, Superfund Memorandum of Agreement (SMOA), or other agreement, that agency may designate a support agency coordinator (SAC) to provide assistance, as requested, by the OSC/RPM. The SAC is the prime representative of the support agency for response actions.

(2) The SAC's responsibilities may include:

(i) Providing and reviewing data and documents as requested by the OSC/RPM during the planning, design, and cleanup activities of the response action; and

(ii) Providing other assistance as requested.

(h)(1) The lead agency should provide appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under the NCP.

(2) OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out

actions under the NCP, to the extent practicable.

§ 300.125 Notification and communications.

(a) The National Response Center (NRC), located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges must be made telephonically through a toll free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). (Notification details appear in §§ 300.300 and 300.405.) The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate pre-designated federal OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster situation.

(b) The Commandant, USCG, in conjunction with other NRT agencies, shall provide the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B, and 40 CFR part 302, respectively. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424-8802 or (202) 267-2675. All notices of discharges or releases received at the NRC will be relayed immediately by telephone to the OSC.

§ 300.130 Determinations to initiate response and special conditions.

(a) In accordance with CWA and CERCLA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil or releases of hazardous substances, pollutants, or contaminants except with respect to such releases on or from vessels or facilities under the jurisdiction, custody, or control of other federal agencies.

(b) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare is required to initiate and direct appropriate response activities when the Administrator or Secretary determines that any oil or CWA hazardous substance is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States; or

(c) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate appropriate response activities when the Administrator or Secretary determines that any hazardous substance is released or there is a threat of such a release into the environment, or there is a release or threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.

(d) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA or section 106 of CERCLA as appropriate, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines:

(1) That there may be an imminent and substantial threat to the public health or welfare or the environment of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a CWA hazardous substance from any vessel or offshore or onshore facility into or upon the navigable waters of the United States; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare or the

environment because of a release of a CERCLA hazardous substance from a facility.

(e) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(f) Where appropriate, when a discharge or release involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan. Most radiological discharges and releases do not result in FRERP activation and should be handled in accordance with the NCP. However, releases from nuclear incidents subject to requirements for financial protection established by the Nuclear Regulatory Commission under the Price-Anderson amendments (section 170) of the Atomic Energy Act are specifically excluded from CERCLA and NCP requirements.

(g) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency (FEMA) Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(h) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer (FCO) to coordinate all federal disaster assistance activities. In such cases, the OSC/RPM would continue to carry out OSC/RPM responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(i) In the event of a declaration of a major disaster by the President, the Federal Emergency Management Agency (FEMA) may activate the Federal Response Plan (FRP). A Federal Coordinating Officer (FCO), designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Functions.

(ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

§ 300.135 Response operations.

(a) The OSC/RPM, consistent with §§ 300.120 and 300.125, shall direct response efforts and coordinate all other efforts at the scene of a discharge or release. As part of the planning and preparation for response, the OSCs/RPMs shall be pre-designated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge or release should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the pre-designated OSC. This official may initiate federal Fund-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC/RPM shall, to the extent practicable, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; whether the discharge is a worst case discharge as discussed in § 300.324; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge or release poses a substantial threat to the public health or welfare as discussed in § 300.322; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation.

(d) The OSC's/RPM's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs/RPMs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under subparts D and E of the NCP that involve expenditures of the Oil Spill

Liability Trust Fund or CERCLA funds unless an appropriate contract or cooperative agreement has been established.

(e) The OSC/RPM should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC/RPM shall advise the support agency as promptly as possible of reported releases.

(g) The OSC/RPM should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(h) In those instances where a possible public health emergency exists, the OSC/RPM should notify the Department of Health and Human Services (HHS) representative to the RRT. Throughout response actions, the OSC/RPM may call upon the HHS representative for assistance in determining public health threats and call upon the Occupational Safety and Health Administration (OSHA) and HHS for assistance on worker health and safety issues.

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)(1) The OSC/RPM shall ensure that the trustees for natural resources are promptly notified of discharges or releases.

(2) The OSC or RPM shall coordinate all response activities with the affected natural resource trustees and, for discharges of oil, the OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(k) Where the OSC/RPM becomes aware that a discharge or release may affect any endangered or threatened species or their habitat, the OSC/RPM shall consult with the Department of Interior (DOI), or the Department of Commerce (DOC) (NOAA) and, if appropriate, the cognizant federal land managing agency.

(l) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.150.

(m) The OSC shall submit pollution reports to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or

procedures agreed to by the RRT and covered in the RCP.

(n) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable, consistent with the requirements of § 300.155 of this part.

§ 300.140 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge or release affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC and/or RPM at any time during the course of a response operation. Should a discharge or release affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC and/or RPM. The RRT shall designate the OSC and/or RPM if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC and/or RPM if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has initially provided the OSC for response to a release from hazardous waste management facilities located in the coastal zone, responsibility for response action shall shift to EPA or another federal agency, as appropriate.

§ 300.145 Special teams and other assistance available to OSCs/RPMs.

(a) The NSF is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the NSFCC. The NSF is available to assist OSCs/RPMs in their preparedness and response duties.

(1) The three Strike Teams (Atlantic, Gulf, and Pacific) provide trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and in monitoring or directing the response actions of the responsible parties and/or contractors. The OSC has a specific team designated for initial contact and may contact that team directly for any assistance.

(2) The NSFCC can provide the following support to the OSC:

(i) Technical assistance, equipment and other resources to augment the OSC staff during spill response.

(ii) Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil.

(iii) Review of the area contingency plan, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations.

(iv) Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources.

(v) Coordination and evaluation of pollution response exercises.

(vi) Inspection of district prepositioned pollution response equipment.

(3) PIAT is an element of the NSFCC staff which is available to assist OSCs to meet the demands for public information during a response or exercise. Its use is encouraged any time the OSC requires outside public affairs support. Requests for PIAT assistance may be made through the NSFCC or NRC.

(b)(1) The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering.

(2) The ERT can provide access to special decontamination equipment for chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; clean-up techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of clean-up required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC/RPM or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(c) Scientific Support Coordinators (SSCs) may be designated by the OSC (and RPM in the case of EPA SSCs) as the principal advisors for scientific

issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies regarding scientific studies. The SSC strives for a consensus on scientific issues affecting the response, but ensures that differing opinions within the community are communicated to the OSC/RPM.

(1) Generally, SSCs are provided by NOAA in the coastal zones, and by EPA in the inland zone. OSC/RPM requests for SSC support can be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs can also be requested through NOAA's SSC program office in Seattle, WA. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

(2) During a response, the SSC serves on the federal OSC's/RPM's staff and may, at the request of the OSC/RPM, lead the scientific team and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature and location of the incident, the SSC integrates expertise from governmental agencies, universities, community representatives, and industry to assist the OSC/RPM in evaluating the hazards and potential effects of releases and in developing response strategies.

(3) At the request of the OSC, the SSC may facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the Regional Response Teams and the Area Committees in preparing regional and area contingency plans and in conducting spill training and exercises. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions in support of the OSC.

(d) For marine salvage operations, OSCs/RPMs with responsibility for monitoring, evaluating, or supervising these activities should request technical assistance from DOD, the Strike Teams, or commercial salvors as necessary to ensure that proper actions are taken. Marine salvage operations generally fall into five categories: Afloat salvage; offshore salvage; river and harbor clearance; cargo salvage; and rescue

towing. Each category requires different knowledge and specialized types of equipment. The complexity of such operations may be further compounded by local environmental and geographic conditions. The nature of marine salvage and the conditions under which it occurs combine to make such operations imprecise, difficult, hazardous, and expensive. Thus, responsible parties or other persons attempting to perform such operations without adequate knowledge, equipment, and experience could aggravate, rather than relieve, the situation.

(e) Radiological Emergency Response Teams (RERTs) have been established by EPA's Office of Radiation Programs (ORP) to provide response and support for incidents or sites containing radiological hazards. Expertise is available in radiation monitoring, radionuclide analysis, radiation health physics, and risk assessment. RERTs can provide on-site support including mobile monitoring laboratories for field analyses of samples and fixed laboratories for radiochemical sampling and analyses. Requests for support may be made 24 hours a day via the NRC or directly to the EPA Radiological Response Coordinator in the Office of Radiation Programs. Assistance is also available from DOE and other federal agencies.

(f)(1) DRGs assist the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. Each DRG consists of all Coast Guard personnel and equipment, including marine firefighting equipment, in its district, additional pre-positioned equipment, and a District Response Advisory Team (DRAT) that is available to provide support to the OSC in the event that a spill exceeds local response capabilities. Each DRG:

(i) Shall provide technical assistance, equipment, and other resources, as available, when requested by an OSC through the USCG representative to the RRT;

(ii) Shall ensure maintenance of all USCG response equipment within its district;

(iii) May provide technical assistance in the preparation of the ACP; and

(iv) Shall review each of those plans that affect its area of geographic responsibility.

(2) In deciding where to locate personnel and pre-positioned equipment, the USCG shall give priority emphasis to:

(i) The availability of facilities for loading and unloading heavy or bulky equipment by barge;

(ii) The proximity to an airport capable of supporting large military transport aircraft;

(iii) The flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties;

(iv) The availability of trained local personnel capable of responding in an oil spill emergency; and

(v) Areas where large quantities of petroleum products are transported.

(g) The National Pollution Funds Center (NPFCC) is responsible for implementing those portions of Title I of the OPA that have been delegated to the Secretary of the department in which the Coast Guard is operating. The NPFCC is responsible for addressing funding issues arising from discharges and threats of discharges of oil. The NPFCC:

(1) Issues Certificates of Financial Responsibility to owners and operators of vessels to pay for costs and damages that are incurred by their vessels as a result of oil discharges;

(2) Provides funding for various response organizations for timely abatement and removal actions related to oil discharges;

(3) Provides equitable compensation to claimants who sustain costs and damages from oil discharges when the responsible party fails to do so;

(4) Recovers monies from persons liable for costs and damages resulting from oil discharges to the full extent of liability under the law; and

(5) Provides funds to initiate natural resource damage assessments.

§ 300.150 Worker health and safety.

(a) Response actions under the NCP will comply with the provisions for response action worker safety and health in 29 CFR 1910.120. The NRS meets the requirements of 29 CFR 1910.120 concerning use of an incident command system.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for the protection of workers at the response site.

(c) In a response taken under the NCP by a lead agency, an occupational safety and health program should be made available for the protection of workers at the response site, consistent with, and to the extent required by, 29 CFR 1910.120. Contracts relating to a response action under the NCP should contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651

et. seq.) (OSH Act) and state laws with plans approved under section 18 of the OSH Act.

(d) When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply with standards in 40 CFR part 311, promulgated by EPA pursuant to section 126(f) of SARA.

(e) Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) through (d) of this section, must be complied with where applicable. Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

§ 300.155 Public information and community relations.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC/RPM. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead

administrative trustee. The designated lead administrative trustee may assist the OSC/RPM by disseminating information on issues relating to damage assessment activities. Following termination of removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

(c) The community relations requirements specified in §§ 300.415, 300.430, and 300.435 apply to removal, remedial, and enforcement actions and are intended to promote active communication between communities affected by discharges or releases and the lead agency responsible for response actions. Community Relations Plans (CRPs) are required by EPA for certain response actions. The OSC/RPM should ensure coordination with such plans which may be in effect at the scene of a discharge or release or which may need to be developed during follow-up activities.

§ 300.160 Documentation and cost recovery.

(a) For releases of a hazardous substance, pollutant, or contaminant, the following provisions apply:

(1) During all phases of response, the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be sufficient to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, accurate accounting of federal, state, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment. Where applicable, documentation shall state when the NRC received notification of a release of a reportable quantity.

(2) The information and reports obtained by the lead agency for Fund-financed response actions shall, as appropriate, be transmitted to the chair of the RRT. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate.

(3) The lead agency shall make available to the trustees of affected natural resources information and documentation that can assist the trustees in the determination of actual or potential natural resource injuries.

(b) For discharges of oil, documentation and cost recovery provisions are described in § 300.315.

(c) Response actions undertaken by the participating agencies shall be carried out under existing programs and authorities when available. Federal

agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the federal resources will be available for a timely response to a discharge or release. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures. Further funding provisions for discharges of oil are described in § 300.335.

(d) The Administrator of EPA and the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) shall assure that the costs of health assessment or health effect studies conducted under the authority of CERCLA section 104(i) are documented in accordance with standard EPA procedures for cost recovery. Documentation shall include information on the nature of the hazardous substances addressed by the research, information concerning the locations where these substances have been found, and any available information on response actions taken concerning these substances at the location.

§ 300.165 OSC reports.

(a) As requested by the NRT or RRT, the OSC/RPM shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The RRT shall review the OSC report and send to the NRT a copy of the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(b) The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

§ 300.170 Federal agency participation.

Federal agencies listed in § 300.175 have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil or release of a hazardous substance, pollutant, or contaminant. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge or release as described in subpart G of this part. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs and ACPs, described in § 300.210, provide for agencies to

coordinate with each other in carrying out these duties.

(a) Federal agencies may be called upon by an OSC/RPM during response planning and implementation to provide assistance in their respective areas of expertise, as described in § 300.175, consistent with the agencies' capabilities and authorities.

(b) In addition to their general responsibilities, federal agencies should:

(1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs/RPMs.

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs.

(3) Inform the NRT, RRTs, and Area Committees, consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(c) All federal agencies are responsible for reporting releases of hazardous substances from facilities or vessels under their jurisdiction or control in accordance with section 103 of CERCLA.

(d) All federal agencies are encouraged to report releases of pollutants or contaminants or discharges of oil from facilities or vessels under their jurisdiction or control to the NRC.

§ 300.175 Federal agencies: Additional responsibilities and assistance.

(a) During preparedness planning or in an actual response, various federal agencies may be called upon to provide assistance in their respective areas of expertise, as indicated in paragraph (b) of this section, consistent with agency legal authorities and capabilities.

(b) The federal agencies include:

(1) USCG, as provided in 14 U.S.C. 1-3, is an agency in DOT, except when operating as an agency in the United States Navy (USN) in time of war. The USCG provides the NRT vice chair, co-chairs for the standing RRTs, and pre-designated OSCs for the coastal zone, as described in § 300.120(a)(1). The USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG also offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation, and safety of vessels and marine facilities. The USCG may enter into a contract or cooperative agreement

with the appropriate state in order to implement a response action.

(2) EPA chairs the NRT and co-chairs, with the USCG, the standing RRTs; provides pre-designated OSCs for all inland areas for which an ACP is required under CWA section 311(j) and for discharges and releases occurring in the inland zone and RPMs for remedial actions except as otherwise provided; and generally provides the SSC for responses in the inland zone. EPA provides expertise on environmental effects of oil discharges or releases of hazardous substances, pollutants, or contaminants, and environmental pollution control techniques. EPA also provides legal expertise on the interpretation of CERCLA and other environmental statutes. EPA may enter into a contract or cooperative agreement with the appropriate state in order to implement a response action.

(3) FEMA provides guidance, policy and program advice, and technical assistance in hazardous materials, chemical, and radiological emergency preparedness activities (including planning, training, and exercising). FEMA's primary point of contact for administering financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability is the State and Local Programs and Support (SLPS) Directorate.

(4) DOD has responsibility to take all action necessary with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of DOD. DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed USN oil spill equipment and provide assistance to other federal agencies on request. The following two branches of DOD have particularly relevant expertise:

(i) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administrative services for other federal agencies.

(ii) The USN is the federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and

personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents.

(5) DOE generally provides designated OSCs/RPMs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, under the FRERP, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Coordinating Office.

(6) The Department of Agriculture (USDA) has scientific and technical capability to measure, evaluate, and monitor, either on the ground or by use of aircraft, situations where natural resources including soil, water, wildlife, and vegetation have been impacted by fire, insects and diseases, floods, hazardous substances, and other natural or man-caused emergencies. The USDA may be contacted through Forest Service emergency staff officers who are the designated members of the RRT. Agencies within USDA have relevant capabilities and expertise as follows:

(i) The Forest Service has responsibility for protection and management of national forests and national grasslands. The Forest Service has personnel, laboratory, and field capability to measure, evaluate, monitor, and control as needed, releases of pesticides and other hazardous substances on lands under its jurisdiction.

(ii) The Agriculture Research Service (ARS) administers an applied and developmental research program in animal and plant protection and production; the use and improvement of soil, water, and air; the processing, storage, and distribution of farm products; and human nutrition. The ARS has the capabilities to provide regulation of, and evaluation and training for, employees exposed to biological, chemical, radiological, and industrial hazards. In emergency situations, the ARS can identify,

control, and abate pollution in the areas of air, soil, wastes, pesticides, radiation, and toxic substances for ARS facilities.

(iii) The Soil Conservation Service (SCS) has personnel in nearly every county in the nation who are knowledgeable in soil, agronomy, engineering, and biology. These personnel can help to predict the effects of pollutants on soil and their movements over and through soils. Technical specialists can assist in identifying potential hazardous waste sites and provide review and advice on plans for remedial measures.

(iv) The Animal and Plant Health Inspection Service (APHIS) can respond in an emergency to regulate movement of diseased or infected organisms to prevent the spread and contamination of nonaffected areas.

(v) The Food Safety and Inspection Service (FSIS) has responsibility to prevent meat and poultry products contaminated with harmful substances from entering human food channels. In emergencies, the FSIS works with other federal and state agencies to establish acceptability for slaughter of exposed or potentially exposed animals and their products. In addition they are charged with managing the Federal Radiological Emergency Response Program for the USDA.

(7) DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil and hazardous substances through trajectory modeling, and information on the sensitivity of coastal environments to oil and hazardous substances and associated clean-up and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary and National Estuarine Research Reserve ecosystems; provides information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes.

(8) HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as state and local governments.

(i) The principal HHS response comes from the U.S. Public Health Service and

is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a hazardous materials emergency comes from Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA while ATSDR takes the lead during chemical releases under CERCLA. Both agencies are mutually supportive.

(ii) Other Public Health Service agencies involved in support during hazardous materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

(iii) Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: (A) Worker safety training and (B) basic research activities. Under section 126 of SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders. Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act (HMTUSA), NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental

health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

(9) DOI may be contacted through Regional Environmental Officers (REOs), who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(i) United States Fish and Wildlife Service (USFWS): Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; effects on natural resources; and laboratory/research facilities.

(ii) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(iii) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness; and hazardous materials.

(iv) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipelines and pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; and oil spill response technology research.

(v) Bureau of Mines: Analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(vi) Office of Surface Mining: Coal mine wastes and land reclamation.

(vii) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(viii) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(ix) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(x) Office of Territorial Affairs: Assistance in implementing the NCP in American Samoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

(10) The Department of Justice (DOJ) can provide expert advice on

complicated legal questions arising from discharges or releases, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges or releases. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC/RPM for the response.

(11) The Department of Labor (DOL), through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(i) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(ii) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or employee complaints. OSHA may also conduct inspections at hazardous waste sites in those states with approved plans that choose not to exercise their jurisdiction to inspect such sites. On request, OSHA will provide advice and assistance to EPA and other NRT/RRT agencies as well as to the OSC/RPM regarding hazards to persons engaged in response activities. Technical assistance may include development and maintenance of site safety plans and work practices, assistance with exposure monitoring, and help with other compliance questions. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites should be referred to the OSHA Regional Office.

(12) DOT provides response expertise pertaining to transportation of oil or hazardous substances by all modes of transportation. Through the Research and Special Programs Administration (RSPA), DOT offers expertise in the requirements for packaging, handling, and transporting regulated hazardous materials.

(13) The Department of State (DOS) will lead in the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag

vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(14) The Nuclear Regulatory Commission will respond, as appropriate, to releases of radioactive materials by its licensees, in accordance with the NRC Incident Response Plan (NUREG-0728) to monitor the actions of those licensees and assure that the public health and environment are protected and adequate recovery operations are instituted. The Nuclear Regulatory Commission will keep EPA informed of any significant actual or potential releases in accordance with procedural agreements. In addition, the Nuclear Regulatory Commission will provide advice to the OSC/RPM when assistance is required in identifying the source and character of other hazardous substance releases where the Nuclear Regulatory Commission has licensing authority for activities utilizing radioactive materials.

(15) The General Services Administration (GSA) provides logistic and telecommunications support to federal agencies. During an emergency situation, GSA quickly responds to aid state and local governments. The type of support provided might include leasing and furnishing office space, setting up telecommunications and transportation services, and advisory assistance.

(16) The National Response Center (NRC), located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions. The NRC acts as the single federal point of contact for all pollution incident reporting and as the NRT communications center. These response actions include: Oil and hazardous substances, radiological, biological, etiological, surety materials, munitions, and fuels. Notice of discharges must be made telephonically through a toll free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted.) The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC. Each telephone notice is magnetically voice recorded and manually entered into an on-line computer data base. The NRC tracks medium, major, and potential major spills and provides incident summaries to all NRT members and other interested parties. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster or evacuations situation. The NRC

provides facilities for the NRT to use in coordinating a national response action, when required; assists in arrangements for regular as well as special NRT meetings and maintains information on the time and place of such meetings; and sends representatives to RRT meetings as appropriate. The NRC is available to assist all NRT agencies as needed.

§ 300.180 State and local participation in response.

(a) Each state governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state governor is also requested to designate a lead state agency that will direct state-lead response operations. This agency is responsible for designating the OSC/RPM for state-lead response actions, designating SACs for federal-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate local and state officials (including Indian tribes) will participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under CERCLA or the CWA, states are encouraged to undertake response actions themselves or to use their authorities to compel potentially responsible parties to undertake response actions.

(e) States are encouraged to enter into cooperative agreements pursuant to section 104 (c)(3) and (d) of CERCLA to enable them to undertake actions authorized under subpart E of the NCP. Requirements for entering into these agreements are included in subpart F of the NCP. A state agency that acts pursuant to such agreements is referred to as the lead agency. In the event there is no cooperative agreement, the lead agency can be designated in a SMOA or other agreement.

(f) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

§ 300.185 Nongovernmental participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst-case discharge to the maximum extent practicable, and should commit sufficient resources to implement other aspects of those plans.

(b) The technical and scientific information generated by the local community, along with information from federal, state, and local governments, should be used to assist the OSC/RPM in devising response strategies where effective standard techniques are unavailable. Such information and strategies will be incorporated into the ACP, as appropriate. The SSC may act as liaison between the OSC/RPM and such interested organizations.

(c) ACPs shall establish procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with § 300.150 regarding worker health and safety. ACPs should provide for the direction of volunteers by the OSC/RPM or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC/RPM, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC/RPM, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of subpart H of this part if any recovery of costs will be sought.

Subpart C—Planning and Preparedness

§ 300.200 General.

This subpart summarizes emergency preparedness activities relating to discharges of oil and releases of hazardous substances, pollutants, or contaminants; describes the three levels of contingency planning under the national response system; and cross-references state and local emergency preparedness activities under SARA title III, also known as the "Emergency Planning and Community Right-to-Know Act of 1986" but referred to herein as "title III." Regulations implementing title III are codified at 40 CFR subchapter J.

§ 300.205 Planning and coordination structure.

(a) *National.* As described in § 300.110, the NRT is responsible for national planning and coordination.

(b) *Regional.* As described in § 300.115, the RRTs are responsible for regional planning and coordination.

(c) *Area.* As required by section 311(j) of the CWA, under the direction of the federal OSC for its area, Area Committees comprising qualified personnel of federal, state, and local agencies shall be responsible for:

- (1) Preparing an ACP for their areas (as described in § 300.210(c));
- (2) Working with appropriate federal, state, and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

(3) Working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(d) *State.* As provided by sections 301 and 303 of title III, the SERC of each state, appointed by the Governor, is to designate emergency planning districts, appoint Local Emergency Planning Committees (LEPCs), supervise and coordinate their activities, and review local emergency response plans, which are described in § 300.215. The SERC also is to establish procedures for receiving and processing requests from the public for information generated by title III reporting requirements and to designate an official to serve as coordinator for information.

(e) *Local.* As provided by sections 301 and 303 of title III, emergency planning districts are designated by the SERC in order to facilitate the preparation and

implementation of emergency plans. Each LEPC is to prepare a local emergency response plan for the emergency planning district and establish procedures for receiving and processing requests from the public for information generated by title III reporting requirements. The LEPC is to appoint a chair and establish rules for the LEPC. The LEPC is to designate an official to serve as coordinator for information and designate in its plan a community emergency coordinator.

§ 300.210 Federal contingency plans.

There are three levels of contingency plans under the national response system: The National Contingency Plan, RCPs, and ACPs. These plans are available for inspection at EPA regional offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual, issued annually, or in local telephone directories.

(a) *The National Contingency Plan.* The purpose and objectives, authority, and scope of the NCP are described in §§ 300.1 through 300.3.

(b) *Regional Contingency Plans.* The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil or releases of hazardous substances, pollutants, or contaminants. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, which are described in § 300.210(c), and title III local emergency response plans, which are described in § 300.215. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

(c) *Area Contingency Plans.* (1) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee, in consultation with the appropriate RRTs, Coast Guard DRGs, the NSFCC, SSCs, LEPCs, and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge under § 300.324, and to mitigate or prevent a substantial

threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(2) The areas of responsibility may include several title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible, to the greatest extent possible, with all appropriate response plans of state, local, and non-federal entities, and especially with title III local emergency response plans.

(3) The ACP shall include the following:

(i) A description of the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(ii) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iii) A list of equipment (including firefighting equipment), dispersants, or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which include such equipment lists);

(iv) A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants; and

(v) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans approved by the President, and into operating procedures of the NSFCC.

(4)(i) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the USFWS and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area

Committee recommendations. The annex will provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge, protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(ii) The annex shall:

(A) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant or otherwise designated protected areas.

(B) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (c)(3)(iii) of this section.

(C) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to: Disturbance of sensitive areas and habitats; illegal or inadvertent

taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.

(D) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (c)(3)(i) and (iii) of this section and subpart J requirements, and must have the concurrence of the natural resource trustees.

(E) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include "set-aside" or "control" areas, where no mitigative actions are taken.

(F) Identify and provide for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with the OSC's removal operations.

(G) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not

limited to procedures regarding the capture, transport, rehabilitation, release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(H) Identify and secure the means for providing, if needed, the minimum required OSHA and EPA training for volunteers, including those who assist with injured wildlife.

(I) Define the requirements for evaluating the compatibility between this annex and non-federal response plans (including those of vessels, facilities and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

§ 300.212 Area response drills.

The OSC periodically shall conduct drills of removal capability (including fish and wildlife response capability), without prior notice, in areas for which ACPs are required by § 300.210(c) and under relevant tank vessel and facility response plans.

§ 300.215 Title III local emergency response plans.

This section describes and cross-references the regulations that implement title III. These regulations are codified at 40 CFR part 355.

(a) Each LEPC is to prepare an emergency response plan in accordance with section 303 of title III and review the plan once a year, or more frequently as changed circumstances in the community or at any facility may require. Such title III local emergency response plans should be closely coordinated with applicable federal ACPs and state emergency response plans.

§ 300.220 Related Title III Issues.

Other related title III requirements are found in 40 CFR part 355.

Subpart D—Operational Response Phases for Oil Removal

§ 300.300 Phase I—Discovery or notification.

(a) A discharge of oil may be discovered through:

- (1) A report submitted by the person in charge of a vessel or facility, in accordance with statutory requirements;
- (2) Deliberate search by patrols;
- (3) Random or incidental observation by government agencies or the public; or
- (4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC. If direct reporting to the NRC is not practicable,

reports may be made to the USCG or EPA pre-designated OSC for the geographic area where the discharge occurs. The EPA pre-designated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or pre-designated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

§ 300.305 Phase II—Preliminary assessment and initiation of action.

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the

circumstances, so advise the responsible party. If the responsible party does not respond properly the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(i) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) Direct or monitor all federal, state, and private actions to remove a discharge; and

(iii) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in a substantial threat to the public health or welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC must direct all response efforts, as provided in § 300.322(b) of this part. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(d) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. When circumstances permit, the OSC shall share the use of response resources with the trustees, provided trustee activities do not interfere with response actions. The lead

administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees.

§ 300.310 Phase III—Containment, countermeasures, cleanup, and disposal.

(a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare or the environment. Actions may include but are not limited to: Analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of this part to restrain the spread of the oil and mitigate its effects. The ACP prepared under § 300.210(c) should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: The sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

§ 300.315 Phase IV—Documentation and cost recovery.

(a) All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential

impacts to public health and welfare and the environment. Documentation procedures are contained in 33 CFR subchapter M.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) OSCs shall submit OSC reports to the NRT or RRT, only if requested, as provided by § 300.165.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to trustees of the affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.317 National response priorities.

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities.

The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

§ 300.320 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(2) Officially classify the size (i.e., minor, medium, major) and type (i.e., substantial threat to the public health or welfare, worst case discharge) of the discharge and determine the course of action to be followed to ensure effective and immediate removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in §§ 300.322, 300.323, and 300.324.

(i) When the reported discharge is an actual or potential major discharge, immediately notify the RRT, including the affected state, if appropriate, and the NRC, and ensure notification of the natural resource trustees, as required by § 300.305(d).

(ii) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, if appropriate.

(iii) When the investigation shows that an actual or potential minor discharge exists, the OSC shall monitor the situation to ensure that proper removal action is being taken.

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a discharge can be achieved by private party efforts, and where the discharge does not pose a substantial threat to the public health or welfare of the United States, determine whether the responsible party or other person is properly carrying out removal. Removal is being done properly when:

(i) The cleanup is fully sufficient to effectively and immediately remove, minimize, or mitigate threat(s) to public health and welfare and the environment. Removal efforts are improper to the extent that federal efforts are necessary to remove, minimize further, or mitigate those threats; and

(ii) The removal efforts are in accordance with applicable regulations, including the NCP.

(4) Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions.

(5) Ensure prompt notification of the trustees of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with the Governor or Governors of the affected states. When the OSC considers removal complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

§ 300.322 Response to substantial threats to public health or welfare.

(a) As part of the investigation described in § 300.320, the OSC shall determine whether a discharge results in a substantial threat to public health or welfare (including, but not limited to, fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States). Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges, and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare of the United States, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment

of personnel by the federal government to:

(1) Remove or arrange for the removal of the discharge;

(2) Mitigate or prevent the substantial threat of the discharge; and

(3) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(c) In the case of a substantial threat to public health or welfare of the United States, the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance described in § 300.145, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT; and

(3) Take whatever additional response actions are deemed appropriate, including, but not limited to, implementation of the ACP as required by section 311(j)(4) of the CWA or relevant tank vessel or facility response plan required by section 311(j)(5) of the CWA.

When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

§ 300.323 Spills of national significance

(a) A discharge may be classified as a spill of national significance (SONS) by the Administrator of EPA for discharges occurring in the inland zone and the Commandant of the USCG for discharges occurring in the coastal zone.

(b) For a SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in:

(1) Communicating with affected parties and the public; and

(2) Coordinating federal, state, local, and international resources at the national level.

This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in:

(1) Communicating with affected parties and the public, and

(2) Coordinating federal, state, local, and international resources at the

national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

§ 300.324 Response to worst case discharges

(a) If the investigation by the OSC shows that a discharge is a worst case discharge or there is a substantial threat of such a discharge, the OSC shall:

- (1) Notify the NSFCC;
- (2) Require, where applicable, implementation of the worst case portion of an approved tank vessel or facility response plan required by section 311(j)(5) of the CWA;
- (3) Implement the worst case portion of the ACP required by section 311(j)(4) of the CWA; and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

§ 300.335 Funding.

(a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR subchapter M. The responsible party, is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Where the OSC requests assistance from a federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR subchapter M. Specific interagency reimbursement agreements may be used when necessary to ensure that the federal resources will be available for a timely response to a discharge of oil.

(c) Procedures for funding the initiation of natural resource damage assessment are covered in 33 CFR subchapter M.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) USN may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(3) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR subchapter M states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

Subpart E—Hazardous Substance Response

§ 300.400 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA and CWA section 311(c):

(1) When there is a release of a hazardous substance into the environment; or

(2) When there is a release into the environment of any pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare.

* * * * *

§ 300.405 Discovery or notification.

(a) A release may be discovered through:

(1) A report submitted in accordance with section 103(a) of CERCLA, i.e., reportable quantities codified at 40 CFR part 302;

(2) A report submitted to EPA in accordance with section 103(c) of CERCLA;

(3) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(4) Notification of a release by a federal or state permit holder when required by its permit;

(5) Inventory or survey efforts or random or incidental observation

reported by government agencies or the public;

(6) Submission of a citizen petition to EPA or the appropriate federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA;

(7) A report submitted in accordance with section 311(b)(5) of the CWA; and

(8) Other sources.

* * * * *

(f) * * *

(3) If radioactive substances are present in a release, the EPA Radiological Response Coordinator should be notified for evaluation and assistance either directly or via the NRC, consistent with §§ 300.130(e) and 300.145(f).

* * * * *

§ 300.410 Removal site evaluation.

(a) A removal site evaluation includes a removal preliminary assessment and, if warranted, a removal site inspection.

(b) A removal site evaluation of a release identified for possible CERCLA response pursuant to § 300.415 shall, as appropriate, be undertaken by the lead agency as promptly as possible. The lead agency may perform a removal preliminary assessment in response to petitions submitted by a person who is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant pursuant to § 300.420(b)(5).

(c)(1) The lead agency shall, as appropriate, base the removal preliminary assessment on readily available information. A removal preliminary assessment may include, but is not limited to:

(i) Identification of the source and nature of the release or threat of release;

(ii) Evaluation by ATSDR or by other sources, for example, state public health agencies, of the threat to public health;

(iii) Evaluation of the magnitude of the threat;

(iv) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(v) Determination of whether a nonfederal party is undertaking proper response.

(2) A removal preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted, as appropriate.

(d) A removal site inspection may be performed if more information is needed. Such inspection may include a perimeter (i.e., off-site) or on-site

inspection, taking into consideration whether such inspection can be performed safely.

(e)(1) As part of the evaluation under this section, the OSC shall determine whether a release governed by CWA section 311(c)(2), has occurred.

(2) If such a release of a CWA hazardous substance has occurred, the OSC shall determine whether the release results in a substantial threat to the public health or welfare. Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the release, the character of the release, and the nature of the threat to public health or welfare. Upon obtaining relevant elements of such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other releases, and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(f) A removal site evaluation shall be terminated when the OSC or lead agency determines:

- (1) There is no release;
 - (2) The source is neither a vessel nor a facility as defined in § 300.5 of the NCP;
 - (3) The release involves neither a hazardous substance, nor a pollutant or contaminant that may present an imminent and substantial danger to public health or welfare;
 - (4) The release consists of a situation specified in § 300.400(b) (1) through (3) subject to limitations on response;
 - (5) The amount, quantity, or concentration released does not warrant federal response;
 - (6) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or
 - (7) The removal site evaluation is completed.
- (g) The results of the removal site evaluation shall be documented.
- (h) The OSC or lead agency shall ensure that natural resource trustees are promptly notified in order that they may initiate appropriate actions, including those identified in subpart G of this part. The OSC or lead agency shall coordinate all response activities with such affected trustees.
- (i) If the removal site evaluation indicates that removal action under § 300.415 is not required, but that remedial action under § 300.430 may be necessary, the lead agency shall, as appropriate, initiate a remedial site evaluation pursuant to § 300.420.

§ 300.415 Removal action.

(a)(1) In determining the appropriate extent of action to be taken in response to a given release, the lead agency shall first review the removal site evaluation, any information produced through a remedial site evaluation, if any has been done previously, and the current site conditions, to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly.

(3) This section does not apply to removal actions taken pursuant to section 104(b) of CERCLA. The criteria for such actions are set forth in section 104(b) of CERCLA.

(b)(1) At any release, regardless of whether the site is included on the National Priorities List (NPL), where the lead agency makes the determination, based on the factors in paragraph (b)(2) of this section, that there is a threat to public health or welfare or the environment, the lead agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

(2) The following factors shall be considered in determining the appropriateness of a removal action pursuant to this section:

- (i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;
- (ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- (iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
- (iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
- (v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
- (vi) Threat of fire or explosion;
- (vii) The availability of other appropriate federal or state response mechanisms to respond to the release; and
- (viii) Other situations or factors that may pose threats to public health or welfare or the environment.

(3) If the lead agency determines that a removal action is appropriate, actions shall, as appropriate, begin as soon as possible to abate, prevent, minimize,

stabilize, mitigate, or eliminate the threat to public health or welfare or the environment. The lead agency shall, at the earliest possible time, also make any necessary determinations pursuant to paragraph (b)(4) of this section.

(4) Whenever a planning period of at least six months exists before on-site activities must be initiated, and the lead agency determines, based on a site evaluation, that a removal action is appropriate:

(i) The lead agency shall conduct an engineering evaluation/cost analysis (EE/CA) or its equivalent. The EE/CA is an analysis of removal alternatives for a site.

(ii) If environmental samples are to be collected, the lead agency shall develop sampling and analysis plans that shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs. Sampling and analysis plans shall be reviewed and approved by EPA. The sampling and analysis plans shall consist of two parts:

(A) The field sampling plan, which describes the number, type, and location of samples and the type of analyses; and

(B) The quality assurance project plan, which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action.

(5) CERCLA fund-financed removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after \$2 million has been obligated for the action or 12 months have elapsed from the date that removal activities begin on-site, unless the lead agency determines that:

- (i) There is an immediate risk to public health or welfare or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and such assistance will not otherwise be provided on a timely basis; or
- (ii) Continued response action is otherwise appropriate and consistent with the remedial action to be taken.

(c)(1) In carrying out a response to a release of a CWA hazardous substance, as described in CWA section 311(c)(1)(A), the OSC may:

- (i) Remove or prevent a substantial threat of a release, at any time;
- (ii) Direct or monitor all federal, state, and private actions to remove a release; and
- (iii) Remove and, if necessary, destroy a vessel releasing or threatening to release CWA hazardous substances, by whatever means are available.

(2) If the investigation by the OSC under § 300.410 shows that the release of a CWA hazardous substance results in a substantial threat to public health or welfare, the OSC shall direct all federal, state, or private actions to remove the release or to mitigate or prevent the threat of such a release, as appropriate. In directing the response, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to: (i) Remove or arrange for the removal of the release; (ii) mitigate or prevent the substantial threat of the release; and (iii) remove and, if necessary, destroy a vessel releasing, or threatening to release, by whatever means are available.

(3) In the case of a release of a CWA hazardous substance posing a substantial threat to public health or welfare, the OSC shall: (i) Assess opportunities for the use of various special teams and other assistance described in § 300.145, as appropriate; (ii) request immediate activation of the RRT; and (iii) take whatever additional response actions are deemed appropriate. When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the release to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public in accordance with § 300.155. The lead agency shall ensure that a contracting officer is available onscene, at the request of the OSC.

(d) Removal actions shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned.

(e) The following removal actions are, as a general rule, appropriate in the types of situations shown; however, this list is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary under CERCLA, CWA section 311, or other appropriate federal or state enforcement or response authorities, and the list does not create a duty on the lead agency to take action at any particular time:

(1) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the release;

(2) Drainage controls, for example, run-off or run-on diversion—where needed to reduce migration of hazardous substances or pollutants or contaminants off-site or to prevent precipitation or run-off from other sources, for example, flooding, from

entering the release area from other areas;

(3) Stabilization of berms, dikes, or impoundments or drainage or closing of lagoons—where needed to maintain the integrity of the structures;

(4) Capping of contaminated soils or sludges—where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground or surface water, or air;

(5) Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release;

(6) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas—where such actions will reduce the spread of, or direct contact with, the contamination;

(7) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants—where it will reduce the likelihood of spillage; leakage; exposure to humans, animals, or food chain; or fire or explosion;

(8) Containment, treatment, disposal, or incineration of hazardous materials—where needed to reduce the likelihood of human, animal, or food chain exposure; or

(9) Provision of alternative water supply—where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(f) Where necessary to protect public health or welfare, the lead agency shall request that FEMA conduct a temporary relocation or that state/local officials conduct an evacuation.

(g) If the lead agency determines that the removal action will not fully address the threat posed by the release and the release may require remedial action, the lead agency shall ensure an orderly transition from removal to remedial response activities.

(h) CERCLA removal actions conducted by states under cooperative agreements, described in subpart F of this part, shall comply with all requirements of this section.

(i) Facilities operated by a state or political subdivision at the time of disposal require a state cost share of at least 50 percent of Fund-financed response costs if a Fund-financed remedial action is conducted.

(j) Fund-financed removal actions under CERCLA section 104 and removal actions pursuant to CERCLA section 106 shall, to the extent practicable considering the exigencies of the situation, attain applicable or relevant

and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Waivers described in

§ 300.430(f)(1)(ii)(C) may be used for removal actions. Other federal and state advisories, criteria, or guidance may, as appropriate, be considered in formulating the removal action (see § 300.400(g)(3)). In determining whether compliance with ARARs is practicable, the lead agency may consider appropriate factors, including:

(1) The urgency of the situation; and
(2) The scope of the removal action to be conducted.

(k) Removal actions pursuant to section 106 or 122 of CERCLA are not subject to the following requirements of this section:

(1) Section 300.415(a)(2) requirement to locate responsible parties and have them undertake the response;

(2) Section 300.415(b)(2)(vii) requirement to consider the availability of other appropriate federal or state response and enforcement mechanisms to respond to the release;

(3) Section 300.415(b)(5) requirement to terminate response after \$2 million has been obligated or 12 months have elapsed from the date of the initial response; and

(4) Section 300.415(g) requirement to assure an orderly transition from removal to remedial action.

(l) To the extent practicable, provision for post-removal site control following a CERCLA Fund-financed removal action at both NPL and non-NPL sites is encouraged to be made prior to the initiation of the removal action. Such post-removal site control includes actions necessary to ensure the effectiveness and integrity of the removal action after the completion of the on-site removal action or after the \$2 million or 12-month statutory limits are reached for sites that do not meet the exemption criteria in paragraph (b)(5) of this section. Post-removal site control may be conducted by:

(1) The affected state or political subdivision thereof or local units of government for any removal;

(2) Potentially responsible parties; or

(3) EPA's remedial program for some federal-lead Fund-financed responses at NPL sites.

(m) OSCs/RPMs conducting removal actions shall submit OSC reports to the RRT as required by § 300.165.

(n) Community relations in removal actions. (1) In the case of all CERCLA removal actions taken pursuant to § 300.415 or CERCLA enforcement actions to compel removal response, a spokesperson shall be designated by the lead agency. The spokesperson shall

inform the community of actions taken, respond to inquiries, and provide information concerning the release. All news releases or statements made by participating agencies shall be coordinated with the OSC/RPM. The spokesperson shall notify, at a minimum, immediately affected citizens, state and local officials, and, when appropriate, civil defense or emergency management agencies.

(2) For CERCLA actions where, based on the site evaluation, the lead agency determines that a removal is appropriate, and that less than six months exists before on-site removal activity must begin, the lead agency shall:

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper of general circulation within 60 days of initiation of on-site removal activity;

(ii) Provide a public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection, pursuant to § 300.820(b)(2); and

(iii) Prepare a written response to significant comments pursuant to § 300.820(b)(3).

(3) For CERCLA removal actions where on-site action is expected to extend beyond 120 days from the initiation of on-site removal activities, the lead agency shall by the end of the 120-day period:

(i) Conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved in the Superfund process;

(ii) Prepare a formal community relations plan (CRP) based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the response; and

(iii) Establish at least one local information repository at or near the location of the response action. The information repository should contain items made available for public information. Further, an administrative record file established pursuant to subpart I of this part for all removal actions shall be available for public inspection in at least one of the repositories. The lead agency shall inform the public of the establishment of the information repository and provide notice of availability of the administrative record file for public review. All items in the repository shall

be available for public inspection and copying.

(4) Where, based on the site evaluation, the lead agency determines that a CERCLA removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities, the lead agency shall at a minimum:

(i) Comply with the requirements set forth in paragraphs (n)(3)(i), (ii), and (iii) of this section, prior to the completion of the engineering evaluation/cost analysis (EE/CA), or its equivalent, except that the information repository and the administrative record file will be established no later than when the EE/CA approval memorandum is signed;

(ii) Publish a notice of availability and brief description of the EE/CA in a major local newspaper of general circulation pursuant to § 300.820;

(iii) Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments after completion of the EE/CA pursuant to § 300.820(a). Upon timely request, the lead agency will extend the public comment period by a minimum of 15 days; and

(iv) Prepare a written response to significant comments pursuant to § 300.820(a).

* * * * *

Subpart G—Trustees for Natural Resources

§ 300.600 Designation of federal trustees.

(a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. Federal officials so designated will act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, and section 1006 of the OPA. Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States (including the resources of the exclusive economic zone).

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources. They are authorized to act pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance or a discharge of oil.

Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) *Secretary of Commerce.* The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC or by other federal agencies and that are found in or under waters navigable by deep draft vessels, in, under, or using tidally influenced waters, or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf, and in upland areas serving as habitat for marine mammals and other protected species. However, before the Secretary takes an action with respect to an affected resource under the management or protection of another federal agency, he shall, whenever practicable, seek to obtain the concurrence of that other federal agency. Examples of the Secretary's trusteeship include marine fishery resources and their supporting ecosystems; most anadromous fish; certain endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) *Secretary of the Interior.* The Secretary of the Interior shall act as trustee for natural resources managed or controlled by the DOI. Examples of the Secretary's trusteeship include migratory birds; certain anadromous fish, endangered species, and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) *Secretary for the land managing agency.* For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) *Head of authorized agencies.* For natural resources located in the United States but not otherwise described in this section, the trustee shall be the head of the federal agency or agencies authorized to manage or control those resources.

§ 300.605 State trustees.

State trustees shall act on behalf of the public as trustees for natural resources within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the

purposes of subpart G of this part, the definition of the term "state" does not include Indian tribes. The governor of a state is encouraged to designate a state lead trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the state lead trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

§ 300.610 Indian tribes.

The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in § 300.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation. Such officials are authorized to act when there is injury to, destruction of, loss of, or threat to natural resources as a result of a release of a hazardous substance.

§ 300.612 Foreign trustees.

Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

§ 300.615 Responsibilities of trustees.

(a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP

and the ACP, appropriate contacts to receive notifications from the OSCs/RPMs of discharges or releases.

(c)(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 107(f) of CERCLA, or section 311(f)(5) of the CWA, take the following or other actions as appropriate:

- (i) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;
- (ii) Cooperate with the OSC/RPM in coordinating assessments, investigations, and planning;
- (iii) Carry out damage assessments; or
- (iv) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

- (i) In accordance with OPA section 1006(e), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and
- (ii) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)(i) The trustees, through the lead administrative trustee, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in redesignating shoreline types and areas in ACPs.

(ii) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations.

(iii) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

- (1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and
- (2) Participating in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate.

(3) Requiring, in consultation with the lead agency, any person to comply with the requirements of CERCLA section 104(e) regarding information gathering and access.

(4) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 107(f) of CERCLA, section 311(f)(5) of the CWA, or section 1006 of the OPA include, but are not limited to, any of the following:

- (1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or
- (2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil or hazardous substances from a contaminated medium pursuant to section 104 of CERCLA or section 311 of CWA.

Subpart H—Participation by Other Persons

§ 300.700 Activities by other persons.

(a) *General.* Except as provided (e.g., in CWA section 311(c)), any person may undertake a response action to reduce or eliminate a release of a hazardous substance, pollutant, or contaminant.

(b) *Summary of CERCLA authorities.* The mechanisms available to recover the costs of response actions under CERCLA are, in summary:

- (1) Section 107(a), wherein any person may receive a court award of his

or her response costs, plus interest, from the party or parties found to be liable;

(2) Section 111(a)(2), wherein a private party, a PRP pursuant to a settlement agreement, or certain foreign entities may file a claim against the Fund for reimbursement of response costs;

(3) Section 106(b), wherein any person who has complied with a section 106(a) order may petition the Fund for reimbursement of reasonable costs, plus interest; and

(4) Section 123, wherein a general purpose unit of local government may apply to the Fund under 40 CFR part 310 for reimbursement of the costs of temporary emergency measures that are necessary to prevent or mitigate injury to human health or the environment associated with a release.

(c) *Section 107(a) cost recovery actions.* (1) Responsible parties shall be liable for all response costs incurred by the United States government or a state or an Indian tribe not inconsistent with the NCP.

(2) Responsible parties shall be liable for necessary costs of response actions to releases of hazardous substances incurred by any other person consistent with the NCP.

(3) For the purpose of cost recovery under section 107(a)(4)(B) of CERCLA:

(i) A private party response action will be considered "consistent with the NCP" if the action, when evaluated as a whole, is in substantial compliance with the applicable requirements in paragraphs (c) (5) and (6) of this section, and results in a CERCLA-quality cleanup; and

(ii) Any response action carried out in compliance with the terms of an order issued by EPA pursuant to section 106 of CERCLA, or a consent decree entered into pursuant to section 122 of CERCLA, will be considered "consistent with the NCP."

(4) Actions under § 300.700(c)(1) will not be considered "inconsistent with the NCP," and actions under § 300.700(c)(2) will not be considered not "consistent with the NCP," based on immaterial or insubstantial deviations from the provisions of 40 CFR part 300.

(5) The following provisions of this part are potentially applicable to private party response actions:

(i) Section 300.150 (on worker health and safety);

(ii) Section 300.160 (on documentation and cost recovery);

(iii) Section 300.400(c)(1), (4), (5), and (7) (on determining the need for a Fund-financed action); (e) (on permit requirements) except that the permit waiver does not apply to private party response actions; and (g) (on

identification of ARARs) except that applicable requirements of federal or state law may not be waived by a private party;

(iv) Section 300.405(b), (c), and (d) (on reports of releases to the NRC);

(v) Section 300.410 (on removal site evaluation) except paragraphs (f)(5) and (6);

(vi) Section 300.415 (on removal actions) except paragraphs (a)(2), (b)(2)(vii), (b)(5), and (g); and including § 300.415(j) with regard to meeting ARARs where practicable except that private party removal actions must always comply with the requirements of applicable law;

(vii) Section 300.420 (on remedial site evaluation);

(viii) Section 300.430 (on RI/FS and selection of remedy) except paragraph (f)(1)(ii)(C)(6) and that applicable requirements of federal or state law may not be waived by a private party; and

(ix) Section 300.435 (on RD/RA and operation and maintenance).

(6) Private parties undertaking response actions should provide an opportunity for public comment concerning the selection of the response action based on the provisions set out below, or based on substantially equivalent state and local requirements. The following provisions of this part regarding public participation are potentially applicable to private party response actions, with the exception of administrative record and information repository requirements stated therein:

(i) Section 300.155 (on public information and community relations);

(ii) Section 300.415(n) (on community relations during removal actions);

(iii) Section 300.430(c) (on community relations during RI/FS) except paragraph (c)(5);

(iv) Section 300.430(f) (2), (3), and (6) (on community relations during selection of remedy); and

(v) Section 300.435(c) (on community relations during RD/RA and operation and maintenance).

(7) When selecting the appropriate remedial action, the methods of remedying releases listed in Appendix D of this part may also be appropriate to a private party response action.

(8) Except for actions taken pursuant to CERCLA section 104 or 106 or response actions for which reimbursement from the Fund will be sought, any action to be taken by the lead agency listed in paragraphs (c)(5) through (c)(7) of this section may be taken by the person carrying out the response action.

(d) *Section 111(a)(2) claims.* (1) Persons, other than those listed in paragraphs (d)(1) (i) through (iii) of this

section, may be able to receive reimbursement of response costs by means of a claim against the Fund. The categories of persons excluded from pursuing this claims authority are:

(i) Federal government;

(ii) State governments, and their political subdivisions, unless they are potentially responsible parties covered by an order or consent decree pursuant to section 122 of CERCLA; and

(iii) Persons operating under a procurement contract or an assistance agreement with the United States with respect to matters covered by that contract or assistance agreement, unless specifically provided therein.

(2) In order to be reimbursed by the Fund, an eligible person must notify the Administrator of EPA or designee prior to taking a response action and receive prior approval, i.e., "preauthorization," for such action.

(3) Preauthorization is EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. All applications for preauthorization will be reviewed to determine whether the request should receive priority for funding. EPA, in its discretion, may grant preauthorization of a claim. Preauthorization will be considered only for:

(i) Removal actions pursuant to § 300.415;

(ii) CERCLA section 104(b) activities; and

(iii) Remedial actions at National Priorities List sites pursuant to § 300.435.

(4) To receive EPA's prior approval, the eligible person must:

(i) Demonstrate technical and other capabilities to respond safely and effectively to releases of hazardous substances, pollutants, or contaminants; and

(ii) Establish that the action will be consistent with the NCP in accordance with the elements set forth in paragraphs (c) (5) through (8) of this section.

(5) EPA will grant preauthorization to a claim by a party it determines to be potentially liable under section 107 of CERCLA only in accordance with an order issued pursuant to section 106 of CERCLA, or a settlement with the federal government in accordance with section 122 of CERCLA.

(6) Preauthorization does not establish an enforceable contractual relationship between EPA and the claimant.

(7) Preauthorization represents EPA's commitment that if funds are appropriated for response actions, the response action is conducted in accordance with the preauthorization

decision document, and costs are reasonable and necessary, reimbursement will be made from the Superfund, up to the maximum amount provided in the preauthorization decision document.

(8) For a claim to be awarded under section 111 of CERCLA, EPA must certify that the costs were necessary and consistent with the preauthorization decision document.

(e) *Section 106(b) petition.* Subject to conditions specified in CERCLA section 106(b), any person who has complied with an order issued after October 16, 1986 pursuant to section 106(a) of CERCLA, may seek reimbursement for response costs incurred in complying with that order unless the person has waived that right.

(f) *Section 123 reimbursement to local governments.* Any general purpose unit of local government for a political subdivision that is affected by a release may receive reimbursement for the costs of temporary emergency measures necessary to prevent or mitigate injury to human health or the environment subject to the conditions set forth in 40 CFR part 310. Such reimbursement may not exceed \$25,000 for a single response.

(g) *Release from liability.* Implementation of response measures by potentially responsible parties or by any other person does not release those parties from liability under section 107(a) of CERCLA, except as provided in a settlement under section 122 of CERCLA or a federal court judgment.

(h) *Oil Pollution Act Claims.* Claims are authorized to be presented to the OSLTF under section 1013 of the OPA, for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States. Anyone desiring to file a claim against the OSLTF may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203-1804, (703) 235-4756.

* * * * *

Subpart J—Use of Dispersants and Other Chemicals

§ 300.900 General.

(a) Section 311(d)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may

be used in carrying out the NCP. This subpart makes provisions for such a schedule.

(b) This subpart applies to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976.

(c) This subpart applies to the use of any chemical agents or other additives as defined in subpart A of this part that may be used to remove or control oil discharges.

§ 300.905 NCP Product Schedule.

(a) *Oil Discharges.* (1) EPA shall maintain a schedule of dispersants and other chemical or bioremediation products that may be authorized for use on oil discharges in accordance with the procedures set forth in § 300.910. This schedule, called the NCP Product Schedule, may be obtained from the Emergency Response Division (5202-G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The telephone number is 1-202-260-2342.

(2) Products may be added to the NCP Product Schedule by the process specified in § 300.920.

(b) *Hazardous Substance Releases.* [Reserved]

§ 300.910 Authorization of use.

(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available

means to monitor product application and effectiveness. RRTs shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this paragraph, the OSC is to inform the EPA RRT representative and, as appropriate,

the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resources trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section.

(e) Sinking agents shall not be authorized for application to oil discharges.

(f) When developing preauthorization plans, RRTs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in § 300.915 and described in Appendix C to part 300, due to existing site-specific or area-specific concerns.

§ 300.915 Data requirements.

(a) *Dispersants.* (1) Name, brand, or trademark, if any, under which the dispersant is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Effectiveness. EPA will conduct the effectiveness tests for dispersant effectiveness, using the Swirling Flask effectiveness test methods described in appendix C to this part 300. Manufacturers shall submit a one liter sample of their dispersant to EPA for the purposes of EPA conducting these effectiveness tests. Manufacturers are also encouraged to provide data on product performance under conditions other than those captured by these tests.

(8) Dispersant Toxicity. EPA will conduct the toxicity tests for dispersant toxicity, using the standard toxicity test methods described in appendix C to this part 300. Manufacturers shall submit a one liter sample of their dispersant to EPA for the purposes of EPA conducting these toxicity tests.

(9) The following data requirements incorporate by reference standards from

the 1991 or 1992 Annual Books of ASTM Standards. American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. 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 51.¹⁵

(i) Flash Point—Select appropriate method from the following:

(A) ASTM—D 56—87, "Standard Test Method for Flash Point by Tag Closed Tester;"

(B) ASTM—D 92—90, "Standard Test Method for Flash and Fire Points by Cleveland Open Cup;"

(C) ASTM—D 93—90, "Standard Test Methods for Flash Point by Pensky-Martens Closed Tester;"

(D) ASTM—D 1310—86, "Standard Test Method for Flash Point and Fire Point of Liquids by Tag Open-Cup Apparatus;" or

(E) ASTM—D 3278—89, "Standard Test Methods for Flash Point of Liquids by Setaflash Closed-Cup Apparatus."

(ii) Pour Point—Use ASTM—D 97—87, "Standard Test Method for Pour Point of Petroleum Oils."

(iii) Viscosity—Use ASTM—D 445—88, "Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)."

(iv) Specific Gravity—Use ASTM—D 1298—85(90), "Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method."

(v) pH—Use ASTM—D 1293—84(90), "Standard Test Methods for pH of Water."

(10) Dispersing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Using standard test procedures, state the concentrations or upper limits of the following materials:

(i) Arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, plus

any other metals that may be reasonably expected to be in the sample. Atomic absorption methods should be used and the detailed analytical methods and sample preparation shall be fully described.

(ii) Cyanide. Standard calorimetric procedures should be used.

(iii) Chlorinated hydrocarbons. Gas chromatography should be used and the detailed analytical methods and sample preparation shall be fully described. At a minimum, the following test methods shall be used for chlorinated hydrocarbon analyses: EPA Method 601—Purgeable halocarbons (Standard Method 6230 B) and EPA Method 608—Organochlorine pesticides and PCBs (Standard Method 6630 C).¹⁶

(12) The technical product data submission shall include the identity of the laboratory that performed the required tests, the qualifications of the laboratory staff, including professional biographical information for individuals responsible for any tests, and laboratory experience with similar tests. It is the responsibility of the submitter to select competent analytical laboratories based on the guidelines contained herein. EPA reserves the right to refuse to accept a submission of technical product data because of lack of qualification of the analytical laboratory, significant variance between submitted data and any laboratory confirmation performed by EPA, or other circumstances that would result in inadequate or inaccurate information on the dispersing agent.

(b) *Surface washing agents.* (1) Name, brand, or trademark, if any, under which the surface washing agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and

¹⁵ Copies of these standards may be obtained from the publisher. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., SW., Room LG, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20408.

¹⁶ These test methods may be obtained from: Standard Methods for the Examination of Water and Wastewater, 17th Edition, American Public Health Association, 1989; or Method 601—Purgeable halocarbons, 40 CFR part 136 and Method 608—Organochlorine pesticide and PCBs, 40 CFR part 136. Copies may be inspected at the U.S. Environmental Protection Agency, 401 M St., SW., Room LG, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20408.

conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity. Use standard toxicity test methods described in appendix C to this part 300.

(8) Follow the data requirement specifications in paragraph (a)(9) of this section.

(9) Surface Washing Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages will include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: Surface active agents, solvents, and additives.

(10) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(11) of this section.

(11) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (a)(12) of this section. In addition, laboratories performing toxicity tests for surface washing agent toxicity must demonstrate previous toxicity test experience in order for their results to be accepted.

(c) *Surface collecting agents.* (1) Name, brand, or trademark, if any, under which the product is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alterations to the effectiveness of the product.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(7) Toxicity. Use standard toxicity test methods described in appendix C to this part 300.

(8) Follow the data requirement specifications in paragraph (a)(9) of this section.

(9) Test to Distinguish Between Surface Collecting Agents and Other Chemical Agents.

(i) Method Summary—Five milliliters of the chemical under test are mixed with 95 milliliters of distilled water and allowed to stand undisturbed for one hour. Then the volume of the upper phase is determined to the nearest one milliliter.

(ii) Apparatus.

(A) Mixing Cylinder: 100 milliliter subdivisions and fitted with a glass stopper.

(B) Pipettes: Volumetric pipette, 5.0 milliliter.

(C) Timers.

(iii) Procedure—Add 95 milliliters of distilled water at 22° C, plus or minus 3° C, to a 100 milliliter mixing cylinder. To the surface of the water in the mixing cylinder, add 5.0 milliliters of the chemical under test. Insert the stopper and invert the cylinder five times in ten seconds. Set upright for one hour at 22° C, plus or minus 3° C, and then measure the chemical layer at the surface of the water. If the major portion of the chemical added (75 percent) is at the water surface as a separate and easily distinguished layer, the product is a surface collecting agent.

(10) Surface Collecting Agent Components. Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: Surface action agents, solvents, and additives.

(11) Heavy Metals, Cyanide, and Chlorinated Hydrocarbons. Follow specifications in paragraph (a)(11) of this section.

(12) Analytical Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (b)(11) of this section.

(d) *Bioremediation Agents.* (1) Name, brand, or trademark, if any, under which the agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures.

(5) Shelf life.

(6) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types

and ages of the pollutants, and any other application restrictions.

(7) Bioremediation Agent Effectiveness. Use bioremediation agent effectiveness test methods described in appendix C to this part 300.

(8) Bioremediation Agent Toxicity. Use bioremediation agent toxicity test methods described in appendix C to this part 300.

(9) Biological additives.

(i) For microbiological cultures, furnish the following information:

(A) Listing of each component of the total formulation, other than microorganisms, by chemical name and percentage by weight.

(B) Listing of all microorganisms by species.

(C) Percentage of each species in the composition of the additive.

(D) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(E) Special nutrient requirements, if any.

(F) Separate listing of the following, and test methods for such determinations: Salmonella, fecal coliform, Shigella, Staphylococcus Coagulase positive, and Beta Hemolytic Streptococci.

(ii) For enzyme additives, furnish the following information:

(A) Listing of each component of the total formulation, other than enzymes, by chemical name and percentage by weight.

(B) Enzyme name(s).

(C) International Union of Biochemistry (I.U.B.) number(s).

(D) Source of the enzyme.

(E) Units.

(F) Specific Activity.

(G) Optimum pH, temperature, and salinity ranges for use of the additive, and maximum and minimum pH, temperature, and salinity levels above or below which the effectiveness of the additive is reduced to half its optimum capacity.

(H) Enzyme shelf life.

(I) Enzyme optimum storage conditions.

(10) For nutrient additives, furnish the following information:

(i) Listing of each component of the total formulation by chemical name and percentage by weight.

(ii) Nutrient additive optimum storage conditions.

(11) Laboratory Requirements for Technical Product Data. Follow specifications in paragraph (b)(11) of this section.

(e) *Burning agents.* EPA does not require technical product data submissions for burning agents and does not include burning agents on the NCP Product Schedule.

(f) *Miscellaneous oil spill control agents.* (1) Name, brand, or trademark, if any, under which the miscellaneous oil spill control agent is sold.

(2) Name, address, and telephone number of the manufacturer, importer, or vendor.

(3) Name, address, and telephone number of primary distributors or sales outlets.

(4) Brief description of recommended uses of the product and how the product works.

(5) Special handling and worker precautions for storage and field application. Maximum and minimum storage temperatures, to include optimum ranges as well as temperatures that will cause phase separations, chemical changes, or other alternatives to the effectiveness of the product.

(6) Shelf life.

(7) Recommended application procedures, concentrations, and conditions for use depending upon water salinity, water temperature, types and ages of the pollutants, and any other application restrictions.

(8) Toxicity. Use standard toxicity test methods described in appendix C to this part 300.

(9) Follow the data requirement specifications in paragraph (a)(9) of this section.

(10) *Miscellaneous Oil Spill Control Agent Components.* Itemize by chemical name and percentage by weight each component of the total formulation. The percentages should include maximum, minimum, and average weights in order to reflect quality control variations in manufacture or formulation. In addition to the chemical information provided in response to the first two sentences, identify the major components in at least the following categories: surface active agents, solvents, and additives.

(11) *Heavy Metals, Cyanide, and Chlorinated Hydrocarbons.* Follow specifications in paragraph (a)(11) of this section.

(12) For any miscellaneous oil spill control agent that contains microbiological cultures, enzyme additives, or nutrient additives, furnish the information specified in paragraphs (d)(9) and (d)(10) of this section, as appropriate.

(13) *Analytical Laboratory Requirements for Technical Product Data.* Follow specifications in paragraph (b)(11) of this section.

(g) *Sorbents.* (1) Sorbent material may consist of, but is not limited to, the following materials:

(i) Organic products—

(A) Peat moss or straw;

(B) Cellulose fibers or cork;

(C) Corn cobs;

(D) Chicken, duck, or other bird

feathers.

(ii) Mineral compounds—

(A) Volcanic ash or perlite;

(B) Vermiculite or zeolite.

(iii) Synthetic products—

(A) Polypropylene;

(B) Polyethylene;

(C) Polyurethane;

(D) Polyester.

(2) EPA does not require technical product data submissions for sorbents and does not include sorbents on the NCP Product Schedule.

(3) Manufacturers that produce sorbent materials that consist of materials other than those listed in paragraph (g)(1) of this section shall submit to EPA the technical product data specified for miscellaneous oil spill control agents in paragraph (f) of this section and EPA will consider listing those products on the NCP Product Schedule under the miscellaneous oil spill control agent category. EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.

(4) Certification. OSCs may request a written certification from manufacturers that produce sorbent materials that consist solely of the materials listed in paragraph (g)(1) of this section prior to making a decision on the use of a particular sorbent material. The certification at a minimum shall state that the sorbent consists solely of the materials listed in § 300.915(g)(1) of the NCP. The following statement, when completed, dated, and signed by a sorbent manufacturer, is sufficient to meet the written certification requirement:

[SORBENT NAME] is a sorbent material and consists solely of the materials listed in § 300.915(g)(1) of the NCP.

(h) *Mixed products.* Manufacturers of products that consist of materials that meet the definitions of two or more of the product categories contained on the NCP Product Schedule shall submit to EPA the technical product data specified in this section for each of those product categories. After review of the submitted technical product data, and the performance of required dispersant effectiveness and toxicity tests, if appropriate, EPA will make a determination on whether and under which category the mixed product should be listed on the Schedule.

§ 300.920 Addition of products to Schedule.

(a) *Dispersants.* (1) To add a dispersant to the NCP Product Schedule, the technical product data specified in § 300.915(a) must be submitted to the Emergency Response Division (5202-G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(2) After the receipt of the required technical product data, EPA will conduct the required Swirling Flask tests, as specified in appendix C to this part 300, for dispersant effectiveness. In order to be added to the Schedule, a dispersant must attain an effectiveness value of 45 percent or greater.

(3) EPA will conduct the required toxicity tests for dispersant toxicity, as specified in appendix C to this part 300, after it has performed the required effectiveness tests and only for those dispersants that attain an effectiveness value of 45 percent or greater, and are therefore eligible for addition to the Schedule.

(4) EPA will inform the submitter in writing, after the receipt of the required technical product data and after EPA has performed the required effectiveness tests and toxicity tests, if applicable, of its decision on adding the dispersant to the Schedule.

(5) Request for review of decision. (i) A submitter of dispersant technical product data whose product did not meet the minimum 45 percent effectiveness threshold and, therefore, could not be listed on the NCP Product Schedule may request the Administrator of EPA to review the Agency's determination. The request must be made in writing within 30 days of receipt of the notification to not list the dispersant on the Schedule. The request shall contain a clear and concise statement with supporting facts and technical analysis demonstrating that EPA's decision was incorrect.

(ii) The Administrator or his designee may request additional information from the submitter, or from any other person, and may provide for a conference between EPA and the submitter, if appropriate. The Administrator or his designee shall render a decision within 60 days of receiving the request, or within 60 days of receiving requested additional information, if appropriate, and shall notify the submitter of his decision in writing.

(b) *Surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents.* (1) To add a surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous

oil spill control agent to the NCP Product Schedule, the technical product data specified in § 300.915 must be submitted to the Emergency Response Division (5202-G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If EPA determines that the required data were submitted, EPA will add the product to the Schedule.

(2) EPA will inform the submitter in writing, within 60 days of the receipt of technical product data, of its decision on adding the product to the Schedule.

(c) The submitter may assert that certain information in the technical product data submissions, including technical product data submissions for sorbents pursuant to § 300.915(g)(3), is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked "Confidential Business Information." If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

(d) The submitter must notify EPA of any changes in the composition, formulation, or application of the dispersant, surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous oil spill control agent. On the basis of this data, EPA may require retesting of the product if the change is likely to affect the effectiveness or toxicity of the product.

(e) The listing of a product on the NCP Product Schedule does not constitute approval of the product. To avoid possible misinterpretation or misrepresentation, any label, advertisement, or technical literature that refers to the placement of the product on the NCP Product Schedule must either reproduce in its entirety EPA's written statement that it will add the product to the NCP Product Schedule under § 300.920 (a)(4) or (b)(2), or include the disclaimer shown below. If the disclaimer is used, it must be conspicuous and must be fully reproduced. Failure to comply with these restrictions or any other improper attempt to demonstrate the approval of the product by any NRT or other U.S. Government agency shall constitute grounds for removing the product from the NCP Product Schedule.

* * * * *

Disclaimer

[PRODUCT NAME] is on the U.S. Environmental Protection Agency's NCP

Product Schedule. This listing does NOT mean that EPA approves, recommends, licenses, certifies, or authorizes the use of [PRODUCT NAME] on an oil discharge. This listing means only that data have been submitted to EPA as required by subpart J of the National Contingency Plan, § 300.915.

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3. Appendices C and E are revised to read as follows:

Appendix C to Part 300—Swirling Flask Dispersant Effectiveness Test, Revised Standard Dispersant Toxicity Test, and Bioremediation Agent Effectiveness and Toxicity Tests

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- 9 Summary of Operating Conditions for Bioremediation Agent Toxicity Test

1.0 Introduction

1.1 *Scope and Application.* The methods described below apply to "dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents" involving subpart J (Use of Dispersants and Other Chemicals) in 40 CFR part 300 (National Oil and Hazardous Substances Pollution Contingency Plan). They are revisions and additions to the EPA's Standard Dispersant Effectiveness and Toxicity Tests (1). The new Swirling Flask Dispersant Effectiveness Test is used only for testing dispersants. The Revised Standard Dispersant Toxicity Test is used for testing dispersants, as well as surface washing agents, surface collecting agents, and miscellaneous oil spill control agents. The bioremediation agent effectiveness and

toxicity tests are used for testing bioremediation agents only. The Environmental Protection Agency (EPA) will conduct the effectiveness and toxicity tests for dispersants, while the manufacturers of the other types of products will be responsible for conducting the effectiveness and toxicity tests required for their products.

1.2 *Definitions.* The definitions of dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents are provided in 40 CFR 300.5.

2.0 Swirling Flask Dispersant Effectiveness Test

2.1 *Summary of Method.* This protocol was developed by Environment Canada to provide a relatively rapid and simple testing procedure for evaluating dispersant effectiveness (2). It uses a modified Erlenmeyer flask to which a side spout has been added for removing subsurface samples of water near the bottom of the flask without disturbing a surface oil layer. Seawater and a surface layer of oil are added to the flask. Turbulent mixing is provided by placing the flask on a standard shaker table at 150 rpm for 20 minutes to induce a swirling motion to the liquid contents. Following shaking, the flask is immediately removed from the shaker table and maintained in a stationary position for 10 minutes to allow the oil that will reform a slick to return to the water's surface. A sample of water for chemical analysis is then removed from the bottom of the flask through the side spout, extracted with methylene chloride (DCM), and analyzed for oil content by UV-visible absorption spectrophotometry at wavelengths of 340, 370, and 400 nm (2).

2.2 *Apparatus. Modified Erlenmeyer Flask.* Use 125-ml glass Erlenmeyer flasks that have been modified to include an attachment of a glass side spout that extends from the bottom of the flask upward to the neck region, as shown in Figure 1.

Shaker Table. Use a shaker table with speed control unit with variable speed (40–400 rpm) and an orbital diameter of approximately 0.75 inches (2 cm) to provide turbulence to solutions in test flasks.

Spectrophotometer. Use a UV-visible spectrophotometer capable of measuring absorbance at 340, 370, and 400 nm. A Hitachi Model U-2000 or equivalent is acceptable for this purpose.

Glassware. Glassware should consist of 5-, 10-, 25-, 100-, and 500-ml graduated cylinders; 125-ml separatory funnels with Teflon stopcocks; and 10-, 100-, and 1,000-ml volumetric flasks and micropipettes.

2.3 *Reagents. Synthetic Seawater.* The synthetic sea salt "Instant Ocean," manufactured by Aquarium Systems of Mentor, OH, can be used for this purpose. The synthetic seawater solution is prepared by dissolving 34 g of the salt mixture in 1 liter of distilled water (i.e., a salinity of 34 ppt). Table 1 provides a list of the ion composition of the seasalt mixture.

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Figure 1

Swirling Flask Test Apparatus

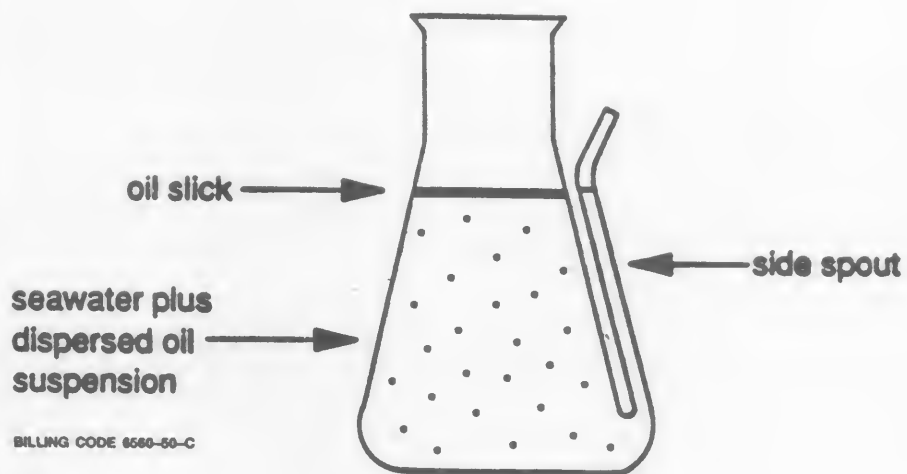


TABLE 1.—MAJOR ION COMPOSITION OF INSTANT OCEAN SYNTHETIC SEA SALT

Major ion	Percent total weight	Ionic concentration at 34 ppt salinity (mg/l)
Chloride (Cl ⁻)	47.470	18,740
Sodium (Na ⁺)	26.280	10,454
Sulfate (SO ₄ ⁻)	6.602	2,631
Magnesium (Mg ⁺⁺)	3.230	1,256
Calcium (Ca ⁺⁺)	1.013	400
Potassium (K ⁺)	1.015	401
Bicarbonate (HCO ₃ ⁻)	0.491	194
Boron (B)	0.015	6.0
Strontium (Sr ⁺⁺)	0.001	7.5
Solids Total	86.11	34,089.50
Water	13.88	
Total	99.99	

Following the preparation, the saltwater solution is allowed to equilibrate to the ambient temperature of the laboratory and should be in the range of 22 ± 3 °C.

Test Oil. Two EPA/American Petroleum Institute (API) standard reference oils, Prudhoe Bay and South Louisiana crude, should be used for this test. These should be obtained only from the Industrial Chemicals Repository, EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH, 45268 (James Longbottom, Custodian, (513) 569-7325). These oils have been thoroughly homogenized, as well as characterized physically and chemically for previous EPA and API studies. Various selected parameters are presented in Table 2.

TABLE 2.—TEST OIL CHARACTERISTICS

	Prudhoe Bay crude oil	South Louisiana crude oil
Specific gravity ¹	0.894 kg/l	0.840 kg/l.
API gravity ¹	26.8 degrees	37.0 degrees.
Sulfur	1.03 wt%	0.23 wt%.
Sulfur compounds, profile.		
Nitrogen	0.20 wt%	0.031 wt%.
Vanadium	21 mg/l	0.95 mg/l.
Nickel	11 mg/l	1.1 mg/l.
Simulated distillation profile.		
Infrared spectrum.		
UV fluorescence spectrum.		
Pour point	+25°F	0°F.
Viscosity		
at 40° C	14.09 cST	3.582 cST.
at 100° C	4.059 cST	1.568 cST.
Index	210	2.

¹ At 15°C.

² Not calculable when viscosity at 100° C is less than 2.0.

Methylene Chloride (Dichloromethane-DCM), Pesticide Quality. For extraction of all sample water and oil-standard water samples.

2.4 Pretest Preparation. Preparation and Analysis of Oil Standards. Standard solutions of oil for calibrating the UV-visible spectrophotometer are prepared with the

specific reference oils and dispersant used for a particular set of experimental test runs. For experiments with no dispersant, only oil is used to make the standard solution. For experiments with the oil plus dispersant, the standard is made with a 1:10 (v:v) mixture of the dispersant to the test oil (i.e., a dispersant-to-oil ratio of 1:10). This ratio is used in the test tank with dispersant added. The presence of water and certain dispersants in DCM extracts can affect absorbance readings in a spectrophotometer. All standard solutions of oil (and dispersant, if present) should be prepared in a stepwise manner that reflects the analytical protocol used for the experimental water samples.

To prepare the standards, prepare a parent oil-DCM standard by mixing 1 part oil (plus 1/10 part premixed dispersant, if applicable) to 9 parts DCM (i.e., 1:10 dilution of the oil v:v). Add a specific volume of the parent oil-DCM standard to 30 ml of synthetic seawater in a separatory funnel. Extract the oil-water mixture with 5-ml volumes of DCM after 15 seconds of vigorous shaking followed by a 2 minute stationary period to allow for phase separation for each extraction. Repeat the extraction using a total of three 5-ml portions of DCM. Adjust the final DCM volume for the combined extracts to 20 ml with DCM in a 25-ml graduated cylinder.

The quantities of oil used to achieve the desired concentrations in the final 20-ml DCM extracts for the standard oil-solutions are summarized in Table 3. Specific masses for oil amounts in standards are determined as volumes of oil multiplied by the density of the oil.

TABLE 3.—OIL STANDARD SOLUTIONS: CONCENTRATION IN FINAL DCM EXTRACTIONS¹

Final oil concentration (mg/ml of DCM)	Final extract volume (ml of DCM)	Total amount of oil in standard (mg)	Volume of parent oil-DCM std (μl) added to saltwater
4.0	20.0	80.0	890
2.0	20.0	40.0	440
1.0	20.0	20.0	220
0.50	20.0	10.0	110
0.10	20.0	2.0	22
0.05	20.0	1.0	11

¹ Assuming an oil density of 0.9 g/ml and an extraction efficiency of 100% for oil from the 30-ml of seawater.

Linear Stability Calibration of UV-Visible Spectrophotometer. Before DCM-extracts of dispersed oil-water samples can be analyzed for their oil content, the UV-visible spectrophotometer must meet an instrument stability calibration criterion. This criterion is determined with the six oil standards identified in Table 3. Determine the absorbance of standards at each of the three analytical wavelengths (i.e., 340, 370, and 400 nm). Determine the response factors (RFs) for the test oil at each of the three analytical wavelengths using the following equation:

$$RF_x = C/A_x \quad (1)$$

where:

RF_x = Response factor at wavelength x (x = 340, 370, or 400 nm)

C = Oil concentration, in mg of oil/ml of DCM in standard solution

A_x = Spectrophotometric absorbance of wavelength x

Instrument stability for the initial calibration is acceptable when the RFs for the five highest standard extracts of oil are <20% different from the overall mean value for the five standards. If this criterion is satisfied, analysis of sample extracts can begin. RFs for the lowest concentration (0.05 mg oil/ml DCM) are not included in the consideration because the absorbance is close to the detection limit of the spectrophotometer (with associated high variability in the value) for the 1-cm path-length cell used for measurements. Absorbances ≥3.5 are not

included because absorbance saturation occurs at and above this value.

If one or more of the standard oil extracts do not meet this linear-stability criterion, then the "offending" standard(s) can be prepared a second time (i.e., extraction of the specified amount of oil from 30-ml or seawater for the "offending" standard according to the pretest preparation procedure). If replacement of the reanalyzed standard solution(s) in the standard curve meets the linear-stability criterion (i.e., no RF >20% different from the overall mean), then analysis of sample extracts can begin.

If the initial-stability criterion is still not satisfied, analysis of sample extract cannot begin and the source of the problem (e.g., preparation protocol for the oil standards,

spectrophotometer stability, etc.) must be corrected.

The initial six-point calibration of the UV-visible spectrophotometer at the oil concentrations identified is required at least once per test day.

2.5 Test Procedure. Preparation of Premixed Dispersant Oil. Prepare a premixed dispersant oil by mixing 1 part dispersant to 10 parts oil. Store this mixture in a glass container.

The dispersant effectiveness test procedures are listed in steps 1-20:

1. Prepare 4 replicates (same test oil and dispersant), one control (i.e., no dispersant) and one method blank and run at the same time on the shaker table.

2. Add 120±2 ml of synthetic seawater to each of the modified 125-ml glass Erlenmeyer flasks. Measure and record the water temperature.

3. Place the flasks securely into the attached slot on the shaker table.

4. Carefully add 100 µl of an oil-dispersant solution onto the center of the water's surface using a positive displacement pipette.

5. Agitate the flasks for 20±1 minutes at 150±10 rpm on the shaker table.

6. After the 20±1 minutes shaking, remove the flasks from the shaker table and allow them to remain stationary for 10±1 minutes for oil droplet "settling."

7. At the conclusion of the 10-minute settling period, carefully decant a 30-ml sample through the side spout of the test flasks into a 50-ml graduated cylinder.

Note: Discard the first 1-2 ml of sample water to remove nonhomogeneous water-oil initially contained in the spout.

8. Transfer the samples from the graduated cylinder into a 125- or 250-ml glass separatory funnel fitted with a Teflon stopcock.

9. Add 5 ml of pesticide-quality DCM to the separatory funnel and shake vigorously for 15 seconds. Release the pressure carefully from the separatory funnel through the stopcock into a fume hood.

10. Allow the funnel to remain in a stationary position for 2 minutes to allow phase-separation of the water and DCM.

11. Drain the DCM layer from the separatory funnel into a glass-stoppered, 25-ml graduated glass cylinder.

12. Repeat the DCM-extraction process two additional times.

13. Combine the three extracts in the graduated cylinder and adjust the final volume to 20-ml with additional DCM.

14. Analyze the samples using a UV-spectrophotometer at 340, 370, and 400 nm-wavelengths and determine the quantity of oil as follows:

$$C_x = (A_x) \times (RF_x) \times (V_{DCM}) \times (V_{tw}/V_{cw}) \quad (2)$$

where:

C_x = Total mass of dispersed oil in swirling flask at wavelength x (x = 340, 370, or 400 nm)

A_x = Spectrophotometric absorbance at wavelength x

RF_x = Mean response factor at wavelength x (determined from equation 1)

V_{DCM} = Final volume of DCM-extract of water sample (20 ml)

V_{tw} = Total water volume in swirling flask vessel (120 ml)

V_{cw} = Volume of water extracted for dispersed oil content (30 ml)

15. Obtain three concentration values for oil in each experimental water sample (340, 370, and 400 nm).

16. Determine the mean of three values as follows:

$$C_{mean} = (C_{340} + C_{370} + C_{400})/3 \quad (3)$$

Note: Means will be used for all dispersion-performance calculations. Samples where one of the values for C_{340} , C_{370} , or C_{400} is more than 30% different from C_{mean} will be flagged. Whenever oil measurements are flagged as having a concentration based on one wavelength as >30% different from C_{mean} , raw data will be evaluated to establish that the measurements are valid. In addition, attempts will be made to correlate the difference to oil type, dispersant test, or dispersant used. If no errors or correlations are apparent and <10% of all oil measurements are flagged, the mean concentration data will be used in the calculation for dispersant performance and the subject data will be flagged.

17. Determine the dispersant performance (i.e., percent of oil that is dispersed, or EFF) based on the ratio of oil dispersed in the test system to the total oil added to the system as follows:

$$EFF \text{ (in \%)} = (C_{mean}/C_{TOT}) \times 100 \quad (4)$$

where:

C_{mean} = Mean value for total mass of dispersed oil in the swirling flask determined by spectrophotometric analysis

C_{TOT} = Total mass of oil initially added to the experimental swirling flask

18. Calculate EFF using equation 4 for coupled experiments with and without dispersant (EFF_c and EFF_d , respectively). EFF_c is the effectiveness of the control and represents natural dispersion of the oil in the test apparatus. EFF_d is the measured uncorrected value.

19. Calculate the final dispersant performance of a chemical dispersant agent after correcting for natural dispersion using equation 5.

$$EFF_D = EFF_d - EFF_c \quad (5)$$

where:

EFF_D = % dispersed oil due to dispersant only

EFF_d = % dispersed oil with dispersant added

EFF_c = % dispersed oil with no dispersant added

20. Calculate the average dispersant effectiveness value by summing the corrected values (EFF_D) for each of the four replicates for each of the two test oils and dividing this sum by eight.

2.6 Performance criterion. The dispersant product tested will remain in consideration for addition to the NCP Product Schedule if the average dispersant effectiveness, as

calculated in section 2.5 above, is at least 45% (i.e., 50%±5%).

2.7 Quality Control (QC) Procedures for Measurements of Oil Concentrations. UV-visible Spectrophotometric Measurements. At least 5% of all UV-visible spectrophotometric measurements will be performed in duplicate as a QC check on the analytical measurement method. The absorbance values for the duplicates should agree within ±5% of their mean value.

Method Blanks. Analytical method blanks involve an analysis of seawater blanks (i.e., seawater but no oil or dispersant in a swirling flask vessel) through testing and analytical procedures (3, pp 79-80). Method blanks are analyzed with a frequency of at least 1 for every 12 experimental swirling flask samples. Oil concentrations in method blanks must be <5% of that occurring for 100% dispersion of oil in testing apparatus.

3.0 Revised Standard Dispersant Toxicity Test

3.1 Summary of Method. The standard toxicity test for dispersants and other products involves exposing two species (*Menidia beryllina* (silversides) and *Mysidopsis bahia* (mysid shrimp)) to five concentrations of the test product and No. 2 fuel oil alone and in a 1:10 mixture of product to oil. To aid in comparing results from assays performed by different workers, reference toxicity tests are conducted using dodecyl sodium sulfate (DSS) as a reference toxicant. The test length is 96 hours for *Menidia* and 48 hours for *Mysidopsis*. LC_{50} s are calculated based on mortality data at the end of the exposure period (for method of calculation, see section 3.6 below).

3.2 Selection and Preparation of Test Materials. Test Organisms. *Menidia beryllina*. Obtain fish (silversides) from a single source for each series of toxicity tests. In-house cultures are recommended wherever it is cost-effective; however, organisms are available from commercial suppliers. Information on the source of test organisms and any known unusual condition to which fish were exposed before use should be included in the data report. Use of animals previously treated with pesticides or chemotherapeutic agents should be avoided. Organisms should not be used if they appear to be unhealthy, discolored, or show signs of stress. Use 7-day old larval fish.

Fish should be cultured in accordance with the methods outlined in Middaugh, *et al.* (5). There should be no need to acclimate organisms to the 25±1°C temperature recommended for the toxicity tests if laboratory stock cultures of *Menidia* are maintained at the recommended culture temperature of 25±1°C. If test organisms must be obtained from a commercial source, it may become necessary to acclimate test fish to the test temperature of 25±1°C, a pH of 8.0±0.2, and 20±2 ppt salinity since changes in temperature may occur during shipping. Eliminate groups of fish having a mortality of more than 10% during the first 48 hours, and more than 5% thereafter. During acclimation, organisms should be maintained on a diet of freshly hatched *Artemia* (brine shrimp) nauplii. Feed the fish daily to satiation during the acclimation period, and once

daily during the 96-hour test. Care should be taken daily to remove excess food and fecal material from beakers during the test. Use only those organisms that feed actively and that appear to be healthy. Organisms should be free of disease, external parasites, and any signs of physical damage or stress. Discard any fish injured or dropped while handling.

Mysidopsis bahia. Several methods for culturing *Mysidopsis bahia* (mysid shrimp) may be used and are noted in appendix A of Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (6). To ensure uniformity of mysids, recently hatched mysids should be collected daily from stock cultures and identified by the date of hatch. Mysids used in 48-hour tests should be from a single day's collection, but may have an age range of 5-7 days old. In cases where in-house cultures of mysids are unavailable, organisms may be purchased from a commercial source. Information on the source of test organisms should be submitted in the data report.

Preparation of Experimental Water. Filtered natural seawater is recommended for use since it represents a natural source of saltwater containing an inherent population of microorganisms. Synthetic seawater formulated according to the following method can serve as an acceptable alternative to filtered, natural seawater for toxicity tests performed in laboratories in which natural seawater is unavailable.

Synthetic Seawater Formation. To prepare standard seawater, mix technical-grade salts with 900 liters of distilled or demineralized water in the order and quantities listed in Table 4. These ingredients must be added in the order listed and each ingredient must be dissolved before another is added. Stir constantly after each addition during preparation until dissolution is complete.

TABLE 4.—SYNTHETIC SEAWATER
(Toxicity test)

Salt	(g) ¹
NaF	1.9
SrCl ₂ • 6H ₂ O	13.0
H ₃ BO ₃	20.0
KBr	67.0
KCl	466.0
CaCl ₂ • 2H ₂ O	733.0
Na ₂ SO ₄	2,660.0
MgCl ₂ • 6H ₂ O	3,330.0
NaCl	15,650.0
Na ₂ SiO ₃ • 9H ₂ O	13.0
EDTA ²	0.4
NaHCO ₃	133.0

¹ Amount added to 900 liters of water, as described in the text.

² Ethylenediaminetetraacetate tetra sodium salt.

Add distilled or demineralized water to make up to 1,000 liters. The pH should now be 8.0±0.2. To attain the desired salinity of 20±1 ppt, dilute again with distilled or demineralized water at time of use.

3.3 Sampling and Storage of Test Materials. Toxicity tests are performed with No. 2 fuel oil having the characteristics defined in Table 5. Store oil used for toxicity

tests in sealed containers to prevent the loss of volatiles and other changes. For ease in handling and use, it is recommended that 1,000-ml glass containers be used. To ensure comparable results in the bioassay tests, use oils packaged and sealed at the source. Dispose of unused oil in each open container on completion of dosing to prevent its use at a later date when it may have lost some of its volatile components. Run all tests in a bioassay series with oil from the same container and with organisms from the same group collected or secured from the same source.

TABLE 5.—TEST OIL
CHARACTERISTICS: NO. 2 FUEL OIL

Characteristic	Minimum	Maximum
Gravity (°API)	32.1	42.8
Viscosity kinematic at 100°F (cs)	2.35	3.00
Flash point (°F)	150	.....
Pour point (°F) .....	.....	0
Cloud point (°F) .....	.....	10
Sulfur (wt %) .....	.....	0.35
Aniline point (°F)	125	180
Carbon residue (wt %) .....	.....	0.16
Water (vol %) .....	.....	0
Sediment (wt %) .....	.....	0
Aromatics (vol %)	10	15
Distillation:		
IBP (°F)	347	407
10% (°F)	402	456
50% (°F)	475	530
90% (°F)	542	606
End Point (°F)	596	655
Neutralization No .....	.....	0.05

3.4 General Test Conditions and Procedures for Toxicity Tests. Temperature. For these toxicity tests, use test solutions with temperatures of 25±1°C.

Dissolved Oxygen and Aeration. *Menidia*. Because oils contain toxic, volatile materials, and because the toxicity of some water-soluble fractions of oil and degradation products are changed by oxidation, special care must be used in the oxygenation of test solutions. Aeration during the test is generally not recommended but should be used to maintain the required dissolved oxygen (DO) in cases where low DO is observed. The DO content of test solutions must not drop below 60% saturation during the first 48 hours of a static acute (96-hour) test and must remain between 40-100% after the first 48 hours of the test. Aeration at a rate of 100±15 bubbles per minute is supplied by a serological pipette as needed for maintenance of DO. If aeration is necessary, all test chambers should be aerated. At this rate, and with the proper weight of fish, DO concentration should remain slightly above 4 ppm over a 96-hour period. Take DO measurements daily.

Mysidopsis. Achieve sufficient DO by ensuring that the surface area to volume ratio of the test solution exposed is large enough. Oxygen content should remain high throughout the test because of the low oxygen demand of the organisms. Aeration is not recommended during 48-hour acute

toxicity tests unless the DO falls below 60% saturation.

Controls. With each fish or mysid test or each series of simultaneous tests of different solutions, perform a concurrent control test in exactly the same manner as the other tests and under the conditions prescribed or selected for those tests. Use the diluent water alone as the medium in which the controls are held. There must be no more than 10% mortality among the controls during the course of any valid test.

Reference Toxicant. To aid in comparing results from tests performed by different workers and to detect changes in the condition of the test organisms that might lead to different results, perform reference toxicity tests with reagent grade DSS in addition to the usual control tests. Prepare a stock solution of DSS immediately before use by adding 1 gram of DSS per 500 ml of test water solution. Use exploratory tests before the full scale tests are begun to determine the amount of reference standard to be used in each of the five different concentrations.

Number of Organisms. At a minimum, 20 organisms of a given species are exposed for each test concentration. For the toxicity test procedures using *Menidia*, place 10 fish in each of two jars. For the toxicity tests using *Mysidopsis*, place 10 larvae in each of two containers.

Transfer of Organisms. Organisms should be handled as little as possible in order to minimize stress. Transfer *Menidia* and *Mysidopsis* from the acclimatization aquaria to the test chambers with a pipette or a wide-bore, smooth glass tube (4 to 8 mm internal diameter) fitted with a rubber bulb. Dip nets should be avoided when handling larval fish and mysids. Do not hold fish out of the water longer than necessary and discard any specimen accidentally dropped or otherwise mishandled during transfer.

Mysidopsis. To have the mysids ready for study, mysids may be sorted 24 hours prior to initiation of the 48-hour test. Transfer the mysids to a beaker containing a small volume of water; this vessel serves as a holding chamber during randomized transfer of the organisms to test solutions. Mysids are randomly selected from the batch of mysids in the holding chamber, and transferred to 50-ml beakers containing a small volume of seawater. One mysid is added per beaker using a small piece of flexible 500-µm screening until all of the beakers contain one mysid. The process of random selection and sorting is continued until the appropriate number of mysids has been delivered to each of the 50-ml beakers. The mysids are gently released from the 50-ml beakers into larger beakers filled with an appropriate volume of 20-ppt seawater (25°C) to bring the total volume to 200 ml. The beakers are randomly placed into a temperature-controlled water bath to acclimate overnight at 25°C.

The mysids are transferred to larger beakers (1-liter) for the 48-hour test after the addition of 800 ml of the test solution. A total of 10 mysids per beaker are used for 48-hour acute toxicity tests. A minimum of two replicate chambers are used for each test concentration and control.

Menidia and *Mysidopsis* are fed 50 brine shrimp nauplii/organism daily during the 96-

hour and 48-hour tests. Excess food should be removed daily by aspirating with a pipette.

Test Duration and Observations. *Menidia*. Observe the number of dead fish in each test container and record at the end of each 24-hour period. Fish are considered dead upon cessation of respiratory and all other overt movements, whether spontaneous or in response to mild mechanical prodding. Remove dead fish as soon as observed.

Also note and report when the behavior of test fish deviates from that of control fish. Such behavioral changes would include variations in opercular movement, coloration, body orientation, movement, depth in container, schooling tendencies, and others. Abnormal behavior of the test organisms (especially during the first 24 hours) is a desirable parameter to monitor in a toxicity test because changes in behavior and appearance may precede mortality. Toxicants can reduce an organism's ability to survive natural stresses. In these cases, the mortality is not directly attributed to the toxicant, but most certainly is an indirect effect. Reports on behavioral changes during a toxicity test can give insight into the non-acute effects of the tested material.

At the end of the 96-hour period, terminate the fish tests and determine the LC₅₀ values.

The acute toxicity test is terminated after four days of exposure. The number of surviving fish are counted and recorded for each chamber in accordance with standard EPA methods (6). The LC₅₀ is calculated using survival data from the test in accordance with the methods described in the guidelines (6).

***Mysidopsis*.** Terminate the mysid test after 48 hours of incubation. To count the dead animals accurately, place the exposure vessels on a light table such that light passes through the bottom of the vessel. Most of the dead mysids will be on the bottom of the beaker and can readily be seen against the background of the light table. Also search the top of the liquid for mysids trapped there by surface tension. Exercise caution when determining death of the animals. Occasionally, an animal appears dead, but closer observation shows slight movement of an appendage or a periodic spasm of its entire body. For these tests, animals exhibiting any movement when touched with a pipette tip are considered alive. Account for all test animals to ensure accuracy since *Mysidopsis bahia* may disintegrate or be cannibalized by other mysids. Consider individuals not accounted for as dead.

At the end of 48 hours of exposure, terminate the mysid assay and determine the LC₅₀ values in accordance with the methods described in the guidelines (6).

Physical and Chemical Determinations. *Menidia*. Determine the temperature, DO, and pH of the test solutions before the fish are added and at 24-, 48-, 72-, and 96-hour exposure intervals. It is necessary to take measurements from only one of the replicates of each of the toxicant series.

***Mysidopsis*.** Determine the temperature, DO, and pH of the test solutions before the nauplii are added and at the 24- and 48-hour exposure interval. Measure DO and pH in only one of the replicates of each of the toxicant series.

Testing Laboratory. An ordinary heated or air-conditioned laboratory room with thermostatic controls suitable for maintaining the prescribed test temperatures generally will suffice to conduct the toxicity tests. Where ambient temperatures cannot be controlled to 25±1 °C, use water baths with the necessary temperature controls.

Test Containers. For tests with fish or mysids, use 1-liter glass beakers measuring approximately 10 cm in diameter. In conducting the test, add to each beaker 1 liter of the test solution or seawater formulation aerated to saturation with DO. To add the liter volume easily and accurately, use a large volume (1-liter) graduated cylinder.

Process all required glassware before each test. Immerse in normal hexane for 10 minutes. Follow this with a thorough rinse with hot tap water; three hot detergent scrubs; an additional hot tap-water rinse; and three rinses with distilled water. Oven or air dry the glassware in a reasonably dust-free atmosphere.

3.5 Preparation of Test Concentrations. *Menidia*. Place test jars (approximately 22.5 cm in height, 15 cm in diameter, 11 cm in diameter at the mouth) containing 2 liters of synthetic seawater on a reciprocal shaker. The shaker platform should be adapted to hold firmly six of the toxicity test jars. Add the desired amount of the petroleum product (if applicable) under test directly to each test jar. Dispense the appropriate amount of toxicant (if applicable) into the jars with a pipette. Tightly cap the test jars and shake for 5 minutes at approximately 315 to 333 2-cm (0.75-inch) strokes per minute in a reciprocal shaker or at approximately 150 to 160 rpm on orbital shakers. At the completion of shaking, remove the jars from the shaker and dispense 1 liter of the mixture to each of the 1-liter glass beakers. Randomly place beakers in a constant-temperature water bath or room, take water quality measurements, add fish, and initiate aeration.

***Mysidopsis*.** To prepare test solutions for products and oil/product mixtures, blend or mix the test solutions with an electric blender having: speeds of 10,000 rpm or less; a stainless-steel cutting assembly; and a 1-liter borosilicate jar. To minimize foaming, blend at speeds below 10,000 rpm.

For the product test solution, add 550 ml of the synthetic seawater to the jar, then with the use of a gas-tight calibrated glass syringe with a Teflon-tipped plunger, add 0.55 ml of the product and mix for 5 seconds.

For the oil test solution, add 550 ml of the synthetic seawater to the jar. Then with the use of a gas-tight calibrated glass syringe equipped with a Teflon-tipped plunger, add 0.55 ml of the oil and mix for 5 seconds.

For the oil/product mixture, add 550 ml of the synthetic seawater to the mixing jar. While the blender is in operation, add 0.5 ml of the oil under study with the use of a calibrated syringe with a Teflon-tipped plunger and then 0.05 ml of the product as indicated above. Blend for 5 seconds after addition of product. These additions provide test solutions of the product, oil, and the oil/product mixture at concentrations of 1,000 ppm.

Immediately after the test solutions are prepared, draw up the necessary amount of

test solution with a gas-tight Teflon-tipped glass syringe of appropriate size and dispense into each of the five containers in each series. If the series of five concentrations to be tested are 10, 18, 32, 56, and 100 ppm, the amount of the test solution in the order of the concentrations listed above would be as follows: 10, 18, 32, 56, and 100 ml.

Each time a syringe is to be filled for dispensing to the series of test containers, start the mixer and withdraw the desired amount in the appropriate syringe while the mixer is in operation. Turn off immediately after the sample is taken to limit the loss of volatiles.

Use exploratory tests before the full-scale test is set up to determine the concentration of toxicant to be used in each of the five different concentrations. After adding the required amounts of liquid, bring the volume in each of the test containers up to 800 ml with the artificial seawater. To ensure keeping each of the series separate, designate on the lid of each container the date, the material under test, and its concentration.

When the desired concentrations are prepared, gently release into each beaker the 10 test *Mysidopsis* (previously transferred into 200 ml of medium). This provides a volume of 1 liter in each test chamber. A pair of standard cover glass forceps with flat, bent ends is an ideal tool for handling and tipping the small beaker without risk of contaminating the medium.

After adding the test animals, incubate the test beakers at 25±1 °C for 48 hours. Recommended lighting is 2,000 lumens/m² (200 ft-c) of diffused, constant, fluorescent illumination.

Wash the blender thoroughly after use and repeat the above procedures for each series of tests. Wash the blender as follows: rinse with normal hexane; pour a strong solution of laboratory detergent into the blender to cover the blades; fill the container to about half of its volume with hot tap water; operate the blender for about 30 seconds at high speed; remove and rinse twice with hot tap water, mixing each rinse for 5 seconds at high speed; and then rinse twice with distilled water, mixing each rinse for 5 seconds at high speed.

3.6 Calculating and Reporting. At the end of the test period, the toxicity tests are terminated and the LC₅₀ values are determined.

Calculations. The LC₅₀ is the concentration lethal to 50% of the test population. It can be calculated as an interpolated value based on percentages of organisms surviving at two or more concentrations, at which less than half and more than half survived. The LC₅₀ can be estimated with the aid of computer programs or graphic techniques (log paper). The 95% confidence intervals for the LC₅₀ estimate should also be determined.

Reporting. The test product and oil and their source and storage are described in the toxicity test report. Note any observed changes in the experimental water or the test solutions. Also include the species of fish used; the sources, size, and condition of the fish; data of any known treatment of the fish for disease or infestation with parasites before their use; and any observations on the fish behavior at regular intervals during the

tests. In addition to the calculated LC_{50} values, other data necessary for interpretation (e.g., DO, pH, other physical parameters, and the percent survival at the end of each day of exposure at each concentration of toxicant) should be reported.

3.7 Summary of Procedures, *Menidia*:

1. Prepare adequate stocks of the appropriate standard dilution water.
2. Add 2 liters of the standard dilution water to the test jars. Each test consists of 5 replicates of each of 5 concentrations of the test material, a control series of 5 beakers, and a standard reference series of 5 different concentrations for a total of 35 beakers. Simultaneous performance of toxicity tests on the oil, product, and oil/product mixture requires a total of 105 beakers.
3. Add the determined amount (quarter points on the log scale) of test material to the appropriate jars. Preliminary tests will be necessary to define the range of definitive test concentrations.
4. Cap the jars tightly with the Teflon-lined screw caps and shake for 5 minutes at 315 to 333 2-cm (0.75-inch) strokes per minute on a reciprocal shaker.
5. Remove the jars from the shaker, take water quality data, dispense 1 liter of solution to the 1-liter glass beaker, and add 10 acclimated fish per beaker.
6. Aerate with 100 ± 15 bubbles per minute through a 1-ml serological pipette, as needed, to maintain DO above 4.0 mg/l.
7. Observe and record mortalities, water quality, and behavioral changes every 24 hours.
8. After 96 hours, terminate the test, and calculate LC_{50} values and corresponding confidence limits.

Mysidopsis:

1. Initiate the procedure for hatching the *Mysidopsis* in sufficient time before the toxicity test is to be conducted so that 5-7 day old larvae are available.
2. With the use of a small pipette, transfer 10 *Mysidopsis* into small beakers, each containing 200 ml of the proper synthetic seawater.
3. To prepare the test stock product and oil solutions, add 550 ml of the artificial seawater to the prescribed blender jar. By means of a gas-tight glass syringe with a Teflon-tipped plunger, add 0.55 ml of the product (or oil) and mix at 10,000 rpm for 5 seconds. To prepare the test stock oil/product mixture, add 550 ml of the standard seawater to the blender jar. While the blender is in operation (10,000 rpm), add 0.5 ml of the oil, then 0.05 ml of the product with the use of a calibrated syringe with a Teflon-tipped plunger. Blend for 5 seconds after adding the product. One ml of these stock solutions added to the 100 ml of standard seawater in the test containers yields a concentration of 10 ppm product, oil, or oil/product combination (the test will be in a ratio of 1 part product to 10 parts of oil).
4. Each test consists of 5 replications of each of 5 concentrations of the material under study, a control series of 5 beakers and a standard reference series of 5 different concentrations, for a total of 35 beakers. Simultaneous performance of toxicity tests on the oil, product, and oil/product mixture requires a total of 105 beakers. Immediately

after preparing the test solution of the product or oil/product solution, and using an appropriately sized syringe, draw up the necessary amount of test solution and dispense into each of the five containers in each series.

Each time a syringe is to be filled for dispensing to the series of test containers, start the mixer and withdraw the desired amount in the appropriate syringe while the mixer is in operation. Turn mixer off immediately after the sample is taken to limit the loss of volatiles. After adding the required amount of the test oil/product or product mixture, bring the volume of liquid in each of the test containers up to 800 ml with the artificial seawater.

When the desired concentrations have been prepared, gently release into each beaker the 10 mysids previously transferred into 200 ml of medium. This provides a volume of 1 liter in each test chamber.

5. Wash the blender as prescribed for each series of tests.

6. Incubate the test beakers at 25 ± 1 °C for 48 hours with the prescribed lighting.

7. Terminate the experiment after 48 hours, observe and record the mortalities, and determine the LC_{50} s and corresponding confidence limits.

4.0 Bioremediation Agent Effectiveness Test

4.1 Summary of Method. The bioremediation agent effectiveness testing protocol is designed to determine a product's ability to biodegrade oil by quantifying changes in the oil composition resulting from biodegradation. The protocol quantifies the disappearance of saturated hydrocarbons and polynuclear aromatic hydrocarbons (PAHs). The sample preparation procedure partitions the oil phase into a neutral solvent (hexane). To effectively accomplish the goals of the testing protocol, it is necessary to normalize the concentration of the various analytes in oil to a non-biodegradable biomarker, hopane (7).

The test method targets the relatively easy to degrade normal alkanes and the more resistant and toxic PAHs. It normalizes their concentrations to $C_{30}17\alpha(H)$, $21\beta(H)$ -hopane on an oil weight basis (mg $C_{30}17\alpha(H)$, $21\beta(H)$ -hopane/kg oil, mg target analyte/kg oil).

The analytical technique uses a high resolution gas chromatograph/mass spectrometer (GC/MS) because of its high degree of chemical separation and spectral resolution. GC/MS has long been used to study the weathering and fate of oil spilled into the environment. For quantitative analyses, the instrument is operated in the selective ion detection (SIM) mode at a scan rate of greater than 1.5 scans per second to maximize the linear quantitative range and precision of the instrument. The sample preparation method does not exclude analysis of selected samples by GC/MS in the full scanning mode of operation to qualitatively assess changes in the oil not accounted for by the SIM approach.

Performed concurrently with the chemical analysis described above is a microbiological analysis. The microbiological analysis is performed to determine and monitor the viability of the microbial cultures being studied. Under this procedure, microbial

enumerations of hydrocarbon degraders are performed at each sampling event using a microtiter Most Probable Number (MPN) determination.

4.2 Apparatus. The following materials and equipment are required for the protocol: Appropriate flasks and other glassware; sterile tubes; graduated cylinders (100-ml); D.I. water; p-iodonitrotetrazolium violet dye; weighing pans or paper; 250-ml borosilicate glass Erlenmeyer flasks with screw tops; Pasteur pipettes; laboratory notebook; microtiter MPN plates (24-well) multi-channel pipetting device; dilution tube and caps; autoclave; environmental room or incubator; balance accurate to 0.1 mg (XD-400); Hewlett-Packard 5890/5971 GC/MS instrument equipped with a DB-5 capillary column (30 m, 0.25-mm I.D., and 0.25- μ m film thickness) and a split/splitless injection port operating in the splitless mode; and an autosampler for testing multiple samples.

4.3 Reagents and Culture Medium.

Preparation of Seawater. All products are tested in unfiltered Gulf Breeze coast seawater¹, which is available from the EPA/Office of Research and Development's (ORD) Environmental Research Laboratory, Sabine Island, FL, 32561-5299. The seawater is used within seven days of collection. No microbial inoculum is added.

Preparation of Oil. A medium weight crude oil, Alaska North Slope (ANS), is artificially weathered by heating to 521°F to remove the light end hydrocarbons prior to experimental start-up. The method is described in the Draft International Standard ISO/DIS 8708 "Crude Petroleum Oil—Determination of Distillation Characteristics Using 15 Theoretical Plates Columns" by the International Organization for Standardization (8). The ANS crude oil can be obtained from the National Environmental Technology Applications Corporation's (NETAC) Bioremediation Products Evaluation Center (BPEC), University of Pittsburgh Applied Research Center, 615 William Pitt Way, Pittsburgh, PA, 15238, (412) 826-5511. The crude oil is heated to 374°F under atmospheric pressure. The system is then cooled and placed under vacuum (20 mm Hg). The oil is reheated to 521°F, then allowed to cool to between 230-250°F. The oil is nitrogen blanketed and stored.

Preparation of Mineral Nutrient Solution. If a commercial product is a microbial inoculum and does not contain its own nutrients, a mineral nutrient solution will be provided if requested by the product manufacturer or vendor. If a commercial product contains its own nutrients, no further nutrients will be added. The nutrient solution is a modified salt solution and is described below.

Nutrient Preparation:

1. N&P Salts. The following salts are added to distilled water and made up to a 1,000-ml volume. Adjust final pH to 7.8. The solution is sterilized by autoclaving at 121 °C at 15 psig for 20 minutes or by filtering through a sterile 0.22 μ m membrane filter.

¹ This protocol was developed using the Gulf Breeze coast seawater. To ensure the reproducibility of test results, this type of seawater should be used when conducting this test.

$\text{Na}_2\text{HPO}_4 \cdot 2\text{H}_2\text{O}$ —18.40 g
 KNO_3 —76.30 g

2. $\text{MgSO}_4 \cdot 7\text{H}_2\text{O}$ solution. Dissolve 22.50 g in 1,000 ml distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

3. CaCl_2 solution. Dissolve 27.50 g in 1,000 ml of distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

4. $\text{FeCl}_3 \cdot 6\text{H}_2\text{O}$ solution. Dissolve 0.25 g in 1,000 ml of distilled water. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

5. Trace Element Solution. The following salts are added to distilled water and made up to a 1,000-ml volume. The solution is sterilized by autoclaving at 121°C at 15 psig for 20 minutes.

$\text{MnSO}_4 \cdot \text{H}_2\text{O}$ —30.2 mg
 H_3BO_3 —57.2 mg
 $\text{ZnSO}_4 \cdot 7\text{H}_2\text{O}$ —42.8 mg
 $(\text{NH}_4)_6\text{Mo}_7\text{O}_{24}$ —34.7 mg

Final Concentrations:

Ten (10) ml of solution 1 and 2 ml of solutions 2–5 are added to non-sterile seawater and made up to a 1,000-ml volume immediately prior to test start-up. This seawater/mineral nutrient solution is used for all flasks containing products requiring nutrient supplements and for the flasks containing no commercial additive. Seawater without the above nutrient solutions is used for products containing their own source of nutrients.

4.4 *Pretest Preparation. Experimental Setup.* The procedure consists of an experimental shaker flask setup and the specific set of microbiological and chemical analyses that are performed on individual product samples.

The following test flasks are prepared:

1. *Product Treatment.* Three product flasks containing oil, seawater (with or without nutrients as appropriate), and the commercial product being tested for each sampling event (12 total for each of four sampling events).

2. *Nutrient Treatment.* Three nutrient flasks containing oil and seawater (with nutrients) for each sampling event (12 total for each of four sampling events).

3. *Control.* Three flasks containing oil and seawater without nutrients for each sampling event (12 total for each of four sampling events).

The total number of flasks needed for a test, knowing that each test consists of a control, nutrient treatment, and product treatment, is 36 flasks.

For each test, a sheet listing the number of flasks, types of controls, number of replicates, product to be tested, and other information is prepared. The following steps should be adhered to for the experimental setup:

1. Borosilicate glass Erlenmeyer flasks (250-ml) are thoroughly cleaned and autoclaved for 20 minutes at 120°C at 15 psi, then dried in the drying oven.

2. Flasks are labeled with the appropriate code: Product or control, sample day, and letter indicating replicate.

3. 100 ml of seawater is added to each flask.

4. For nutrient and product treatments that require the addition of nutrients, seawater containing the nutrient solution is prepared.

5. Pasteur pipettes should be sterilized in advance. Break off the tip to provide a larger opening prior to sterilization.

6. Pour the approximate amount of oil to be used from the large stock bottle into a sterile beaker. Keep the beaker covered when oil is not being removed.

7. The labeled flasks containing seawater and other additions, as necessary, are placed on the balance. The flask is tared. The appropriate amount of oil (500 mg) is added drop by drop using a sterile Pasteur pipette with the tip broken off to provide a wider opening. Care is taken to avoid splashing the oil or getting it on the sides of flasks. Precautions are taken when handling and charging the flasks to minimize the likelihood of contamination by exogenous microbes. This includes using a new sterile pipette for each series of flasks.

8. The weight of the oil is recorded in the laboratory notebook.

9. The product is prepared and added to the appropriate flasks according to the manufacturer's or vendor's instructions.

10. Flasks are carried upright and carefully placed in the holders on the shaker table to minimize the amount of oil that might adhere to the side of the flasks. Flasks in which a significant amount of oil is splashed on the sides are redone.

11. The prepared flasks are shaken at 200 rpm at 20°C until such time that they will be removed for sampling.

Sampling. The control and treatments (nutrient and product flasks) are sampled four times over a 21-day period: day 0, day 5, day 13, and day 21. The entire flask is sacrificed for analysis. A 0.5-ml aliquot is removed from each flask for the microbiological analysis. The remainder of each flask is used for the chemical analysis. Specific procedures for both the microbiological and chemical analysis are described below. At the time of each sampling event, physical observations of each flask should be recorded.

4.5 *Microbiological Analysis.* To determine and monitor the viability of the microbial cultures being studied, microbial enumerations of hydrocarbon degraders are performed at each sampling event using a microtiter MPN determination.

Media Preparation. Media for microbial enumerations are carefully prepared according to manufacturer's or other instructions and sterilized using appropriate methods.

General Media Treatment: Buy Bushnell-Haas broth in quantities to last no longer than one year. Use media on a first-in, first-out basis. When practical, buy media in quarter-pound multiples, rather than one-pound multiples to keep supply sealed as long as possible. Keep an inventory of media, including kind, amount, lot number, expiration date, date received, and date opened. Check inventory before reordering media. Discard media that are caked, discolored, or show other deterioration.

Sterile Saline (pH adjusted):

1. Weigh 30 g of NaCl.
 2. Dissolve in enough water to make 1,000 ml.

3. Adjust pH to 8.0 with NaOH (10M and 0.5M).

4. Sterilize by autoclaving for 15 minutes at 15 psig.

Standard Nutrient Concentrate (add 1 ml to each 100 ml of Bushnell-Haas medium for MPNs):

1. Weigh compounds listed below, dissolve in DIH_2O , dilute to 1 liter.

Potassium Phosphate, monobasic KH_2PO_4 —

0.633 g

Potassium Phosphate, dibasic K_2HPO_4 —

1.619 g

Sodium Phosphate, dibasic Na_2HPO_4 —2.486

g

Ammonium Chloride NH_4Cl —3.850 g

Magnesium Sulfate, heptahydrate

$\text{MgSO}_4 \cdot 7\text{H}_2\text{O}$ —4.500 g

Calcium Chloride, dihydrate $\text{CaCl}_2 \cdot 2\text{H}_2\text{O}$ —

7.290 g

Ferric Chloride, hexahydrate $\text{FeCl}_3 \cdot 6\text{H}_2\text{O}$ —

0.250 g

Trace Elements

Manganese Sulfate, monohydrate

$\text{MnSO}_4 \cdot \text{H}_2\text{O}$ —6.04 mg

Boric Acid H_3BO_3 —11.44 mg

Zinc Sulfate, heptahydrate $\text{ZnSO}_4 \cdot 7\text{H}_2\text{O}$ —

8.56 mg

Ammonium Molybdate, tetrahydrate

$(\text{NH}_4)_6\text{Mo}_7\text{O}_{24} \cdot 4\text{H}_2\text{O}$ —6.94 mg

2. Adjust pH to 6.0.

3. Stir solution for approximately 3 hours, then filter through a Buchner funnel using #1 paper, which will retain approximately 3.8 g of insolubles.

4. Then filter through a 0.45 micron filter into sterile bottles.

5. Cap bottles, label, and store in refrigerator until used.

Quality Assurance/Quality Control (QA/QC):

1. Periodically check the effectiveness of sterilization using commercially available tapes or *Bacillus stearothermophilus* spore suspensions, following the instructions with these products.

2. Maintain a media log book that includes the dates, kinds and amounts of media made, pH, and any problems or observations.

3. Before use, check plates and tubes for signs of contamination, drying, or other problems.

Safety/Special Precautions:

1. Note any safety or other precautions for particular media.

2. Note precautions to be followed when using the autoclave.

3. Use gloves and other protective clothes when handling media.

4. Use care in handling hot media.

Microbial Enumeration. Standardized techniques for performing microbial enumerations are described below.

Dilutions:

1. Remove 0.5 ml of water from each flask to be tested and add it to a tube of 4.5 ml sterile buffered saline (see Media Preparation section above). This is the 10^{-1} dilution.

Note: Minimize the amount of oil that adheres to the tip of the pipette when performing this procedure. Any oil on the pipette should be rinsed back into the flask with the appropriate solvent. Use the solvent that will be used for the extraction procedure being carried out.

2. Mix the contents of the first dilution tube by forcefully pipetting the fluid up and down several times.

3. Using sterile techniques, remove 0.5 ml from the first dilution tube and add it to a second tube containing 4.5 ml of sterile buffered saline.

4. Repeat this procedure for a total of 8 serial 10-fold dilutions. A fresh sterile pipette should be used for the preparation of each dilution. On day 0, samples are taken out to dilutions of 10⁷. On all other days, samples are taken out to dilutions of 10⁶. Note that on each day a straight seawater sample is taken and diluted to 10⁴.

Inoculating MPN Plates (Oil Degradation):

1. Prepare sufficient sterile Bushnell-Haas (B-H) broth (see Media Preparation section above) to fill the number of wells required for the test (1.75 ml/well).

2. Add 1 ml of standard nutrient concentrate (see Media Preparation section above) to each 100 ml of B-H media.

3. Using sterile technique, add 1.75 ml of B-H broth to each well.

4. Label the top of the plate with the proper dilution for each row.

5. Add 0.1 ml of fluid from each dilution tube to each well in the appropriate row, starting with the most dilute.

6. After adding the fluid to all the wells, add 20 µl of ANS521 oil to the top of each well.

7. Incubate each plate at 20°C.

8. After 14 days of incubation, add 100 µl of p-iodotetrazolium violet dye (50 mg/10 ml of D.I. water) to each well to determine growth.

9. View plates against a white background to determine if color is present. Development of a purple or pink color upon standing for 20 minutes constitutes a positive test.

10. Record the number of positive wells and the dilutions at which they occur.

Quality Assurance/Quality Control:

1. Check pH of medium before preparing wells (pH should be approximately 8.0). Adjust pH, if necessary, with dilute NaOH.

2. Keep prepared tetrazolium violet dye solution in the refrigerator in an amber bottle when not in use.

3. Have all laboratory personnel periodically run MPNs on the same sample to test precision.

Safety/Special Precautions:

1. Use sterile technique in preparing solutions, dilutions, plates, and MPN wells.

2. Do not pipette potentially hazardous solutions by mouth.

3. Autoclave all plates and wells before discarding.

4.6 *Chemical Analysis of Oil Composition. GC/MS Procedure.* Steps 1-10 below should be followed when conducting the GC/MS procedure.

1. After 0, 5, 13, and 21 days of rotary shaking and incubating at 20°C, the reaction vessels are sacrificed by adding hexane to the contents. Prior to the addition of hexane, a 0.5-ml sample of the aqueous phase is removed for the microbiological analysis.

2. A surrogate recovery standard is prepared in the following manner: 200 mg of d₁₀-phenanthrene and 200 mg of 5α-androstane are measured into a 500-ml volumetric flask and hexane is added to the

mark to produce a 400-ng/µl stock solution. A 0.5-ml aliquot of the surrogate solution is added to each test flask.

3. Fifty (50) ml of hexane is placed in a Teflon squeeze bottle. The 0.5-ml pipette used to remove the water sample from the shaker flask is rinsed with hexane from the squeeze bottle. The hexane remaining in the bottle is emptied into the flask so that the total volume of hexane added to the flasks is exactly 50 ml. The final concentration of surrogates in each flask from step 2 is 4 ng/µ hexane. The aliphatics and hopane data should be corrected for percent recovery of the 5α-androstane surrogate and the aromatics for the d₁₀-phenanthrene surrogate.

4. A stir bar is added to the flasks and the hexane/seawater mixture is allowed to stir for at least 10 minutes. Note that the stirring should be vigorous enough that the two layers are thoroughly mixed.

5. The flask is set aside to allow the hexane and water layers to partition. This may take 5-10 minutes for some products and up to 3 hours for others if the product has caused formation of an emulsion.

6. The contents of the flask are placed into a separatory funnel, and 30 ml of the water fraction is emptied into a 50-ml vial. The pH of the water is adjusted to 3.0. The vial is sealed with a Teflon-lined cap and stored at 4°C. This water layer is kept as a precautionary measure. If the GC/MS analysis of the hexane layer indicates recovery of <85% for C₃₀17α(H),21β(H)-hopane relative to surrogate recovery standards (d₁₀-phenanthrene and 5α-androstane), then the water layer should be extracted again using three separate extractions with methylene chloride followed by concentrating to 0.1 ml, and analyzing by GC/MS (SIM).

7. After draining approximately the first 10 ml of the hexane layer, 30 ml of the hexane layer is dried by passing it through a funnel packed with anhydrous sodium sulfate directly into a 50-ml sample vial.

Note: The sample vial should have a Teflon-lined cap.

8. Before the gravimetric analysis is attempted, all the asphaltenes should be removed from the dried hexane layer. This is accomplished by centrifuging the dried hexane extract at 4°C for 15 minutes at 3,000 rpm. Ten (10) ml of the supernatant is placed in a small vial and concentrated to dryness by nitrogen blowdown techniques. If the oil is severely biodegraded, a larger volume of hexane may be necessary for the gravimetric analysis. The residue is weighed 3 times for the gravimetric weight of oil. This is an important and necessary step that will enable reporting the data on an oil weight basis. The increase in hopane concentration with time, relative to the initial source of oil, is a measure of the amount of oil degraded. The percent depletion of the oil can be estimated by the following equation:

$$\% \text{ total oil depletion} = (1 - H_0/H_1) \times 100 \quad (6)$$

where:

H₀ = C₃₀17α(H),21β(H)-hopane concentration in the source oil

H₁ = C₃₀17α(H),21β(H)-hopane concentration in the degraded oil

Individual analyte depletion can be estimated by the following equation:

$$\% \text{ analyte depletion} = (1 - (C_1/C_0) \times (H_0/H_1)) \times 100 \quad (7)$$

where:

C₁ = analyte concentration in the degraded oil

C₀ = analyte concentration in the source oil

The hopane-normalized concentration of analytes is computed by the following equation:

$$\text{hopane-normalized analyte conc.} = (100 - \% \text{ analyte depleted}) \times C_0 \quad +100 \quad (8)$$

9. The hexane level of the remaining portion of the extract is marked on the vial with a grease pencil. At this point, samples are properly labelled and stored at 4°C for later analysis.

10. One (1) ml of the hexane extract is placed into a 1.5-ml vial for use on the autosampler of the GC/MS instrument. To this solution, 20 µl of a 500-ng/µl solution of the internal standards is added. The final concentration of the internal standards in each sample is 10 ng/µl. This solution contains 4 deuterated compounds: d₈-naphthalene, d₁₀-anthracene, d₁₂-chrysene, and d₁₂-perylene in methylene chloride.

Quality Assurance/Quality Control. At the start of any analysis period, the mass spectrometer (MS) is tuned to PFTBA by an autotune program to reduce operator variability (generally, the Hewlett-Packard quicktune routine will be used). An instrument blank and a daily standard are analyzed prior to analysis of unknowns. Internal standards are combined with the sample extracts and co-injected with each analysis to monitor the instrument's performance during each run. Miscellaneous information that should be included on the acquisition form include operator's name, sample name, sample preparation information, method information, GC column number, and EMV setting. If the instrument is operated for a period of time greater than 12 hours, the tune will be checked and another daily standard analyzed prior to continuing with analyses.

The QA/QC procedure is based on a modified version of EPA Method 8270 (9). Specifically, the concentrations of internal standards are 10 ng/µl instead of 40 ng/µl. The MS is calibrated using Method 8270. A five-point calibration curve is obtained for each compound listed in Table 6. The concentrations used for these curves are 1, 5, 10, 25, and 50 ng/µl in a 90:10 solution of hexane/methylene chloride. The standard mix (excluding C₃₀17β(H),21α(H)-hopane) for this calibration curve may be obtained from Absolute Standards, Inc., 498 Russell St., New Haven, CT, 06513, (800) 368-1131; the C₃₀17β(H),21α(H)-hopane may be obtained from Dr. Charles Kennicutt II, Geochemical and Environmental Research Group, Texas A&M University, 833 Graham Rd., College Station, TX, 77845. (409) 690-0095.

TABLE 6.—COMPOUNDS USED IN FIVE-POINT CALIBRATION CURVE

n-alkanes, C10-C35	Chrysene.
pristane	Benzo(b)fluoranthene.
phytane	Benzo(k)fluoranthene.
naphthalene	Benzo(e)pyrene.
fluorene	Benzo(a)pyrene.
dibenzothiophene	Perylene.
anthracene	Indeno(g,h,i)pyrene.
phenanthrene	Dibenzo(a,h)anthracene.
fluoranthene	Benzo(1,2,3-cd)perylene.
pyrene	C ₃₀ 17β(H), 21α(H)-hopane.

Table 7 lists the primary ions monitored for each target analyte during GC/MS analysis in the SIM mode.

Generally Accepted Laboratory Procedures. Samples are immediately logged into the laboratory, where they will be given a unique sample identification based on Julian data and the number logged in. Prior to the analysis of any experimental samples, a five-point standard curve is prepared. One of the standard curve concentration levels is analyzed daily before sample analysis. Relative response factors for all target analytes should be within 25% of the standard curve response values at day 0, and at any sampling event the check standard percent difference from the initial five-point calibration must not exceed 20% between the before and after daily standard mix (see below).

The collected GC/MS data are initially processed by a macro routine, which performs extracted chromatographic plots of the target compounds, integrates the target compounds, and shows integration results to include tabular numbers. The integration values are then transferred to a spreadsheet format to be quantified. Because of the complexity of the analyte matrix (oil), a very high degree of manual verification and reintegration of the spectral data is required.

TABLE 7.—PRIMARY IONS MONITORED FOR EACH TARGET ANALYTE

Compound	Ion
n-alkanes (C ₁₀ -C ₃₅)	85
pristane	85
phytane	85
decalin	138
C-1 decalin	152
C-2 decalin	166
C-3 decalin	180
naphthalene	128
C-1 naphthalenes	142
C-2 naphthalenes	156
C-3 naphthalenes	170
C-4 naphthalenes	184
fluorene	166
C-1 fluorenes	180
C-2 fluorenes	194
C-3 fluorenes	208
dibenzothiophenes	184
C-1 dibenzothiophenes	198
C-2 dibenzothiophenes	212
C-3 dibenzothiophenes	226
anthracene	178
phenanthrene	178
C-1 phenanthrenes	192
C-2 phenanthrenes	206

TABLE 7.—PRIMARY IONS MONITORED FOR EACH TARGET ANALYTE

Compound	Ion
C-3 phenanthrenes	220
fluoranthene/pyrene	202
C-1 pyrenes	220
C-2 pyrenes	230
chrysene	228
C-1 chrysenes	242
C-2 chrysenes	256
hopanes (177 family)	177
hopanes (191 family)	191
steranes (217 family)	217
benzo(b)fluoranthene	252
benzo(k)fluoranthene	252
benzo(e)pyrene	252
benzo(a)pyrene	252
perylene	252
ideno(g,h,i)pyrene	276
dibenzo(a,h)anthracene	278
benzo(1,2,3-cd)perylene	276
d ₁₀ -naphthalene	136
d ₁₀ -anthracene	188
d ₁₀ -phenanthrene	188
d ₁₂ chrysene	240
d ₁₂ perylene	264
α-androstane	260

The reliability of this method is dependent on the QC procedures followed. With each analytical batch (approximately 10 samples), one procedural blank, one duplicate (one before and one after all samples), and one standard source oil are analyzed. Surrogate recoveries should be within 70 to 120%, and duplicate relative percent difference values should be ±20%. A control chart of the standard oil should be prepared and monitored. Variations of analytes in the control chart should be no more than 25% from the historical averages. Injection port discrimination for n-C25 and greater alkanes must be carefully monitored; the ratio of relative response factor (RRF) n-C32/RRF n-C21 alkanes should not be allowed to fall below 80%. The mass discrimination can be reduced by replacing the quartz liner in the injection port after every analytical batch.

The instrument's performance and reproducibility are validated routinely by analyzing the reference crude oil standard. All analyses are recorded in instrument logs detailing operating conditions, date and time, file name, etc. After analysis, the sample extracts are archived at refrigeration temperatures. To document QA/QC, the following information is contained in the detailed quantitative reports: Average RRF derived from the standard curve; RRF from

the daily standard; percent relative standard deviation; area of target analyte; concentration determined both on a weight and volume basis; and values for any surrogates and internal standards.

Instrument Configuration and Calibration. A 2-ml aliquot of the hexane extract prepared by the above procedure is injected into a Hewlett-Packard 5890/5971 GC/MS instrument. This instrument is equipped with a DB-5 capillary column (30 m, 0.25-mm I.D., and 0.25-μm film thickness) and a split/splitless injection port operating in the splitless mode. Table 8 summarizes the temperature program used for the analysis.

This temperature program has been optimized to give the best separation and sensitivity for analysis of the desired compounds on the instrument. Prior to the sample analysis, a five-point calibration must be conducted on a standard mix of the compounds listed in Table 7 to determine RRFs for the analytes.

TABLE 8.—OPERATING CONDITIONS AND TEMPERATURE PROGRAM OF GC/MS

Operating conditions					
Injector port	290°C.				
Transfer line	320°C.				
Total run time	73 minutes.				
Column flow rate (He)	1.0 ml/minute.				
Temperature program					
Level	Temp. 1, °C	Time 1, minutes	Rate, °C/minute	Temp 2, °C	Time 2, minutes
1	55	3	5	280	5
2	280	0	3	310	10

5.0 Bioremediation Agent Toxicity Test

5.1 Summary of Method. The toxicity test for bioremediation agents involves exposing two species (*Menidia beryllina* (silversides) and *Mysidopsis bahia* (mysid shrimp)) to five concentrations each of a bioremediation agent, a crude oil, and a mixture of bioremediation agent plus oil in a series of short-term bioassays. The testing proceeds from tests of a relatively short duration (96-hours) to toxicity tests of 7 days in length according to the scheme outlined in Figure 2. A 96-hour static, acute range finding test is conducted with the product to establish a narrower range of concentrations for the subsequent 7-day chronic estimator tests to

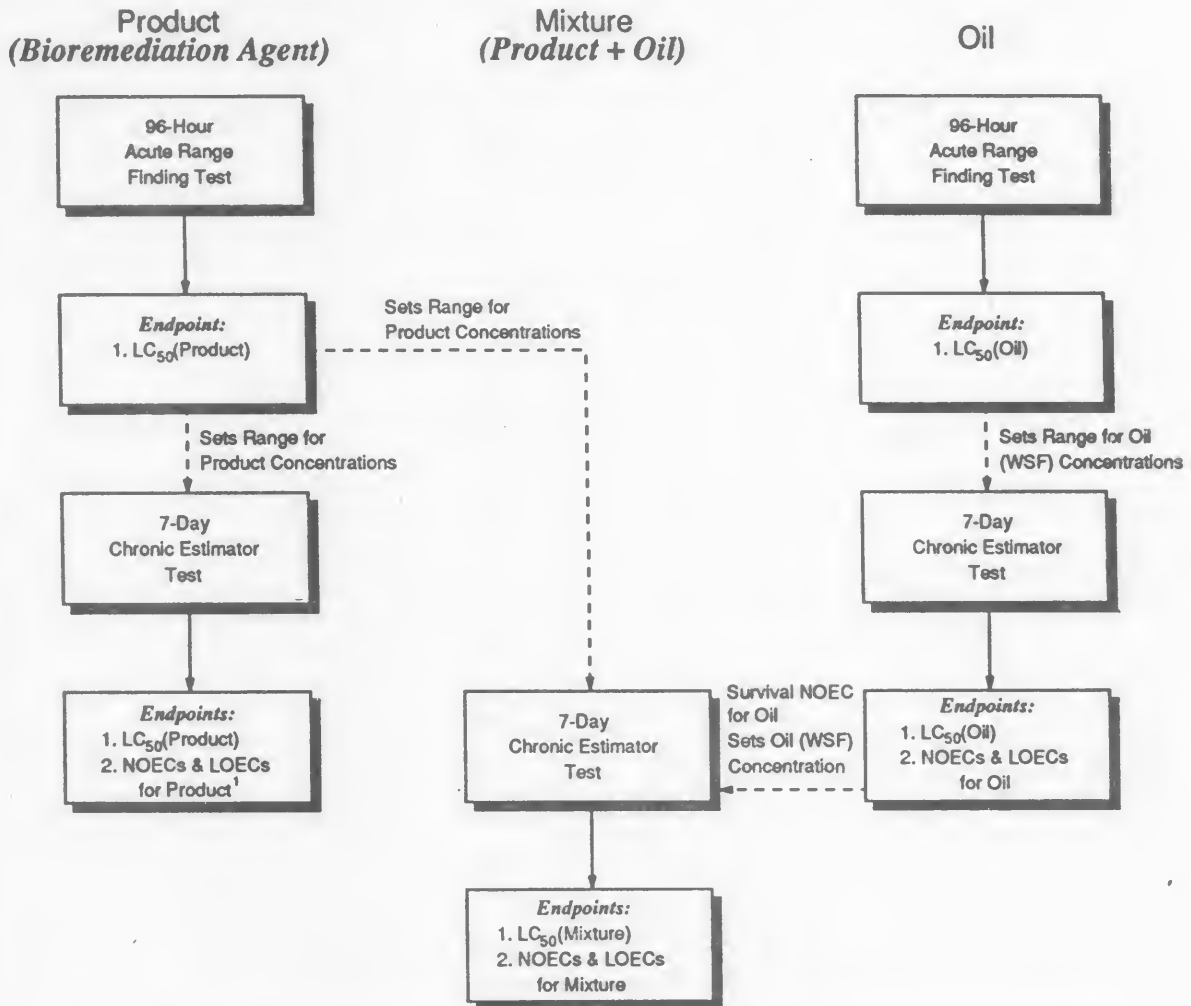
be conducted with the bioremediation agent and a mixture containing the bioremediation

agent plus oil. A 96-hour static, acute range finding test is also conducted using the

water-soluble fraction (WSF) of oil and appropriate (seawater) control.

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Figure 2
Process for Conducting Bioremediation Agent Toxicity Test



¹ For all tests, survival and growth NOECs & LOECs are calculated for both *Menidia* and *Mysidopsis*, and fecundity NOECs & LOECs are calculated for *Mysidopsis* only.

Data from this 96-hour test are used in setting up a 7-day chronic estimator test to determine the no observed effective concentration (NOEC) and the lowest observed effective concentration (LOEC) for the treatment effects (i.e., growth and survival for both fish and mysids, and fecundity in mysids) of the specific type of oil. The LOEC is the lowest concentration of a substance having a statistically significant adverse effect on the exposed population when compared to the control, and the NOEC is the highest concentration of a substance not having a statistically significant adverse effect on the exposed population when compared to the control. The survival NOEC of oil is subsequently used as the test concentration for oil used in a 7-day chronic estimator test of a mixture of bioremediation agent plus oil.

Seven (7) day chronic estimator tests with the mixture include both a seawater control and a control for the oil (WSF at the survival NOEC). Reference tests using DSS are conducted to ensure the sensitivity of test organisms and to aid in comparisons of results from assays performed by different workers. The duration of the reference tests is 96 hours for both *Menidia beryllina* and *Mysidopsis bahia*. The acute range finding tests are static tests, while the chronic estimator tests are static-renewal tests.

Methods for the bioremediation agent toxicity test should follow the basic recommendations made for conducting acute (6) and chronic (10) tests with effluents using silversides and mysids. However, the guidelines in this Appendix should be followed in cases where there is disagreement between the two protocols. Because of a lack of information on the use of oil and bioremediation agents in the effluent guidelines, specific information on preparation of oil sample and oil plus bioremediation agent mixture will be provided below. Guidelines for the preparation of bioremediation agents and the manufacturer's recommended application rate for field use are determined by the product vendor and should be provided to the laboratory personnel conducting the toxicity tests. This information should be included as part of the necessary documentation when submitting information for consideration of a product for inclusion on the NCP Product Schedule.

Data from the 96-hour acute toxicity range finding tests are used to derive a concentration range for the LC_{50} according to standard methods (6). LC_{50} s are calculated based on mortality data at the end of the 7-day exposure period and are calculated according to the method in Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (10). Survival, growth, and fecundity (for *Mysidopsis* only) data are used to calculate NOECs for the 7-day tests according to the EPA protocol (10).

Weathered crude oil (ANS521) is used as the standard oil for performance of these toxicity tests. However, product manufacturers wishing to evaluate their product's toxicity in the presence of other types of oil may utilize this protocol for additional toxicity testing of the

bioremediation agent with other kinds of oil (e.g., heavy or light crude oil, or refined oils such as No. 2 or No. 6 fuel oil).

5.2 Selection and Preparation of Test Materials. Test Organisms. *Menidia beryllina*. Obtain fish from a single source for each series of toxicity tests. In-house cultures are recommended wherever it is cost-effective, although organisms are available from commercial suppliers. Information on the source of test organisms and any known unusual condition to which fish were exposed before use should be included in the data report. Use of animals previously treated with pesticides or chemotherapeutic agents should be avoided. Organisms should not be used if they appear to be unhealthy, discolored, or show signs of stress. Use 7-day old larval fish.

Fish should be cultured in accordance with the methods outlined in Middaugh, *et al.* (5). There should be no need to acclimate organisms to the 25-1C temperature recommended for the toxicity tests if laboratory stock cultures of *Menidia* are maintained at the recommended culture temperature of 25±1C. If test organisms must be obtained from a commercial source, it may become necessary to acclimate test fish to the test temperature of 25±1C, a pH of 8.0±0.2, and 20±2 ppt salinity since changes in temperature may occur during shipping. Eliminate groups of fish having mortality of more than 20% during the first 48 hours, and more than 5% thereafter.

During acclimation, organisms should be maintained on a diet of freshly hatched *Artemia* (brine shrimp) nauplii. Feed the fish daily to satiation during the acclimation period, and once daily during the 96-hour test. Care should be taken daily to remove excess food and fecal material from beakers during the 96-hour test. Use only those organisms that feed actively and that appear to be healthy. Organisms should be free of disease, external parasites, and any signs of physical damage or stress. Discard any fish injured or dropped while handling.

***Mysidopsis*.** Several methods for culturing *Mysidopsis bahia* may be used and are noted in Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (6). To ensure uniformity of mysids, recently hatched mysids should be collected daily from stock cultures and identified by the date of hatch. Mysids used in 96-hour tests should be from a single day's collection, but may have an age range of 5-7 days old. In cases where in-house cultures of mysids are unavailable, organisms may be purchased from a commercial source. Information on the source of test organisms should be submitted in the data report.

Preparation of Experimental Water. Filtered natural seawater (FNS) is recommended for use since it represents a natural source of saltwater containing an inherent population of microorganisms. Synthetic seawater formulated according to the following method can serve as an acceptable alternative to filtered natural seawater for toxicity tests in laboratories in which natural seawater is unavailable, and product effectiveness is not dependent upon the presence of a natural assemblage of

microorganisms. The type of water used (i.e., natural or synthetic) should be identified in the data report.

Synthetic Seawater Formation. See section 3.2. Selection and Preparation of Test Materials for Dispersant Toxicity Test.

Apparatus. In addition to the above test materials, the following equipment is required for the toxicity tests: An aeration pump, regulators, and air lines for the air supply; electronic and top-loading balances; large polyethylene carboys; fluorescent lights with timer; glassware: 1 1-liter and 1 6-liter Erlenmeyer flask, 24 1-liter beakers, 24 400-ml beakers, 1 1-liter graduated cylinder, and volumetric and glass pipettes (disposable); light table; refractometer; shaker table; water bath; desiccator; and a dissecting microscope.

5.3 Sampling and Storage of Test Materials. Toxicity tests are performed with ANS521 crude oil, an artificially weathered product having characteristics that define it as a weathered, medium weight crude oil. ANS521 is prepared according to a draft method developed by the International Organization for Standardization (8), and is described in section 4.3.

Store oil used in toxicity tests in sealed containers protected from the light to prevent loss of volatiles and other changes. For ease in handling and use, it is recommended that 1-liter glass containers be used. To ensure comparable results in the toxicity tests, use oils packaged and sealed at the source. Dispose of unused oil from each open container on completion of dosing to prevent its use at a later date when it may have lost some of its volatile components. Run all tests in a bioassay series with oil from the same container or lot number, and with organisms from the same group collected or secured from the same source.

Water-Soluble Fraction. The WSF in toxicity tests is prepared according to an API method (11). The WSF is prepared by adding 1 part oil to 9 parts 20-ppt filtered natural seawater in a 4-liter Erlenmeyer flask. The contents of the flask are placed on a stir-table for 20 hours and stirred at a speed such that the vortex of oil at the top of the container does not extend more than 25% of the distance to the bottom of the flask. The mixture is allowed to settle for a minimum of one hour, and the aqueous portion is siphoned off.

The oil component (WSF) of the oil plus bioremediation agent mixture is produced in a similar manner as the oil (WSF) for toxicity tests using oil only. Actual concentrations of WSF used in the 7-day test may differ for each type of oil tested; based on NOEC data from tests with ANS521 and mysids, a concentration of 33% WSF would be added to the bioremediation agent to prepare the oil/product mixture. A seawater control and an oil control are used in addition to a total of five treatment mixtures. To prepare the mixtures, a total of five concentrations of bioremediation agent and one concentration of oil (i.e., the survival NOEC from the 7-day test with oil only) are used in the 7-day test.

5.4 General Test Conditions and Procedures for Toxicity Tests. Temperature. For these toxicity tests, use test solutions of 25±1°C.

Dissolved Oxygen and Aeration. *Menidia*. Because oils contain toxic, volatile materials,

and because the toxicity of some WSFs of oil and degradation products are changed by oxidation, special care must be used in the oxygenation of test solutions. Aeration during the test is generally not recommended but should be used to maintain the required DO in cases where low DO is observed. The DO content of test solutions must not drop below 60% saturation during the first 48 hours of a static acute (96-hour) test and must remain between 40–100% after the first 48 hours of the test. A DO reading of 60–100% saturation must be maintained within each exposure chamber throughout a 7-day static-renewal test. Aeration at a rate of 100±15 bubbles per minute is supplied by a serological pipette as needed for maintenance of DO. If aeration is necessary, all test chambers should be aerated. At this rate and with the proper weight of fish, DO concentration should remain slightly above 4 ppm. Take DO measurements daily.

Mysidopsis. Achieve sufficient DO by ensuring that the surface area to volume ratio of the test solution exposed is large enough. Oxygen content should remain high throughout the test because of the low oxygen demand of the organisms. Aeration is not recommended during 96-hour acute toxicity range finding tests unless the DO falls below 60% saturation.

Controls. With each fish or mysid test, or each series of tests of different solutions, perform a concurrent control test utilizing filtered natural seawater or other form of dilution water in exactly the same manner as the other tests and under the conditions prescribed or selected for those tests. There must be no more than 10% mortality among the controls during the course of any valid test. Twenty (20) % mortality is allowed for 7-day chronic estimator toxicity tests using *Mysidopsis*.

Reference Toxicant. See section 3.4, General Test Conditions and Procedures for Dispersant Toxicity Test.

Number of Organisms. For the 96-hour toxicity test procedures using *Menidia*, place 10 larval fish in each 1-liter glass beaker. Ten (10) mysids should be placed in each of the replicate 1-liter beakers for 96-hour toxicity tests. Fifteen (15) fish in a 1-liter beaker containing 750-ml test solution, and 5 mysids in a 400-ml beaker containing 150 ml of test solution are used for the 7-day chronic estimator tests.

Transfer of Organisms. Menidia. Organisms should be handled as little as possible in order to minimize stress. Transfer *Menidia* from the acclimatization aquaria to the test containers with a pipette. Dip nets should be avoided when handling larval fish. Do not hold fish out of the water longer than necessary and discard any specimen accidentally dropped or otherwise mishandled during transfer.

Mysidopsis. To have the mysids ready for study, mysids may be sorted 24 hours prior to initiation of the 96-hour test. Transfer mysids to a beaker containing a small volume of water; this vessel serves as a holding chamber during random transfer of the organisms to test solutions. Mysids are randomly selected from the batch of mysids, and transferred to 50-ml beakers containing a small volume of seawater. One mysid is

added per beaker using a small piece of flexible 500- μ m screening until all of the beakers contain one mysid. The process of random selection and sorting is continued until the appropriate number of mysids has been delivered to each of the 50-ml beakers. The beakers are filled with an appropriate volume of 20-ppt seawater (25°C) and placed into a temperature controlled water bath to acclimate overnight at 25°C.

The mysids are then transferred to the larger beakers (1-liter or 400-ml for 96-hour and 7-day toxicity tests, respectively) used as test chambers. A total of 10 mysids per beaker are used for 96-hour acute toxicity tests and 5 mysids per beaker are used for 7-day chronic estimator tests. Eight replicate test chambers are used for each test concentration used in a 7-day toxicity test. Two replicates are used per test concentration for the 96-hour acute range finding test.

Mysids are fed 50 brine shrimp nauplii/mysid daily during the acute toxicity range finding tests and 150 nauplii/mysid daily during the chronic estimator toxicity tests. Excess food should be removed daily by aspirating with a pipette.

Test Duration and Observations. Menidia. For duration and observations for the acute toxicity test, see section 3.4, General Test Conditions and Procedures for Dispersant Toxicity Test.

The chronic estimator test is terminated after 7 days of exposure. The number of surviving fish are counted for each chamber, and prepared as a group for drying and weighing in accordance with EPA Method 1006 (10). Utilizing survival and growth data from the test, the following endpoints are determined: LC₅₀, and LOEC and NOEC values for survival and growth in accordance with the methods described in EPA Method 1006 (10).

Mysidopsis. Terminate the mysid test after 96-hours of incubation. To count the dead animals accurately, place the exposure vessels on a light table such that light passes through the bottom of the vessel. Most of the dead mysids will be on the bottom of the beaker and can readily be seen against the background of the light table. Also search the top of the liquid for mysids trapped there by surface tension. Exercise caution when determining death of the animals. Occasionally, an animal appears dead, but closer observation shows slight movement of an appendage or a periodic spasm of its entire body. For these tests, animals exhibiting any movement when touched with a pipette tip are considered alive. Account for all test animals to ensure accuracy since *Mysidopsis bahia* may disintegrate or be cannibalized by other mysids. Consider individuals not accounted for as dead.

At the end of 96-hours of exposure, terminate the mysid assay and determine the LC₅₀ values in accordance with EPA methods (6). For 7-day toxicity assays, the effects measured at the termination of the exposure period include the LC₅₀, and LOEC and NOEC values for survival, growth, and fecundity in accordance with the methods outlined in EPA Method 1007 (10).

Physical and Chemical Determinations. Determine the salinity, temperature, DO, and

pH of the test solutions before the fish or mysids are added to the exposure vessel. These parameters should also be measured at 24-hour intervals during the 96-hour or 7-day exposure intervals. It is necessary to make measurements from only one of the replicates of each of the toxicant series on a given day. Other water quality parameters (e.g., free ammonia) should be measured at the initiation of the tests and periodically during the exposure period (96-hours or 7-days) to ensure the viability of the test organisms as high nutrient levels could adversely affect the test organisms.

Testing Laboratory. See section 3.4, General Test Conditions and Procedures for Dispersant Toxicity Test.

Test Containers. For tests with *Menidia*, use 1-liter glass beakers. For tests with *Mysidopsis*, use 1-liter or 400-ml glass beakers for 96-hour and 7-day toxicity tests, respectively. In conducting the test with *Menidia* or *Mysidopsis*, add to each of the beakers a volume of seawater aerated to saturation with DO. Refer to the methods manuals for the appropriate volume to be used for an acute or chronic test for the specific organism (6, 10). To add the appropriate volume easily and accurately, use a large capacity (1-liter) graduated cylinder.

Process all required glassware before each test. Immerse in normal hexane for 10 minutes. Follow this with a thorough rinse with hot tap water, three hot detergent scrubs, an additional hot tap-water rinse, and three rinses with distilled water. Oven or air dry the glassware in a reasonably dust-free atmosphere.

5.5 Preparation of Test Concentrations. Preparation of Oil. The methods to be used for preparing the working stocks of the oil WSF are those that are provided in the API publication No. 4249 (11); refer to section 3.5, Preparation of Test Concentration for Dispersant Toxicity Test, for additional discussion.

The WSF of ANS521 will be prepared by adding a 9:1 ratio of filtered natural seawater (20 ppt) and oil to a 4-liter Erlenmeyer flask. The mixture is then stirred on a stir plate for a period of 20 hours. The rate of mixing is adjusted so that the vortex at the surface of the mixture does not extend >25% of the distance to the bottom of the container. The mixture is allowed to settle for a period of 1–6 hours to allow the oil and water to separate. The aqueous portion is siphoned off for immediate use as stock solution. This stock solution represents 100% WSF.

Example: A 96-hour acute range finding test is conducted with a range of oil (WSF) concentrations (i.e., 100%, 33%, 11%, 3.3%, and 1.1% WSF) plus a seawater control. The undiluted water soluble fraction (100% WSF) represents the initial stock that is serially diluted to produce a lower concentration of WSF until five concentrations of WSF have been prepared. A minimum of 3,050 ml of 100% WSF is needed when 2 1-liter replicates are run per test concentration. 1,050 ml is reserved from the higher concentration to dilute for the next lowest concentration. The volumes of oil and seawater needed to achieve these test concentrations are shown below:

Concentration ANS521 oil (WSF) (% test media)	Volume (ml)	Seawater (20 ppt) (ml)	Total (ml)	Excess volume (ml)
100.0	3050.0		3050.0	
33.0	1050.0 of 100 WSF	2100.0	3150.0	100
11.0	1050.0 of 33 WSF	2100.0	3150.0	100
3.3	1050.0 of 11 WSF	2100.0	3150.0	100
1.1	1050.0 of 3.3 WSF	2100.0	3150.0	100
Control		2000.0	2000.0	

The LC₅₀ estimate derived from the data generated during the 96-hour acute range finding test is used to narrow the range of concentrations over which the subsequent 7-day chronic estimator test will be performed. Exact procedures for formulation of the oil (WSF) concentrations used for the 7-day test are not provided since the actual concentration range tested is dependent on the value obtained in the 96-hour test. The preparation of oil (WSF) concentrations should follow the same concept of serial dilution of an initial stock solution (100%

WSF) with a dilution factor of approximately 0.66.

Once the 7-day LC₅₀ is determined for ANS521, and the NOEC and LOEC values are determined, the NOEC for survival will be used as the concentration of oil diluent used in chronic estimator tests with the bioremediation agents. For tests with mysids, each mysid test chamber will contain 150 ml of test solution and 5 mysids with 8 replicates per concentration (240 mysids/test). When performing 7-day tests with silversides, test chambers will contain 750 ml

of test solution and 15 fish with 4 replicates per concentration (360 silversides/test). The test solution is renewed every 24 hours from a stock solution that is prepared daily. Table 9, Summary of Operating Conditions for Bioremediation Agent Toxicity Test, provides a brief synopsis of test parameters for both silversides and mysids. Information is provided on the volume needed per chamber and can be used to estimate the total volume of solution required for each test concentration during 96-hour and 7-day tests with silversides and mysids.

TABLE 9.—SUMMARY OF OPERATING CONDITIONS FOR BIOREMEDIATION AGENT TOXICITY TEST

Operating conditions	96-hour acute range finding test	7-day chronic estimator test
Test type	static	static-renewal.
Waterbath temperature	25 °C	25 °C.
Salinity	20±2 ppt	20±2 ppt.
Aeration	none, unless <60%	none, unless <60%.
Test chamber	1-liter beaker	1000-ml beaker (fish) 400-ml beaker (mysid).
Renewal solution	none	daily.
Number of treatments	5+ control	5+ control.
Number of replicates	2	4 (fish); 8 (mysid).
Dilution factor	= 0.5	= 0.66.
Endpoint	LC ₅₀	LC ₅₀ , NOEC, LOEC.
Test duration	96-hour	7-day.
Light	20 µE/m ² /s (50–100 ft.c)	20 µE/m ² /s (50–100 ft.c)
Photoperiod	16-h light/8-h dark with phase in/phase out	16-h light/8-h dark with phase in/phase out.
Volume	1000 ml	750 ml (fish); 150 ml (mysid).
Age of organisms	7 days	7 days.
Number of organisms	10/beaker	15/beaker (fish) 5/beaker (mysid).
Feeding	50 <i>Artemia</i> nauplii/organism	50 nauplii/mysid 0.1g nauplii/fish (day 0–2) 0.15g nauplii/fish (day 3–6).
Cleaning	pipette excess from cup daily	pipette excess from cup daily.
EPA Manual Reference	U.S. EPA, 1991 (6)	U.S. EPA, 1988 (10).

Preparation of Bioremediation Agent. Because some of the bioremediation agent formulations will require the addition of several components prior to use (e.g., addition of nutrient component to microbial component), all calculations of product concentrations used in acute and chronic toxicity tests with the product will be based on the final (combined bioremediation) product. This final product is prepared according to the manufacturer's instructions found in the product material safety data sheets (MSDSs). A working stock of 100,000 ppm will be prepared from the final product. Make a stock of 100,000 ppm in a 500-ml volumetric flask by adding 50 ml or 50 grams of final product and diluting with seawater to a final volume of 500 ml. A range finding test will be conducted to determine the concentration range for the chronic estimator test and will involve preparation of serially

diluted samples of the 100,000 ppm stock solution to produce the 5 test concentrations of the bioremediation agent. For the acute range finding tests with seawater as the diluent, a control and 5 concentrations of product are prepared with 2 replications of each concentration.

Two types of chronic tests are performed with the bioremediation agent: a test with the bioremediation agent only, and a test with the bioremediation agent plus oil (WSF). The bioremediation agent concentration is not to exceed 1,000 ppm unless the manufacturer's guidelines indicate that the application rate will be greater than 1,000 ppm. For the chronic tests with mysids, there will also be 5 concentrations plus a control, conducted in 8 replications; only the NOEC of ANS521 oil will be used as diluent in tests with bioremediation agent plus oil (WSF). An example follows that indicates the volume of

bioremediation agent and oil (WSF) at the NOEC that might be used if one were performing a 7-day mysid test with a mixture of bioremediation agent plus oil. A similar approach to preparing test solutions would be used when performing tests with *Menidia*. However, the volume of solution needed should be adjusted to allow for a total of 750 ml/test chamber with 5 concentrations plus controls and 4 replicates per concentration.

Example (7-day mysid test): Make up stock solution according to product's application instructions in the MSDS. If 1,000 ppm is the only concentration, then 1.2 g of product will be needed for the test. For stock solution, make up 10,000 ppm into 150 ml (1.5 ml of product). The test with oil will require approximately 250 ml of oil (WSF at the NOEC) per day; approximately 1,750 ml of the mixture (bioremediation agent plus oil) are needed per test.

Bio. agent (mg/1 ppm)	FNS (ml)	Oil NOEC (ml)	Agent (ml)	Stock media (ppm)	Vol. prev. (ml)	Total conc. (ml)
500.0	1692.21	107.8	10000	.....	1800
200.0	1200.0	.....	.....	600	1800
66.7	1200.0	.....	.....	600	1800
22.2	1200.0	.....	.....	600	1800
7.7	1200.0	.....	.....	600	1800
Oil ¹	1200.0	.....	.....	.....	1200
FNS ¹	1200	.....	.....	.....	.....	1200

¹Control.

5.6 *Calculating and Reporting.* At the end of each test period, the toxicity tests are terminated and the LC₅₀ values determined. Data resulting from 7-day chronic estimator tests are also used to determine the LOEC and NOEC values for survival, growth, and fecundity, as indicated.

Calculations. The LC₅₀ is the concentration lethal to 50% of the test population. It can be calculated as an interpolated value based on percentages of organisms surviving at two or more concentrations in which partial mortality is observed. The LC₅₀ can be estimated with the aid of computer programs or graphic techniques (log paper). The 95% confidence intervals for the LC₅₀ estimate should also be determined. Methods for determining the 96-hour LC₅₀ and 7-day LC₅₀ are found in the EPA methods manuals (6) and (10), respectively.

LOECs and NOECs are estimated utilizing survival, growth, and fecundity (determined for *Mysidopsis* only) data from the 7-day tests in accordance with EPA methods (10).

Reporting. The bioremediation agent and oil, and their source and storage should be described in the toxicity test report. Note any observed changes in the experimental water or test solutions. Also, include the species of fish used; the sources, size, and condition of the fish; and any observations on the behavior of organisms at regular intervals during tests (e.g., notes on physical adherence or trapping of organisms in particulates associated with the product). In addition to the calculated LC₅₀ values (method of estimation should be clearly stated), NOEC and LOEC for survival and growth should be indicated in the report for silversides, and NOEC and LOEC for survival, growth, and fecundity should be indicated in the report for mysids. Other data necessary for interpretation (e.g., DO, pH, other physical parameters, and the percent survival at the end of each day of exposure at each concentration of toxicant) should be reported.

5.6 *Summary of Procedures.* As noted in Figure 2, a series of toxicity tests will be performed with *Menidia beryllina* and *Mysidopsis bahia* and will range in duration from 96-hours (acute range finding tests) to 7-days (chronic estimator tests). The toxicity tests will include:

1. 96-hour acute range finding test of bioremediation agent.
2. 96-hour acute range finding test of WSFs of ANS521 oil.
3. Seven (7) day chronic estimator test of the bioremediation agent.
4. Seven (7) day chronic estimator test of WSFs of ANS521 oil.

5. Seven (7) day chronic estimator test of WSFs of ANS521 oil and the bioremediation agent.

6. Reference tests using DSS, with both the silversides and mysids.

The 96-hour acute toxicity tests will follow the guidelines in the EPA manual Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (6). The 7-day chronic estimator tests will follow the guidelines in the EPA manual Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (10).

96-hour Acute Range Finding Tests. The general sequence of events followed during set-up, conduct, and breakdown of the 96-hour acute range finding test is listed below.

1. Obtain glassware: 12 1-liter beakers and 1 1-liter graduated cylinder.
2. Label beakers.
3. Add seawater into glassware and check salinity. Add 1,000 ml into 1-liter beakers.
4. Prepare stock solution. Mix the solution immediately before test begins, cover solution and store it in the dark.
5. Dose.
6. Randomly count out organisms into each container and record start time.
7. Data sheets: Measure temperature, pH, salinity, dissolved oxygen.
8. Feed organisms: 50 *Artemia nauplii*/organism/day.
9. Check after 2 hours for mortality, aberrant behavior (e.g., animals moving slowly, swimming spirally), color change, or opaque color.
10. Check test every 0, 24, 48, 72, and 96 hours. Record data on data sheets.
11. Terminate test and calculate LC₅₀ and 95% confidence intervals.
12. QA/QC: Each control should have no more than 20% mortality in each replicate, and the survival rate for all controls should be at least 90% (10% mortality).

7-day Chronic Estimator Tests. Seven (7) day chronic estimator tests generally follow the sequence below.

1. Make up aluminum weigh boats 24 hours in advance. Heat in oven 24 hours, cool, weigh, store in desiccator.
2. Obtain glassware: 48 400-ml beakers; 1 2-liter graduated cylinder; pipettes; and Erlenmeyer flasks.
3. Prepare stock solution. Mix solution immediately before test begins, cover solution and keep in the dark.
4. Dose.
5. Randomly count out organisms into each container and record start time.

6. Data sheets: Measure temperature, pH, salinity, dissolved oxygen.

7. Feed test organisms.

8. Check after 2 hours for mortality, aberrant behavior (e.g., animals moving slowly or swimming spirally), color change, or opaque color.

9. Check test every 0, 24, 48, 72, 96, 120, 144, and 168 hours. Record data on data sheets.

10. Terminate test.

11. QA/QC: A maximum of 20% mortality is allowed for each replicate control; all controls together should have a survival rate of at least 90% (10% mortality).

12. For tests using mysids, determine sex and record the number of females with and without eggs.

13. Put total number of organisms from each replicate cup in separate weigh boat. Dry in oven at 130 °F (55°C) for at least 24-48 hours. Weigh and record data.

14. Calculate LC₅₀ and 95% confidence interval, and LOEC and NOEC for survival, growth, and fecundity, as appropriate.

6.0 Summary Technical Product Test Data Format

The purpose of this format is to summarize in a standard and convenient presentation the technical product test data required by the U.S. Environmental Protection Agency before a product may be added to EPA's NCP Product Schedule, which may be used in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan. This format, however, is not to preclude the submission of all the laboratory data used to develop the data summarized in this format. Sufficient data should be presented on both the effectiveness and toxicity tests to enable EPA to evaluate the adequacy of the summarized data.

A summary of the technical product test data should be submitted in the following format. The numbered headings should be used in all submissions. The subheadings indicate the kinds of information to be supplied. The listed subheadings, however, are not exhaustive; additional relevant information should be reported where necessary. As noted, some subheadings may apply only to particular types of agents.

I. Name, Brand, or Trademark
 II. Name, Address, and Telephone Number of Manufacturer

III. Name, Address, and Telephone Numbers of Primary Distributors

IV. Special Handling and Worker Precautions for Storage and Field Application

1. Flammability.
2. Ventilation.
3. Skin and eye contact; protective clothing; treatment in case of contact.
4. Maximum and minimum storage temperatures; optimum storage temperature range; temperatures of phase separations and chemical changes.

V. Shelf Life

VI. Recommended Application Procedure

1. Application method.
2. Concentration, application rate (e.g. gallons of dispersant per ton of oil).

3. Conditions for use: water salinity, water temperature, types and ages of pollutants.

VII. Toxicity (Dispersants, Surface Washing Agents, Surface Collecting Agents, and Miscellaneous Oil Spill Control Agents)

Materials tested	Species	LC ₅₀ (ppm) (hr.)
Product	<i>Menidia beryllina</i>	96
	<i>Mysidopsis bahia</i>	48
No. 2 fuel oil	<i>Menidia beryllina</i>	96
	<i>Mysidopsis bahia</i>	48
Product and No. 2 fuel Oil (1:10).	<i>Menidia beryllina</i>	96
	<i>Mysidopsis bahia</i>	48

VIII(a). Effectiveness (Bioremediation Agents).

Raw data must be reported according to the format shown below. The first column lists the names of the analytes measured by GC/

MS (SIM), the surrogate standards, and various ratios and sums. In the next three columns, the concentration of the analytes (ng/mg oil), the concentration of the analytes corrected for the recovery of the surrogate standard (α -androstande for alkanes, d₁₀-phenanthrene for aromatics), and the concentration of corrected analytes normalized against α , β -hopane, respectively, are reported for the first replicate from the first sampling event. These three columns are each repeated for the next two replicates, giving 9 total columns for the product of interest. The next 9 columns are the same as the product columns except they are for the no-nutrient control. The last nine columns are for the nutrient control. Thus, a total of 28 columns are needed in the spreadsheet. This spreadsheet is for the first sampling event (day 0). Three more identical spreadsheets will be needed for each of the next three sampling events (days 5, 13, and 21).

Date:
 Testing Date: 0, 5, 13, 21 (Circle One)
 Initial Oil Weight:

BIOREMEDIATION AGENT EFFECTIVENESS TEST RAW DATA

	Product replicate 1			Product replicate 2
	Concentration ng/mg	Surrogate corrected ng/mg	Normalized to hopane ng/mg	
ALKANE ANALYTE.				
nC-10				
nC-11				
nC-12				
nC-13				
nC-14				
nC-15				
nC-16				
nC-17				
Pristane.				
nC-18				
Phytane.				
nC-19				
nC-20				
nC-21				
nC-22				
nC-23				
nC-24				
nC-25				
nC-26				
nC-27				
nC-28				
nC-29				
nC-30				
nC-31				
nC-32				
nC-33				
nC-34				
nC-35				
nC-36				
α -androstande.				
Total alkanes.				
nC-17: Pristane				
nC-18: Phytane.				
AROMATIC ANALYTE				
Naphthalene.				
c1 Naphthalenes				
c2 Naphthalenes				
c3 Naphthalenes				
c4 Naphthalenes				
Dibenzothiophene				

BIOREMEDIATION AGENT EFFECTIVENESS TEST RAW DATA—Continued

	Product replicate 1			Product replicate 2
	Concentration ng/mg	Surrogate corrected ng/mg	Normalized to hopane ng/mg	
Fluorene				
c1 Flurenes				
c2 Flurenes				
c3 Flurenes				
c1 Dibenzothiophenes				
c2 Dibenzothiophenes				
c3 Dibenzothiophenes				
Phenanthrene				
Anthracene				
c1 Phenanthrenes				
c2 Phenanthrenes				
c3 Phenanthrenes				
Naphthobenzothio.				
c1 Naphthobenzothio.				
c2 Naphthobenzothio.				
c3 Naphthobenzothio.				
Fluoranthene				
Pyrene				
c1 Pyrenes				
c2 Pyrenes				
Chrysene				
Benzo (a) anthracene				
c1 Chrysenes				
c2 Chrysenes				
Benzo (b) fluoranth.				
Benzo (k) fluoranth.				
Benzo (e) pyrene				
Benzo (a) pyrene				
Perylene				
Indeno (1, 2, 3-cd) per.				
Benzo (g, h, i) pyrene				
Dibenz (ah) anthrac.				
α, β-hopane				
d8 Naphthalene				
d10 Phenanthrene				
d12 Chrysene				
d12 Perylene				
Total aromatics				
Grav. weight oil				
No. oil degraders/ml				

For the statistical analysis, a report showing the two-way analysis of variance (ANOVA) table created by the software used by the investigator must be shown in its entirety along with the name of the software package used. Another printout showing the mean separation table (protected LSD test

results) generated by the software must be reported. The statistical analyses are conducted using the sum of the alkane concentrations and the sum of the aromatics concentrations from the raw data table. Thus, two ANOVAs are run for each sampling event, one for total alkanes and one for total

aromatics, giving a total of 8 ANOVAs for a product test (2 ANOVAs x 4 sampling events). Only if significant differences are detected by a given ANOVA will it be necessary to run a protected LSD test.

VIII.(b). Toxicity (Bioremediation Agents)

Materials tested	Species	LC ₅₀ (ppm)	NOEC & LOEC (ppm or % WSF)
Product	<i>Menidia beryllina</i>	96-hr. & 7-day	Survival and growth.
	<i>Mysidopsis bahia</i>	96-hr. & 7-day	Survival, growth, and fecundity.
ANS521 Oil	<i>Menidia beryllina</i>	96-hr. & 7-day	Survival and growth.
	<i>Mysidopsis bahia</i>	96-hr. & 7-day	Survival, growth, and fecundity.
Product and ANS521 Oil	<i>Menidia beryllina</i>	7-day	Survival and growth.
	<i>Mysidopsis bahia</i>	7-day	Survival, growth, and fecundity.

IX. Microbiological Analysis (Bioremediation Agents)

X. Physical Properties of Dispersant/Surface Washing Agent/Surface Collecting Agent/Miscellaneous Oil Spill Control Agent

1. Flash Point: (°F)
2. Pour Point: (°F)
3. Viscosity: _____ at _____ °F (furol seconds)
4. Specific Gravity: _____ at _____ °F
5. pH: (10% solution if hydrocarbon based)
6. Surface Active Agents (Dispersants and Surface Washing Agents)²
7. Solvents (Dispersants and Surface Washing Agents)²
8. Additives (Dispersants and Surface Washing Agents)
9. Solubility (Surface Collecting Agents)

XI. Analysis for Heavy Metals, Chlorinated Hydrocarbons, and Cyanide (Dispersants, Surface Washing Agents Surface Collecting Agents, and Miscellaneous Oil Spill Control Agents)

Compounds	Concentration (ppm)
Arsenic	
Cadmium	
Chromium	
Copper	
Lead	
Mercury	
Nickel	
Zinc	
Cyanide	
Chlorinated Hydrocarbons.	

References

- (1) L.T. McCarthy, Jr., I. Wilder, and J.S. Dorrier. *Standard Dispersant Effectiveness and Toxicity Tests*. EPA Report EPA-R2-73-201 (May 1973).
- (2) M.F. Fingas, K.A. Hughes, and M.A. Schwertzer. "Dispersant Testing at the Environmental Emergencies Technology Division." *Proc. Tenth Arctic Marine Oilspill Program Technical Seminar*. 9-11 June, 1987. Edmonton, Alberta, Canada. Conservation and Protection, Environment Canada. pp. 343-356.
- (3) J.R. Clayton, Jr., S.F. Tsang, V. Frank, P. Marsden, and J. Harrington. *Chemical Oil Spill Dispersants: Evaluation of Three Laboratory Procedures for Estimating Performance*. Final report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992.
- (4) J.R. Clayton, Jr. and J.R. Payne. *Chemical Oil Spill Dispersants: Update State-of-the-Art on Mechanisms of Actions and Factors Influencing Performance With Emphasis on Laboratory Studies*. Final report prepared by Science Applications International Corporation for U.S. Environmental Protection Agency, 1992.
- (5) D.P. Middaugh, M.J. Hemmer, and L. Goodman. *Methods for Spawning, Culturing*

² If the submitter claims that the information presented under this subheading is confidential, this information should be submitted on a separate sheet of paper clearly labeled according to the subheading and entitled "Confidential Information."

and Conducting Toxicity-tests With Early Life Stages of Four Antherinid Fishes: the Inland Silverside, *Menidia beryllina*, Atlantic Silverside, *M. menidia*, Tidewater Silverside, *M. peninsulae*, and California Grunion, *Lesthes tenuis*. Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC. EPA 600/8-87/004, 1987.

(6) U.S. EPA. *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*. Fourth edition. U.S. Environmental Protection Agency, Washington, DC. EPA 600/4-90/027, 1991.

(7) G.S. Douglas, et al. "The Use of Hydrocarbon Analyses for Environmental Assessment and Remediation." In: P.T. Kosteki and E.J. Calabrese (eds.), *Contaminated Soils, Diesel Fuel Contamination*. Lewis Publishers, Ann Arbor, MI, 1992.

(8) Draft International Standard ISO/DIS 8708 "Crude Petroleum Oil—Determination of Distillation Characteristics Using 15 Theoretical Plates Columns." International Organization for Standardization.

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(10) U.S. EPA. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Environmental Monitoring and U.S. Environmental Protection Agency, Cincinnati, OH. EPA 600/4-87/028, 1988.

(11) J.W. Anderson. Laboratory Studies on the Effects of Oil on Marine Organisms. American Petroleum Institute, Publ. No. 4249, 1975.

Appendix E to Part 300—Oil Spill Response

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1.0 Introduction

1.1 Background

The Oil Pollution Act of 1990 (OPA) amends the Federal Water Pollution Control Act (FWPCA), commonly referred to as the Clean Water Act (CWA), to require the revision of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In revising the NCP, the need to separate the response requirements for oil discharges and release of hazardous substances, pollutants, and contaminants became evident.

1.2 Purpose/Objective

This document compiles general oil discharge response requirements into one

appendix to aid participants and responders under the national response system (NRS). This appendix provides the organizational structure and procedures to prepare for and respond to oil discharges. Nothing in this appendix alters the meaning or policy stated in other sections or subparts of the NCP.

1.3 Scope

(a) This appendix applies to discharges of oil into or upon the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, or waters of the exclusive economic zone, or which may affect the natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(b) This appendix is designed to facilitate efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It addresses:

(1) The national response organization that may be activated in response actions, the responsibilities among the federal, state, and local governments, and the resources that are available for response.

(2) The establishment of regional and area contingency plans.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Designation of federal trustees for natural resources for purposes of the CWA.

(5) Procedures for the participation of other persons in response actions.

(6) Procedures for compiling and making available cost documentation for response actions.

(7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(c) In implementing the NCP provisions compiled in this appendix, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking action that may affect its activities.

1.4 Abbreviations

This section of the appendix provides abbreviations relating to oil.

(a) Department and Agency Title Abbreviations:

ATSDR—Agency for Toxic Substances and Disease Registry
 CDC—Centers for Disease Control
 DOC—Department of Commerce
 DOD—Department of Defense
 DOE—Department of Energy
 DOI—Department of the Interior
 DOJ—Department of Justice
 DOL—Department of Labor
 DOS—Department of State
 DOT—Department of Transportation
 EPA—Environmental Protection Agency
 FEMA—Federal Emergency Management Agency
 GSA—General Services Administration
 HHS—Department of Health and Human Services

NIOSH—National Institute for Occupational Safety and Health

NOAA—National Oceanic and Atmospheric Administration

OSHA—Occupational Safety and Health Administration

RSPA—Research and Special Programs Administration

USCG—United States Coast Guard

USDA—United States Department of Agriculture

Note: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation "NRC" only with respect to the National Response Center.

(b) Operational Abbreviations:

AC—Area Committee

ACP—Area Contingency Plan

DRAT—District Response Advisory Team

DRG—District Response Group

ERT—Environmental Response Team

ESF—Emergency Support Functions

FCO—Federal Coordinating Officer

FRERP—Federal Radiological Emergency

Response Plan

FRP—Federal Response Plan

LEPC—Local Emergency Planning Committee

NCP—National Contingency Plan

NPFC—National Pollution Funds Center

NRC—National Response Center

NRS—National Response System

NRT—National Response Team

NSF—National Strike Force

NSFCC—National Strike Force Coordination Center

OSC—On-Scene Coordinator

OSLTF—Oil Spill Liability Trust Fund

POLREP—Pollution Report

PIAT—Public Information Assist Team

RCP—Regional Contingency Plan

RERT—Radiological Emergency Response Team

RRT—Regional Response Team

SERC—State Emergency Response

Commission

SONS—Spill of National Significance

SSC—Scientific Support Coordinator

1.5 Definitions

Terms not defined in this section have the meaning given by CERCLA, the OPA, or the CWA. This appendix restates the NCP definitions relating to oil.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Area Committee (AC) as provided for by CWA sections 311(a)(18) and (j)(4), means the entity appointed by the President consisting of members from qualified personnel of federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President.

Area contingency plan (ACP) as defined by CWA sections 311(a)(19) and (j)(4) means the plan prepared by an Area Committee that is developed to be implemented in conjunction with the NCP and RCP, in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore

facility, or onshore facility operating in or near an area designated by the President.

Bioremediation agents means microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge.

Burning agents means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

Chemical agents means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the oil pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, and burning agents, but do not include solvents.

Claim in the case of a discharge under CWA means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

Claimant as defined by section 1001 of the OPA means any person or government who presents a claim for compensation under Title I of the OPA.

Coastal waters for the purpose of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Coast Guard District Response Group (DRG) as provided for by CWA sections 311(a)(20) and (j)(3), means the entity established by the Secretary of the department in which the USCG is operating within each USCG district and shall consist of: The combined USCG personnel and equipment, including firefighting equipment, of each port within the district; additional prepositioned response equipment; and a district response advisory team.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Damages as defined by section 1001 of the OPA means damages specified in section 1002(b) of the Act, and includes the cost of assessing these damages.

Discharge as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means substantial threat of discharge.

Dispersants means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

Exclusive economic zone as defined in OPA section 1001, means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Facility as defined by section 1001 of the OPA means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: Exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Federal Response Plan (FRP) means the agreement signed by 25 federal departments and agencies in April 1987 and developed under the authorities of the Earthquake Hazards Reduction Act of 1977 and the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988.

First federal official means the first federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the pre-designated OSC.

Indian tribe as defined in OPA section 1001, means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the Tribe.

Inland waters for the purposes of classifying the size of discharges, means those waters of the United States in the

inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes, and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

Lead administrative trustee means a federal natural resource trustee who is designated on an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other federal natural resource trustees during response operations and is responsible for applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

Lead agency means the agency that provides the OSC to plan and implement response actions under the NCP.

Miscellaneous oil spill control agent is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

National Pollution Funds Center (NPFCC) means the entity established by the Secretary of Transportation whose function is the administration of the Oil Spill Liability Trust Fund (OSLTF). Among the NPFCC's duties are: Providing appropriate access to the OSLTF for federal agencies and states for removal actions and for federal trustees to initiate the assessment of natural resource damages; providing appropriate access to the OSLTF for claims; and coordinating cost recovery efforts.

National Response System (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the NRT, RRTs, OSC, Area Committees, and Special Teams and related support entities.

National Strike Force (NSF) is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the National Strike Force Coordination Center. The NSF is available to assist OSCs in their preparedness and response duties.

National Strike Force Coordination Center (NSFCC), authorized as the National Response Unit by CWA section 311 (a)(23) and (j)(2), means the entity established by the Secretary of the department in which the USCG is operating at Elizabeth City, North Carolina, with responsibilities that include administration of the USCG Strike Teams, maintenance of response equipment inventories and logistic networks, and conducting a national exercise program.

Natural resources means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including

the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Navigable waters as defined by 40 CFR 110.1 means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; and

(3) That are used or could be used for industrial purposes by industries in interstate commerce.

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Offshore facility as defined by section 311(a)(11) of the CWA means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil as defined by section 311(a)(1) of the CWA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

Oil Spill Liability Trust Fund means the fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-scene coordinator (OSC) means the federal official pre-designated by the EPA or

the USCG to coordinate and direct federal response under subpart D.

Onshore facility as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of a response action.

Person as defined by section 1001 of the OPA, means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Public vessel as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Remove or removal as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife, public and private property, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes monitoring of action to remove a discharge.

Removal costs as defined by section 1001 of the OPA means the costs of removal that are incurred after a discharge of oil has occurred, or in any case in which there is a substantial threat of a discharge of oil the costs to prevent, minimize, or mitigate oil pollution from such an incident.

Responsible party as defined by section 1001 of the OPA means the following:

(a) **Vessels**—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) **Onshore facilities**—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) **Offshore facilities**—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) **Deepwater ports**—In the case of a deepwater port licensed under the Deepwater

Port Act of 1974 (33 U.S.C. 1501-1524), the licensee.

(e) **Pipelines**—In the case of a pipeline, any person owning or operating the pipeline.

(f) **Abandonment**—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the person who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

Sinking agents means those additives applied to oil discharges to sink floating pollutants below the water surface.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) **Minor discharge** means a discharge in inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) **Medium discharge** means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) **Major discharge** means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Sorbents means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it, absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material, or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

(a) **Organic products**—(1) Peat moss or straw; (2) Cellulose fibers or cork; (3) Corn cobs; (4) Chicken or duck feathers.

(b) **Mineral compounds**—(1) Volcanic ash or perlite; (2) Vermiculite or zeolite.

(c) **Synthetic products**—(1) Polypropylene; (2) Polyethylene; (3) Polyurethane; (4) Polyester.

Specified ports and harbors means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in federal regional contingency plans and area contingency plans.

Spill of national significance (SONS) means a spill which due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state,

local, and responsible party resources to contain and clean up the discharge.

State means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian tribes as defined in the NCP except where specifically noted.

Surface collecting agents means those chemical agents that form a surface film to control the layer thickness of oil.

Surface washing agent is any product that removes oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing or solubilizing the oil into the water column.

Tank vessel as defined by section 1001 of OPA means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or residue, and that: (1) Is a vessel of the United States; (2) operates on the navigable waters; or (3) transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Threat of discharge, see definition for discharge.

Trustee means an official of a federal natural resources management agency designated in subpart G of the NCP or a designated state official or Indian tribe or, in the case of discharges covered by the OPA, a foreign government official, who may pursue claims for damages under section 1006 of the OPA.

United States when used in relation to section 311(a)(5) of the CWA, mean the states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vessel as defined by section 311(a)(3) of the CWA means every description of, watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Volunteer means any individual accepted to perform services by the lead agency which has authority to accept volunteer services (for examples, see 16 U.S.C. 742(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

Worst case discharge as defined by section 311(a)(24) of the CWA means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo, and in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.

2.0 National Response System

2.1 Overview

The national response system (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the National Response Team (NRT), Regional Response Teams (RRTs), On-scene coordinator (OSC), Area Committees, and Special Teams and related support entities. The NRS functions

as an incident command system (ICS) under the direction of the OSC. Typical of an ICS, the NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge.

2.2 Priorities

(a) Safety of human life must be given the highest priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

2.3 Responsibility

(a) The pre-designated OSC has the responsibility to direct response actions and coordinate all other response efforts at the scene of an oil discharge or threatened discharge. The OSC monitors or directs all federal, state, local, and private removal actions, or arranges for the removal of an actual or threatened oil discharge, removing and if necessary, requesting authority to destroy a vessel. Additionally, the CWA requires the OSC to direct all federal, state, local, and private removal actions to any incident that poses a substantial threat to the public health or welfare.

(b) Cleanup responsibility for an oil discharge immediately falls on the responsible party, unless the discharge poses

a substantial threat to public health or welfare. In a large percentage of oil discharges, the responsible party shall conduct the cleanup. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated.

(1) If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(2) If the Administrator of EPA or the Secretary of the department in which the USCG is operating determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States (including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States), the Administrator or Secretary may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA including administrative orders, that may be necessary to protect the public health or welfare.

(3) The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(c) In those incidents where a discharge or threat of discharge poses a substantial threat to the public health or welfare of the United States, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. The OSC shall also request immediate activation of the RRT.

(d) During responses to any discharge the OSC may request advice or support from the Special Teams and any local support units identified by the Area Committee. Examples include scientific advice from the Scientific Support Coordinator (SSC), technical guidance or prepositioned equipment from the District Response Group (DRG), or public information assistance from the National Strike Force (NSF).

(e) When an oil discharge exceeds the response capability of the region in which it

occurs, transects regional boundaries, or involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to the natural resources, the NRT should be activated as an emergency response team. If appropriate the RRT Chairman may contact the NRT Chairman and request the NRT activation.

3.0 Components of national response system and responsibilities

The NRS is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS organization is divided into national, regional, and area levels. The national level comprises the NRT, the National Strike Force Coordination Center (NSFCC), and the National Response Center (NRC). The regional level is comprised of the RRT. The area level is made up of the OSC, Special Teams, and Area Committees.

3.1 National

3.1.1 National Response Team. (a) National planning and coordination is accomplished through the NRT. The NRT consists of representatives from the USCG, EPA, Federal Emergency Management Agency (FEMA), Department of Defense (DOD), Department of Energy (DOE), Department of Agriculture (DOA), Department of Commerce (DOC), Department of Health and Human Services (HHS), Department of the Interior (DOI), Department of Justice (DOJ), Department of Labor (DOL), Department of Transportation (DOT), Department of State (DOS), Nuclear Regulatory Commission, and General Services Administration (GSA). Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT (see Figure 1).

(b) The chair of the NRT shall be the representative of the EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC. The vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

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Figure 1



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(d) The NRT may establish such bylaws, procedures, and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges, shall recommend any changes needed in the response organization, and shall recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil that is beyond regional capabilities;

(2) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(3) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(4) Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of federal, state, and local governments, and private response to oil discharges;

(5) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

(6) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

(7) Reviewing regional responses to oil discharges, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(8) Assist in developing a national exercise program, in coordination with the NSFCC to ensure preparedness and coordination nationwide.

(i) The NRT shall consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge:

(A) Exceeds the response capability of the region in which it occurs;

(B) Transects regional boundaries; or

(C) Involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to natural resources;

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT will meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC and recommend to the OSC, through the RRT, actions to combat the discharge;

(2) Request other federal, state and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

3.1.2 National Response Center. (a) The NRC, located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions, including those involving discharges of oil. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges must be made by telephone through a toll free number or a special number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC.

(b) The Commandant, USCG, in conjunction with other NRT agencies, provides the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B. Notification will be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424-8802 or (202) 267-2675. All notices of discharges received at the NRC will be relayed immediately by telephone to the QSC.

3.1.3 National Strike Force Coordination Center. NSFCC, located in Elizabeth City, North Carolina, may assist the OSC by providing information on available spill removal resources, personnel, and equipment. The NSFCC can provide the following support to the OSC:

(a) Technical assistance, equipment, and other resources to augment the OSC staff during spill response;

(b) Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;

(c) Review of the area contingency plan, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;

(d) Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;

(e) Coordination and evaluation of pollution response exercises; and

(f) Inspection of district prepositioned pollution response equipment.

3.2 Regional. (a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. In the case of a discharge of oil, preparedness activities shall be carried out in conjunction with Area Committees as appropriate. The

RRT agency membership parallels that of the NRT, but also includes state and local representation. The RRT provides: (1) The appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC during such response actions; and (2) guidance to Area Committees, as appropriate, to ensure inter-area consistency and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis. It also includes coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge. Appropriate levels of activation and/or notification of the incident-specific RRT, including participation by state and local governments, shall be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC. The designated OSC manages response efforts and coordinates all other efforts at the scene of a discharge.

(c) The representatives of EPA and the USCG shall act as co-chairs of the RRTs except when the RRT is activated. When the RRT is activated for response actions, the chair is the member agency providing the OSC.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange with the RRT for representation appropriate to their geographical location. All agencies and states may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and

membership on incident-specific teams in support of the OSCs.

(f) Federal RRT members or their representatives should provide OSCs with assistance from their respective federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the RCP and ACP.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining ACPs.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state Governor is requested to assign an office or agency to represent the state on the appropriate RRT; to designate representatives to work with the RRT in developing RCPs; to plan for, make available, and coordinate state resources for use in response actions; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep the State Emergency Response Commission (SERC) apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes are also invited to participate in such activities.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of ACPs for the federal response to discharges, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the RRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and ACPs are effective;

(5) Encourage the state and local response community to improve its preparedness for response;

(6) In coordination with the Area Committee, conduct advance planning for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents in accordance with subpart J of this part;

(7) Be prepared to provide response resources to the major discharges or releases outside the region;

(8) Conduct or participate in training and exercises as necessary to encourage

preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period, consider changes in RCPs, and recommend changes in ACPs;

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31; and

(11) Ensure maximum participation in the national release program for announced and unannounced exercises.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge:

(A) Exceeds the response capability available to the OSC in the place where it occurs;

(B) Transects state boundaries;

(C) May pose a substantial threat to the public health or welfare, or to regionally significant amounts of property; or

(D) Is a worst case discharge, as defined in section 1.5 of this appendix.

(2) The RRT shall be activated during any discharge upon a request from the OSC, or from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives will meet at the call of the chair and may:

(A) Monitor and evaluate reports from the OSC, advise the OSC on the duration and extent of response, and recommend to the OSC specific actions to respond to the discharge;

(B) Request other federal, state, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or to monitor response operations;

(C) Help the OSC prepare information releases for the public and for communication with the NRT;

(D) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC that a different OSC should be designated; and

(E) Submit pollution reports to the NRC as significant developments occur.

(5) RCPs shall specify detailed criteria for activation of RRTs.

(6) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(7) When the RRT is activated, affected states may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any federal member of the RRT.

(8) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC no longer requires RRT assistance.

(9) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT for advice.

3.3 Area.

3.3.1 *On-scene coordinator.* The OSC is the federal official pre-designated by EPA or the USCG to coordinate and direct federal responses under subpart D of the NCP. The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. EPA shall provide OSCs for discharges into or threatening the inland zone. In carrying out a response, the OSC may direct or monitor all federal, state, and private actions to remove a discharge. The OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

3.3.2 *Area Committees.* (a) Area Committees shall be responsible for: (1) Preparing an ACP for their areas; (2) working with appropriate federal, state, and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and (3) working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

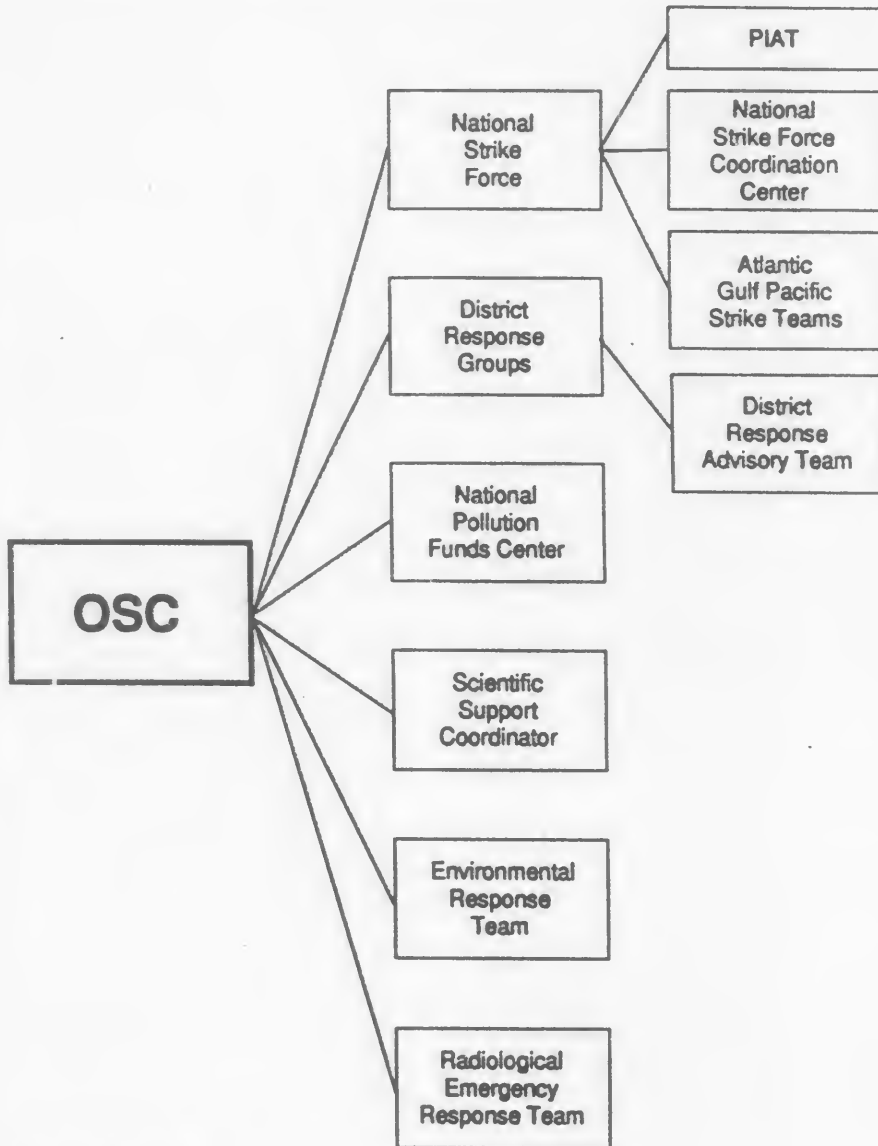
(b) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. The ACP, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate and prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

3.3.3 *Special teams.* (a) Special teams include: NOAA/EPA's SSCs; EPA's Environmental Response Team (ERT); and USCG's NSF; DRGs; and NPFC (see Figure 2).

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Figure 2

National Response System Special Teams



(b) SSCs may be designated by the OSC as the principal advisors for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies regarding scientific studies. The SSC strives for a consensus on scientific issues affecting the response, but ensures that differing opinions within the community are communicated to the OSC.

(1) Generally, SSCs are provided by NOAA in the coastal zones, and by EPA in the inland zone. OSC requests for SSC support may be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs may also be requested through NOAA's SSC program office in Seattle, WA. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

(2) During a response, the SSC serves on the federal OSC's staff and may, at the request of the OSC, lead the scientific team and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature and location of the incident, the SSC integrates expertise from governmental agencies, universities, community representatives, and industry to assist the OSC in evaluating the hazards and potential effects of releases and in developing response strategies.

(3) At the request of the OSC, the SSC may facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the RRTs and the Area Committees in preparing regional and area contingency plans and in conducting spill training and exercises. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions in support of the OSC.

(c) The ERT is established by the EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology and engineering.

(1) The ERT can provide access to special decontamination equipment and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water

supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material. The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(2) OSC or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(d) The NSF is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the NSFCC. The NSF is available to assist OSCs in their preparedness and response duties.

(1) The three Strike Teams (Atlantic, Gulf, and Pacific) provide trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and in monitoring or directing the response actions of the responsible parties and/or contractors. The OSC has a specific team designated for initial contact and may contact that team directly for any assistance.

(2) The NSFCC can provide the following support to the OSC:

- Technical assistance, equipment and other resources to augment the OSC staff during spill response;
- Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;
- Review of the ACP, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;
- Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;
- Coordination and evaluation of pollution response exercises; and
- Inspection of district prepositioned pollution response equipment.

(3) PIAT is an element of the NSFCC staff which is available to assist OSCs to meet the demands for public information during a response or exercise. Its use is encouraged any time the OSC requires outside public affairs support. Requests for PIAT assistance may be made through the NSFCC or NRC.

(e)(1) The DRG assists the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. Each DRG consists of all Coast Guard personnel and equipment, including marine firefighting equipment, in its district,

additional pre-positioned equipment, and a District Response Advisory Team (DRAT) that is available to provide support to the OSC in the event that a spill exceeds local response capabilities. Each DRG:

(A) Shall provide technical assistance, equipment, and other resources as available when requested by an OSC through the USCG representative to the RRT;

(B) Shall ensure maintenance of all USCG response equipment within its district;

(C) May provide technical assistance in the preparation of the ACP; and

(D) Shall review each of those plans that affect its area of geographic responsibility.

(2) In deciding where to locate personnel and pre-positioned equipment, the USCG shall give priority emphasis to:

(A) The availability of facilities for loading and unloading heavy or bulky equipment by barge;

(B) The proximity to an airport capable of supporting large military transport aircraft;

(C) The flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties;

(D) The availability of trained local personnel capable of responding in an oil spill emergency; and

(E) Areas where large quantities of petroleum products are transported.

(f) The NPFC is responsible for implementing those portions of Title I of the OPA that have been delegated to the Secretary of the department in which the Coast Guard is operating. The NPFC is responsible for addressing funding issues arising from discharges and threats of discharges of oil. The NPFC:

(1) Issues Certificates of Financial Responsibility to owners and operators of vessels to pay for costs and damages that are incurred by their vessels as a result of oil discharges;

(2) Provides funding for various response organizations for timely abatement and removal actions related to oil discharges;

(3) Provides equitable compensation to claimants who sustain costs and damages from oil discharges when the responsible party fails to do so;

(4) Recovers monies from persons liable for costs and damages resulting from oil discharges to the full extent of liability under the law; and

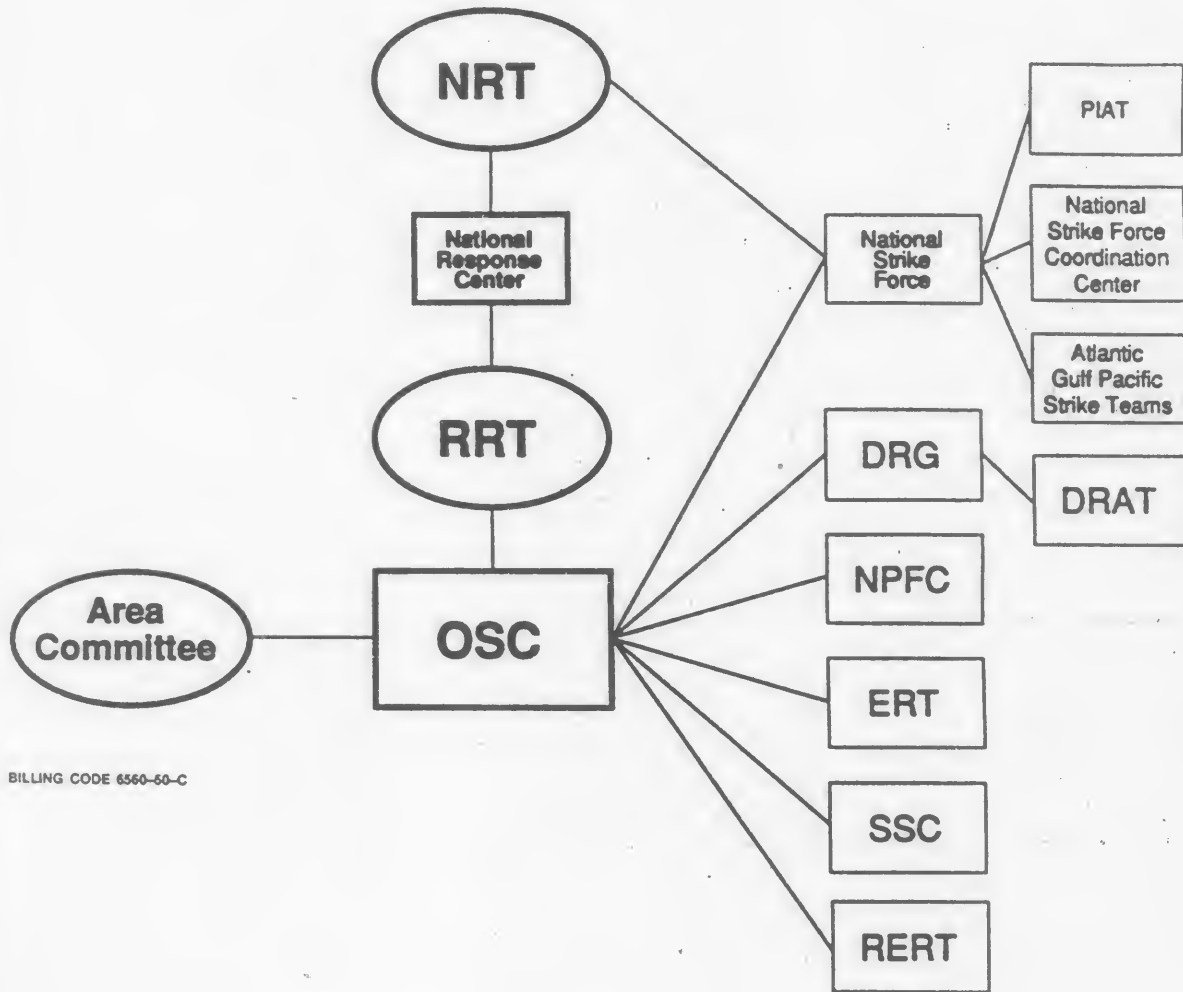
(5) Provides funds to initiate natural resources damage assessment.

(g) The organizational concepts of the national response system discussed above are depicted in Figure 3.

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Figure 3

National Response System Organization



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4.0 Preparedness Activities

4.1 *Federal contingency plans.* This section summarizes emergency preparedness activities relating to discharges of oil and describes the three levels of contingency planning under the national response system.

4.1.1 *National Contingency Plan.* (a) The NCP provides for efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It provides for:

- (1) The national response organization that may be activated in response actions and specifies responsibilities among the federal, state, and local governments and describes resources that are available for response;
- (2) The establishment of requirements for federal, regional, and area contingency plans;
- (3) Procedures for undertaking removal actions pursuant to section 311 of the CWA;
- (4) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions;
- (5) Designation of federal trustees for natural resources for purposes of the CWA;
- (6) Procedures for the participation of other persons in response actions; and
- (7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(b) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking action which may affect its activities.

4.1.2 *Regional contingency plans.* The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, and Title III local emergency response plans. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. RCPs shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by the USCG and the EPA.

4.1.3 *Area contingency plans.* (a) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee, in consultation with the appropriate RRTs, DRGs, the NSFCC, SSCs, Local Emergency Planning Committees (LEPCs), and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of

such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(b) The areas of responsibility may include several Title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible to the greatest extent possible with all appropriate response plans of state, local, and non-federal entities, and especially with Title III local emergency response plans.

(c) The ACP shall include the following:

- (1) A description of the area covered by the plan, including the areas of special economic or environmental importance that might be impacted by a discharge;
- (2) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;
- (3) A list of equipment (including firefighting equipment), dispersants, or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which include such equipment lists);
- (4) A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants; and
- (5) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans approved by the President, and into operating procedures of the NSFCC.

4.1.4 *Fish and Wildlife and Sensitive Environments Plan annex.* (a) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex shall be prepared in consultation with the U.S. Fish and Wildlife Service (FWS) and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area Committee recommendations. The annex shall provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge; protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure

compatibility of annex-related activities with removal operations.

(b) The annex shall:

(1) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant or otherwise designated protected areas.

(2) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (3) of this section.

(3) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to, disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.

(4) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (1) and (3) of this section and subpart J requirements of the NCP, and must have the concurrence of the natural resource trustees.

(5) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include "set-aside" or "control" areas, where no mitigative actions are taken.

(6) Identify and provide for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with the OSC's removal operations.

(7) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(8) Identify and secure the means for providing, if needed, the minimum required Occupational Safety and Health Administration (OSHA) training for volunteers, including those who assist with injured wildlife.

(9) Evaluate the compatibility between this annex and non-federal response plans (including those of vessels, facilities and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

4.2 Relation to Others Plans

4.2.1 *Federal response plans.* In the event of a declaration of a major disaster by the President, the FEMA may activate the Federal Response Plan (FRP). A Federal Coordinating Officer (FCO), designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Functions (ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

4.2.2 *Tank Vessel and Facility Response Plans.* (a) Under CWA section 311(j)(5), tank vessels, offshore facilities, and certain

onshore facilities are required to prepare and submit response plans for review and approval by the President for the carriage, storage, and transportation of oil and hazardous substances. Separate regulations published by the appropriate federal agencies provide for required response plan development and/or approval.

(b) These plans shall be developed to coordinate responsible party actions with the OSC and the ACP response strategies, for response to oil discharges within the inland and coastal zones of the United States.

4.3 Pre-approval Authority

(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. RRTs shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans developed pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with

jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this paragraph, the OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resource trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section.

(e) Sinking agents shall not be authorized for application to oil discharges.

(f) When developing preauthorization plans, RRTs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in § 300.915 and described in appendix C to part 300, due to existing site-specific or area-specific concerns.

4.4 *Area response drills.* The OSC periodically shall conduct drills of removal capability (including fish and wildlife response), without prior notice, in areas for which ACPs are required and under relevant tank vessel and facility response plans.

5.0 Response Operations

(a) The OSC shall direct response efforts and coordinate all other efforts at the scene of a discharge. As part of the planning and preparation for response, OSCs shall be pre-designated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the pre-designated OSC. This official may initiate federal OSLTF-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC shall, to the extent practicable, collect pertinent facts about the discharge, such as its source and cause; the identification of responsible parties; the nature, amount, and location of discharged materials; the probable direction and time of travel of discharged materials; whether the discharge is a worst case discharge; the pathways to human and environmental

exposure; the potential impact on human health, welfare, and safety and the environment; whether the discharge poses a substantial threat to the public health or welfare; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate cost documentation.

(d) The OSC's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs may designate capable persons from federal, state, or local agencies to act as their on-scene representatives. State and local governments, however, are not authorized to take actions under subpart D of the NCP that involve expenditures of the OSLTF unless an appropriate contract or cooperative agreement has been established.

(e) The OSC should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(g) The OSC is responsible for addressing worker health and safety concerns at a response scene.

(h) In those instances where a possible public health emergency exists, the OSC should notify the HHS representative to the RRT. Throughout response actions, the OSC may call upon the OSHA and HHS representative for assistance on worker health and safety issues.

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)(1) The OSC shall ensure that the natural resource trustees are promptly notified of discharges.

(2) The OSC shall coordinate all response activities with the affected natural resource trustees and shall consult with the affected trustees on the appropriate removal action to be taken.

(3) Where the OSC becomes aware that a discharge may affect any endangered or threatened species, or their habitat, the OSC shall consult with DOI, DOC, NOAA, and, if appropriate, the cognizant federal land managing agency.

(k) The OSC shall submit pollution reports (POLREPs) to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(l) The OSC should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable.

5.1 Phase I—Discovery or Notification

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility, in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC.

Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424-8802 or (202) 267-2675.

If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA pre-designated OSC for the geographic area where the discharge occurs. The EPA pre-designated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or pre-designated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event, such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

5.2 Phase II—Preliminary Assessment and Initiation of Action

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible

party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(A) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(B) Direct or monitor all federal, state, and private actions to remove a discharge; and

(C) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in a substantial threat to the public health or welfare of the United States (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC must direct all response efforts, as provided in section 5.3.4 of this appendix. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(d) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. When circumstances permit, the OSC shall share the use of response resources with the trustees, provided trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees.

5.3 Patterns of Response

5.3.1 Determinations to initiate response and special conditions.

(a) In accordance with the CWA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil.

(b) The Administrator of EPA or the Secretary of the department in which the

USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare is required to initiate and direct, appropriate response activities when the Administrator or Secretary determines that any oil is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, on the adjoining shorelines to the navigable waters, into or on the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under exclusive management authority of the United States.

(c) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States.

(d) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(e) Where appropriate, when a discharge involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan. Most radiological discharges and releases do not result in FRERP activation and should be handled in accordance with the NCP. However, releases from nuclear incidents subject to requirements for financial protection established by the Nuclear Regulatory Commission under the Price-Anderson amendments (section 170) of the Atomic Energy Act are specifically excluded from CERCLA and NCP requirements.

(f) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and FEMA Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(g) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the Governor

and declare a major disaster or emergency and appoint a FCO to coordinate all federal disaster assistance activities. In such cases, the OSC would continue to carry out OSC responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(h) In the event of a declaration of a major disaster by the President, FEMA may activate the FRP. An FCO, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as ESFs. EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

5.3.2 General pattern of response. (a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(2) Officially classify the size (i.e., minor, medium, major) and type (i.e., substantial threat to the public health or welfare, worst case discharge) of the discharge and determine the course of action to be followed to ensure effective and immediate removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in 5.3.4, 5.3.5, and 5.3.6 of this appendix.

(A) When the reported discharge is an actual or potential major discharge, immediately notify the RRT, including the affected state, if appropriate, and the NRC, and ensure notification of the natural resource trustees.

(B) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, if appropriate.

(C) When the investigation shows that an actual or potential minor discharge exists, the OSC shall monitor the situation to ensure that proper removal action is being taken.

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a discharge can be achieved by private party efforts, and where the discharge does not pose a substantial threat to the public health or welfare, determine whether the responsible party or other person is properly carrying out removal. Removal is being done properly when:

(A) The cleanup is fully sufficient to effectively and immediately remove, minimize, or mitigate threat(s) to public health and welfare and the environment. Removal efforts are improper to the extent that federal efforts are necessary to remove, minimize further, or mitigate those threats; and

(B) The removal efforts are in accordance with applicable regulations, including the NCP.

(4) Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions.

(5) Ensure prompt notification of the trustees of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with the Governor or Governors of the affected states. When the OSC considers removal complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

5.3.3 Containment, countermeasures, and cleanup. (a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare or the environment. Actions may include but are not limited to: Analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; measuring and sampling; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of part 300 of the NCP to restrain the spread of the oil and mitigate its effects. The ACP should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: The sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

5.3.4 Response to a substantial threat to the public health or welfare. (a) The OSC

shall determine whether a discharge results in a substantial threat to public health or welfare (including, but not limited to, fish, shellfish, wildlife, other natural resources, the public and private beaches, and shorelines of the United States). Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. In directing the response in such cases, the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government to:

(1) Remove or arrange for the removal of the discharge;

(2) Mitigate or prevent the substantial threat of the discharge; and

(3) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(c) In the case of a substantial threat to the public health or welfare, the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT; and

(3) Take whatever additional response actions are deemed appropriate, including but not limited to implementation of the ACP or relevant tank vessel or facility response plan.

(d) When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

5.3.5 Enhanced activities during a spill of national significance. (a) A discharge may be classified as a SONS by the Administrator of EPA for discharges occurring in the inland zone and the Commandant of the USCG for discharges occurring in the coastal zone.

(b) For a SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For a SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination shall involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

5.3.6 Response to worst case discharges.

(a) If the investigation by the OSC shows that a discharge is a worst case discharge or there is a substantial threat of such a discharge, the OSC shall:

(1) Notify the NSFCC;

(2) Require, where applicable, implementation of the worst case portion of an approved tank vessel or facility response plan;

(3) Implement the worst case portion of the ACP, if appropriate; and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

5.3.7 Multi-regional responses. (a) If a discharge moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC at any time during the course of a response operation. Should a discharge affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC. The RRT shall designate the OSC if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC if members of one RRT or two adjacent RRTs are unable to agree on the designation.

5.3.8 Worker health and safety. (a) Response actions under the NCP shall comply with the provisions for response action worker safety and health in 29 CFR 1910.120. The national response system meets the requirements of 29 CFR 1910.120 concerning use of an incident command system.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for the protection of workers at the response site.

(c) In a response taken under the NCP by a lead agency, an occupational safety and health program should be made available for the protection of workers at the response site, consistent with, and to the extent required

by, 29 CFR 1910.120. Contracts relating to a response action under the NCP should contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (OSH Act) and state laws with plans approved under section 18 of the OSH Act.

(d) When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply with standards in 40 CFR part 311, promulgated by the EPA pursuant to section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

(e) Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) through (d) of this section, must be complied with where applicable. Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

5.4 Disposal

Oil recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: The sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

5.5 Natural Resource Trustees

5.5.1 Damage assessment. (a) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 1006 of the OPA, take the following actions as appropriate:

(1) Conduct a preliminary survey of the area affected by the discharge to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(2) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(3) Carry out damage assessments; or

(4) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(b) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such,

resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(1) In accordance with OPA section 1006(e), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(2) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

(c)(1) The trustees, through the lead administrative trustee, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in pre-designating shoreline types and areas in ACPs.

(2) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations.

(3) The OSC deploys federal response resources, including but not limited to aircraft, vessels, and booms to contain and remove discharged oil. When circumstances permit, the OSC shall share the use of federal response resources with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate, apply to the OSC for access to federal response resources on behalf of all trustees.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Participating in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate.

(3) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 311(f)(5) of the CWA or section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge; or

(2) Requesting that the lead agency remove, or arrange for the removal of any oil from a contaminated medium pursuant to section 311 of the CWA.

5.5.2 Lead administrative trustee. The lead administrative trustee is a federal natural resource trustee who is designated on

an incident-by-incident basis and chosen by the other federal trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other federal natural resource trustees during response operations and is responsible for applying to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

5.5.3 On-scene Coordinator (OSC) coordination. (a) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable, as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(b) The trustees will provide timely advice concerning recommended actions with regard to trustee resources that are potentially affected. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques, and in pre-designating shoreline types and areas in ACPs.

(c) The trustees also will assure that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations.

5.5.4 Dissemination of Information. (a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC by disseminating information on issues relating to damage assessment activities. Following termination of the removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

5.5.5 Responsibilities of trustees. (a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs of discharges.

(c)(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(A) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(B) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(C) Carry out damage assessments; or

(D) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(A) In accordance with OPA section 1006(e), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(B) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship;

(3)(A) The trustees, through the lead administrative trustee, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in pre-designating shoreline types and areas in ACPs.

(B) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations.

(C) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee shall, as appropriate.

apply to the OSC for access to federal response resources on behalf of all trustees for initiation of damage assessment and claims for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil from a contaminated medium pursuant to section 311 of CWA.

5.6 Oil Spill Liability Trust Fund

5.6.1 *Funding.* (a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR subchapter M. The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(c) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency.

(d) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy (USN) may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(3) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR subchapter M, states may be reimbursed from the OSLTF for

the reasonable costs incurred in such a removal.

5.6.2 *Claims.* (a) Claims are authorized to be presented to the OSLTF under section 1013 of the OPA of 1990, for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States.

(b) Anyone desiring to file a claim against the OSLTF may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia, 22203-1804, (703) 235-4756.

5.7 Documentation and cost recovery

All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare and the environment. Documentation procedures are contained in 33 CFR subchapter M.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) As requested by the NRT or RRT, the OSC shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The RRT shall review the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report. The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred.

Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to the trustees of affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

5.8 National response priorities

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel

that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begin as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

6.0 Response coordination

6.1 Nongovernmental participation

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst case discharge to the maximum extent practicable, and should commit sufficient resources to implement other aspects of those plans.

(b) The technical and scientific information generated by the local community, along with information from federal, state, and local governments, should be used to assist the OSC in devising response strategies where effective standard techniques are unavailable. Such information and strategies will be incorporated into the ACP, as appropriate. The SSC may act as liaison between the OSC and such interested organizations.

(c) ACPs shall establish procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with requirements regarding worker health and safety. ACPs should provide for the direction of volunteers by the OSC or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of subpart H of the NCP if any recovery of costs will be sought.

6.2 Natural resource trustees

6.2.1 Federal agencies. (a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. These designated federal officials shall act pursuant to section 1006 of the OPA. *Natural resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States, including the resources of the exclusive economic zone.

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources. They are authorized to act pursuant to section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources as a result of a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC or by other federal agencies and that are found in, or under, or using waters navigable by deep draft vessels in, under, or using tidally influenced waters or waters of the contiguous zone, the exclusive economic zone, the outer continental shelf, and in upland areas serving as habitat for marine mammals and other protected species. However, before the Secretary takes an action with respect to an affected resource under the management or protection of another federal agency, he shall, whenever practicable, seek to obtain concurrence of that other federal agency. Examples of the Secretary's trusteeship include marine fishery resources and their supporting ecosystems; most anadromous fish; certain endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) The Secretary of the Interior shall act as trustee for natural resources managed or controlled by DOI. Examples of the Secretary's trusteeship include migratory birds; certain anadromous fish, endangered species, and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) Secretary for the land managing agency. For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) Head of Authorized Agencies. For natural resources located within the United States but not otherwise described in this section, the trustee is the head of the federal agency or agencies authorized to manage or control those resources.

6.2.2 State. (a) State trustees shall act on behalf of the public as trustees for natural resources within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the purposes of section 6.1, the definition of the term "state" does not include Indian tribes.

(b) The Governor of a state is encouraged to designate a lead state trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as a contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the lead state trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone, and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

6.2.3 Indian tribes. The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in section 1.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation.

6.2.4 Foreign trustees. Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

6.3 Federal agencies

(a) Federal agencies listed in this appendix have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs, and ACPs provide for agencies to coordinate with each other in carrying out these duties.

(b) Federal agencies may be called upon by an OSC during response planning and implementation to provide assistance in their respective areas of expertise, consistent with the agencies' capabilities and authorities.

(c) In addition to their general responsibilities, federal agencies should:

(1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs;

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs; and

(3) Inform the NRT, RRTs, and Area Committees consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(d) All federal agencies are encouraged to report discharges of oil from vessels or facilities under their jurisdiction or control to the NRC.

6.4 Other federal agencies

6.4.1 Department of Commerce. (a) The DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil through trajectory modeling, and information on the sensitivity of coastal environments to oil and associated cleanup and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary and National Estuarine Research Reserve ecosystems; and provides information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for marine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes. In addition to this expertise, NOAA provides SSCs in the coastal zone, as described under section 3.3.3 of this appendix, Special teams.

6.4.2 Department of Justice. The DOJ can provide expert advice on complicated legal questions arising from discharges, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC for the response.

6.4.3 Department of Defense. The DOD has responsibility to take all action necessary with respect to discharges where either the discharge is on, or the sole source of a discharge is from, any facility or vessel under the jurisdiction, custody, or control of DOD. DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed USN oil spill response equipment and provide assistance to other federal agencies upon request. The following two branches of DOD have particularly relevant expertise:

(a) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract

writing and contract administrative services for other federal agencies.

(b) The USN is the federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents.

6.4.4 Department of Health and Human Services. The HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as state and local governments.

The principal HHS response comes from the U.S. Public Health Service and is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a hazardous materials emergency comes from the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA while ATSDR takes the lead during chemical releases under CERCLA. Both agencies are mutually supportive.

Other Public Health Service agencies involved in support during hazardous materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: (1) Worker safety training and (2) basic research activities. Under section 126 of the SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders. Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act, NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess

human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

6.4.5 Department of the Interior. The DOI may be contacted through Regional Environmental Officers, who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(a) FWS: Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; effects on natural resources; and laboratory/research facilities.

(b) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(c) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness.

(d) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; and oil spill response technology research.

(e) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(f) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(g) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(h) Office of Territorial Affairs: Assistance in implementing the NCP in American Samoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

6.4.6 Department of Labor. The DOL, through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(a) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(b) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests

from EPA or another lead agency, or in response to accidents or employee complaints. On request, OSHA shall provide advice and assistance to EPA and other NRT/RRT agencies as well as to the OSC regarding hazards to persons engaged in response activities. Technical assistance may include development and maintenance of site safety plans and work practices, assistance with exposure monitoring, and help with other compliance questions. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites should be referred to the OSHA Regional Office.

6.4.7 Federal Emergency Management Agency. FEMA provides guidance, policy and program advice, and technical assistance in hazardous materials, chemical, and radiological emergency preparedness activities (including planning, training, and exercising). FEMA's primary point of contact for administering financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability is the State and Local Programs and Support Directorate.

6.4.8 Department of Energy. The DOE generally provides designated OSCs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, under the FRERP, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through direct contact with the appropriate DOE Radiological Assistance Coordinating Office.

6.4.9 Department of State. The DOS will lead in the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

6.4.10 General Services Administration. The GSA provides logistic and telecommunications support to federal agencies. During an emergency situation, GSA quickly responds to aid state and local governments. The type of support provided might include leasing and furnishing office space, setting up telecommunications and transportation services, and advisory assistance.

6.5 States and local participation in response

(a) Each state Governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state Governor is also requested to designate a lead state agency that shall direct state-lead response operations. This agency is responsible for designating the OSC for state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the

state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate state and local officials (including Indian tribes) shall participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under the CWA for oil discharges, states are encouraged to undertake response actions themselves or

to use their authorities to compel potentially responsible parties to undertake response actions.

(e) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect the public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

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Federal Register

Friday
October 22, 1993

Part IV

Department of Transportation

Federal Highway Administration

**National Highway Traffic Safety
Administration**

**23 CFR Parts 659 and 1260
Certification of Speed Limit Enforcement;
Revision of Procedures; Final Rule and
Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****National Highway Traffic Safety Administration****23 CFR Parts 659 and 1260**

[Docket No. 93-8; Notice 2]

RIN 2127-AE52

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice replaces the National Maximum Speed Limit (NMSL) procedures contained in 23 CFR part 659 with new procedures as required by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). It revises the speed limit compliance formula, the speed monitoring plan, and the penalty for non-compliance in accordance with the requirements of this new legislation.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: In FHWA, Julie Anna Cirillo, Chief, Information Management and Analysis Branch, 202-366-2170. In NHTSA, J. Michael Sheehan, Chief, Police Traffic Services Division, 202-366-4295.

SUPPLEMENTARY INFORMATION:**Background**

The 55 mph NMSL was first instituted in 1974. FHWA and NHTSA have shared responsibility for the enforcement of the NMSL, which includes imposing sanctions on States that do not comply. ISTEA, which was signed into law on December 18, 1991, requires the Secretary of Transportation to propose changes to the regulation governing the NMSL, 23 CFR part 659. Because of this statutory mandate, FHWA and NHTSA published proposed modifications to Part 659 in the Federal Register (58 FR 186) on January 4, 1993 (the NPRM), and proposed that the revised procedures be contained in 23 CFR part 1260.

ISTEA requires that a new rule establish speed limit compliance requirements on both 65 mph and 55 mph roads (previously, the NMSL covered only 55 mph roads), a formula for determining compliance by the States with such requirements and penalties for State noncompliance. The statute requires that the formula assign

greater weight for violations of the applicable speed limits in proportion to the amount by which the speed of the motor vehicle exceeds the speed limit. The formula must also differentiate among the types of road on which the violations occur. In developing this formula, the Secretary was directed to consider factors relating to the enforcement efforts made by the States, data concerning fatalities and serious injuries occurring on roads posted at the NMSL, any other factors relating to speed limit enforcement and speed-related highway safety trends which the Secretary determines appropriate.

The ISTEA also requires the Secretary to consider—

- (1) The variability of speedometer readings;
- (2) The speeds of all vehicles or a representative sample of all vehicles;
- (3) The number of speeding citations, travel speeds, and the posted speed limit for NMSL highways; and
- (4) The design characteristics for the NMSL highways.

In addition, the ISTEA states that:

- (1) The data shall be collected from uniform monitoring programs; and
- (2) The data shall be obtained from devices and equipment placed at locations on NMSL highways, on a scientifically random basis, which take into account the relative risk of motor vehicle accidents occurring considering the classes of highways and the speeds being attained on such highways.

Discussion of Comments

The portions of the agencies' NPRM for which commenters expressed no opinion have not been discussed in this final rule. These portions are incorporated for the purposes of this Notice. To assist the reader, the agencies have attempted to group the topics discussed in this final rule in a manner similar to that found in the NPRM, except where comments fell into subject categories that did not logically belong under the NPRM topics.

A total of 79 comments were received: 4 from Governor's Highway Safety Representatives; 4 from individuals; 23 from law enforcement agencies and professional organizations; 7 from special interest groups; 39 from State transportation departments; and 2 joint responses from State regulatory entities. Many of the comments supported the proposed rule as being fair and equitable without creating any adverse impact on their operations. The New York State Department of Transportation stated that FHWA and NHTSA "are to be congratulated on their effort to respond in a reasonable

and timely manner to the numerous and complex requirements" of the ISTEA.

Nevertheless, some commenters questioned why the Department was undertaking this rulemaking. One individual commenter described "the changes proposed in the NPRM as too complex and too expensive." The Nevada Department of Transportation commented that "Nevada remains opposed in principle to a National Maximum Speed Limit." The Utah Department of Public Safety remarked that Congress and the Federal Government have overstepped their bounds on coercing the States to follow a national inflexible speed limit standard. The Virginia Department of Transportation stated it remains "opposed to and very concerned with the regulation, either by statute or by rule-making, of speed limits by the Federal Government."

The agencies acknowledge the views of these commenters. However, the 55/65 mph national maximum speed limits have been established by Federal law. The agencies' role in this rulemaking is to carry out the responsibilities given to them by Congress. As indicated in the NPRM, the Department developed the compliance formula and monitoring plan provided in this final rule pursuant to the statutory requirements of ISTEA.

Speed Enforcement and Highway Safety

Some commenters contended that an inordinate amount of effort has already been expended by the States in the area of speed enforcement. The Colorado Department of Public Safety (DPS) remarked that it currently directs 68 percent of the resources toward a problem that represents only 3.6 percent of the State's fatalities. Colorado DPS estimated that there are two and one half times as many crashes caused by animals in that State as there are crashes caused by violations of posted speed limits.

The agencies question these statistics. It is very difficult to track the number of speed related crashes that actually occur in most States using currently reported crash data. For example, a rear-end collision may be reported as a violation for following too closely and not as speed-related when, in fact, the rear-most vehicle was travelling too fast to stop before colliding with the vehicle in front.

The North Dakota Department of Transportation commented that the new compliance methods will "cause a redirection of law enforcement onto [65 mph] roadways which, by their design, are already the safest in the transportation network." To the contrary, the purpose of the rule is to

allow the States to shift their law enforcement from the safest NMSL roads to the more dangerous NMSL roads. The factors in the formula proposed in the NPRM and adopted in the final rule include fatality and severity measures, and, thereby, take into account the relative risk of each type of roadway. In addition, States have the flexibility to direct enforcement efforts to those roadways with an identifiable speed violation and/or safety problem. Further, law enforcement agencies may not need to devote additional enforcement resources to achieve compliance on these roadways. Compliance may be achieved instead by increasing public awareness through the combined use of enforcement and vigorous public information and education campaigns.

The National Motorists Association stated that there is "no compelling evidence that the rule will result in improved highway safety (or) overall economic benefits." The Coalition for Consumer Health and Safety, in contrast, stated that "speed is a major public health issue." The agencies' data support the latter view. According to the agencies' information, speeding is one of the most prevalent factors contributing to crash occurrences. Current data show that speeding is cited as a contributing factor in approximately 12 percent of all police-reported crashes and over one-third of all fatal crashes. In 1989, it is estimated that about 15,558 fatalities and 80,000 serious injuries occurred in speed-related crashes. The economic cost of these crashes was over \$10 billion.

The final rule establishes a program that will measure compliance with speed limits on NMSL highways posted at 55 or 65 miles per hour. Using the specific data required to be collected under the final rule, enforcement efforts can be targeted at those areas identified at risk because of excessive speed.

State-by-State Standard

The NPRM proposed that State compliance be based on a national performance standard, rather than on State-by-State performance standards. The Dallas, Texas Police Department, Puerto Rico Department of Transportation, the National Association of Governor's Highway Safety Representatives (NAGHSR) and various other commenters agree on the concept of a national performance standard.

However, several comments expressed a desire for each State to determine its own score by the use of State specific data. NHTSA and FHWA

considered such a State-by-State compliance score, as outlined in the NPRM. State-by-State performance standards recognize differences among States and would allow States to maintain the current level of compliance, but get no worse.

There are several difficulties associated with a State-by-State standard. State level compliance scores require the collection of data for a suitable baseline period. A single year of data is not statistically adequate to establish a permanent level of permissible speed compliance. A three-year baseline period was determined to be the minimum time needed to provide adequate data. Operationally, the first year would be designated for data collection only. During the second year, a compliance score would be calculated based upon the two years of data collection, and States would be permitted a 10 percent cushion for determining compliance since the score would have been based upon only two years of data. For year three, the compliance score would be established as the average of the three years and the State would be required to achieve at least this level of compliance. The agencies object to this approach because it requires additional data manipulation on the part of the States and results in an unacceptable delay in implementing the regulatory program.

In addition, the gathering of data over a three year period, to establish a State's compliance score, could result in a de facto delay in improving speed compliance. The better a State does during the baseline collection period, the more stringent the resulting compliance score. In this situation, there would be little or no incentive to improve compliance scores during this collection period. This would be counterproductive to the goals of the speed compliance program.

Further, States that achieved better compliance rates during the baseline collection period could find it more difficult than other States to maintain those rates of compliance.

Finally, if a State were to change its status, for example, from a non-65 mph State to a 65 mph State, existing data would no longer be relevant, and the exercise of establishing a baseline with three years of data collection would have to be repeated, further delaying the establishment of final compliance scores for that State. For all of these reasons, the agencies have rejected the use of a State-by-State compliance score in the final rule.

National Compliance Formula

Although the NPRM explained the proposed compliance formula in detail, there were numerous comments about the complexity of the formula. Comments from several sources requested clarification or offered alternate methods to construct the formula. Some of the issues include the use of a fatal crash rate rather than the fatality rate, discussion of Delta-V, use of hospitalization rates, dual speed limits, 60 mph speed limit, and the periodic revision of the formula.

ISTEA required that both fatalities and serious injuries be considered in developing a compliance formula. To address this requirement, the agencies used two factors: the relative risk of fatality and a measure of crash severity. The relative fatality risk was determined for each type of roadway. Delta-V (see Tables 1-4 of the NPRM) was used as the measure for crash severity.

Several commenters questioned the use of the fatality rate, stressing that it varies with traffic density and that it appears to be unfair to rural States.

The agencies agree that fatality rates vary by traffic density. In an attempt to account for this variation, the agencies defined three types of highways—freeways at 65 mph (rural), freeways at 55 mph (urban) and non freeways at 55 mph (rural). Additional subcategories could have been provided to account for traffic volumes and number of lanes (elements used to determine density). However, each additional category would have required additional data collection on the part of the States and additional factors in the formula. It was decided that this approach would prove too burdensome in terms of data collection and analysis.

Some commenters favored the use of the fatal crash rate in lieu of the fatality rate. The fatality rate is defined as the number of fatalities per 100 million vehicle miles of travel. The fatal crash rate is defined as the number of fatal crashes per 100 million vehicle miles of travel. The agencies considered this option, but found that the two rates are virtually identical. Moreover, the fatality rate is the more commonly used and generally accepted statistic.

One major area where a difference might occur between using fatality vs. fatal crash rates would be in determining whether a State, not in compliance, would receive penalty mitigation. However, after examining fatality and fatal accident data over a three year period among all States, the agencies found only one instance where a difference between these rates made a State eligible to mitigate the penalty. For

these reasons, the fatality rate has been retained in the final rule.

The Massachusetts State Police, the International Association of Chiefs of Police and the Oregon Department of Transportation suggested using hospitalization rates instead of fatality rates to ascertain relative risk and mitigation of penalty. However, uniform and accurate national or statewide information on hospitalization rates at the required level of detail are not available to ascertain relative risk. Requiring States to collect these data is not practical, and fatality rates based on VMT (vehicle miles of travel) have long been used to monitor overall safety trends.

The Departments of Transportation from Arizona, Ohio, Rhode Island and the Colorado Department of Public Safety suggested using VMT as an additional factor on each of the different types of roadways. However, the agencies believe that explicitly accounting for differences in VMT on the various highway types unnecessarily complicates site selection and data collection. This proposal would require data collection on each of the existing roadway types by the number of lane categories (3 or 5) and VMT categories. At a minimum, at least 5 VMT categories would be required for each site type. Thus the total number of site types would be 15 for 55 mph freeways, 15 for rural freeways, and 25 for 55 non-freeways. Once these categories were identified, each State would have to select an appropriate number of monitoring sites in each of the categories and collect the full range of data on each site. The agencies believe this process would constitute an excessive burden on the States, and have decided not to include VMT categories within the highway types.

The Massachusetts State Police felt the use of Delta-V was inappropriate due to the increasing use of seat belts, air bags, and significant improvements in highway engineering. The agencies agree with the Commonwealth of Massachusetts in its assertion that safety belts, air bags and improvements in highway engineering have all contributed to reductions in traffic fatalities. However, consideration of other factors, such as airbags, seatbelts, antilock brakes and similar devices in the formula would require excessive data collection by the States, and acceptable measures for their use are simply not available.

Moreover, Delta-V is the best available measure to estimate crash severity. Simply stated, crash severity increases disproportionately with speed at impact. The chances of death or serious

injury increase dramatically as vehicle speed increases. NHTSA's "National Crash Severity Study (1977-1979)" revealed that a driver crashing with a 50 mph change in velocity is twice as likely to be killed as one crashing with a 40 mph change in velocity. In short, crashes at higher speeds increase the potential for death and disabling injury.

The Illinois Department of Transportation expressed concern that the monitoring proposal for dual speed roadways and highways of monitoring sites in each of the categories and collect the full range of data on each site. The agencies believe this process would constitute an excessive burden on the States, and have decided not to include VMT categories within the highway types.

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The Illinois Department of Transportation expressed concern that the monitoring proposal for dual speed roadways and highways posted at 60 mph would require data collection at the posted speed(s) and not at the higher speed level. In some States, dual speed limits are set for automobiles and trucks. In others, the dual speed limits change only during nighttime hours. For example, truck speed limits are reduced by 10 mph only during nighttime hours. A few States have lowered speed limits to 60 mph to accommodate safety and design concerns. Since monitoring is to be performed on a random basis, data collection to account for so few number of miles posted at 60 mph would be a

formidable task for the few States required to collect these data. FHWA estimates that dual speed roadways and those posted at 60 mph comprise an extremely small amount of roadway mileage and that the data collection equipment necessary to complete the monitoring tasks would have to be extremely sophisticated. It would also require increases in the number of monitoring sites and burdensome recordkeeping activities. For these reasons, this option was rejected.

The Ohio Department of Transportation, the Arizona Department of Public Safety and one individual wanted the agencies to consider periodically revising the fatality rates, relative risk and other factors in the formula based upon new data that would become available in the future. While it is true that the purpose of the national compliance formula is to establish a national standard for both current and future use, periodic adjustments create relative criteria which are incompatible with a fixed standard. In addition, periodic revision of the formula factors presents the States with a "moving target," which makes consistent compliance scores more difficult to attain over time. Finally, the continuing upward trend in speed distributions make adjustments to the compliance score self-defeating. Therefore, the agencies have no plan to revise the formula factors in the future.

Calculation of the National Compliance Score

The Insurance Institute for Highway Safety and the Maryland Department of Transportation (MDT) commented that the formula is unfair to those States who had not increased eligible roadways to 65 mph. They indicated that those States are penalized when they could be in compliance by simply raising speed limits to 65, where applicable. They further suggested that States may choose to comply with the requirements by raising their speed limits to 65, and stated that such a result would not be in the best interests of highway safety.

MDT proposed that the final rule be modified to permit States that have roads eligible for posting at 65 mph (but have not exercised that option and maintain a 55 mph speed limit) to certify compliance using the allowable compliance score for 65 mph States. However, this result is clearly inconsistent with ISTEA, which was enacted to encourage State enforcement of prevailing speed limits. In addition, this change could lead to increased noncompliance on roads posted at 55 mph.

States currently decide whether to post eligible road segments at 65 mph. Rural Interstate highways have been eligible for posting at 65 mph since 1987. States have had the opportunity since that time to change the speed limit on these highways. There is no reason to believe that the monitoring requirements in this rule will encourage States to raise their speed limits now, when historically they have not done so. If a State does decide to raise its speed limits, the rule requires adherence to a different compliance score based upon an additional road type and associated additional speed categories. It also requires more monitoring sites. The agencies therefore believe that the rule is not unfair and does not encourage States with lower speed roadways to raise their speed limits.

Comments were received criticizing the agencies' proposal to require that States count vehicles travelling only 5 miles per hour over the posted speed limit. Massachusetts State Police remarked that speeds from 1-10 miles over the posted speed limit, referred to as a "zone of indifference," should not be counted.

As stated in the NPRM, the rationale to begin measuring speeds at 5 miles over the posted speed limit is based on customs and practices generally accepted by the law enforcement community and motorists. Police agencies do not strictly enforce minor speed infractions in any speed limit zone, and when enforcement action is taken for minor infractions, traffic courts generally do not impose sanctions. Traffic courts expect application of reasonable judgment by police when enforcing traffic laws. Enforcement action is more likely to occur in speed ranges of 5-9 miles per hour above the limit, and the issuance of a citation is virtually certain for violations exceeding 10 mph over the maximum speed limit.

Due to these enforcement practices, most drivers realize the police and courts tolerate moderate excesses of the 55 and 65 mph speed limits before applying enforcement and sanctions, and the average traffic speeds have slowly increased due to this perceived tolerance level. If the tolerance level is increased to the suggested 10 mph over the speed limit, higher speeds can be expected.

Studies over the past twenty-five years indicate that crash risk is associated with variations from the mean speed, which result in more frequent lane changes and passing maneuvers so that faster moving vehicles can avoid vehicles travelling at slower speeds. Empirical studies of the

relationship between speed and crashes consistently show that crash involvement rates are lowest for vehicles traveling within 10 mph of the average speed; vehicles traveling at speeds outside of that range have involvement rates at least six times greater.

Data from the National Crash Severity Study (1979) show that while travelling 20 mph above the average speed, the estimated crash risk is about 11 times greater than at the average travel speed. The implication of this is that to reduce the incidence of motor vehicle crashes, speeds should be regulated within a range that will permit the free flow of traffic while simultaneously avoiding great variances in speed. Therefore, the final rule continues the measuring of speeds at 5 miles over the speed limit to account for traditional enforcement practices, while not creating higher speed tolerances.

ISTEA requires that any formula adopted must assign a "greater weight for violations of speed limits in proportion to the amount by which the speed of the motorist's vehicle exceeds the speed limit." In the NPRM, the agencies proposed a formula which assigns greater weight to more serious speed violations. Comments were submitted requesting an explanation for this aspect of the proposal. A penalty was proposed to be assessed for all vehicles exceeding the speed limit by 5 mph, additional penalty for vehicles exceeding the speed limit by 10 mph, and a third penalty for vehicles exceeding the speed limit by 15 mph. This methodology takes into account the greater penalties for higher speeds. In the formula, the compliance score is calculated so that vehicles exceeding the speed limit by 5 mph, 10 mph and 15 mph have a cumulative effect assessed in proportion to their excess speed. Thus, the multiple counting is a mechanism to implement the proportional requirement specified in ISTEA.

Commenters also questioned the use of certain error adjustments contained in the proposed rule. Prior to ISTEA, the agencies' regulation allowed the States to adjust for three potential sources of error: speedometer variability, statistical error, and speed monitoring equipment error (23 CFR 659.15(d)). The regulation provided that each potential source of error could be adjusted individually or by use of a single adjustment which addressed all three potential errors. Forty-four States have used this single adjustment when calculating speeds for the required annual certification.

The NMSL law continues to require that the regulation account for

speedometer variability and the other potential sources of error in the speed monitoring data. The agencies have therefore continued to permit the use of a single adjustment in the final rule which addresses these three potential errors.

Citation Data

The NPRM explained that the agencies considered and rejected a number of factors for inclusion in the proposed compliance formula, and proposed to include only the fatality rate as a mitigation factor. Commenters offered other suggestions. The Arizona Department of Transportation suggested utilization of the level of enforcement as a mitigating factor in noncomplying States. The Maryland State Police advocated an adjustment to the State's compliance score allowing it to "reduce its compliance score by one point for each unit by which the number of speeding citations issued per mile on NMSL highways * * * exceeds the national average citation issuance rate on NMSL highways during the previous year."

Consideration was given to the use of an enforcement index, which is the number of hazardous moving violations (including forfeitures) divided by the number of personal injury and fatal crashes. However, it was apparent that this would necessitate additional data collection and analysis by the States. Further, this method may reinforce the public's misconception that police operate under some type of quota system. Quota systems have been declared unlawful in many parts of the country. Therefore, these approaches were rejected.

Collection of Citation Data

ISTEA requires the collection of data on speeding citations. Specifically, the law requires the States to report data necessary to support the annual certification, " * * * which shall include, but not be limited to, data on citations and travel speeds." The NPRM required the collection of the total number of citations written by the multiple agencies having NMSL jurisdiction.

One purpose of gathering information on speeding citations is to demonstrate each State's efforts to enforce the NMSL. However, several commenters pointed out that different law enforcement agencies are responsible for enforcement of the NMSL within the same State. For example, municipal or county agencies may be responsible for those NMSL highways within the municipalities or incorporated areas, while a highway patrol may be responsible for those

highway segments outside of these areas.

It was pointed out that many States, as reported by the Kansas Highway Patrol, do not have a central repository for traffic citation data. Thus, the citation collection proposed in the NPRM creates considerable hardship. Further, in most States, there is no requirement for municipal and county agencies to report citation data to the State. The commenters suggested that citation data be collected only from State agencies, and the agencies have decided to accept this recommendation. This revision is contained in § 1260.15(c)(2) of the regulation.

The final rule does not revise the current method of reporting citation data, and the political entities of the District of Columbia, State of Hawaii and Commonwealth of Puerto Rico, which have unique enforcement structures and reporting methods, will continue reporting speed citation data as they have done in the past.

The agencies have determined that retaining the current citation data collection requirement is sufficient to support the statutory requirement of 23 U.S.C. 154(e) for data supporting the certification required under 23 U.S.C. 141(a). Under the final rule, § 1260.13 continues to require the certification of the Governor, or other properly designated State official, in order to comply with these statutory mandates.

Plan for Collection of Monitoring Data

The South Dakota Department of Transportation expressed concern that the new data collected cannot be tied to the State's old data collection, causing a loss of the ability to link the old and new data. As demonstrated in the Speed Monitoring Program Procedural Manual, the speed monitoring program and its sampling plan are designed to ensure that data collected under this rule will be consistent with the data collected under the former procedures.

Most of the current monitoring stations can continue to be used under the final rule. In fact, the monitoring manual provides States the flexibility to use all current monitoring stations. In addition, the sampling plan and monitoring requirements contained in the NPRM were designed to provide the same level of confidence in the data collected. While additional monitoring for various road types has been added (sixty-five mph roadways were not monitored in the past), data from the two types of 55 mph roadways (freeways and non-freeways) may be combined to provide comparability with historical data.

The Colorado and Kansas Departments of Transportation requested information about the number of additional monitoring stations required and the requirement that data be collected quarterly at each monitoring station. The monitoring guidelines were prepared using the same level of statistical precision and monitoring activity as required under the existing monitoring procedures. Concerns about ISTEA's requirements to stratify data by highway type and to consider various levels exceeding the speed limit led the agencies to consider ways to avoid a large increase in the number of monitoring stations. In order to minimize the number of additional monitoring stations and maintain the same level of reliability in the collected data, the agencies proposed a reduced number of new sites in the NPRM, coupled with an increase in monitoring sessions to four times per year at each location.

In response to the comments received on this proposal, the agencies investigated additional alternatives to the proposed monitoring plan, with the goals of reducing the States' data collection burden without loss of statistical precision historically associated with the former regulation and of collecting reliable data to reduce the risk of non-compliance by chance alone.

The first alternative considered by the agencies was semi-annual monitoring. In order to maintain the same level of statistical accuracy and collect data semi-annually, the States would have to randomly select a data collection day, within the six month period, for each monitoring site. The present system allows the States to schedule monitoring activities to enable a data collection team to service many monitoring sites in a single day. If States were required to randomly select data collection days for each site, a data collection team might be able to service only one monitoring site each day.

This procedure would greatly increase the required staff hours to collect the speed data. For most States, the efficiency of collecting the data from all sites four times per year, in a short period of time, is more cost effective than the almost continuous collection of data half as often throughout the year. In addition, this alternative would require States to increase the number of monitoring sites by 10 percent above that indicated in the NPRM. Therefore, the agencies decided against this first alternative.

In a second alternative, the agencies considered monitoring compliance at each site semi-annually, but to maintain

a reasonable level of statistical accuracy the States would have to increase the number of monitoring sites by 10 percent. All sites would have to be monitored twice each year with one half of the sites in the first and third quarters, and one half of the sites in the second and fourth quarters. This procedure would increase a State's fixed cost by increasing the number of monitoring sites, and would not reduce the collection burden very much since data would have to be collected four times per year. The second alternative was therefore rejected.

A third alternative was to provide for semi-annual data collection without the additional sites over the number identified in the NPRM. Under this scenario, States would collect data as they do under the previous regulation, but only twice per year. This alternative significantly reduces the statistical reliability of the data. Thus, each State would be at an additional risk of being out of compliance by chance alone, since only two data points would be collected for each site. Moreover, there is considerable variation, both between sites and within a site, in the collected speed data. To maintain the historical quality of the data collected and to lessen the risk of chance noncompliance, the agencies rejected this third alternative.

A variation of the third alternative was also considered. Under this variation, States would be permitted to collect data at each site semi-annually but would collect one half of the data in the first and third quarters and one half of the data in the second and fourth quarters. This alternative marginally increased the reliability of the data, but not to historical levels under the former regulation. In addition, this alternative caused some increase in cost since some data collection would have to take place four times per year. This alternative was also rejected.

Due to the combination of cost increase and administrative burden on the States in the first alternative and the degradation of the data and associated increase in risk of non-compliance with only a minimal decrease in costs of the second and third alternatives, the agencies determined that data should be collected on a quarterly basis as originally proposed in the NPRM.

Commenters from 15 State agencies with primary monitoring responsibility expressed concern that the proposed monitoring plan would require additional monitoring sites, additional personnel, and/or additional equipment to properly implement data collection. The majority of these commenters did not feel that adequate time was available

to procure and install the necessary equipment at the selected monitoring sites in order to meet the FY 1994 deadline proposed in the NPRM. Upon reviewing these comments, the agencies have concluded that additional time is necessary to obtain equipment and set up functional monitoring sites. Therefore, § 1260.9 (a), (b) and (c) and § 1260.11 (a) and (b) have been changed to require the States to submit a new monitoring plan, which contains two parts, by January 24, 1994. The date by which States must commence the actual collection of data has been extended to October 1, 1994.

Sanctions for Noncompliance

As required by statute, the NPRM proposed a penalty if a State exceeds the applicable NMSL compliance score. One and one-half percent of the funds apportioned to the State for Federal-aid highways and highway safety construction programs under section 104(b) of title 23, United States Code (other than paragraph (5)) would be transferred to the State's apportionment under 23 U.S.C. 402 for the fiscal year, not to exceed the total section 402 apportionment for that year. This transfer penalty was questioned by many commenters. Two individuals complained that speed enforcement does much less to promote highway safety than does the construction of safe highways. Comments from the International Association of Chiefs of Police Highway Safety Committee, Commercial Vehicle Safety Alliance, Operation CARE (Combined Accident Reduction Effort) and Police Traffic Services Committee of the American Association of Motor Vehicle Administrators suggested that the shifting of funds from construction agencies to enforcement agencies may lead to detrimental interdepartmental disputes over funds.

The Michigan Department of Transportation expressed the view that "the penalties for speed limit non-compliance should not be levied against a department that is not responsible for enforcement." The West Virginia Governor's Highway Safety Office added that the reduction of funds for road construction is especially unfair to small rural States.

The transfer of certain construction funds within a State for noncompliance is specifically required by ISTEA. The legislation expressly requires that the rule " * * * shall provide for the transfer of apportionments [of certain highway construction funds], if a State fails to enforce speed limits in accordance with * * * such rule."

Therefore, these penalties remain a part of the final rule.

The Coalition for Consumer Health and Safety expressed the belief that utilizing a State's current section 402 apportionment as a penalty cap is arbitrary and does not reflect a State's ability to use such funds. They strongly oppose capping the penalty and support using at least 50% of the redirected funds for speed enforcement and education. The agencies believe their selection of this penalty level is reasonable and appropriate since a much larger sum could overburden a State's highway safety program and the State's ability to expend the funds in an efficient and effective manner.

Graduated Penalties for Noncompliance

The NPRM proposed a penalty for any State exceeding the maximum allowable compliance score. Several commenters felt that this pass/fail concept in the NPRM was too stringent. The Department of California Highway Patrol commented that it was inequitable to impose the maximum sanction on a State whether it is one point or 100 points out of compliance. Other States felt that a score in any year significantly higher than the maximum score would present them with an impossible task in attempting to come into compliance in future years. The Minnesota Department of Transportation suggested a penalty reduction which consisted of six graduations based on low fatality rates, and NAGHSR suggested three alternatives, including a graduated set of penalty reductions.

After an analysis of the docket comments, the agencies have decided to include several levels of penalties based on graduation of the noncompliance scores. The final rule provides for graduated penalties in one-half of one percent increments which correspond to the degree of noncompliance, with a maximum penalty of not more than one and one-half percent. These penalty increments will be imposed at ten and twenty percent intervals above the maximum allowable score. As proposed in the NPRM, the maximum penalty would not exceed a State's annual Section 402 highway safety grant program apportionment. This revision should encourage improvement by noncomplying States. Section 1260.19(b) has been modified and a new § 1260.19(c) has been added in the final rule to effect these graduated penalties.

Program Purpose for Penalty Transfer

The NPRM proposed that the penalty for NMSL noncompliance would consist

of a transfer of certain highway construction funds to the noncomplying State's section 402 program with an emphasis on speed enforcement. The comments recommend that the agencies broaden that purpose. NAGHSR, for example, pointed out that the redirected funds should be used to improve State enforcement efforts, but the States should not be forced to use all of their funds for that purpose. NAGHSR also maintained that flexibility is particularly important for large States where the amount of redirected funds could be sizable. Ohio DOT's consolidated response suggested that the transfer of funds from construction to unsuccessful speed enforcement efforts gives the impression of reinforcing failure. They recommend funds should be transferred to highway safety activities generally.

The agencies recognize that the States are in the best position to determine the most effective use of the penalty transfer funds. For example, greater compliance with the NMSL can be achieved over a longer period of time if enforcement efforts are accompanied by vigorous public information and education campaigns. The agencies have therefore decided to provide the States with flexibility to use these funds for any purpose consistent with section 402 of title 23, United States Code (Section 402). Consequently, the emphasis on speed enforcement has been removed from § 1260.21(c) of the final rule.

Under the section 402 program, States are required to submit a Highway Safety Plan on an annual basis. These plans are systematically reviewed by both NHTSA and FHWA Regional offices to ensure consistency with the overall efforts of each State to improve highway safety. The funds transfer shall take place in the fiscal year subsequent to the fiscal year in which the compliance score exceeded the maximum allowable compliance score. States subject to a transfer under the NMSL will be required to detail their additional expenditures in the Highway Safety Plan for that fiscal year.

Mitigation of Noncompliance Penalty

The agencies proposed in the NPRM that a noncomplying State would be eligible to have its penalty reduced by one-third if it has a fatality rate at least twenty percent below the national fatality rate. The Insurance Institute for Highway Safety stated there is " * * * no reason to soften the penalty by forgiving the transfer" on this basis. Other commenters argued that the proposed one-third reduction in penalty for a fatality rate at least twenty percent below the national fatality rate is not

equitable to rural States since fatality rates vary inversely with traffic density. Achieving a fatality rate 20 percent below the national average would be particularly difficult for many rural States. The International Association of Chiefs of Police commented that consideration should be given to other alternatives, such as permitting States to show a significant improvement in their fatality rates, even if such rates are higher than the national average. They thought that this would serve as an incentive for improvement. Based on these comments, the agencies have reexamined this issue to determine the best method of encouraging State compliance and recognizing State highway safety achievements.

The agencies agree that the twenty-percent threshold is too restrictive. To provide the States a stronger incentive, taking into account both speed enforcement and overall highway safety issues, the agencies have determined that a ten percent reduction below the national fatality rate is a more equitable level for mitigation of penalty. Therefore, this final rule provides that a State's penalty will be reduced by one-third if the State's fatality rate, rounded to the nearest tenth, is at least ten percent below the national fatality rate. Section 1260.21(a) has been modified to reflect this change.

The Arizona Department of Transportation (ADOT) suggested that pedestrian, bicycle and non-NMSL roadway fatalities should be excluded from the fatality rate used for mitigation purposes. ADOT felt that it was unfair to penalize those responsible only for safety on NMSL roads for fatalities that occurred beyond their control. The agencies disagree with this position. The ultimate purpose of the NMSL is to save lives and reduce injuries on our nation's highways. States that do not comply with the NMSL requirements, but have found other means to advance highway safety and achieve overall fatality rates significantly lower than the national average deserve to be recognized for their accomplishments and have their penalties reduced. The agencies see no reason to exclude any particular classification of fatality for this purpose.

Under the previous regulatory procedures, a hearing was held to determine the level of penalty and to consider mitigating circumstances. The Arizona Department of Public Safety noted that the NPRM did not contain provisions for hearings and suggested that a State should have the option of requesting a hearing if it believed that there were mitigating circumstances. Under the procedures proposed in the

NPRM, however, the only basis for mitigation is a State having a fatality rate ten percent below the national average. By adopting this basis for mitigation in the final rule, the agencies have eliminated any need for a subjective evaluation that would require that a hearing be held.

Successive Year Non-compliance Penalty

Some commenters objected to the absence of incentives in the NPRM for States to seek improvement in their NMSL compliance scores once they are found out of compliance, and suggested the creation of such incentives. One commenter proposed consideration of an additional penalty transfer for successive year non-compliance. However, since a successive year penalty was not proposed in the NPRM, it has not been included in the final rule. The sanctions for States with non-complying scores, which were proposed in the NPRM, are presently contained in the final rule, provided that the penalty transfer from highway construction funds to Section 402 programs would not exceed the greater of (i) one and one-half percent of the construction funds, or (ii) the total Section 402 apportionment for the applicable fiscal year. The agencies are willing to consider the possibility of providing incentives and have issued a Supplemental Notice of Proposed Rulemaking (SNPRM) in order to receive comments on proposed penalty increases to accomplish this goal. An SNPRM covering this subject is being published concurrently with this final rule in today's issue of the *Federal Register*.

Technical Clarifications

Definitions

Several commenters expressed the need to clarify or include additional definitions in § 1260.5 of the regulation. The Ohio Department of Transportation noted, for example, that the term "local" is used in the appendix, but is not defined in § 1260.5. The agencies therefore have added a definition for "local road." The definition selected is derived from the statutory requirement that requires designation of a functional system of highways. The definition is taken from the FHWA Highway Functional Classification Manual.

In the final rule, the agencies have made the definition of "roadway segment" more specific in accordance with the requirement designating a functional system of highways. This revision will also assist in making the maximum possible use of instrumented

highway sites and in conserving resources of the States for use in sites instrumented for other purposes (e.g., weight-in-motion, pavement monitoring). Accordingly, the section in the appendix entitled "Selection of Sample Sizes" has been amended to reflect this change.

Some commenters expressed confusion about the definition of the term "non-freeway." Currently many different road classifications have speed limits posted at 55 mph including freeways, arterials, and major collectors. To account for distinctions between roadway types, 55 mph freeways were identified as a separate group. All other types of highways with speed limits posted at 55 mph were designated non-freeways for the purpose of speed monitoring. A non-freeway is therefore any highway which is not classified as a freeway. Since an adequate definition of a "freeway" was contained in the NPRM and has been adopted without change in the final rule, the agencies decided a separate definition for the term "non-freeway" was not necessary.

The Alaska Department of Transportation and Public Facilities asked how a portion of the Parks Highway in Alaska should be classified under the proposed rule. Although this part of the highway is uniquely rural and is posted at 65 mph for over 200 miles, it is not a "freeway" because its design characteristics are below freeway standards. The agencies have determined that this portion of the Parks Highway should be included in the 65 mph non-freeway mileage for Alaska. This change is incorporated into the final rule in § 1260.15(d) by changing "60 mph" to "65 mph" before the word "freeways" in the category with the score "138."

The agencies discovered a typographical error in § 1260.15(d) of the proposed rule although it had been correctly stated in the preamble. The second compliance score number, "1.155" in the proposed rule was incorrect. The correct number is "1.115" and is included in the final rule.

The agencies also corrected an inaccurate reference in subsection (b) of § 1260.19, and revised that subsection to clarify that any transfer of funds will take place in the fiscal year subsequent to the fiscal year in which a State submits its certification. Section 1260.19 is also revised to number each penalty category.

Finally, the agencies identified the need to provide for additional flexibility in the data collection schedule, should conditions at a site preclude the normal flow of traffic, and have amended § 1260.9(b)(5)(i) to address this need.

Speed Monitoring Program Procedural Manual

Comments were made that caused some minor changes to the Monitoring Program Procedural Manual located in the appendix. Several commenters raised questions about the need to calibrate the speed measuring equipment before each data collection session. Review of equipment and calibration standards indicate that the speed measuring equipment need only be calibrated once a year. This change has been incorporated into the section in the appendix entitled "Review Highway Conditions."

Other comments stated that existing speed measuring equipment only have the capacity to accumulate data into 12 data bins. In order to accommodate this limited capacity, the number of categories required for data collection is being reduced by 2 in the final rule. This has been accomplished by collapsing the first three categories into one category. This change is reflected in the section entitled "Reporting Results" and in the table called "Distribution of Vehicle Speeds."

The section of the appendix entitled "Selection of Sample Sizes" has been as revised to permit the maximum possible use of all instrumented highway sites.

Some commenters identified an error in the table entitled "Calculation of Compliance Score" in the appendix. This error has been corrected in the final rule. The factor for the category "percent exceeding 70 mph on 55 mph non-freeways" was incorrectly presented as 3.974. This number has been changed to 2.974.

Regulatory Analyses and Notices*Civil Justice Reform*

This rule does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring speed limits and speed limit enforcement through the potential redesignation of Federal highway construction funds to safety programs. Any redesignation of funds would not take place until FY 1997. If a State submits (1) data showing that its highway speeds are below a certain national level, and (2) a certification from the Governor reporting that the State is enforcing the speed limits on public highways in accordance with 23 U.S.C. 154, then it shall not be subject to a redesignation of funds. The authorizing legislation for the rule does not establish a procedure for judicial review promulgated under its provisions. There is no requirement that

individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Federal Regulation and DOT Regulatory Policies and Procedures

The agencies have analyzed the effect of this proposed action and determined that it is not "major." Because of the public's interest in the 55/65 mph speed limit, it is considered to be "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agencies have prepared a Final Regulatory Evaluation (FRE) for this proposal, and made it available in the public docket. A copy of the FRE may be obtained by writing to Docket No. 93-8, HCC-10, FHWA, Room 4232, 400 Seventh Street SW., Washington, DC 20590.

A number of comments discussed the potential costs of this rule. The FRE addresses these comments and includes a discussion of the costs of this rule. The FRE estimates the costs of new speed monitoring devices to be \$4.4 million. The FRE also presents estimated FY 1990 speed compliance data and finds that at least three States (Connecticut, Massachusetts and Wyoming) would have likely been out of compliance with the maximum allowable compliance scores had they been in effect in FY 1990.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this proposed action on small entities. Based on the evaluation, we certify that this action does not have a significant economic impact on a substantial number of small entities. The FRE concludes that there is no significant impact on small businesses since the portion of the highway construction funds going to noncomplying States is not lost, but only transferred to highway safety programs. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit speed data and related certification information necessary to calculate its compliance score, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Accordingly, this information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of

the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) The requirement has been approved through January 31, 1996, with the OMB control number No. 2125-0027.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it does not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with Executive Order 12612, concerning Federalism. The rule's provisions are likely to affect the allocations of States' resources, the way they measure their success in traffic law enforcement, relationships among States agencies, and the distribution of Federal funds between States' highway construction and safety programs. All of these effects may fairly be regarded as Federalism impacts. However, the basic requirements of the rule (i.e., the potential redistribution of Federal funds) are mandated by statute, so the agencies do not have discretion to mitigate these impacts. The agencies have carefully considered the comments of State agencies in shaping the details of the rule.

List of Subjects in 23 CFR Parts 659 and 1260

Grant programs—Transportation, Highway and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 14, 1993.

Rodney E. Slater,
Administrator, Federal Highway Administration.

Howard M. Smolkin,
Executive Director, National Highway Traffic Safety Administration.

In consideration of the foregoing, under the authority at 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50 part 659 of chapter I, subchapter G of title 23, Code of Federal Regulations (CFR), is removed and part 1260 to chapter II, subchapter C of title 23, CFR, is established as set forth below.

PART 1260—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

Sec.

- 1260.1 Purpose.
 1260.3 Objective.
 1260.5 Definitions.
 1260.7 Adoption of national maximum speed limits.
 1260.9 Formulation of a plan for monitoring speeds.
 1260.11 Guidelines and evaluations of operations.
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 1260.15 Certification content.
 1260.17 Certification and statistical submittal.
 1260.19 Effect of failure to certify or to meet compliance standards.
 1260.21 Penalty reduction and notification of noncompliance.

Appendix to Part 1260—Speed Monitoring Program Procedural Manual

Authority: 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50.

§ 1260.1 Purpose.

This part prescribes requirements for administering a program for monitoring speeds on public highways in order to provide reliable data to be included in a State's annual certification of speed limit enforcement.

§ 1260.3 Objective.

To establish a valid statistical method of measuring a sample of vehicle speeds on a sample of highways to estimate the percentage of vehicles exceeding the speed limit on highways posted at 55 mph and on highways posted at 65 mph with sufficient accuracy to support a determination of compliance by a State's motoring public with the National Maximum Speed Limits in accordance with 23 U.S.C. 154; to prescribe the compliance reporting requirements for the States; and to specify fund transfer provisions for non-compliance with the National Maximum Speed Limits.

§ 1260.5 Definitions.

As used in this part:

- (a) *FHWA* means the Federal Highway Administration.
 (b) *Fiscal year* means the Federal fiscal year, consisting of twelve months beginning each October 1 and ending the following September 30.
 (c) *Freeway* means a divided arterial highway for through traffic with full control of access and grade separated intersections.
 (d) *Governor* means the Governor of any of the fifty States, Puerto Rico or the Mayor of the District of Columbia.
 (e) *Highway* means all streets, roads or parkways under the jurisdiction of State, including its political subdivisions, open for use by the

general public, and including toll facilities.

(f) *Interstate System* means the Interstate System described in 23 U.S.C. 103(e).

(g) *Local road* means a road which:

- (i) Serves primarily to provide access to adjacent land,
 (ii) Provides travel service over relatively short distances, and
 (iii) Includes rural mileage not classified as part of principal arterial, minor arterial or collector roadway systems.

(h) *Motor vehicle* means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(i) *National Maximum Speed Limits* mean the speed limits provided for the highways described in 23 U.S.C. 154.

(j) *NHTSA* means the National Highway Traffic Safety Administration.

(k) *Roadway Segment* means either a highway performance monitoring system sample section as defined by the States, a section of highway instrumented for another purpose on which required speed data may be collected, or a section of highway approximately five miles in length that is selected randomly from the universe of highway sections for each highway classification.

(l) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 1260.7 Adoption of national maximum speed limits.

The Secretary of Transportation shall not approve any Federal-aid projects under 23 U.S.C. 106 in a State which fails to adopt or maintain maximum speed limits as follows:

(a)(1) The maximum speed limit shall be 65 mph or less on a highway located outside of an urbanized area of 50,000 population or more, either on the Interstate System, or on a highway:

- (i) Which is constructed to Interstate standards in accordance with 23 U.S.C. 109(b) and connected to a highway on the Interstate System;
 (ii) Which is a divided 4-lane fully controlled access highway designed on constructed to connect to a highway on the Interstate System posted at 65 miles per hour and constructed to design and construction standards as determined by the Secretary which provide a facility adequate for a speed limit of 65 miles per hour; or
 (iii) Which is constructed to the geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and is designated by the

Secretary as part of the Interstate System in accordance with 23 U.S.C. 139(c).

(2) The maximum speed limit on all other public highways in the State shall be 55 mph or less. Emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health and safety.

(b) Except as provided in paragraphs (c) and (d) of this section, the speed limit on any portion of a highway shall be uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of vehicles using it.

(c) Notwithstanding the provisions of paragraph (b) of this section, a State may establish a lower speed limit for a motor vehicle operating under a special permit because of weight or dimension of such vehicle, including any load thereon.

(d) Notwithstanding the provisions of paragraph (b) of this section, a State may specify nonuniform speed limits on any portion of a highway when the condition of the highway, weather, a crash, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

§ 1260.9 Formulation of a plan for monitoring speeds.

(a) Each State shall develop a speed sampling plan following the guidelines in the Speed Monitoring Program Procedural Manual (SMPPM), FHWA, 1992, which is set forth in the Appendix. The initial plan shall have two major parts. Part I shall provide details on how the State will select and instrument new speed monitoring sites. These details shall include identification of potential sites and schedules for equipment procurement, installation, and testing. Part II shall provide details on how the State will follow the guidelines provided in the SMPPM. Only Part II of the speed sample and monitoring plan, as described below, is required to be updated after the initial submission of the plan.

(b) At a minimum, the plan shall discuss the following subjects:

(1) Miles of highway posted at the National Maximum Speed Limit (NMSL) classified as follows:

- (i) Miles of freeways posted at 55 mph;
 (ii) Miles of freeways posted at 65 mph (including freeways with posted speed limits that are higher than 55 mph but lower than 65 mph);
 (iii) Miles of nonfreeways posted at 55 mph;

(2) Number of sampling locations and their distribution by highway classification (55 mph freeways, 65 mph freeways and 55 mph nonfreeways), all of which shall be determined in accordance with the SMPPM. The minimum sample size needed by each State for each highway classification shall be determined in accordance with the SMPPM.

(3) Location of monitoring stations. The discussion of the location of the monitoring sites must include information on the functional classification of the highway where the monitoring station is located.

(4) Type and capabilities of speed measuring equipment to be used.

(5) Data collection. (i) Schedule. Speed monitoring sessions shall be scheduled evenly among the three-month periods of the year ending December 31, March 31, June 30, and September 30. Each monitoring station shall be monitored once per three-month period. The dates that monitoring is planned shall be included in the schedule. These dates may be changed if conditions at a site preclude the normal flow of traffic as indicated in clause (ii) of this subsection.

(ii) Field data collection. The choice of a data collection site within a given segment shall reflect the geometric design conditions of the segment. Data shall not be acceptable in determining compliance if conditions at a site are such that the normal flow of traffic is substantially restricted by activities such as highway construction, maintenance operations, extreme weather conditions, temporary lane closings, or the presence of non-routine enforcement activity.

(iii) A 24-hour monitoring period shall be the duration of any individual speed monitoring session.

(6) Any deviation from the analysis methods described in the SMPPM.

(c) Data collection shall start October 1, 1994.

§ 1260.11 Guidelines and evaluations of operations.

(a) The State shall submit its initial speed monitoring plan to the FHWA Division Administrator on or before January 24, 1994. The plan shall be evaluated annually and revised as conditions dictate. The plan may also be revised at any time during the 12-month data collection period ending September 30 if the State elects to change its speed limit on eligible roads.

(b) Annual evaluations of the State's speed monitoring plan shall be submitted to the FHWA Division Administrator by December 1 following the close of the data collection period of

each year beginning with December 1, 1994, so that changes to the plan called for by the evaluation can go into effect with the subsequent quarter beginning January 1. At a minimum, the evaluation shall discuss:

(1) Adjustments to the number of sampling locations in a State.

(2) Any other changes to the plan proposed by the State.

(c) Plan revisions called for during the data collection period due to a State changing its speed limit shall be submitted to the FHWA Division Administrator for approval, and may take effect retroactively to the date on which the speed limit was changed if such approval is granted.

§ 1260.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

§ 1260.15 Certification content.

The certification shall consist of the following elements:

(a) (1) A statement by the Governor of the State, or an official designated by the Governor, that the National Maximum Speed Limits on public highways in the State are being enforced. The certifying statement shall be worded as follows:

(Name of the certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, is enforcing the National Maximum Speed Limits.

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

(b) A copy of any State law, regulation, administrative order, statement of policy or any other written instruction relating to enforcement of the National Maximum Speed Limits shall be included with the initial certification required by this rule. If there has been no change in the applicable State law, regulation, administrative order, policy statement or written instruction concerning National Maximum Speed Limit Enforcement, then a State may include a statement to that effect with the

annual certification. If a change has occurred then a State need only submit a copy of the changed document with subsequent annual certifications. If a written enforcement policy on the National Maximum Speed Limits does not exist, a statement to that effect must also be included.

(c) Information relating to enforcement and monitoring as follows:

(1) Miles of highway with a 55 mph or 65 mph speed limit, by the following highway categories:

- (i) Freeways posted at 55 mph;
- (ii) Freeways posted at 65 mph (including freeways posted higher than 55 mph but lower than 65 mph); and
- (iii) Nonfreeways posted at 55 mph.

(2) Number of citations issued by State agencies for violations of the 55 mph speed limit and 65 mph speed limit during each month of the 12-month period ending on September 30 before the date by which certification is required.

(3) Number of monitoring locations and monitoring sessions.

(4) Number of vehicles observed during monitoring sessions.

(5) Distribution of vehicle speed by each highway category listed in paragraph (c)(1) of this section.

(6) For freeways and nonfreeways posted at 55 mph—the percentage of vehicles exceeding each of the following speeds: 55, 60, 65, 70 and 75 mph.

(7) For freeways posted at 65 mph—the percentage of vehicles exceeding each of the following speeds: 65, 70, 75, 80 and 85 mph.

(8) The data must be reported as required in the SMPPM.

(d) A calculation of the State's compliance scores is as follows: The statewide percentage of vehicles exceeding 60, 65 and 70 mph on all 55 mph highways, and 70, 75 and 80 mph on all 65 mph highways, is derived from the speed sampling plan specified in § 1260.9, and adjusted using a single adjustment procedure to take into account potential error sources. The single adjustment formula is:

$$H = \frac{(A + B)}{2}$$

where: H=The percent exceeding x mph after adjustment

A=the percent of vehicles exceeding x mph, and

B=the percent of vehicles exceeding +5 mph

These percents shall be calculated to the precision of a tenth of one percent. The adjusted percentages, also calculated to the precision of a tenth of one percent, are then inserted into the compliance formula and the State's compliance score is calculated. The percentage of vehicles exceeding a speed is expressed in percentage form. For example,

48.5 percent is expressed in the formula as 48.5, not 0.485.

The State's compliance score is determined by summing the product of relative fatality and a measure of crash severity, as derived from the 1989-1991 National Accident Sampling System data and 1990 Fatal Accident Reporting System data, and the percentage of vehicles exceeding 5 mph, 10 mph and 15 mph over the speed limit for each of the three highway categories. The compliance score formula is:

Compliance score=

- 1.055 × (percentage >60 on 55 mph freeways)
- +1.115 × (percentage >65 on 55 mph freeways)
- +1.180 × (percentage >70 on 55 mph freeways)
- +1.354 × (percentage >70 on 65 mph freeways)
- +1.434 × (percentage >75 on 65 mph freeways)
- +1.520 × (percentage >80 on 65 mph freeways)
- +2.659 × (percentage >60 on 55 mph nonfreeways)
- +2.811 × (percentage >65 on 55 mph nonfreeways)
- +2.974 × (percentage >70 on 55 mph nonfreeways)

The maximum allowable compliance scores are:

States with all highway categories.....	210
States with 55 mph freeways and 55 non-freeways.....	176
States with only 55 mph nonfreeways and 65 mph freeways.....	138
States with only 55 mph freeways.....	73

The State shall submit its compliance score in its annual certification statement.

§ 1260.17 Certification and statistical submittal.

(a) The Governor, or an official designated by the Governor, each year shall submit the certification to the FHWA Division Administrator. The FHWA Division Administrator will retain the original and forward two copies each to the Regional Administrators of FHWA and NHTSA. The Regional Administrators will each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington, DC Headquarters Chief Counsel.

(b) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded shall be submitted in the same manner as the original submission.

(c) The State is required to submit the information relating to enforcement, monitoring, and the compliance score as described in § 1260.15 (c) and (d).

(d) The data required for the annual certification under § 1260.15(c), with the exception of the speeding citation data required under § 1260.15(c)(2),

shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3-month periods ending December 31, March 31, June 30 and September 30 of each year. The submission of the July-September quarter shall, in addition to the quarterly report, include a summary report of the entire year's speed monitoring data (starting from the previous October 1). This submission shall also include the State's annual citation information.

§ 1260.19 Effect of failure to certify or to meet compliance standards.

(a) If a State fails to certify as required by § 1260.13, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Notwithstanding the proper submission of the certification and information supporting the speed monitoring activities of any State, if the Secretary determines that a State's compliance score calculated pursuant to § 1260.15(d) is greater than the maximum allowable compliance score as provided in § 1260.15(d), an amount calculated under paragraph (c) of this section from funds apportioned to that State under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4) and 104(b)(6) shall be transferred to such State's highway safety grant program fund under 23 U.S.C. 402 for the fiscal year subsequent to the fiscal year in which the State submitted its certification and supporting information upon which the compliance score is calculated.

(c) The amount of funds transferred shall be calculated by penalty category as follows:

(1) For States with all highway categories:

(i) Penalty category 1. If the compliance score exceeds 210 but is less than 231, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 231 but is less than 252, one percent shall be transferred.

(iii) Penalty category 3. If the score is 252 or greater, one and one-half percent shall be transferred.

(2) For States with 55 mph freeways and 55 nonfreeways:

(i) Penalty category 1. If the compliance score exceeds 176 but is less than 194, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 194 but less than 211, one percent shall be transferred.

(iii) Penalty category 3. If the score is 211 or greater, one and one-half percent shall be transferred.

(3) For States with only 55 mph nonfreeways and 65 mph freeways:

(i) Penalty category 1. If the compliance score exceeds 138 but is less than 152, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 152 but is less than 166, one percent shall be transferred.

(iii) Penalty category 3. If the score is 166 or greater, one and one-half percent shall be transferred.

(4) For States with only 55 mph freeways:

(i) Penalty category 1. If the compliance score exceeds 73 but is less than 80, one-half of one percent of the funds shall be transferred.

(ii) Penalty category 2. If the score is at least 80 but less than 88, one percent shall be transferred.

(iii) Penalty category 3. If the score is 88 or greater, one and one-half percent shall be transferred.

§ 1260.21 Penalty reduction and notification of noncompliance.

(a) If the FHWA and NHTSA Administrators determine that a noncomplying State's fatality rate, rounded to the nearest tenth, is at least ten percent below the national fatality rate, the Secretary shall reduce the amount of the apportionment transferred under § 1260.19 by one-third. The fatality rate is determined using fatality data contained in NHTSA's Fatal Accident Reporting System Annual Report and vehicle-miles of travel data reported in FHWA's Annual Highway Statistics publication. The State's fatality rate will be based on data for the calendar year preceding the fiscal year in which its compliance score is greater than the maximum allowable compliance score.

(b) On the basis of the information provided by the State and other information in the possession of the Department, the Secretary will notify the Governor of the State of the transfer of apportionments and direct the transfer of said apportionments. A copy of that notification will be transmitted promptly to the State by certified mail.

(c) The State shall expend any transferred funds pursuant to § 1260.19(b) for Section 402 programs within the State. In no instance shall such transfer exceed the total section 402 apportionment for that fiscal year, prior to any penalty reduction.

Appendix to Part 1260—Speed Monitoring Program Procedural Manual

Purpose

The speed monitoring program is intended to provide reliable data to be included in a State's annual certification of National Maximum Speed Limit (NMSL) enforcement.

Legislation

Section 205 of the Surface Transportation Assistance Act of 1978 and Section 1029 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) are the basis for speed monitoring activities related to the National Maximum Speed Limit.

Development and Documentation of Sampling Plan

Following the guidelines in this rule, each State shall develop a Speed Sampling and Analysis Plan for approval by the FHWA Division Administrator. The plan shall be reviewed annually, and updated if there are changes in the number or location of monitoring stations, or in the dates that data collection is planned. At a minimum, the plan shall include:

- Grouping of highways by three highway categories:

- Freeways posted at 55 mph
- Freeways posted at 65 mph
- Non-Freeways posted at 55 mph

- Number of miles of highway with a 55 or 65 mph speed limit, by above categories.
- Number of monitoring stations, sessions, location, and the direction that monitoring takes place (Northbound, Westbound, etc.).

- Any request for an exemption if a State proposes to limit the number of monitoring stations to a number no less than 30 percent higher than the maximum number of monitoring stations under the previous program. This request should include a justification as well as demonstrable assurances that the data integrity is being preserved.

- Type and capabilities of speed measuring equipment used.
- Functional classification of selected monitoring sites.
- Dates of planned data collection for each monitoring station.
- Any deviation from analysis methods recommended in this document.

Sampling Plan Prerequisites

The three types of data that must be assembled before a sampling plan can be developed are:

1. Miles of highway, by highway category, with a 55 or 65 mph speed limit.
2. Location of Highway Performance Monitoring System (HPMS) sample sections.
3. Location of monitoring stations under old program.

Miles of Highway, by Highway Category, With a 55 mph or 65 mph Speed Limit

Miles of highway, by highway category, with a 55 or 65 mph speed limit will be used in the random selection of monitoring stations.

Highways will be grouped into the following categories:

- Freeways posted at 55 mph
- Freeways posted at 65 mph
- Non-Freeways posted at 55 mph

The monitoring category "non-freeways posted at 55 mph" will NOT include any facilities classified as "local," any unpaved roads, and any rural minor collectors.

Location of HPMS Sample Sections

The location of the HPMS sample sections will assist in the selection of monitoring stations. HPMS sections average five miles in length. Monitoring stations will be randomly selected from among the HPMS sample sections where the entire section is posted at 55 or 65 mph.

Location of Monitoring Stations Under the Old Program

The location of existing monitoring stations must be known. Since the old monitoring stations were selected randomly, many of those stations can be retained, under the procedures discussed in the section "Selection of Sample Sites".

Sampling Guidelines

This section presents a sampling plan designed to monitor the speeds vehicles travel on highways posting with a 55 mph or 65 mph speed limit. Monitoring stations will be randomly selected from road segments in three highway categories:

- 55 mph freeways.
- 65 mph freeways.
- 55 mph non-freeways.

The State shall be responsible for selecting the sites to be monitored in accordance with the procedures in this section.

The following issues are addressed:

- Determination of sample sizes;
- Selection of sample sites;
- Number of sampling sessions and length of monitoring period.

Determination of Sample Sizes

The number of monitoring stations required in each State is a function of the number of different highway categories, the variability in the number of vehicles using each highway type, and the number of vehicles exceeding the speed limit in each of the three different levels (exceeding 60, 65, 70 etc.). Data from past speed surveys indicate that speeds vary much more on 55 mph non-freeways than on 55 or 65 mph freeways. In addition, most States have much more 55 mph non-freeway mileage than 55 or 65 mph freeway mileage. Thus, most States will have more monitoring stations on non-freeways than on freeways.

Three tables have been developed to assist the States in determining sample sizes. The tables were derived using speed data from previous surveys. Estimates of sampling errors were calculated for the 55 mph freeway and 55 mph non-freeway monitoring categories. Since no data were available for 65 mph freeways, the assumption was made that the variability of speeds on this highway type were similar to the variability of speeds on the 55 mph freeways. An estimate of overall variance and percent of vehicles exceeding 55 mph were calculated using weighted averaging across the States examined. For the 55 mph freeways, the percent of vehicles exceeding 55 mph averaged 70.9 percent with an estimated population standard deviation of 21 percent. For the 55 mph non-freeways, the percent of vehicles exceeding 55 mph averaged 51.8 percent with an estimated population standard deviation of 40 percent.

Using these figures the sample size tables were created. The tables show sample sizes

for each highway category as a function of the required precision and the number of road segments in each category. The sample sizes given in each table at the 7.5 percent level of precision are the *minimum* necessary in each category to met the precision requirement of these guidelines.

TABLE 1.—FREEWAYS WITH 55 MPH SPEED LIMIT

Number of road segments	Number of high-way segments to be sampled*
1	1
2-3	2
4-6	3
7-10	4
11-18	5
19-36	6
37-141	7
142 or more	8

* Precision based on one standard deviation and the percent of vehicles exceeding 55 equal to 70.9 percent.

TABLE 2.—FREEWAYS WITH 65 MPH SPEED LIMIT

Number of road segments	Number of high-way segments to be sampled*
1	1
2-3	2
4-6	3
7-10	4
11-18	5
19-36	6
37-141	7
142 or more	8

* Precision based on data from 55 mph Freeways and the assumption that the two roadway categories are similar in variation.

TABLE 3.—NON-FREEWAYS WITH 55 MPH SPEED LIMIT

Number of road segments	Number of high-way segments to be sampled*
1	1
2	2
3	3
4-5	4
6	5
7-8	6
9-10	7
11-12	8
13-14	9
15-16	10
17-19	11
20-22	12
23-25	13
26-29	14

TABLE 3.—NON-FREWAYS WITH 55 MPH SPEED LIMIT—Continued

Number of road segments	Number of highway segments to be sampled*
30-34	15
35-39	16
40-45	17
46-53	18
54-62	19
63-74	20
75-88	21
89-109	22
110-137	23
138-180	24
181-253	25
254-406	26
407-950	27
951 or more	28

* Precision based on one standard deviation and the percent of vehicles exceeding 55 equal to 51.8 percent.

Table 1 should be used to determine the number of monitoring stations for freeways with 55 mph speed limits. For example, in a State with 120 freeway road segments at 55 mph, seven monitoring stations would be required to meet the precision level of 7.5 percent.

Similarly, Table 2 should be used for determining the number of monitoring stations for 65 mph freeways and Table 3 for 55 mph non-freeways. Continuing the example, if this State had 60 segments of 65 mph freeways then a sample of seven monitoring stations would be required on these roads. If the State had 1,000 segments of 55 mph non-freeways then 28 monitoring stations would be required on these roads.

If the total number of monitoring stations required by the above methodology is more than 30 percent higher than the maximum number of stations used on roads in the State's existing speed monitoring program, then the State can petition the Division Administrator for a reduced number of stations. The reduction in stations can be to a level no lower than 30 percent higher than the maximum number of stations under the old program. However, there can be no reduction in the number of stations required on freeways posted at 65 mph. Therefore, any reduction in the number of stations must come from the highway categories freeways posted at 55 mph and non-freeways posted at 55 mph.

In lieu of the sample size tables, States can use their own data from past speed surveys to calculate sample sizes for each of the highway categories. However, the State must document in their sampling plan that their level of precision meets the precision requirements in each highway category. For 55 mph freeways and 65 mph freeways, a relative error of 11 percent for the total percent of vehicles exceeding the speed limit is required. For 55 mph non-freeways, a 14 percent relative error for the total percent of vehicles exceeding the speed limit is required. Relative error is defined as one

standard error divided by the estimate of the percent of vehicles exceeding the speed limit. For example, for 55 mph freeways, the percent of vehicles exceeding the speed limit was 71 percent. One standard error was estimated at 7.5 percent. The relative error would be calculated as:

$$\text{Relative Error} = \text{Standard Error/Estimate,} \\ \text{Relative Error} = 7.5/71 = 11 \text{ percent.}$$

If a State wishes to have a higher level of statistical reliability than a 7.5 percent level of precision, then the State can modify these monitoring requirements. The State can add monitoring stations or increase the number of days per year during which data are collected. The FHWA Division Administrator must accept the State's proposal before it can be implemented.

Selection of Sample Sizes

It is not feasible to select all new monitoring stations. Therefore, existing stations, including highway segments instrumented for other purposes such as weigh-in-motion or long term pavement monitoring, should be used to the maximum extent possible. States may either have too many or too few existing monitoring stations in each highway category. For example, many States may not have a sufficient number of stations on 65 mph freeways. Under the old monitoring program, all NMSL highways were divided into segments an average of about five miles long, and monitoring stations were randomly selected from these. A similar process will be used under the new monitoring program.

- Too few monitoring stations within a highway category. If more stations are needed, road segments should be chosen at random from all road segments in that category that currently do not have a monitoring station.

- Too many monitoring stations within a highway category. If a State has more stations in a monitoring category than required in the previous section, the State can choose to eliminate stations. However, the stations to be eliminated must be selected at random from the existing stations.

A random selection procedure for either alternative is provided in Appendix A. For all new stations one of the two directions of traffic should also be chosen at random. On existing monitoring stations, monitoring should take place in the same direction as under the old program. As under the old program, monitoring will take place on all lanes of the highway segment chosen as the monitoring station.

Each year, the number of monitoring stations should be reviewed to determine if any changes are required. Events that could precipitate changing the number of monitoring stations include:

- An increase or decrease in the number of HPMS sample sections in a highway category; and
- The introduction or elimination of a 65 mph maximum speed limit in a State.
- A significant increase or decrease in the amount of 55 mph highways.

Number and Length of Sessions

Each monitoring station will be monitored four times a year, once in each quarter. This

is necessary to account for seasonal variation in traffic.

A 24-hour monitoring period will be used to account for varying hourly traffic conditions and to facilitate the scheduling of data collection. It is expected that the number of vehicles counted during the 24-hour monitoring period will vary.

Data Collection

This section summarizes guidelines for data collection in the speed monitoring program. It is a brief outline of basic procedures that should be expanded on by each State in developing its speed monitoring program.

Organization

The program manager should be responsible for selection of monitoring sites, determining location of monitoring stations, obtaining necessary speed measurement equipment, scheduling equipment installation, scheduling data collection, managing data processing an analysis, and submission of required data and certifications. For the field operation a detailed schedule should be developed that includes as a minimum:

- Selection and location of stations;
- Date of permanent station installation;
- Date/time of equipment setup at each location;
- Date/time of equipment takedown at each location;
- Travel time;
- Makeup time for equipment malfunction; bad weather, etc; and
- Transfer of recorded data to program manager.

This schedule should be as comprehensive as possible so that each member of the data collection team knows what work is expected. This schedule should be coordinated with district or local engineers, and law enforcement officials so that data collection does not occur during construction/maintenance activities and periods of intensive enforcement that might affect vehicle speeds.

Selection and Location of Stations

Selection and location of stations should be as described in the Speed Sampling and Analysis Plan. Once sites are selected it must be determined which sites will be permanent monitoring stations and which ones temporary. Speed monitoring has been underway since the mid 1970s and is currently planned to extend at least until FY 1997. Thus it may be cost effective to seriously consider permanent monitoring stations. Equipment for permanent monitoring stations must be scheduled for loop installation. Temporary monitoring station equipment is installed and removed by the data collection team.

Installation of equipment at monitoring Stations—Segments which will have permanent monitoring stations should be surveyed to determine the optimum place for the installation of the monitoring station. The location of the monitoring station should be representative of typical conditions on the section. Situations to be avoided are:

- Near or at a sharp horizontal curve with a speed advisory plate less than the posted speed limit.

- Steep grades (i.e. greater than 4%).

- Within 1000 feet of a significant at-grade intersection.

- Within 1000 feet of an exit ramp or entrance ramp of an interchange.

- Anywhere within the interchange (defined as the distance from the beginning of a deceleration lane through the end of an acceleration lane).

- Where other unusual features exist that might influence vehicle speeds (e.g. a narrow bridge or railroad crossing).

Temporary monitoring stations should be subjected to the same criteria as permanent stations. In this case the field crew should drive the section (a minimum of twice) to become familiar with its characteristics and to identify any unusual conditions, in addition to those mentioned above, and any other criteria developed by the program manager. The criteria established for locating the monitoring station should be carefully followed since failure to do so may yield in speed data that could result in non-compliance due to data error and/or non-comparability.

Equipment Installation and Data Collection

Two common types of detectors are available to be placed on the roadways for speed monitoring. The first is the standard loop detector. Loop detectors are permanently placed in the pavement. The second type includes temporary sensors (e.g. tape switch, cable sensors) and pneumatic tubes. These sensors must be placed on the pavement just before the start of each speed monitoring station. Extreme care is needed in placing the cables on the pavement since all traffic in one direction must be stopped to place the temporary sensors on the highway. The sensors are attached to the pavement by glue, tape, or both. There may be some problems installing the sensors during wet or cool weather. Both types of sensors perform well when properly placed on the highway. However, under heavy traffic conditions temporary sensors may be damaged.

Data recorders can be placed at a distance from the sensors where the recorder can be secured. The deployment of the data recorder and the temporary sensors can take up to four hours depending on traffic and weather conditions. A shorter deployment period would be needed if permanent loop detectors were already in place.

Review Highway Conditions—Prior to going to the monitoring site, the State should check with district and local engineers and local enforcement officials to determine if any maintenance/construction and/or enforcement activities are present or planned for the site. When the State personnel arrive at the designated site, they should determine the suitability of conditions at the site. Speed monitoring should not be attempted under the following conditions:

- Extreme weather conditions expected during the next 24-hour period (severe rainstorms, heavy snow accumulating or icy roadway);

- Presence of non-routine enforcement activity; or

- Construction/maintenance activity or other disruptive activities which affect the speed of vehicle passing the site.

If any of these conditions exist, the field personnel should immediately contact the program manager or his/her representative so that the session can be rescheduled.

1. Document Speed Monitoring Station—The field data collection crew document the exact location, equipment setup, and equipment used. The following information should be included in station documentation:

- Location of site;
- Station number;
- Session number;
- Equipment used;
- Field data collection crew names;
- Time of arrival at site;
- Sketch of site indicating
 1. Location of speed monitoring equipment (sensor, recorder, etc.)
 2. Director of traffic monitored
 3. Geometrics of highway (lane, width, shoulder width, etc.), and
 4. Other physical features;
- Calibration of equipment checklist completed (check manufacturer's literature); and
- Time equipment is turned on.

Once each year the manufacturer's recommended calibration procedures should be completed. Any discrepancy should be reported to the program manager. No measurement should be taken with uncalibrated equipment.

2. End of Session Procedures—When the crew first arrives, they should determine if the equipment is still operating and run appropriate data checks. Any temporary speed monitoring equipment and all data recorders should be removed from the road and stored.

Scheduling the Data Collection

Data collection must account for variations in speed by the hour of the day, day of the week, and time of the year. To account for the hourly variation, all data collection sessions should be 24 hours long. At all monitoring stations one session of data will be obtained each quarter. All sessions should be evenly distributed by day of week. Data should not be collected on any monitoring station more than once on any day of the week in any one year.

Procedures for Obtaining and Recording Data—Data must be collected at each monitoring station to allow for the calculation of the following statistics:

- At monitoring stations on highways posted at 55 mph:
 - Percent of vehicles exceeding 55 mph.
 - Percent of vehicles exceeding 60 mph.
 - Percent of vehicles exceeding 65 mph.
 - Percent of vehicles exceeding 70 mph.
 - and
 - Percent of vehicles exceeding 75 mph.
- At monitoring stations on freeways posted at 65 mph:
 - Percent of vehicles exceeding 65 mph.
 - Percent of vehicles exceeding 70 mph.
 - Percent of vehicles exceeding 75 mph.
 - Percent of vehicles exceeding 80 mph.
 - and
 - Percent of vehicles exceeding 80 mph.
- The number of vehicles observed.

To determine the above statistics, each monitoring station must record a count of all vehicles and the speed of all vehicles that pass by the monitoring station in each 24-hour monitoring period.

Information on more categories of "percent exceeding" than is specified in the compliance formula is required to allow for error adjustments and to gather information on percent exceeding speed limit.

Data Analysis and Sample Design Evaluation

This section describes the procedures to be used in analyzing speed monitoring data. The main objective is to develop standard procedures applicable to all States. This section is divided into two parts:

- Computation of statistics related to the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph.
- Calculation of Compliance Score

Computation of Statistics

For monitoring stations on freeways and non-freeways posted at 55 mph it is necessary to compute the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, and 75 mph. For monitoring stations on freeways posted at 65 mph it is necessary to compute the percentage of vehicles exceeding 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph.

The data in each category is then adjusted to account for the various errors inherent in the process. As under the old program (FY 1981 to FY 1993), a simplified adjustment will be used to take into account the potential error sources. The adjustment formula is:

$$H = \frac{(A+B)}{2}$$

where: A=the percent of vehicles exceeding x mph
 B=the percent of vehicles exceeding x+5 mph, and
 H=The percent exceeding x mph after adjustment

The adjusted percentages are then inserted into the compliance formula and the State's compliance score is calculated. The following examples demonstrates these calculations.

Example

Part 1—Percent Exceeding at One Station

The first two parts presents a computation of statistics on the percentage of vehicles exceeding 70 mph on freeways posted at 65 mph. The same procedure is to be used to calculate the percentage of vehicles exceeding 55 mph, 60 mph, 65 mph, 70 mph, and 75 mph on highways posted at 55 mph, and the percent of vehicles exceeding 65 mph, 70 mph, 75 mph, 80 mph, and 85 mph on freeways posted at 65 mph.

For each monitoring station, the proportion of vehicles exceeding 70 mph is computed by dividing the number of vehicles traveling in excess of 70 mph by the total number of vehicles measured during the four monitoring sessions. The percentage of vehicles exceeding 70 mph is derived simply by multiplying the proportion by 100.

Location Number 1

Quarter	Number of vehicles exceeding 70 mph	Total vehicles measured
1	2,936	9,786
2	3,473	11,875
3	3,616	12,429
4	3,229	11,064
Total	13,254	45,154

Percentage Exceeding 70 mph for Location Number 1:

$$100 \left(\frac{13,254}{45,154} \right) = 29.4$$

Part 2—Percent Exceeding for One Highway Category

The percentage exceeding 70 mph for each highway category is derived by summing the number of vehicles exceeding 70 mph for all the monitoring stations within the highway category, dividing this sum by the total number of vehicles measured in the highway category, and multiplying the result by 100.

Freeways Posted at 65 MPH

Location No.	Number of vehicles exceeding 70 mph	Total vehicles measured
1	13,254	45,154
2	15,519	56,549
3	8,410	35,831
4	18,374	61,143
5	14,291	48,784
Total	69,848	247,461

Percentage Exceeding 70 mph for Freeways Posted at 65 mph:

$$100 \left(\frac{69,848}{247,461} \right) = 28.2$$

Part 3—Simplified Adjustment

This adjustment is to be taken for each of the nine percentages exceeding that go into the base compliance score. Using the following percentages:

- 38.5 percent exceeding 60 mph on 55 mph Freeways
- 19.0 percent exceeding 65 mph on 55 mph Freeways

Calculate the adjusted percent exceeding 60 mph on 55 mph Freeways:

$$x = \frac{(38.0 + 19.5)}{2}$$

x=28.8, the adjusted percent exceeding 60 mph on 55 mph Freeways.

Part 4—Calculation of Compliance Score

Assume a State with all three highway categories has collected the following data:

- 38.5 percent exceeding 60 mph on 55 mph Freeways
- 19.0 percent exceeding 65 mph on 55 mph Freeways
- 9.1 percent exceeding 70 mph on 55 mph Freeways
- 1.5 percent exceeding 75 mph on 55 mph Freeways
- 28.2 percent exceeding 70 mph on 65 mph Freeways
- 10.2 percent exceeding 75 mph on 65 mph Freeways
- 3.3 percent exceeding 80 mph on 65 mph Freeways
- 0.9 percent exceeding 85 mph on 65 mph Freeways
- 27.0 percent exceeding 60 mph on 55 mph Non-Freeways
- 12.5 percent exceeding 65 mph on 55 mph Non-Freeways
- 4.9 percent exceeding 70 mph on 55 mph Non-Freeways
- 0.5 percent exceeding 75 mph on 55 mph Non-Freeways

Applying the simplified adjustment to these figures yield:

- 28.8 percent exceeding 60 mph on 55 mph Freeways
- 14.1 percent exceeding 65 mph on 55 mph Freeways
- 5.3 percent exceeding 70 mph on 55 mph Freeways
- 19.2 percent exceeding 70 mph on 65 mph Freeways
- 6.8 percent exceeding 75 mph on 65 mph Freeways
- 2.1 percent exceeding 80 mph on 65 mph Freeways
- 19.8 percent exceeding 60 mph on 55 mph Non-Freeways
- 8.7 percent exceeding 65 mph on 55 mph Non-Freeways
- 2.7 percent exceeding 70 mph on 55 mph Non-Freeways

These adjusted percent exceeding figures are used to calculate the compliance score as follows:

$$\begin{aligned} \text{Compliance Score} &= [(1.055 * 28.8) + (1.115 * 14.1) + (1.180 * 5.3) + (1.345 * 19.2) + (1.434 * 6.8) + (1.520 * 2.1) + (2.659 * 19.8) + (2.811 * 8.7) + (2.974 * 2.7)] \\ &= (30.38 + 15.72 + 6.25 + 25.82 + 9.75 + 3.19 + 52.65 + 24.46 + 8.03) \\ &= 176.3 \end{aligned}$$

Reporting Results

Summary speed statistics from each State's monitoring program are required to be submitted to the FHWA as part of the annual certification of NMSL enforcement. In addition, the current practice of submitting quarterly reports showing results of speed monitoring during the previous 3-month period will continue. The Speed Summary Report form at the end of this chapter shows the desired format for reporting both annual and quarterly speed summary data. In addition, on the Speed Summary Report form the compliance score is to be calculated. In

the annual certification, the following data must be reported:

- For freeways and non-freeways posted at 55 mph:
 - Percent of vehicles exceeding 55 mph,
 - Percent of vehicles exceeding 60 mph,
 - Percent of vehicles exceeding 65 mph,
 - Percent of vehicles exceeding 70 mph, and
 - Percent of vehicles exceeding 75 mph.
- For freeways posted at 65 mph:
 - Percent of vehicles exceeding 65 mph,
 - Percent of vehicles exceeding 70 mph,
 - Percent of vehicles exceeding 75 mph,
 - Percent of vehicles exceeding 80 mph, and
 - Percent of vehicles exceeding 85 mph.
- In addition to the above, the following must be determined for each highway category:
 - Highway mileage posted at the NMSL,
 - Number of vehicles observed,
 - Number of monitoring locations,
 - Number of monitoring sessions,

Data on freeways posted at 55 mph and non-freeways posted at 55 mph must be reported separately.

The data must be reported to the following precision:

- Number of Miles—Tenth of a Mile
- Number of Vehicles Observed—Exact Number of Vehicles
- Number of Locations—Exact Number of Locations
- Number of Sessions—Exact Number of Sessions
- Percent Exceeding 55 mph—Tenth of a Percent
- Percent Exceeding 60 mph—Tenth of a Percent
- Percent Exceeding 65 mph—Tenth of a Percent
- Percent Exceeding 70 mph—Tenth of a Percent
- Percent Exceeding 75 mph—Tenth of a Percent
- Percent Exceeding 80 mph—Tenth of a Percent
- Percent Exceeding 85 mph—Tenth of a Percent
- Compliance Score—1 Decimal Place

In addition, a distribution of vehicle speeds shall be reported for each highway category. The following categories shall be used in the reporting of the distribution of vehicle speeds:

- Number of vehicles at 40 mph and below;
- Number of vehicles from 41 to 45 mph;
- Number of vehicles from 46 to 50 mph;
- Number of vehicles from 51 to 55 mph;
- Number of vehicles from 56 to 60 mph;
- Number of vehicles from 61 to 65 mph;
- Number of vehicles from 66 to 70 mph;
- Number of vehicles from 71 to 75 mph;
- Number of vehicles from 76 to 80 mph;
- Number of vehicles from 81 to 85 mph;
- Number of vehicles at 86 mph and above.

These data should be reported on a formatted computer disk which will be provided to each State by the Division office.

SPEED SUMMARY REPORT

[Send quarterly report to Office of Highway Information Management HPM-30]

[Send annual report to Office of Highway Safety HHS-32]

[Quarterly report/Annual report (circle one)—Quarter or Year _____ State _____]

Highway category	No. of miles	No. of vehicles observed	No. of locations	No. of sessions	Percent exceeding							
					55 mph	60 mph	65 mph	70 mph	75 mph	80 mph	85 mph	
Freeways posted at 55 mph											XXXX	XXXX
Freeways posted at 65 mph					XXXX	XXXX						
Non-freeways posted at 55 mph											XXXX	XXXX

XXXX—Data not to be reported.

CALCULATION OF COMPLIANCE SCORE

[Send annual report to Office of Highway Safety HHS-32]

[Annual Report—Year _____ State _____]

Highway category	Adjusted percent exceeding				
	60 mph	65 mph	70 mph	75 mph	80 mph
Freeways posted at 55 MPH				XXXX	XXXX
Freeways posted at 65 MPH	XXXX	XXXX			
Non-freeways posted at 55 MPH				XXXX	XXXX

XXXX—Data not to be reported.

Computation of Compliance Score

Percent Exceeding 60 mph on 55 mph

Freeways: _____ times

1.055= _____

Percent Exceeding 65 mph on 55 mph

Freeways: _____ times

1.115= _____

Percent Exceeding 70 mph on 55 mph

Freeways: _____ times

1.180= _____

Percent Exceeding 70 mph 65 mph

Freeways: _____ times

1.354= _____

Percent Exceeding 75 mph on 65 mph

Freeways: _____ times

1.434= _____

Percent Exceeding 80 mph on 65 mph

Freeways: _____ times

1.520= _____

Percent Exceeding 60 mph on 55 mph

Non-Freeways: _____ times

2.659= _____

Percent Exceeding 65 mph on 55 mph

Non-Freeways: _____ times

2.811= _____

Percent Exceeding 70 mph on 55 mph

Non-Freeways: _____ times

2.974= _____

Adjusted Compliance Score (sum of the scores for the nine highway categories)

DISTRIBUTION OF VEHICLE SPEEDS

[Send quarterly report to Office of Highway Information Statistics HPM-30, send annual report to Office of Highway Safety HHS-32]

[Quarterly Report/Annual Report (circle one)—Quarter or Year _____ State _____]

Recorded speeds	Number of vehicles measured												
	Freeways posted at 55 mph						Freeways posted at 65 mph			Non-freeways posted at 55 mph			
	Rural			Urban			Rural			Rural		Urban	
	Int	Artri	Other	Int	Artri	Other	Int	Artri	Other	Artri	Other	Artri	Other
40 mph and below													
41 to 45 mph													
46 to 50 mph													
51 to 55 mph													
56 to 60 mph													
61 to 65 mph													
66 to 70 mph													
71 to 75 mph													
76 to 80 mph													
81 to 85 mph													
86 mph and Above													

Int—Interstate, Artri—Non-Interstate Arterial, Other—Non-arterial.

Table of Random Numbers

This table consists of four pages, containing 2800 five-digit numbers organized in 200 rows by 14 columns. Numbers from this table may be selected by any random procedure. The procedure presented here consists of five steps:

1. Decide upon some arbitrary scheme of selecting the starting point (row, column) from the table. One method is to ask a person to select a number between 1 and 14. This will be the column number. Then ask a second person to select a number between 1 and 200. This will be the row number. A point (number) to start in the table has been selected.
2. Assign numbers 1 to 99,999 to all highway sections within a highway category from which the random selection will be made.
3. Decide upon some arbitrary scheme of selecting positional digits for each number chosen. If 500 is the highest sequence number used, you may decide to use the first, third, and fourth digit of each entry selected, and as a consequence a three-digit number is created from each entry choice.
4. If the number selected from the random number table is less than the highest sequence number, one highway section has been selected. If a number selected is greater than the highest sequence number or is a repeat of a number already selected, it should be passed over and the next number selected used. This process should continue until the

desired number of highway sections have been selected.

5. A method should be designed to progress through the random number table from the first number selected. Any method can be used, but should be determined before the random numbers are selected. Continue whatever process is selected until the desired number of random numbers has been selected.

The following is an example that puts this procedure into practice.

Example

The problem is to randomly select 10 highway segments to be monitored from a population of 500 segments.

- Select starting point in the Random Number Table.
 - a. Person one selected a number between 1 and 14, 7.
 - b. Person two selected a number between 1 and 200, 3.
- Therefore, the starting point selected is row 3, column 7, random number 15179.
- Assign number to highway segment population 1 to 500.
 - Selection of Position of Digits.
 - a. Since the highest sequence number is 500, three digits should be selected.
 - b. The first three digits from the random number table will be used to construct the random number.
 - The highest number that can be used is 500, therefore, a number greater than 500 will

be passed over. If the number 000 represents 1,000, and if it is encountered it will not be used as it is greater than 500.

- If a number appears more than once in a selection, it will not be selected the second time (or third time, fourth time, etc.).
- Selection of Random Numbers.
 - a. The progress through the random number table will be down the columns selected and up one of the columns on either side of the column used before.
 - b. Locate starting point row 3, column 7.
 - c. The first randomly selected number using the position of the digits in set 3 is 151. The next number is 394 (row 4, column 7). The next number, 604 (row 5, column 7), will not be used as it is greater than 500. Continue down the column selecting only numbers that are less than or equal to 500.

This process continues until all ten numbers have been selected. The result is the ten randomly selected highway segments listed below:

- 151
- 394
- 186
- 388
- 363
- 475
- 185
- 458
- 328
- 379

RANDOM NUMBER TABLE

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	10430	15011	01536	02011	81647	91646	69179	14194	62590	36207	20969	99570	91291	90700
2	22368	46573	25595	85393	30995	89198	27982	53402	93965	34095	52666	19174	39615	99505
3	24130	48350	22527	97265	76393	64809	15179	24830	49340	32081	30680	19655	63348	58629
4	42167	93093	06243	61680	07856	16376	39440	53537	71341	57004	00849	74917	97758	16379
5	37570	39975	81837	16656	06121	91782	60468	81305	49684	60672	14110	06927	01263	54613
6	77921	06907	11008	42751	27756	53498	18602	70659	90655	15053	21916	81825	44394	42880
7	99562	72905	56420	69994	98872	31016	71194	18738	44013	48840	63213	21069	10634	12952
8	96301	91977	05463	07972	18876	20922	94595	56869	69014	60045	18425	84903	42508	32307
9	89579	14342	63661	10281	17453	18103	57740	84378	25331	12566	58678	44947	05585	56941
10	85475	36857	43342	53988	53060	59533	38867	62300	08158	17983	16439	11458	18593	64952
11	28918	69578	88231	33276	70997	79936	56865	05859	90106	31595	01547	85590	91610	78188
12	63553	40961	48235	03427	49626	69445	18663	72695	52180	20847	12234	90511	33703	90322
13	09429	93969	52636	92737	88974	33488	36320	17617	30015	08272	84115	27156	30613	74952
14	10365	61129	87529	85689	48237	52267	67689	93394	01511	26358	85104	20285	29975	89868
15	07119	97336	71048	08178	77233	13916	47564	81056	97735	85977	29372	74461	28551	90707
16	51085	12765	51821	51259	77452	16308	60756	92144	49442	53900	70960	63990	75601	40719
17	02368	21382	52404	60268	89368	19885	55322	44819	01188	65255	64835	44919	05944	55157
18	01011	54092	33362	94904	31273	04146	18594	29852	71585	85030	51132	01915	92747	64951
19	52162	53916	46369	58586	23216	14513	83149	98736	23495	64350	94738	17752	35156	35749
20	07056	97628	33787	09998	42698	06691	76988	13602	51851	46104	88916	19509	25625	58104
21	48663	91245	85828	14346	09172	30168	90229	04734	59193	22178	30421	61666	99904	32812
22	54164	58492	22421	74103	47070	25306	76468	26384	58151	06646	21524	15227	96909	44592
23	32639	32363	05597	24200	13363	38005	94342	28728	35806	06912	17012	64161	18296	22851
24	29334	27001	87637	87308	58731	00256	45834	15398	46557	41135	10367	07684	36188	18510
25	02488	33062	28834	07351	19731	92420	60952	61280	50001	67658	32586	86679	50720	94953
26	81525	72295	04839	96423	24878	82651	66566	14778	76797	14780	13300	87074	79666	95725
27	29676	20591	68086	26432	46901	20849	89768	81536	86645	12659	92259	57102	80428	25280
28	00742	57392	39064	66432	84673	40027	32832	61362	98947	96067	64760	64584	96096	98253
29	05366	04213	25669	26422	44407	44048	37937	63904	45766	66134	75470	66520	34693	90449
30	91921	26418	64117	94305	26766	25940	39972	22209	71500	64568	91402	42416	07844	69618
31	00582	04711	87917	77341	42206	35126	74087	99547	81817	42607	43808	76655	62028	76630
32	00725	69884	62797	56170	86324	88072	76222	36086	84637	93161	76038	65855	77919	88006
33	69011	65797	95876	55293	18988	27354	26575	08625	40801	59920	29841	80150	12777	48501
34	25976	57948	29888	88604	67917	48708	18912	82271	65424	69774	33611	54262	85963	03547

RANDOM NUMBER TABLE—Continued

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
35	09763	83473	73577	12908	30883	18317	28290	35797	05998	41688	34952	37888	38917	88050
36	91567	42595	27958	30134	04024	86385	29880	99730	55536	84855	29080	09250	79656	73211
37	17955	56349	90999	49127	20044	59931	06115	20542	18059	02008	73708	83917	36103	42791
38	46503	18584	18845	49618	02304	51038	20655	58727	28168	15475	55942	53389	20562	87338
39	92157	89634	94824	78171	84610	82834	09922	25417	44137	48413	25555	21246	35509	20468
40	14577	62765	35605	81263	39667	47358	56873	56307	61607	49518	89656	20103	77490	19062
41	98427	07523	33362	64270	01638	92477	66969	98420	04880	45585	46565	04102	46890	45709
42	34914	63976	88720	82765	34476	17032	87589	40836	32427	70002	70663	88863	77775	69348
43	70060	28277	39475	46473	23219	53416	94970	25832	69975	94884	19661	72828	00102	66794
44	53976	54914	06990	67245	68350	82948	11398	42878	80287	88267	47363	46634	06541	97809
45	76072	29515	40980	07391	58745	25774	22987	80059	39911	96189	41151	14222	60697	59583
46	90725	52210	83974	29992	65831	38857	50490	83765	55657	14361	31720	57375	56228	41546
47	64364	67412	33339	31926	14883	24413	59744	92351	97473	89286	35931	04110	23726	51900
48	08962	00358	31662	25388	61642	34072	81249	35648	56891	69352	48373	45578	78547	81788
49	95012	68379	93526	70765	10593	04542	76463	54328	02349	17247	28865	14777	62730	92277
50	15664	10493	20492	38391	91132	21999	59516	81652	27195	48223	46171	22923	32261	85653
51	16408	81899	04153	53381	79401	21438	83035	92350	36693	31238	59649	91754	72772	02338
52	18629	81953	05520	91962	04739	13092	97662	24622	94730	06496	35090	04822	86772	98289
53	73115	35101	47498	87637	99016	71060	88824	71013	18735	20286	23153	72924	35165	43040
54	57491	16703	23167	49323	45021	33132	12544	41035	80780	45393	44812	12515	89831	91202
55	30405	83946	23792	14422	15059	45799	22716	19792	09983	74353	68668	30429	70735	25499
56	16631	35006	85900	98275	32388	52390	16815	69298	82732	38480	73817	32523	41916	44437
57	96773	20206	42559	78985	05300	22164	24369	54224	35083	19687	11052	91491	60383	19746
58	38935	64202	14349	82674	66523	44133	00697	35552	35970	19124	63318	29686	03387	59846
59	31624	76384	17403	53363	44167	64486	64758	75366	76554	31601	12614	33072	60332	92325
60	78919	19474	23632	27889	47914	02584	37680	20801	72152	39939	38406	08930	85001	87820
61	03931	33309	57047	74211	63445	17361	62825	39908	05607	91284	68833	25570	38818	46920
62	74426	33278	43972	10119	89917	15665	52872	73823	73144	88662	88970	74492	51805	99378
63	09066	00903	20795	95452	92648	45454	09552	88815	16553	51125	79375	97596	16296	66092
64	42238	12426	87025	14267	20979	04508	64535	31355	86064	29472	47689	05974	52468	16834
65	16153	08002	26504	41744	81959	65642	74240	56302	00033	67107	77510	70625	28725	34191
66	21457	40742	29820	96783	29400	21840	15035	34537	33310	06116	95240	15957	16572	06004
67	21581	57802	02050	89728	17837	37621	47075	42080	97403	48626	68995	43805	33386	21597
68	55612	78095	83197	33732	05810	24813	86902	60397	16489	03264	88525	42786	05269	92532
69	44657	66999	89324	51281	84463	60563	79312	93454	68876	25471	93911	25650	12682	73572
70	91340	84979	46949	81973	37949	61023	43997	15263	80644	43942	89203	71795	99533	50501
71	91227	21199	31935	27022	84067	05462	35216	14486	29891	68607	41867	14951	91696	85065
72	50001	38140	66321	19924	72163	09538	12151	06878	91903	18749	34405	56087	82790	70925
73	65390	05224	72958	28609	81406	39147	25549	48542	42627	45233	57202	94617	23772	07896
74	27504	96131	83944	41575	10573	08619	64482	73923	36152	05184	94142	25299	84387	34925
75	37169	94851	39117	89532	00959	16487	65536	49071	39782	17095	02330	74301	00275	48280
76	11508	70225	51111	38351	19444	66499	71945	05422	13442	78675	84081	66938	93654	59894
77	37449	30362	06694	54690	04052	53115	62757	95348	78662	11163	81651	50245	34971	52924
78	46515	70331	85922	38329	57015	15765	97161	17869	45349	61796	66345	81073	49106	79860
79	30986	81223	42416	58353	21532	30502	32305	86482	05174	07901	54339	58861	74818	46942
80	63798	64995	46583	09765	44160	78128	83991	42865	92520	83531	80377	35909	81250	54238
81	82486	84846	99254	67632	43218	50076	21361	64816	51202	88124	41870	52689	51275	83556
82	21885	32906	92431	09060	64297	51674	64126	62570	26123	05155	59194	52799	28225	85762
83	60336	98782	07408	53458	13564	59089	26445	29789	82505	41001	12535	12133	14645	23541
84	43937	46891	24010	25560	86355	33941	25786	54990	71899	15475	95434	98227	21824	19581
85	97656	63175	89303	16275	07100	92063	21942	18611	43748	20203	18534	03862	78095	50136
86	03299	01221	05418	38982	55758	92237	26759	86367	21216	98442	08303	56613	91511	75928
87	79526	06486	09574	17668	07785	76020	79924	25651	83325	88428	85076	72811	22717	50585
88	85636	68335	47539	08129	65651	11977	02510	26113	99447	68645	34327	15152	55230	93448
89	18039	14367	61337	06177	12143	46609	32989	74014	64708	00533	35398	58408	13261	47908
90	08362	15656	60627	36478	65648	16764	53412	09013	07832	41574	17639	82163	60859	75567
91	79556	29068	04142	16268	15387	12856	66227	38358	22478	73373	88732	09443	82558	05250
92	92608	82674	27072	32534	17075	27698	98204	63863	11951	34648	88022	56148	34925	57031
93	23982	25835	40055	67006	12293	02753	14827	22235	35071	99704	37543	11601	35503	85171
94	09915	96306	05908	97901	28395	14186	00821	80703	70426	75647	76310	88717	37890	40129
95	50937	33300	26695	62247	69927	76123	50842	43834	86654	70959	97925	93872	28117	19233
96	42488	78077	69882	61657	34136	79180	97526	43092	04098	73571	80799	76536	71255	64239
97	46764	86273	63003	93017	31204	36692	40202	35275	57306	55543	53203	18098	47625	88684
98	03237	45430	55417	63282	90816	17349	88298	90183	36600	78406	06216	95787	42579	90730
99	00091	81482	52667	61583	14972	90053	89534	76036	49199	43716	97548	04379	46370	28672
100	38534	01715	84964	87288	65680	43772	39560	12918	86537	62738	19636	51132	25739	56947

RANDOM NUMBER TABLE—Continued

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
101	13034	16334	74151	92027	24670	36665	00770	22878	02179	51602	07270	76517	97275	45960
102	21224	00370	30420	03883	96648	89428	41583	17564	27395	63904	41548	49197	82277	24120
103	99052	47887	81085	64933	66279	80432	65793	83287	34142	13241	30590	97760	35848	91983
104	00199	50993	98603	38452	87890	94624	69721	57484	67501	77638	44331	11257	71131	11059
105	60578	06483	28733	37867	07936	98710	98539	27186	31237	80612	44488	97819	70401	95419
106	92140	18312	17441	01929	18163	69201	31211	54288	39296	37318	65724	90401	79017	62077
107	97458	14229	12063	59611	32249	90466	33216	19358	02591	54263	88449	01912	07436	50813
108	35249	38646	34475	72417	60514	89257	12489	51924	86871	92446	36607	11458	30440	52639
109	38980	46600	11759	11900	46743	27860	77940	39298	97838	95145	32378	68038	89351	37005
110	10750	52745	38749	87365	58959	53731	89295	59062	39404	13198	59960	70408	29812	83126
111	36247	27850	73958	20673	37800	63835	71051	84724	52492	22342	78071	17456	96104	18327
112	70994	66986	99744	72438	01174	42159	11392	20724	54322	36923	70009	23233	65438	59685
113	99638	94702	11463	18148	81386	80431	90628	52506	02016	85151	88598	47821	00265	82525
114	72055	15774	43857	99805	10419	76939	25993	03544	21560	83471	43989	90770	22965	44247
115	24038	65541	85788	55835	38835	59399	13790	35112	01324	39520	76210	22467	83275	32286
116	74976	14631	35908	28221	39470	91548	12854	30166	09073	75887	36782	00268	97121	57676
117	35553	71628	70189	26436	63407	91178	90348	55359	80392	41012	36270	77786	89578	21059
118	35676	12797	51434	82976	42010	26344	92920	92155	58807	54644	58581	95331	78629	73344
119	74815	67523	72985	23183	02446	63594	98924	20633	58842	85961	07648	70164	34994	67662
120	45246	88048	65173	50989	91060	89894	36063	32819	68559	99221	49475	50558	34698	71800
121	76509	47069	86378	41797	11910	49672	88575	97966	32466	10083	54728	81972	58975	30761
122	19689	90332	04315	21358	97248	11188	39062	63312	52496	07349	79178	33692	57352	72862
123	42751	35318	97513	61537	54955	08159	00337	80778	27507	95478	21252	12746	37554	97775
124	11946	22681	45045	13964	57517	59419	58045	44067	58718	58840	45557	96345	33271	53464
125	96518	48688	20996	11090	48396	57177	83867	86464	14342	21545	46717	72364	86954	55580
126	35726	58643	76869	84622	39098	36083	72505	92265	23107	60278	05822	46760	44294	07672
127	39737	42750	48968	70536	84864	64952	38404	94317	65402	13589	01055	79044	19308	83623
128	97025	66492	56177	04049	80312	48028	26408	43591	75528	65341	49044	95495	81256	53214
129	62814	08075	09788	56350	76787	51591	54509	49295	85830	59860	30883	89660	96142	18354
130	25578	22950	15227	83291	41737	79599	96191	71845	86899	70694	24290	01551	80092	82118
131	68763	89576	88991	49662	46704	63362	56625	00481	73323	91427	15264	08969	57048	54149
132	17900	00813	64361	50725	88974	81005	99709	30666	26451	11528	44323	34778	60342	60388
133	71944	60227	63551	71109	05624	49836	58254	28160	32116	63403	35404	57148	10909	07346
134	54684	93691	85132	64399	29182	44324	14491	55228	78793	34107	30374	48429	51376	09559
135	25946	27623	11258	65204	52832	50880	22273	05554	99521	73791	85744	29276	70326	60251
136	01353	39318	44961	44972	91766	90262	56073	06606	51826	18893	83448	31915	97764	75091
137	99083	88191	27662	99113	57174	35571	99884	13951	71057	53981	81448	74909	07322	80960
138	52021	45406	37945	75234	24327	86978	22644	87779	23753	99926	63898	54888	18051	96314
139	78755	47744	43776	83098	03225	14281	83637	55984	13300	52212	58781	14905	46502	04472
140	25282	69106	59180	16257	22810	43609	12224	25643	89884	31149	85423	32581	34374	70873
141	11959	94202	02743	86847	79725	51811	12994	76844	05320	54236	53891	70226	38632	84776
142	11644	13792	98190	01424	30078	28197	55583	05197	47714	68440	22016	79204	06862	94451
143	06307	97912	68110	59812	95448	43244	31262	88880	13040	16458	43813	89416	42482	33939
144	76285	75714	89585	99296	52640	46518	55486	90754	88932	19937	57119	23251	55819	23879
145	55322	07589	39600	60866	63007	20007	66819	84164	81131	81429	60678	42807	78288	29015
146	78017	90028	90220	92503	83375	26986	74399	30850	88567	29169	72818	53357	15428	86932
147	44768	43342	20696	26331	43140	89744	82928	24988	94237	46138	77426	39039	55596	12655
148	25100	19336	14605	86803	51680	97678	24261	02464	86563	74812	60069	71874	15478	47642
149	83612	46623	62876	85197	07824	91392	58317	37728	84628	42221	10268	20692	15699	29167
150	41347	81666	82961	60413	71020	83658	02415	33322	66036	98712	46795	16308	28413	05417
151	38128	51178	75096	13609	16110	73533	42564	59870	29399	67834	91055	89917	51096	08901
152	60950	00455	73254	96067	50717	13878	03216	78274	65863	37011	91283	33914	91303	49326
153	90524	17320	29832	96118	75792	25326	22940	24904	80523	38928	91374	55597	97567	38914
154	49897	18278	67160	39408	97056	43517	84426	59650	20247	19293	02019	14790	02852	05819
155	18494	99209	81060	19488	65596	59787	47939	91225	98768	43688	00438	05548	09443	82897
156	65373	72984	30171	37741	70203	94094	87261	30058	58124	70133	18936	02138	59372	09075
157	40653	12843	04213	70925	95360	55774	76439	61768	52817	81151	52188	31940	54273	49032
158	51638	22238	56344	44587	83231	50317	74541	07719	25472	41602	77318	15145	57515	07633
159	69742	99303	62578	83575	30337	07488	51941	84318	42067	49692	28618	29101	03013	73449
160	58012	74072	67488	74580	47992	69482	58624	17106	47538	13452	22620	24260	40155	74716
161	18348	19855	42887	08279	43206	47077	42637	45606	00011	20662	14642	49984	94509	56380
162	59614	09193	58064	29086	44385	45740	70752	05663	49081	26960	57454	99264	24142	74848
163	75688	28630	39210	52897	62748	72658	98059	87202	72789	01869	13496	14663	87845	89713
164	13941	77802	69101	70061	35460	34578	15412	81304	58757	35498	94830	75521	00603	97701
165	96656	86420	96475	86458	54463	96419	55417	41375	76886	19008	66877	35934	59801	00497
166	03363	82042	15942	14549	38324	87094	19069	67590	11087	68570	22591	65232	85915	91499

RANDOM NUMBER TABLE—Continued

Line Col.	1	2	3	4	5	6	7	8	9	10	11	12	13	14
167	70366	08390	69155	25496	13240	57407	91407	49160	07379	34444	94567	66035	38918	65708
168	47870	36605	12927	16043	53257	93796	52721	73120	48025	76074	95605	67422	41646	14557
169	79504	77606	22761	30518	28373	73898	30550	76684	77366	32276	04690	61667	64798	66276
170	46967	74841	50923	15339	37755	98995	40162	89561	69199	42257	11647	47603	48779	97907
171	14558	50769	35444	59030	87516	48193	02945	00922	48189	04724	21263	20892	92955	90251
172	12440	25057	01132	38611	28135	68089	10954	10097	54243	06460	50856	65435	79377	53890
173	32293	29938	68653	10497	98919	46587	77701	99119	93165	67788	17638	23097	21468	36992
174	10640	21875	72462	77981	56550	55999	87310	69643	45124	00349	25748	00844	96831	30651
175	47615	23169	39571	56972	20628	21788	51736	33133	72696	32605	41569	76148	91544	21121
176	16948	11128	71624	72754	49084	96303	27830	45817	67867	18062	87453	17226	72904	71474
177	21258	61092	66634	70335	92448	17354	83432	49608	66520	06442	59664	20420	39201	69549
178	15072	48853	15178	30730	47481	48490	41436	25015	49932	20474	53821	51015	79841	32405
179	99154	57412	09858	65671	60655	71479	63520	31357	56988	06729	34465	70685	04184	25250
180	08759	61089	23706	32994	35426	36666	63988	98844	37533	08269	27021	45886	22835	78451
181	67323	57809	61114	62192	47547	58023	64630	34886	98777	75442	95592	06141	45096	73117
182	09255	13986	84834	20764	72208	89393	34548	93438	88730	61805	78955	18952	46436	58740
183	36304	74712	00374	10107	85061	69228	81969	92216	03568	39630	61869	52824	50937	27954
184	15884	87429	86612	47367	10242	44880	12060	44309	48629	55105	66793	93173	00480	13311
185	18745	32031	35303	08134	33925	03044	59929	95418	04917	57596	24878	61733	92834	64454
186	72934	40086	88292	65728	38300	42323	64068	98373	48971	08049	59943	36538	05976	82118
187	17626	02944	20910	57662	80181	38579	24580	90529	52303	50436	29401	57824	86039	81062
188	27117	61399	50967	41399	81636	16663	15634	79717	94696	59240	25543	97989	63306	90946
189	93995	18678	80012	63645	85701	85269	62263	68331	00389	72571	15210	20769	44686	96176
190	67392	88421	09623	80725	62620	84162	87368	29560	00519	84545	08004	24526	41252	14521
191	04910	12261	37566	80016	21245	69377	50420	85658	55263	68667	78770	04533	14513	18099
192	81453	20283	79929	59639	23875	13245	46808	74124	74703	35769	95588	21014	37078	39170
193	19480	75790	48539	23703	15537	48885	02861	86587	74539	65227	90799	58789	96257	02708
194	21456	13162	74608	81011	55512	07481	93551	72189	76261	91206	89941	15132	37738	59284
195	89406	20912	46189	76376	25538	87212	20748	12831	57166	35026	16817	79121	18929	40628
196	09866	07414	55977	16419	01101	69343	13305	94302	80703	57910	36933	57771	42546	03003
197	86541	24681	23421	13521	26000	94917	07423	57523	97234	63951	42876	48829	09781	58160
198	10414	96941	06205	72222	57167	83902	07460	69507	10600	08858	07685	44472	64220	27040
199	49842	06683	41479	58982	56288	42853	92196	20632	62045	78812	35895	51851	83534	10689
200	23995	68882	42291	23374	24299	27024	67460	94783	40937	16961	26053	78749	16704	21983

[FR Doc. 93-25689 Filed 10-21-93; 8:45 am]
 BILLING CODE 4810-22-M

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****National Highway Traffic Safety Administration****23 CFR Part 1260**

[Docket No. 93-8; Notice 3]

RIN 2127-AE52

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice proposes additional sanctions against a State having a compliance score exceeding the national maximum speed limit compliance score for each consecutive year after a year of non-compliance. The purpose of this modification is to encourage non-complying States to make efforts to reduce their scores in years succeeding any year in which they exceed the national maximum speed limit compliance score under 23 CFR part 1260.

DATES: Comments must be received by December 20, 1993.

ADDRESSES: Comments should refer to the docket number set forth above and be submitted to Docket 93-8, Notice 3, HCC-10, Federal Highway Administration, room 4232, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 8:30 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: In FHWA, Julie Anna Cirillo, Chief, Information Management and Analysis Branch, 202-366-2170. In NHTSA, J. Michael Sheehan, Chief, Police Traffic Services Division, 202-366-4295.

SUPPLEMENTARY INFORMATION:**Background**

The 55 mph national maximum speed limit (NMSL) was first instituted in 1974. FHWA and NHTSA have shared responsibility for the enforcement of the NMSL. The Secretary of Transportation was required to propose changes to 23 CFR part 659, currently governing the NMSL, pursuant to section 1029 of Public Law 102-240, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Because of this statutory mandate, FHWA and NHTSA published proposed modifications to part 659 in

the *Federal Register* on January 4, 1993 (58 FR 186) (the NPRM).

ISTEA requires that a new rule establish speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and include a formula for determining compliance by the States with such requirements. In addition, section 1029(c)(1)(A) of ISTEA provides " * * * for the transfer of apportionments under section 104(b) of title 23, United States Code (other than paragraph (5)), if a State fails to enforce speed limits in accordance with this section, [and the rulemaking authorized by section 1029]." However, the legislation does not specify the amount of the apportionments to be transferred or designate the program area to which the apportionments would be transferred.

A final rule, published elsewhere in today's *Federal Register*, revises NMSL procedures and provides that the penalty transfer from highway construction funds to 23 U.S.C. 402 programs would not exceed the greater of (i) one and one-half percent of the construction funds, or (ii) the total section 402 apportionment for the applicable fiscal year. A subsequent year penalty was not proposed in the NPRM and, therefore, is not incorporated into the final rule published today.

Some commenters objected to the absence of incentives in the NPRM for States to seek improvement in their national maximum speed limit compliance scores, and suggested the creation of such incentives. The Arizona Department of Public Safety said that the "most significant problem with the proposed rule is the lack of incentives for states to achieve higher compliance rates." Advocates for Highway and Auto Safety suggested that the transfer of an additional one percent of construction funds should occur for each succeeding year of non-compliance to a maximum of 5 percent.

The agencies stated in the NPRM that "a greater amount, exceeding the total section 402 apportionments, would overburden a State's highway safety planning process and ability to expend the funds as intended." One commenter, the Coalition for Consumer Health & Safety, strongly disagreed with this view, and encouraged the agencies to consider disregarding the amount of the section 402 apportionment as a limit for the funding of the penalty transfer.

The House bill had stated that the amount to be transferred would range from one to five percent of the designated apportionments for the first year of non-compliance and from two to ten percent for two or more consecutive

years of non-compliance. The amounts were to be transferred to the highway safety grant programs, authorized under section 402 of the Highway Safety Act of 1966, 23 U.S.C. 402. The Senate bill did not provide for a transfer of apportionments. In adopting the House's transfer penalty without the House language pertaining to amounts, the conferees included the following statement on page 328 of the report accompanying the conference bill:

The Conference Substitute applies that same reprogramming provision and Secretarial discretion with regard to the percentage transferred as in the House bill.

In reviewing the ranges of the House bill for the purpose of proposing a reasonable amount to be utilized by a non-complying State, the agencies determined that one and one-half percent of the designated apportionment for each State approximated the total amount of its 402 program. The NPRM therefore proposed a transfer of the above-referenced portion of these funds to the section 402 program with an emphasis on speed limit enforcement. However, the final rule, published elsewhere in today's *Federal Register*, no longer emphasizes speed limit enforcement or any other specific highway safety program.

Since the final rule provides additional flexibility to States to use the transferred funds for highway safety activities, other than speed enforcement, the agencies are reconsidering their proposal to limit the amount transferred. The agencies request comments on this SNPRM about revising the regulation to provide that the amount transferred may exceed the total section 402 program fiscal year apportionment, but only in years successive to a year in which a State's compliance score is greater than the maximum allowable compliance score. This would permit an increase to as high as two and one-half percent of funds apportioned for highway construction. This kind of penalty transfer would more closely follow the intent of the House bill for succeeding year non-complying NMSL States.

More importantly, the agencies believe that the proposed additional penalty transfer for succeeding year non-compliance provides incentive for NMSL score improvement. In its present form, the final rule would permit a non-complying State to remain in a penalty category year after year and adapt to a relatively minimal transfer of funds, especially in view of the graduated penalty categories adopted in the final rule.

Accordingly, the agencies propose to add subsection (d) to § 1260.19. This change, if adopted in a final rule, would have the effect of transferring a maximum of two and one-half percent of the funds apportioned to the State for Federal-aid highways and highway safety construction programs under section 104(b) of title 23, United States Code (other than paragraph (5)) to the State's apportionment under 23 U.S.C. 402 for the fiscal year. This maximum amount would be transferred if such State (1) was in the highest penalty category pursuant to § 1260.19(c) (i)-(iv) in the immediately previous fiscal year, and (2) did not improve its score in the current fiscal year so as to be within the range of scores for the applicable second highest penalty category established in § 1260.19(c) (i)-(iv).

Under this proposed change, a non-complying State may avoid the additional one percent subsequent year penalty transfer if it improves its score into a lower penalty category. Such a State would then be subject only to the amount of penalty for that category under § 1260.19(c). If a non-complying State does not improve into a lower penalty category, or has a worse score which moves it into a higher category, the State's penalty transfer shall be the transfer amount for that category plus the additional one percent penalty.

The agencies believe that it is appropriate to impose an additional penalty on any State that is out of compliance and does not make sufficient improvement to reduce its penalty in two or more consecutive years, particularly since the current range between penalty categories approximates only 10 per cent of the total score. However, the agencies solicit comments on whether States should be provided some relief from additional penalties if they show improvement in their compliance score (such as at least a 5 per cent improvement in compliance) but their compliance score does not place them in a lower category.

In addition, a minor revision would be made to § 1260.21(c) to clarify that the 23 U.S.C. 402 apportionment amount may be exceeded for non-complying subsequent year penalty transfers.

Regulatory Analyses and Notices

Civil Justice Reform

This proposed change to the rule would not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring speed limits and speed limit

enforcement through the potential redesignation of Federal highway construction funds to safety programs. Any redesignation of funds would not take place until FY 1997. If a non-complying State (1) submits data showing that its highway speeds are below certain national levels, and (2) a certification from the Governor reporting that the State is enforcing the speed limits on public highways in accordance with 23 U.S.C. 154, then it shall not be subject to the proposed subsequent year sanction which redesignates an additional amount of funds to the State's apportionment of safety grant programs. The transfer amount could be as high as two and one-half percent of a State's apportionment for Federal-aid highways and highway safety construction programs. The authorizing legislation for the proposed rule does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Federal Regulation and DOT Regulatory Policies and Procedures

The agencies have analyzed the effect of this proposed action and determined that it is not "major." Because of the public's interest in the 55/65 MPH speed limit, it is considered to be "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agencies have prepared an addendum to the Final Regulatory Evaluation (AFRE) for this proposal, and made it available in the public docket. A copy of the AFRE may be obtained by writing to the public docket at the address referenced above.

The AFRE assigns no additional cost under this proposal. The AFRE indicates that at least three States (Connecticut, Massachusetts and Wyoming) could be subject to the subsequent year penalty if they were not able to improve their compliance scores during subsequent years.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this proposed action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. The Final Regulatory Evaluation concluded that there would be no significant impact on small businesses since the portion of the highway construction funds going to noncompliant States would not be lost,

but only transferred to highway safety programs. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirement relating to the final rule, that each State must submit speed data and related certification information necessary to calculate its compliance score, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) The requirement has been approved through January 31, 1996, with the OMB control number No. 2125-0027. This proposal contains no additional information collection requirement.

National Environmental Policy Act

The agencies have analyzed this proposed action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with Executive Order 12612, concerning Federalism. The rule's provisions are likely to affect the allocations of States' resources, the way they measure their success in traffic law enforcement, relationships among State agencies, and the distribution of Federal funds between States' highway construction and safety programs. All of these effects may fairly be regarded as Federalism impacts. However, the basic requirements of the rule (i.e., the potential redistribution of Federal funds) are mandated by statute, so the agencies do not have discretion to mitigate these impacts. The agencies have carefully considered the comments of State agencies in shaping the details of the rule.

Comments to the Docket

The agencies are providing a 30-day comment period for interested parties to present data, views, and arguments on the proposed action. The agencies invite comments on the issues raised in this notice and any other issues commenters believe are relevant to this action. All comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a

concise fashion. Necessary attachments may be appended to these submissions without regard to the 15-page limit.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule, if one is issued, will be considered as suggestions for further rulemaking action. The agencies will continue to file relevant information in the docket as it becomes available after the closing date and it is recommended that interested persons continue to examine the docket for new material.

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

List of Subjects in 23 CFR Part 1260

Grant programs—transportation, Highway and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

In consideration of the foregoing, the FHWA and NHTSA hereby propose to amend part 1260 to chapter II, subchapter C of title 23, CFR, as set forth below.

PART 1260—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

1. The authority citation for part 1260 would continue to read as follows:

Authority: 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50.

2. Paragraph (d) would be added to § 1260.19 as follows:

§ 1260.19 Effect of failure to certify or to meet compliance standards

(d) An additional one percent of the funds apportioned to the State under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4) and 104(b)(6) shall be transferred pursuant to paragraph (b) of this section to such State's highway safety grant program fund under 23 U.S.C. 402 for the fiscal year subsequent to the fiscal year in which the State

submitted its compliance score if the Secretary determines that the State's compliance score calculated pursuant to § 1260.15(d) is in the same or a higher penalty category as the State's compliance score submitted in the prior fiscal year, as provided by paragraphs (a) (1) through (4) of this section.

3. Section 1260.21 would be amended by revising paragraph (c) as follows:

§ 1260.21 Penalty reduction and notification of noncompliance.

(c) The State shall expend any transferred funds pursuant to § 1260.19(b) for section 402 programs within that State. In no instance shall such transfer exceed the total section 402 apportionment for that fiscal year, prior to any penalty reduction, except in the case of a subsequent year penalty as provided in § 1260.19(d).

Issued on: October 14, 1993.

Rodney E. Slater,
Administrator, Federal Highway Administration.

Howard M. Smolkin,
Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 93-25690 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-22-M

Federal Register

Friday
October 22, 1993

Part V

**Environmental
Protection Agency**

40 CFR Part 117 et al.
Reportable Quantity Adjustments;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SW H-FRL-4792-5]

Reportable Quantity Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing changes to the Designation, Reportable Quantities, and Notification requirements for hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The table of hazardous substances is being revised to: (1) Add 47 hazardous air pollutants and adjust their reportable quantities (RQs); (2) add five other hazardous air pollutants that are broad generic categories of substances; (3) add to the table of hazardous substances and adjust the RQs for 10 hazardous wastes listed or proposed to be listed under the Resource Conservation and Recovery Act (RCRA); and (4) adjust the RQs for five hazardous wastes that are already on the table. In addition, the Agency is proposing to make conforming changes to the Clean Water Act (CWA) table of hazardous substances and the Emergency Planning and Community Right-to-Know Act (EPCRA) tables of extremely hazardous substances.

DATES: Comments must be submitted on or before December 20, 1993.

ADDRESSES: *Comments:* Comments should be submitted in triplicate to: Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number 102 RQ-CAA, Superfund Docket Room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Release Notification: The toll-free telephone number of the National Response Center is 800-424-8802; in the Washington, DC metropolitan area, the number is 202-267-2675.

Docket: Copies of materials relevant to this rulemaking are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102 RQ-CAA). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202-260-3046. The public may copy a maximum of 267 pages from any regulatory docket at no cost. If the number of pages copied

exceeds 267, however, a charge of \$0.15 will be incurred for each page after page 100.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at 800-424-9346 (in the Washington, DC metropolitan area, contact 703-920-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800-553-7672 (in the Washington, DC metropolitan area, contact 703-486-3323); or Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or at 703-603-8780.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601 *et seq.*, as amended, established broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA chiefly by reference to various Federal environmental statutes. For example, the term includes "any hazardous air pollutant listed under section 112 of the Clean Air Act" (CAA), and "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act * * *" also known as the Resource Conservation and Recovery Act (RCRA). Under CERCLA section 102(a), any substance that, when released into the environment, may present substantial danger to public health or welfare or the environment may be designated as a CERCLA hazardous substance. Designation as a CERCLA hazardous substance means that a release of this substance requires an immediate report to the National Response Center when the amount released is equal to or greater than the reportable quantity (RQ) listed in 40 CFR part 302.

Section 102(b) of CERCLA establishes RQs for releases of CERCLA hazardous substances at one pound, unless a substance has a different RQ established under section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust these RQs by regulation.

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National

Response Center (see 40 CFR 302.6) and State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA) (Pub. L. 99-499), 42 U.S.C. 11001 *et seq.* (see 40 CFR 355.40).

B. Background of This Rulemaking

The CERCLA list needs to be changed because (1) RCRA listing rules and the rule revising the RCRA toxicity characteristics incorporated additional substances into the CERCLA list and (2) amendments to the CAA, signed into law on November 15, 1990 (Pub. L. 101-549), also incorporated substances into the CERCLA list.

Under section 112 of the CAA, as amended, 190 specific substances or broad generic categories of substances are listed as hazardous air pollutants; 52 of these, 47 individual substances and five broad generic categories of substances, were not previously listed individually on the CERCLA hazardous substance list. The substances not previously listed became hazardous substances pursuant to CERCLA section 101(14), and under CERCLA section 102(b) these substances were assigned a one-pound statutory RQ. The U.S. Environmental Protection Agency (EPA) is proposing today to adjust the statutory one-pound RQs for the 47 hazardous air pollutants that are individual substances.¹ EPA also is proposing today to adjust the RQs of 15 RCRA waste streams. The proposed RQ adjustments cover three classes of substances: (1) RCRA wastes that are already on the CERCLA list with one-pound RQs; (2) RCRA wastes that are already on the CERCLA list with 1,000-pound RQs; and (3) wastes proposed to be listed under RCRA that have not yet been finalized as RCRA wastes.

The methodology and criteria used to adjust RQs for CERCLA hazardous substances was promulgated in the final rules that were published on April 4, 1985 (50 FR 13456) and August 14, 1989 (54 FR 33418 and 54 FR 33426).

II. Reportable Quantity Adjustments

A. Introduction

In today's rule, EPA is proposing to adjust the one-pound statutory RQs for the 47 individual hazardous substances based upon specific scientific and technical criteria that relate to the possibility of harm from the release of

¹ As discussed in Section IV of this preamble, EPA is evaluating several possible options for assigning RQs to the five hazardous air pollutants that are broad generic categories and is requesting public comments on these options in this proposed rule.

a CERCLA hazardous substance in certain amounts.² RQs represent a determination only of possible or potential harm, not that releases of a particular amount of a hazardous substance necessarily will be harmful to the public health or welfare or the environment. The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors include, but are not limited to, the location of the release, its proximity to drinking water supplies or other valuable resources, and the likelihood of exposure or injury to nearby populations. The RQ adjustments proposed today would enable EPA to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. These adjustments would also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are unlikely to pose such threats.

B. Summary of the Reportable Quantity Adjustment Methodology

EPA has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.³ The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, EPA ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to

certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP).⁴ If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria), is generally raised one level.⁵ This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance if reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

After hazardous substances are evaluated for the primary and secondary criteria, EPA has proposed (54 FR 35988, August 30, 1989) that substances be further evaluated by applying the methodology for developing threshold planning quantities (TPQs) pursuant to EPCRA section 302 using the following steps. First, the screening criteria used to identify extremely hazardous substances (EHSs) (see 51 FR 41570, November 17, 1986) would be applied to the hazardous substances being evaluated. Second, a level of concern would be established for each hazardous substance that meets the screening criteria.⁶ Third, the dispersion potential of each of these hazardous substances would be assessed by considering its physical state and volatility. The level of concern and dispersion potential would be combined to produce an index value, and the screened substances would be ranked according to this index

value. Tentative RQs would be assigned to substances using a table of index value ranges. If the tentative RQ assigned in this way is lower than the primary and (if applicable) secondary criteria RQ, this tentative RQ resulting from application of the TPQ criteria would become the adjusted RQ.⁷ Because EPA has determined that application of the TPQ criteria to the substances evaluated in today's proposed rule does not affect any of the tentative RQs using the primary and secondary criteria, the content of this proposed rule would be the same whether or not the proposed expanded methodology using the TPQ criteria is used.⁸

III. Releases of Ethylene Glycol

A. Automobile Antifreeze

EPA has received several letters expressed concern about the reporting burdens on operators of automobiles for personal use as a result of the addition of ethylene glycol to the list of CERCLA substances.⁹ Ethylene glycol comprises over 90 percent of automobile antifreeze and has a one-pound statutory RQ. Currently, a release of just over one pound of antifreeze from an automobile must be reported to the National Response Center, the State emergency response commission (SERC), and the local emergency planning committee (LEPC). The proposed adjusted RQ for ethylene glycol is 5,000 pounds, based on chronic toxicity and application of the secondary RQ adjustment criterion of biodegradation. The proposed 5,000-pound RQ for ethylene glycol far exceeds the amount that would be released from an automobile. Consequently, if the proposed RQ is promulgated, releases of antifreeze generally would not require reporting.

B. Airplane De-icing

Another common use of ethylene glycol is in airplane de-icing operations

⁴ For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at room M2424, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

⁵ No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

⁶ This level of concern may be based on the Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute for Occupational Safety and Health. Because most substances do not have published IDLH values, however, levels of concern are usually estimated from acute mammalian toxicity data for the most sensitive species.

⁷ For a more detailed description of how the TPQ criteria are used as a part of the RQ adjustment methodology, see the Technical Background Document to Support Adjustment of the Reportable Quantities of the Extremely Hazardous Substances Designated as CERCLA Hazardous Substances, Volume 5, available for inspection in the public docket at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

⁸ For a more detailed discussion of the application of the TPQ criteria to the substances evaluated in this rule, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 7, available for inspection in the public docket at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

⁹ Copies of these letters are available for inspection in the public docket (No. 102 REQ-CAA) at room 2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

² See Section IV of this preamble for a discussion of possible options for assigning RQs to the five broad generic categories.

³ A different methodology applies for assigning adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

at airports. Regulated parties have argued that because ethylene glycol is released each time an airplane is deiced, the volume and frequency of reports will result in an unnecessary burden on the National Response Center and on the airline industry. EPA suggests that one potential source of reporting relief for such releases may be the final rule on reporting continuous releases, 40 CFR 302.8, promulgated pursuant to CERCLA section 103(f)(2) (55 FR 30166, July 24, 1990). Under that regulation, the person in charge of the facility must establish that the release is continuous and stable in quantity and rate, and must complete the initial notification reports. EPA has defined "continuous" in the final rule to include routine, anticipated, intermittent releases that are incidental to normal plant operations.

The federally permitted releases exemption also may provide reporting relief to regulated parties. Federally permitted releases, defined in CERCLA section 101(10), are exempt from CERCLA notification and liability requirements. CERCLA section 101(10)(A), (B), and (C) exempts certain releases covered by permits issued under section 402 of the CWA. Section 101(10)(D) exempts releases that are specified in and in compliance with applicable pretreatment standards under section 307 of the CWA and that are into a publicly owned treatment works (POTW) with an approved pretreatment program. Section 101(10)(H) exempts releases subject to a permit or control regulation under the CAA hazardous air pollutant program. Therefore, if releases of ethylene glycol are covered by a National Pollutant Discharge Elimination System permit, are covered by a POTW pretreatment program, or are subject to a National Emission Standards for Hazardous Air Pollutants (NESHAPs) permit, they may be exempt from CERCLA notification and liability provisions. For further information on releases of ethylene glycol, contact the appropriate EPA Regional Office (or the docket) to obtain a copy of Directive Memorandum 9360.4-12, issued by EPA's Office of Solid Waste and Emergency Response on February 4, 1992.

IV. Broad Generic Categories

Of the broad generic categories of chemicals listed as hazardous air pollutants by the CAA Amendments, five categories (cobalt compounds, glycol ethers, manganese compounds, fine mineral fibers, and polycyclic organic matter) were not previously on the CERCLA list.

Each of these five categories contains hundreds or thousands of individual compounds with varying toxicological and chemical properties. EPA is currently considering several options for the CERCLA reporting requirements that could be applied to the five categories. Because of the broad range of relative hazards represented by the many compounds within the five CAA broad generic categories, the Agency must balance a variety of factors in choosing an approach that protects public health and the environment. These factors include: The length of time EPA would need to evaluate a large number of compounds individually; the need to have meaningful information reported to the National Response Center (i.e., avoiding either too much or too little information); and the need to avoid unnecessary and costly reporting burdens. EPA requests public comments on options for addressing these broad categories, including comments on the following five options:

- (1) Assign no RQ level to the CAA broad generic categories;
- (2) Retain a one-pound RQ for these categories (i.e., the lowest RQ EPA assigns to individual hazardous substances);
- (3) Assign an RQ to each category that reflects either the average RQ or the lowest RQ of the substances within each category;
- (4) Assign a 5,000-pound RQ to each category (i.e., the highest RQ EPA assigns to individual hazardous substances); or
- (5) Identify and assign an RQ to certain substances within each category. For the remaining substances within each of the five categories not assigned a specific RQ, assign no RQ, retain a one-pound RQ, assign an average or lowest RQ, or assign a 5,000-pound RQ. In particular, EPA requests public comments and supporting data that identify specific substances within the five categories, and data on their toxicological and chemical properties.

If the first option were promulgated, CERCLA notification requirements would no longer apply to specific substances that are within the five CAA broad generic categories, unless the specific substances are listed separately in Table 302.4 of 40 CFR 302.4. If RQs are assigned to the broad generic categories under the remaining four options, releases of an RQ or more of substances within the categories would need to be reported to the National Response Center.

It is important to note that, regardless of the option chosen by the Agency, CERCLA liability will continue to apply

to releases of all specific compounds within each category. Parties responsible for releases of hazardous substances that fall under any of the broad generic categories are liable for the costs associated with cleanup and any natural resource damages resulting from the release.

V. Designation and RQ Adjustment of RCRA Hazardous Wastes

EPA today is also proposing to adjust the RQs of 15 RCRA hazardous wastes. The RQ adjustment methodology for mixtures of hazardous substances, used to adjust the RQs for RCRA hazardous wastes, differs somewhat from the methodology applied to individual hazardous substances. The procedure for assigning RQs to hazardous wastes is based on an analysis of the hazardous substance constituents of the wastes. The constituents of each RCRA hazardous waste are identified in 40 CFR part 261, appendix VII. The RQ of each constituent within the waste is determined, and the lowest RQ value of these constituents is established as the RQ for the waste.

Four of the hazardous wastes addressed in this rule (K088, K090, K091, F025) are already CERCLA hazardous substances by virtue of their listing under RCRA section 3001 on September 13, 1988 (53 FR 35412) and December 11, 1989 (54 FR 50968). Currently, these wastes are assigned the statutory one-pound RQ required by CERCLA section 102(b). Six other wastes addressed in this rule have been proposed to be listed under RCRA and will become CERCLA hazardous substances if and when RCRA designation becomes final. These wastes were proposed as RCRA wastes on May 1, 1985 (K119, K120, K121, U354, U355; 50 FR 18622) and February 25, 1986 (U357; 51 FR 6565). By promulgating adjusted RQs at the same time that the substances first become RCRA hazardous wastes, EPA would avoid imposing the reporting and response burden of a statutory one-pound RQ. The five remaining hazardous wastes (F004, D023, D024, D025, and D026) already have been listed on Table 302.4 and have adjusted RQs of 1,000 pounds. Pursuant to the methodology for adjusting RQs for RCRA wastes, these wastes have RQs based on the RQ for "cresol(s)," the constituent within each waste with the lowest RQ. Because the RQ for cresols is proposed to be adjusted from 1,000 pounds to 100 pounds, the RQs for the five wastes are also proposed to be adjusted from 1,000 pounds to 100 pounds (see Section VI for additional discussion of the RQ adjustment for "cresol(s)").

VI. Changes to Table 302.4: List of Hazardous Substances and Their RQs

EPA also is proposing in this rulemaking to adjust the RQs for two hazardous substance categories, "cresol(s)" and "xylene (mixed)," which are already listed on Table 302.4. The CERCLA listing for the hazardous substance cresols represents a mixture of the three individual cresol isomers, m-cresol, o-cresol, and p-cresol. Similarly, the listing for xylene represents a mixture of the three xylene isomers, m-xylene, o-xylene, and p-xylene. In 1990, the CAA Amendments added the three cresol isomers and the three xylene isomers individually to the CAA section 112 list of hazardous air pollutants.

In today's rulemaking, these six isomers are proposed to be listed as six separate entries on the 40 CFR 302.4 list of CERCLA hazardous substances. EPA has reviewed all relevant data on the cresol and xylene isomers, including studies published since the final rules designating the categories cresols and xylene as hazardous substances and assigning them 1,000-pound RQs. (See 51 FR 34561, September 29, 1986 and 50 FR 13456, April 4, 1985, respectively). As a result of this review, EPA has determined that the three cresol isomers and m- and p-xylene should receive adjusted RQs of 100 pounds. EPA's review of relevant data indicates that o-xylene should receive an adjusted RQ of 1,000 pounds. Because there are only three substances within the cresols and xylene categories and because EPA has sufficient data to assign RQs to each of these substances, the Agency proposes to assign the lowest RQ of the individual member substances to these categories. Therefore, EPA proposes today to adjust the RQ for these categories from 1,000 pounds to 100 pounds to be consistent with the data used to develop the 100-pound RQs for the m-, o-, and p-cresol and m- and p-xylene isomers.

To more clearly show the two types of changes to the list of CERCLA hazardous substances resulting from the addition of the CAA Amendments hazardous air pollutants and the RCRA hazardous wastes, EPA is publishing two sets of revisions to Table 302.4 of 40 CFR part 302 in today's proposed rule. One set of revisions contains the new listings for the CAA Amendments hazardous air pollutants (including the revised cresols and xylene entries) and the RCRA hazardous wastes with their proposed adjusted RQs. The other set of revisions adds a new statutory source code for certain hazardous substances that were already on the CERCLA list to

indicate that, as a result of their listing as hazardous air pollutants in the CAA Amendments, an additional statutory source for designation of these hazardous substances is CAA section 112.

VII. Changes to 40 CFR Parts 355 and 117

Appendices A and B of 40 CFR part 355, which list EHSs and their TPQs under EPCRA, also show the RQs for EHSs. Five of the new CAA hazardous air pollutants whose RQs are proposed to be adjusted today are also EHSs. These substances are chloroacetic acid, hydroquinone, beta propiolactone, titanium tetrachloride, and o-cresol. This rule proposes that chloroacetic acid, hydroquinone, titanium tetrachloride, and o-cresol each receive an adjusted RQ of 100 pounds and that beta propiolactone receive an adjusted RQ of 10 pounds. Therefore, to fully reflect the proposed RQ adjustments for these five substances, EPA is today proposing to revise Appendices A and B of 40 CFR part 355.

EPA is also proposing to amend the RQs for "cresol" and "xylene (mixed)" in Table 117.3 of 40 CFR part 117. Table 117.3, the list of CWA hazardous substances and their RQs, currently contains listings for "cresol" and "xylene (mixed)", each with an RQ of 1,000 pounds. "Cresol" and "xylene (mixed)" are included in Table 117.3 because they were originally listed as hazardous substances under CWA section 311(b)(4). EPA is proposing today to change the RQs for "cresol" and "xylene (mixed)" in Table 117.3 from 1,000 pounds to 100 pounds to ensure that the CWA RQs listed in Table 117.3 are identical to the CERCLA RQs listed in Table 302.4 for the substances that appear on both tables.

VIII. Regulatory Analyses

A. Executive Order 12291

Executive Order (E.O.) 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

- (1) An annual effect on the economy of \$100 million or more; or
- (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 United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

An economic analysis performed by EPA¹⁰ shows that this proposed rule is nonmajor because the rule will result in a net cost savings of approximately \$39.2 million annually, and does not result in any of the other effects that define a major rule. In this proposed rule, RQs for 44 of the 47 hazardous air pollutants and 9 of the 10 RCRA wastes would be raised. In addition, as noted in Section IV of this preamble, EPA is evaluating several options for assigning RQs to the five broad generic categories of hazardous air pollutants and is requesting public comments on these options. Until such time as the Agency promulgates one of these options, the statutory one-pound RQ for these categories will remain in effect. The RQs of the cresols and xylene categories and the five hazardous wastes with RQs based on the RQ for cresols are proposed to be lowered. The estimated net effect of these changes to the current statutory RQs would be to reduce by approximately 31,250 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated \$39.2 million net cost savings reflects only those effects of the RQ adjustments that are readily quantifiable in dollars and are associated with the release notification requirements under section 103 of CERCLA and section 304 of EPCRA (including the associated activities of recordkeeping, notification processing, monitoring, and response). This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." A Regulatory Flexibility Analysis is not necessary for this proposed rule, because the upper-bound total cost of compliance to small firms is negligible. See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at room M2427, U.S.

¹⁰ See the Economic Impact Analysis of Reportable Quantity Adjustments for the Hazardous Air Pollutants and RCRA Hazardous Wastes Added as CERCLA Hazardous Substances, Volume VI, March 1993, available for inspection at room M2424, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Therefore, EPA hereby certifies that today's proposed rule will not have a significant impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The public reporting burden for the collection of information pursuant to CERCLA section 103 is estimated to vary from 2 to 5 hours per response, with an average of 2.1 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These information collection requirements have been assigned OMB control number 2050-0046.

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, PM-223, 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."

List of Subjects

40 CFR Part 117

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community

Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity, Water pollution control, Water supply.

Dated: October 7, 1993.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES, FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), ("the Act") and Executive Order 11735, superceded by Executive Order 12777, 56 FR 54757.

2. Section 117.3 is amended by revising the entries in the "category"

column and in the "RQ in pounds (kilograms)" column for "cresol" and "xylene (mixed)" in Table 117.3 from "C" to "B" and from "1,000 (454)" to "100 (45.4)", respectively, as set forth below:

§ 117.3 Determination of reportable quantities.

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

Material	Category	RQ in pounds (kilograms)
Cresol	B	100 (45.4)
Xylene (mixed)	B	100 (45.4)

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

4. Section 302.4 is amended by adding the following new entries to Table 302.4 and its appendix A, and by adding footnotes "a" and "b" to Table 302.4 as set forth below:

§ 302.4 Designation of hazardous substances.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

(Note: All comments/notes are located at the end of this table)

Hazardous substance	CASRN	Regulatory synonyms	Statutory		Final RQ		
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Acetamide	60355		1*	3		B	100 (45.4)
4-Aminobiphenyl	92671		1*	3		X	1 (0.454)
o-Anisidine	90040		1*	3		B	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

(Note: All comments/notes are located at the end of this table)

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
Benzene ^a	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Benzene, dimethyl-	1330207	Xylene Xylene (mixed). Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
Benzene, m-dimethyl-	108383	m-Xylene	1*	3		B	100 (45.4)
Benzene, o-dimethyl-	95476	o-Xylene	1*	3		C	1000 (454)
Benzene, p-dimethyl-	106423	p-Xylene	1*	3		B	100 (45.4)
Biphenyl	92524		1*	3		B	100 (45.4)
Bromacil	314409	5-Bromo-3-sec-butyl-6-methyluracil	1*	4	U354	B	100 (45.4)
5-Bromo-3-sec-butyl-6-methyluracil	314409	Bromacil	1*	4	U354	B	100 (45.4)
1,3-Butadiene	106990		1*	3		A	10 (4.54)
Calcium cyanamide	156627		1*	3		C	1000 (454)
Caprolactam	105602		1*	3		D	5000 (2270)
Carbonyl sulfide	463581		1*	3		B	100 (45.4)
Catechol	120809		1*	3		B	100 (45.4)
Chloramben	133904		1*	3		B	100 (45.4)
Chloroacetic acid	79118		1*	3		B	100 (45.4)
2-Chloroacetophenone	532274		1*	3		B	100 (45.4)
Chloroprene	126998		1*	3		B	100 (45.4)
Cobalt Compounds	N.A.		1*	3			(***)
Cresols (isomers and mixture)	1319773	Cresylic acid (isomers and mixture) Phenol, methyl-	1000	1,3,4	U052	B	100 (45.4)
m-Cresol	108394	m-Cresylic acid	1*	3		B	100 (45.4)
o-Cresol	95487	o-Cresylic acid	1*	3		B	100 (45.4)
p-Cresol	106445	p-Cresylic acid	1*	3		B	100 (45.4)
Cresylic acid (isomers and mixture)	1319773	Cresols (isomers and mixture) Phenol, methyl-	1000	1,3,4	U052	B	100 (45.4)
m-Cresylic acid	108394	m-Cresol	1*	3		B	100 (45.4)
o-Cresylic acid	95487	o-Cresol	1*	3		B	100 (45.4)
p-Cresylic acid	106445	p-Cresol	1*	3		B	100 (45.4)
DDE ^b	3547044		1*	3		D	5000 (2270)
Diazomethane	334883		1*	3		B	100 (45.4)
Dibenzofuran	132649		1*	3		B	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
N-(3,4-dichlorophenyl)-N-methoxy-N-methylurea	330552	Linuron	1*	4	U355	B	100 (45.4)
Diethanolamine	111422		1*	3		B	100 (45.4)
N,N-Diethylaniline	91667		1*	3		C	1000 (454)
Diethyl sulfate	64675		1*	3		A	10 (4.54)
N,N-Dimethylaniline	121697		1*	3		B	100 (45.4)
Dimethylformamide	68122		1*	3		A	10 (4.45)
Diphenylamine	122394		1*	4	U357	B	100 (45.4)
1,2-Epoxybutane	106887		1*	3		B	100 (45.4)
Ethylene glycol	107211		1*	3		D	5000 (2270)
Fine Mineral Fibers	N.A.		1*	3			(***)
Glycol Ethers	N.A.		1*	3			(***)
Hexamethylene-1,6 diisocyanate	822060		1*	3		B	100 (45.4)
Hexamethylphosphoramide	680319		1*	3		X	1 (0.454)
Hexane	110543		1*	3		D	5000 (2270)
Hydroquinone	123319		1*	3		B	100 (45.4)
Linuron	330552	N-(3,4-dichlorophenyl)-N-methoxy-N-methylurea	1*	4	U355	B	100 (45.4)
Manganese Compounds	N.A.		1*	3			(***)
MDI	101688	Methylene diphenyl diisocyanate	1*	3		D	5000 (2270)
4,4'-Methylenedianiline	101779		1*	3		A	10 (4.54)
Methylene diphenyl diisocyanate	101688	MDI	1*	3		D	5000 (2270)
Methyl tert-butyl ether	1634044		1*	3		C	1000 (454)
Fine Mineral Fibers	N.A.		1*	3			(***)
4-Nitrobiphenyl	92933		1*	3		A	10 (4.54)
N-Nitrosomorpholine	59892		1*	3		X	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
Phenol, methyl-	1319773	Cresols (isomers and mixture) Cresylic acid (Isomers and mixture)	1000	1,3,4	U052	B	100 (45.4)
p-Phenylenediamine	106503	.....	1*	3		D	5000 (2270)
Polycyclic Organic Matter	N.A	.....	1*	3			(***)
beta-Propiolactone	57578	.....	1*	3		A	10 (4.54)
Propionaldehyde	123386	.....	1*	3		C	1000 (454)
Propoxur (Baygon)	114261	.....	1*	3		B	100 (45.4)
Styrene oxide	96093	.....	1*	3		B	100 (45.4)
Titanium tetrachloride	7550450	.....	1*	3		B	180 (45.4)
Trifluralin	1582098	.....	1*	3		A	10 (4.54)
2,2,4-Trimethylpentane	540841	.....	1*	3		C	1000 (454)
Unlisted Hazardous Wastes Char- acteristics. Characteristic of Toxicity:	N.A	.....	1*	4			
o-Cresol (D023)	N.A	.....	1*	4	D023	B	100 (45.4)
m-Cresol (D024)	N.A	.....	1*	4	D024	B	100 (45.4)
p-Cresol (D025)	N.A	.....	1*	4	D025	B	100 (45.4)
Cresol (D026)	N.A	.....	1*	4	D026	B	100 (45.4)
Vinyl bromide	593602	.....	1*	3		B	100 (45.4)
Xylene	1330207	Benzene, dimethyl- Xylene (mixed) Xylenes (Isomers and mixture)	1000	1,3,4	U239	B	100 (45.4)
m-Xylene	108383	Benzene, m-dimethyl-	1*	3		B	100 (45.4)
o-Xylene	95476	Benzene, o-dimethyl-	1*	3		C	1000 (454)
p-Xylene	106423	Benzene, p-dimethyl-	1*	3		B	100 (45.4)
Xylene (mixed)	1330207	Benzene, dimethyl- Xylene Xylenes (isomers and mixture)	1000	1,3,4	U239	B	100 (45.4)
Xylenes (isomers and mixture)	1330207	Benzene, dimethyl- Xylene Xylene (mixed)	1000	1,3,4	U239	B	100 (45.4)
F004 .....		.....	1*	4	F004	B	100 (45.4)
The following spent non-halo- genated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid	1319773	.....	1000	1,3,4	U052	B	100 (45.4)
(b) Nitrobenzene	98953	.....	1000	1,2,4	U169	C	1000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

(Note: All comments/notes are located at the end of this table)

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
F025 Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.			1*	4	F025	X	1 (0.454)
K088 Spent potliners from primary aluminum reduction.			1*	4	K088	A	10 (4.54)
K090 Emission control dust or sludge from ferrochromium production.			1*	4	K090	A	10 (4.54)
K091 Emission control dust or sludge from ferrochromium production.			1*	4	K091	A	10 (4.54)
K119 Wastes from the decanter in the production of linuron.			1*	4	K119	B	100 (45.4)
K120 Wastes from the spill control trap in the production of linuron.			1*	4	K120	B	100 (45.4)
K121 Wastewater from product filtration and water washing in the production of bromacl.			1*	4	K121	B	100 (45.4)

† Indicates the statutory source as defined by 1, 2, 3 and 4 below.

1 Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).

2 Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).

3 Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.

4 Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.

1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

** Indicates that no RQ is being assigned to the generic or broad class.

*** The Agency is considering several options for the CERCLA reporting requirements that would apply to these broad generic categories of hazardous air pollutants and has requested public comments on these options.

• Benzene was already a CERCLA hazardous substance prior to the CAA Amendments of 1990 and received an adjusted 10-pound RQ based on potential carcinogenicity in an August 14, 1989, final rule (54 FR 33418). The CAA Amendments specify that "benzene (including benzene from gasoline)" is a hazardous air pollutant and, thus, a CERCLA hazardous substance.

• The CAA Amendments of 1990 list DDE (3547-04-4) as a CAA hazardous air pollutant. The CAS number, 3547-04-4, is for the chemical, p,p'-dichlorodiphenyl ethane. DDE or p,p'-dichlorodiphenyl dichloroethylene, CAS number 72-55-9, is already listed on Table 302.4 with a final RQ of 1 pound. The substance identified by the CAS number 3547-04-4 is evaluated for this proposed rule and listed as DDE to be consistent with the CAA section 112 listing, as amended.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
57578	beta-Propiolactone.
59892	N-Nitrosomorpholine.
60355	Acetamide.
64675	Diethyl sulfate.
68122	Dimethylformamide.
79118	Chloroacetic acid.
90040	o-Anisidine.
91667	N,N-Diethylaniline.
92524	Biphenyl.
92671	4-Aminobiphenyl.
92933	4-Nitrobiphenyl.
95476	Benzene, o-dimethyl.
95487	o-Xylene. o-Cresol. o-Cresylic acid.
96093	Styrene oxide.
101688	MDI Methylene diphenyl diisocyanate.
101779	4,4'-Methylenedianiline.
105602	Caprolactam.
106423	Benzene, p-dimethyl. p-Xylene.
106445	p-Cresol. p-Cresylic acid.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
106503	p-Phenylenediamine.
106887	1,2-Epoxybutane.
106990	1,3-Butadiene.
107211	Ethylene glycol.
108383	Benzene, m-dimethyl. m-Xylene.
108394	m-Cresol. m-Cresylic acid.
110543	Hexane.
111422	Diethanolamine.
114261	Propoxur (Baygon).
120809	Catechol.
121697	N,N-Dimethylaniline.
122394	Diphenylamine.
123319	Hydroquinone.
123386	Propionaldehyde.
126998	Chloroprene.
132649	Dibenzofuran.
133904	Chloramben.
156627	Calcium cyanamide.
314409	Bromacil.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
330552	5-Bromo-3-sec-butyl-6-methyluracil. N-(3,4-dichlorophenyl)-N-methoxy-N-methylurea. Linuron.
334883	Diazomethane.
463581	Carbonyl sulfide.
532274	2-Chloroacetophenone.
540841	2,2,4-Trimethylpentane.
593602	Vinyl bromide.
680319	Hexamethylphosphoramide.
822060	Hexamethylene-1,6-diisocyanate.
1319773	Cresols (isomers and mixture). Cresylic acid (isomers and mixture). Phenol, methyl-.
1330207	Benzene, dimethyl-. Xylene. Xylene (mixed). Xylenes (isomers and mixture).
1582098	Trifluralin.
1634044	Methyl tert-butyl ether.
3547044	DDE
7550450	Titanium tetrachloride.

5. Section 302.4 is also amended by revising the following existing entries in Table 302.4 to add note "3" to the

statutory code column and to add the following regulatory synonyms as set forth below. In addition, appendix A to Table 302.4 is amended by adding the

following regulatory synonyms as set forth below:

§302.4 Designation of hazardous substances.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

(Note: All comments/notes are located at the end of this table)

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
Acetaldehyde	75070	Ethanal	1000	1,3,4	U001	C	1000 (454)
Acetamide, N-9H-fluoren-2-yl-	53963	2-Acetylaminofluorene	1*	3,4	U005	X	1 (0.454)
Acetic acid (2,4-dichlorophenoxy)-, salts & esters	94757	2,4-D Acid 2,4-D, salts and esters	100	1,3,4	U240	B	100 (45.4)
Acetonitrile	75058	.....	1*	3,4	U003	D	5000 (2270)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	3,4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-	1*	3,4	U005	X	1 (0.454)
Acrolein	107028	2-Propenal	1	1,2,3,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamido	1*	3,4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	3,4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,3,4	U009	B	100 (45.4)
Allyl chloride	107051	.....	1000	1,3	.....	C	1000 (454)
Aniline	62533	Benzenamine	1000	1,3,4	U012	D	5000 (2270)
Antimony and Compounds	N.A.	Antimony Compounds	1*	2,3	.....	.....	(**)
Antimony Compounds	N.A.	Antimony and Compounds	1*	2,3	.....	.....	(**)
Aroclor 1016	12674112	Aroclors	10	1,2,3	.....	X	1 (0.454)
.....	.....	PCBs .....	.....	.....	.....	.....	.....
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclor 1221	11104282	Aroclors	10	1,2,3	.....	X	1 (0.454)
.....	.....	PCBs .....	.....	.....	.....	.....	.....
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclor 1232	11141165	Aroclors	10	1,2,3	.....	X	1 (0.454)
.....	.....	PCBs .....	.....	.....	.....	.....	.....
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclor 1242	53469219	Aroclors	10	1,2,3	.....	X	1 (0.454)
.....	.....	PCBs .....	.....	.....	.....	.....	.....
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclor 1248	12672296	Aroclors	10	1,2,3	.....	X	1 (0.454)
.....	.....	PCBs .....	.....	.....	.....	.....	.....
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclor 1254	11097691	Aroclors	10	1,2,3	.....	X	1 (0.454)
.....	.....	PCBs .....	.....	.....	.....	.....	.....
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclor 1260	11096825	Aroclors	10	1,2,3	.....	X	1 (0.454)
.....	.....	PCBs .....	.....	.....	.....	.....	.....
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclors	1336363	PCBs	10	1,2,3	.....	X	1 (0.454)
.....	.....	Polychlorinated Biphenyls .....	.....	.....	.....	.....	.....
Aroclor 1016	12674112	.....	10	1,2,3	.....	X	1 (0.454)
Aroclor 1221	11104282	.....	10	1,2,3	.....	X	1 (0.454)
Aroclor 1232	11141165	.....	10	1,2,3	.....	X	1 (0.454)
Aroclor 1242	53469219	.....	10	1,2,3	.....	X	1 (0.454)
Aroclor 1248	12672296	.....	10	1,2,3	.....	X	1 (0.454)
Aroclor 1254	11097691	.....	10	1,2,3	.....	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

(Note: All comments/notes are located at the end of this table)

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Aroclor 1260	11096825	.....	10	1,2,3		X	1 (0.454)
Arsenic and Compounds	N.A.	Arsenic Compounds (inorganic including arsine).	1*	2,3			(**)
Arsenic Compounds (inorganic including arsine).	N.A.	Arsenic and Compounds	1*	2,3			(**)
Aziridine	151564	Ethyleneimine	1*	3,4	P054	X	1 (0.454)
Aziridine, 2-methyl-	75558	2-Methyl aziridine	1*	3,4	P067	X	1 (0.454)
		1,2-Propylenimine					
Benzenamine	62533	Aniline	1000	1,3,4	U012	D	5000 (2270)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60117	Dimethyl aminoazobenzene	1*	3,4	U093	A	10 (4.54)
Benzenamine, 2-methyl-	95534	p-Dimethylaminoazobenzene o-Toluidine	1*	3,4	U328	B	100 (45.4)
Benzenamine, 4,4'-methylenebis(2-chloro)-	101144	4,4'-Methylenebis(2-chloroaniline)	1*	3,4	U158	A	10 (4.54)
Benzeneacetic acid, 4-chloro- α -(4-chlorophenyl) - α -hydroxy-, ethyl ester.	510156	Chlorobenzilate	1*	3,4	U038	A	10 (4.54)
Benzene, chloro-	108907	Chlorobenzene	100	1,2,3,4	U037	B	100 (45.4)
Benzene, (chloromethyl)-	100447	Benzyl chloride	100	1,3,4	P028	B	100 (45.4)
Benzenediamine, ar-methyl-	95807	Toluenediamine	1*	3,4	U221	A	10 (4.54)
	496720	2,4-Toluene diamine					
	823405						
	25376458						
1,2-Benzenedicarboxylic acid, dibutyl ester.	84742	n-Butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
		Dibutyl phthalate					
		Di-n-butyl phthalate					
1,2-Benzenedicarboxylic acid, dimethyl ester.	131113	Dimethyl phthalate	1*	2,3,4	U102	D	5000 (2270)
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester.	117817	Bis(2-ethylhexyl)phthalate	1*	2,3,4	U028	B	100 (45.4)
		DEHP					
		Diethylhexyl phthalate					
Benzene, 1,4-dichloro-	106467	p-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
		1,4-Dichlorobenzene					
Benzene, 1,3-diisocyanatomethyl- ..	91087	Toluene diisocyanate	1*	3,4	U223	B	100 (45.4)
	584849	2,4-Toluene diisocyanate					
	26471625						
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,3,4	U127	A	10 (4.54)
Benzene, hydroxy-	108952	Phenol	1000	1,2,3,4	U188	C	1000 (454)
Benzene, methyl-	108883	Toluene	1000	1,2,3,4	U220	C	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	121142	2,4-Dinitrotoluene	1000	1,2,3,4	U105	A	10 (4.54)
Benzene, (1-methylethyl)-	98828	Cumene	1*	3,4	U055	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,3,4	U169	C	1000 (454)
Benzene, pentachloronitro-	82688	PCNB	1*	3,4	U185	B	100 (45.4)
		Pentachloronitrobenzene					
		Quintobenzene					
Benzene, 1,1'-(2,2,2-trichloroethylidene) bis [4-methoxy-	72435	Methoxychlor	1	1,3,4	U247	X	1 (0.454)
Benzene, (trichloromethyl)-	98077	Benzotrichloride	1*	3,4	U023	A	10 (4.54)
Benzidine	92875	[1,1'-Biphenyl]-4,4'-diamine	1*	2,3,4	U021	X	1 (0.454)
p-Benzoquinone	106514	2,5-Cyclohexadiene-1,4-dione	1*	3,4	U197	A	10 (4.54)
		Quinone					
Benzotrichloride	98077	Benzene, (trichloromethyl)-	1*	3,4	U023	A	10 (4.54)
Benzyl chloride	100447	Benzene, (chloromethyl)-	100	1,3,4	P028	B	100 (45.4)
Beryllium and Compounds	N.A.	Beryllium Compounds	1*	2,3			(**)
Beryllium and Compounds	N.A.	Beryllium and Compounds	1*	2,3			(**)
γ-BHC	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-1α,2α,3β,4α,5α,6β)-Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine	92875	Benzidine	1*	2,3,4	U021	X	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-	91941	3,3'-Dichlorobenzidine	1*	2,3,4	U073	X	1 (0.454)
[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-	119904	3,3'-Dimethoxybenzidine	1*	3,4	U091	B	100 (45.4)
[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	119937	3,3'-Dimethylbenzidine	1*	3,4	U095	A	10 (4.54)
Bis(2-chloroethyl) ether	111444	Dichloroethyl ether	1*	2,3,4	U025	A	10 (4.54)
		Ethane, 1,1'-oxybis[2-chloro-					
Bis(chloromethyl) ether	542881	Dichloromethyl ether	1*	3,4	P106	A	10 (4.54)
Bis(2-ethylhexyl) phthalate	117817	Methane, oxybis(chloro)-1,2-Benzenedicarboxylic bis(2-ethyl-hexyl) ester. DEHP Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
Bromoform	75252	Methane, tribromo-	1*	2,3,4	U225	B	100 (45.4)
Bromomethane	74839	Tribromomethane Methane, bromo- Methyl bromide	1*	2,3,4	U029	C	1000 (454)
1,3-Butadiene, hexachloro-	87683	Hexachlorobutadiene	1*	2,3,4	U128	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
2-Butanone	78933	MEK Methyl ethyl ketone	1*	3,4	U159	D	5000 (2270)
n-Butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. Dibutyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
Cadmium and Compounds	N.A.	Cadmium Compounds	1*	2,3			(**)
Cadmium Compounds	N.A.	Cadmium and Compounds	1*	2,3			(**)
Camphene, octachloro-	8001352	Chlorinated camphene Toxaphene	1	1,2,3,4	P123	X	1 (0.454)
Captan	133062	.....	10	1,3		A	10 (4.54)
Carbamic acid, ethyl ester	51796	Ethyl carbamate Urethane	1*	3,4	U238	B	100 (45.4)
Carbamic chloride, dimethyl-	79447	Dimethylcarbamoyl chloride	1*	3,4	U097	X	1 (0.454)
Carbaryl	63252	.....	100	1,3		B	100 (45.4)
Carbon disulfide	75150	.....	5000	1,3,4	P022	B	100 (45.4)
Carbonic dichloride	75445	Phosgene	5000	1,3,4	P095	A	10 (4.54)
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,3,4	U211	A	10 (4.54)
Chlordane	57749	Chlordane, alpha & gamma iso- mers. Chlordane (technical mixture and metabolites) 4,7-Methano-1H-Indene, 1,2,4,5,6,7,8,8- octachloro-2,3,3a,4,7,7, hexahydro- a-	1	1,2,3,4	U036	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Codet	RCRA waste number	Cat-egory	Pounds (kg)
Chlordane, alpha & gamma isomers.	57749	Chlordane Chlordane (technical mixture and metabolites) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1	1,2,3,4	U036	X	1 (0.454)
Chlordane (technical mixture and metabolites).	57749	Chlordane Chlordane, alpha & gamma isomers. 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro	1	1,2,3,4	U036	X	1 (0.454)
Chlorinated camphene	8001352	Camphene, octachloro- Toxaphene	1	1,2,3,4	P123	X	1 (0.454)
Chlorine	7782505	.....	10	1,3		A	10 (4.54)
Chlorobenzene	108907	Benzene, chloro-	100	1,2,3,4	U037	B	100 (45.4)
Chlorobenzilate	510156	Benzeneacetic acid, 4-chloro- α -(4-chlorophenyl)- α -hydroxy-, ethyl ester.	1*	3,4	U038	A	10 (4.54)
1-Chloro-2,3-epoxypropane	106898	Epichlorohydrin Oxirane, (chloromethyl)-	1000	1,3,4	U041	B	100 (45.4)
Chloroethane	75003	Ethyl chloride	1*	2,3		B	100 (45.4)
Chloroform	67663	Methane, trichloro-	5000	1,2,3,4	U044	A	10 (4.54)
Chloromethane	74873	Methane, chloro- Methyl chloride	1*	2,3,4	U045	B	100 (45.4)
Chloromethyl methyl ether	107302	Methane, chloromethoxy-	1*	3,4	U046	A	10 (4.54)
Chromium and Compounds	N.A.	Chromium and Compounds	1*	2,3			(**)
Chromium Compounds	N.A.	Chromium Compounds	1*	2,3			(**)
Cumene	98828	Benzene, (1-methylethyl)-	1*	3,4	U055	D	5000 (2270)
Cyanide Compounds	N.A.	Cyanides	1*	2,3			(**)
Cyanides	N.A.	Cyanide Compounds	1*	2,3			(**)
2,5-Cyclohexadiene-1,4-dione	106514	p-Benzoquinone Quinone	1*	3,4	U197	A	10 (4.54)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (α ,2 α ,3 β ,4 α ,5 α , β)-	58899	γ -BHC Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77474	Hexachlorocyclopentadiene	1	1,2,3,4	U130	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Codet	RCRA waste number	Cat-egory	Pounds (kg)
2,4-D Acid	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D, salts and esters	100	1,3,4	U240	B	100 (45.4)
2,4-D, salts and esters	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D Acid	100	1,3,4	U240	B	100 (45.4)
DDE	72559	4,4'-DDE	1*	2,3		X	1 (0.454)
4,4'-DDE	72559	DDE	1*	2,3		X	1 (0.454)
DEHP	117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ethylhexyl)phthalate Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
1,2-Dibromo-3-chloropropane	96128	Propane, 1,2-dibromo-3-chloro-	1*	3,4	U066	X	1 (0.454)
Dibromoethane	106934	Ethane, 1,2-dibromo- Ethylene dibromide	1000	1,3,4	U067	X	1(0.454)
Dibutyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10(4.54)
Di-n-butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Di-Butyl phthalate	100	1,2,3,4	U069	A	10(4.54)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro- p-Dichlorobenzene	100	1,2,3,4	U072	B	100(45.4)
p-Dichlorobenzene	106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene	100	1,2,3,4	U072	B	100(45.4)
3,3'-Dichlorobenzidine	91941	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dichloro-	1*	2,3,4	U076	X	1 (0.454)
1,1-Dichloroethane	75343	Ethane, 1,1-dichloro- Ethylidene dichloride	1*	2,3,4	U076	C	1000(454)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro- Ethylene dichloride	5000	1,2,3,4	U078	B	100(45.4)
1,1-Dichloroethylene	75354	Ethane, 1,1-dichloro- Vinylidene chloride	5000	1,2,3,4	U078	B	100 (45.4)
Dichloroethyl ether	111444	Bis(2-chloroethyl) ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,3,4	U025	A	10 (4.54)
Dichloromethyl ether	542881	Bis(chloromethyl) ether Methane, oxybis[chloro-	1*	3,4	P016	A	10(4.54)
Dichloromethane	75092	Methane, dichloro- Methylene chloride	1*	2,3,4	U080	C	1000(454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
1,2-Dichloropropane	78875	Propane, 1,2-dichloro- Propylene dichloride	5000	1,2,3,4	U083	C	1000(454)
1,3'-Dichloropropene	542756	1-Propane, 1,3-dichloro-	5000	1,2,3,4	U084	B	1000(45.4)
Dichlorvos	62737	.....	10	1,3		A	10(4.54)
1,4-Diethyleneoxide	123911	1,4-Dioxane	1*	3,4	U108	B	100(45.4)
Diethylhexyl phthalate	117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ethylhexyl)phthalate DEHP	1*	2,3,4	U128	B	100(45.4)
3,3'-Dimethoxybenzidine	119904	[1,1'-Biphenyl]-4,4'-diamine,3,3'- dimethoxy-.	1*	3,4	U091	B	100(45.4)
Dimethyl aminoazobenzene	60117	Benzenamine,N, N-dimethyl-4- (phenylazo)- p-Dimethylaminoazobenzene	1*	3,4	U093	A	10(4.54)
p-Dimethylaminoazobenzene	60117	Benzenamine, N, N-dimethyl-4- (phenylazo)- Dimethyl aminoazobenzene	1*	3,4	U093	A	10 (4.54)
3,3'-Dimethylbenzidine	119937	[1,1'-Biphenyl]-4,4'-diamine,3,3'- dimethyl-.	1*	3,4	U095	A	10 (4.54)
Dimethylcarbamoyl chloride	79447	Carbamic chloride, dimethyl-	1*	3,4	U097	X	1 (0.454)
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1*	3,4	U098	A	10 (4.54)
Dimethylphthalate	131113	1,2-Benzenedicarboxylic acid, di- methyl ester.	1*	2,3,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester	1*	3,4	U103	B	100 (45.4)
4,6-Dinitro-o-cresol, and salts	534521	Phenol, 2-methyl-4,6-dinitro-, & salts.	1*	2,3,4	P047	A	10 (4.54)
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,3,4	P048	A	10 (4.54)
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-	1000	1,2,3,4	U105	A	10 (4.54)
1,4-Dioxane	123911	1,4-Diethyleneoxide	1*	3,4	U108	B	100 (45.4)
1,2-Diphenylhydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,3,4	U109	A	~10 (4.54)
Epichlorohydrin	106898	1-Chloro-2,3-epoxypropane	1000	1,3,4	U041	B	100 (45.4)
Ethanal	75070	Acetaldehyde	1000	1,3,4	U001	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
Ethane, 1,2-dibromo	106934	Dibromoethane Ethylene dibromide	1000	1,3,4	U067	X	1 (0.454)
Ethane, 1,1-dichloro	75343	1,1-Dichloroethane Ethylidene dichloride	1*	2,3,4	U076	C	1000 (454)
Ethane, 1,2-dichloro	107062	1,2-Dichloroethane Ethylene dichloride	5000	1,2,3,4	U077	B	100 (45.4)
Ethane, hexachloro-	67721	Hexachloroethane	1*	2,3,4	U131	B	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111444	Bis(2-chloroethyl) ether Dichloroethyl ether	1*	2,3,4	U025	A	10 (4.54)
Ethane, 1,1,2,2-tetrachloro-	79345	1,1,2,2-Tetrachloroethane	1*	2,3,4	U209	B	100 (45.4)
Ethane, 1,1,1-trichloro-	71556	Methyl chloroform 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000 (454)
Ethane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,3,4	U227	B	100 (45.4)
Ethanone, 1-phenyl-	98862	Acetophenone	1*	3,4	U004	D	5000 (2270)
Ethene, 1,1-dichloro-	75354	1,1-Dichloroethylene Vinylidene chloride	5000	1,2,3,4	U078	B	100 (45.4)
Ethene, tetrachloro-	127184	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
Ethene, trichloro-	79016	Trichloroethene Trichloroethylene	1000	1,2,3,4	U228	B	100 (45.4)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester	1*	3,4	U113	C	1000 (454)
Ethylbenzene	100414		1000	1,2,3		C	1000 (45.4)
Ethyl carbamate	51796	Carbamic acid, ethyl ester Urethane	1*	3,4	U238	B	100 (45.4)
Ethyl chloride	75003	Chloroethane	1*	2,3		B	100 (45.4)
Ethylene dibromide	106934	Dibromoethane	1000	1,3,4	U067	X	1 (0.454)
Ethylene dichloride	107062	Ethane, 1,2-dibromo- 1,2-Dichloroethane Ethane, 1,2-dichloro-	5000	1,2,3,4	U077	B	100 (45.4)
Ethyleneimine	151564	Aziridine	1*	3,4	P054	X	1 (0.454)
Ethylene oxide	75218	Oxirane	1*	3,4	U115	A	10 (4.54)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	3,4	U116	A	10 (4.54)
Ethylidene dichloride	75343	1,1-Dichloroethane Ethane, 1,1-dichloro-	1*	2,3,4	U076	C	1000 (454)
Formaldehyde	50000		1000	1,3,4	U122	B	100 (45.4)
2,5-Furandione	108316	Maleic anhydride	5000	1,3,4	U147	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
Heptachlor	76448	4,7-Methano-1H-Indene, 1,4,5,6,7,8,8- heptachloro-3a,4,7,7a-tetrahydro	1	1,2,3,4	P059	X	1 (0.454)
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,3,4	U127	A	10 (4.54)
Hexachlorobutadiene	87683	1,3-Butadiene 1,1,2,3,4,4- hexachloro-	1*	2,3,4	U128	X	1 (0.454)
Hexachlorocyclohexane (gamma isomer)	58899	γ-BHC	1	1,2,3,4	U129	X	1 (0.454)
		Cyclohexane, 1,2,3,4,5,6- hexachloro- 1α,2α,3β,4α,5α,6β)- Lindane					
Hexachlorocyclopentadiene	77474	Lindane (all isomers)	1	1,2,3,4	U130	A	10 (4.54)
		1,3-Cyclopentadiene, 1,2,3,4,5,5- hexachloro-					
Hexachloroethane	67721	Ethane, hexachloro-	1*	2,3,4	U131	B	100 (45.4)
Hexone	108101	Methyl isobutyl ketone	1*	3,4	U161	D	5000 (2270)
		4-Methyl-2 pentanone					
Hydrazine	302012	.....	1*	3,4	U133	X	1 (0.454)
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	3,4	U098	A	10 (4.54)
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,3,4	U109	A	10 (4.54)
Hydrazine, methyl-	60344	Methyl hydrazine	1*	3,4	P068	A	10 (4.54)
Hydrochloric acid	7647010	Hydrogen chloride	5000	1,3		D	5000 (2270)
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,3,4	U134	B	100 (45.4)
Hydrogen chloride	7647010	Hydrochloric acid	5000	1,3		D	5000 (2270)
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,3,4	U134	B	100 (45.4)
Hydrogen phosphide	7803512	Phosphine	1*	3,4	P096	B	100 (45.4)
2-Imidazolidinethione	96457	Ethylenethiourea	1*	3,4	U116	A	10 (4.54)
Iodomethane	74884	Methane, iodo-	1*	3,4	U138	B	100 (45.4)
		Methyl iodide					
1,3-Isobenzofurandione	85449	Phthalic anhydride	1*	3,4	U190	D	5000 (2270)
Isophorone	78591	.....	1*	2,3		D	5000 (2270)
Lead and Compounds	N.A.	Lead Compounds	1*	2,3			..
Lead Compounds	N.A.	Lead and Compounds	1*	2,3			..
Lindane	58899	γ-BHC	1	1,2,3,4	U129	X	1 (0.454)
		Cyclohexane, 1,2,3,4,5,6- hexachloro- (1α,2α,3β,4α,5α,6β)- Hexachlorocyclohexane (gamma isomer) Lindane (all isomers)					

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Codet	RCRA waste number	Cat-egory	Pounds (kg)
Lindane (all isomers)	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α, 2α,3β,4α,5α,6β)-Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,3,4	U129	X	1 (0.454)
Maleic anhydride	108316	2,5-Furandione	5000	1,3,4	U147	D	5000 (2270)
MEK	78933	2-Butanone Methyl ethyl ketone	1*	3,4	U159	D	5000 (2270)
Mercury and Compounds	N.A.	Mercury Compounds	1*	2,3			**
Mercury Compounds	N.A.	Mercury and Compounds	1*	2,3			**
Methanamine, N-methyl-N-nitroso-	62759	N-Nitrosodimethylamine	1*	2,3,4	P082	A	10 (4.54)
Methane, bromo-	74839	Bromomethane Methyl bromide	1*	2,3,4	U029	C	1000 (454)
Methane, chloro-	74873	Chloromethane Methyl chloride	1*	2,3,4	U045	B	100 (45.4)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether	1*	3,4	U046	A	10 (4.54)
Methane, dichloro-	75092	Methylene chloride Dichloromethane	1*	2,3,4	U080	C	1000 (454)
Methane, iodo-	74884	Iodomethane Methyl iodide	1*	3,4	U138	B	100 (45.4)
Methane, oxybis(chloro-	542881	Bis(chloromethyl)ether Dichloromethyl ether	1*	3,4	P016	A	10 (4.54)
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,3,4	U211	A	10 (4.54)
Methane, tribromo-	75252	Bromoform Tribromomethane	1*	2,3,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,3,4	U044	A	10 (4.54)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro- 3a,4,7,7a-tetrahydro-	76448	Heptachlor	1*	1,2,3,4	P059	X	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro- 2,3,3a,4,7,7a-hexahydro-	57749	Chlordane Chlordane, alpha & gamma isomers Chlordane (technical mixture and metabolites)	1	1,2,3,4	U036	X	1 (0.454)
Methanol	67561	Methyl alcohol	1*	3,4	U154	D	5000 (2270)
Methoxychlor	72435	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-	1	1,3,4	U247	X	1 (0.454)
Methy alcohol	67561	Methanol	1*	3,4	U154	D	5000 (2270)
2-Methyl aziridine	75558	Aziridine, 2-methyl- 1,2-Propylenimine	1*	3,4	P067	X	1 (0.454)
Methyl bromide	74839	Bromomethane Methane, bromo-	1*	2,3,4	U029	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Codet	RCRA waste number	Cat-egory	Pounds (kg)
Methyl chloride	74873	Chloromethane Methane, chloro-	1*	2,3,4	U045	B	100 (45.4)
Methyl chloroform	71556	Ethane, 1,1,1-trichloro- 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000 (454)
4,4'-Methylenebis(2-chloroaniline)	101144	Benzenamine, 4,4'-methylene- bis(2-chloro-	1*	3,4	U158	A	10 (4.54)
Methylene chloride	75092	Dichloromethane Methane, dichloro-	1*	2,3,4	U080	C	1000 (454)
Methyl ethyl ketone	78933	2-Butanone MEK	1*	3,4	U159	D	5000 (2270)
Methyl hydrazine	60344	Hydrazine, methyl-	1*	3,4	P068	A	10 (4.54)
Methyl iodide	74884	Iodomethane Methane, iodo-	1*	3,4	U138	B	100 (45.4)
Methyl isobutyl ketone	108101	Hexone 4-Methyl-2-pentanone	1*	3,4	U161	D	5000 (2270)
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, meth- yl ester.	5000	1,3,4	U162	C	1000 (454)
4-Methyl-2-pentanone	108101	Hexone Methyl isobutyl ketone	1*	3,4	U161	D	5000 (2270)
Naphthalene	91203		5000	1,2,3,4	U165	B	100 (45.4)
Nickel and Compounds	N.A.	Nickel Compounds	1*	2,3			(**)
Nickel Compounds	N.A.	Nickel and Compounds	1*	2,3			(**)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,3,4	U169	C	1000 (454)
p-Nitrophenol	100027	4-Nitrophenol Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
4-Nitrophenol	100027	p-Nitrophenol Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
2-Nitropropane	79469	Propane, 2-nitro-	1*	3,4	U171	A	10 (4.54)
N-Nitrosodimethylamine	62759	Methanamine, N-methyl-N-nitroso-	1*	2,3,4	P082	A	10 (4.54)
N-Nitroso-N-methylurea	684935	Urea, N-methyl-N-nitroso	1*	3,4	U177	X	1 (0.454)
1,2-Oxathiolane, 2,2-dioxide	1120714	1,3-Propane sultone	1*	3,4	U193	A	10 (4.54)
Oxdrane	75218	Ethylene oxide	1*	3,4	U115	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (kg)
Oxirane, (chloromethyl)-	106898	1-Chloro-2,3-epoxypropane Epichlorohydrin	1000	1,3,4	U041	B	100 (45.4)
Parathion	56382	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	1	1,3,4	P089	A	10 (4.54)
PCBs	1336363	Aroclors Polychlorinated Biphenyls	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
PCNB	82688	Benzene, pentachloronitro- Pentachloronitrobenzene Quintobenzene	1*	3,4	U185	B	100 (45.4)
Pentachloronitrobenzene	82668	Benzene, pentachloronitro- PCNB Quintobenzene	1*	3,4	U185	B	100 (45.4)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,3,4	U242	A	10 (4.54)
Perchloroethylene	127184	Ethene, tetrachloro- Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
Phenol	108952	Benzene, hydroxy-	1000	1,2,3,4	U188	C	1000 (454)
Phenol, 2,4-dinitro-	51285	2,4-Dinitrophenol	1000	1,2,3,4	P048	A	10 (4.54)
Phenol, 2-methyl-4,6-dinitro-, & salts.	534521	4,6-Dinitro-o-cresol, and salts	1*	2,3,4	P047	A	10 (4.54)
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,3,4	U170	B	100 (45.4)
Phenol, pentachloro-	87865	Pentachlorophenol	10	1,2,3,4	U242	A	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	2,4,5-Trichlorophenol	10	1,3,4	U230	A	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,3,4	U231	A	10 (4.54)
Phosgene	75445	Carbonic dichloride	5000	1,3,4	P095	A	10 (4.54)
Phosphine	7803512	Hydrogen phosphide	1*	3,4	P096	B	100 (45.4)
Phosphorothioic acid, O, O-diethyl O-(4-nitrophenyl) ester.	56382	Parathion	1	1,3,4	P089	A	10 (4.54)
Phosphorus	7723140		1	1,3		X	1 (0.454)
Phthalic anhydride	85449	1,3-Isobenzofurandione	1*	3,4	U190	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
Polychlorinated biphenyls	1336363	Aroclors	10	1,2,3		X	1 (0.454)
		PCBs					
Aroclor 1016	12674112	.....	10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282	.....	10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165	.....	10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219	.....	10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296	.....	10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691	.....	10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825	.....	10	1,2,3		X	1 (0.454)
Propane, 1,2-dibromo-3-chloro-	96128	1,2-Dibromo-3-chloropropane	1*	3,4	U066	X	1 (0.454)
Propane, 1,2-dichloro-	78875	1,2-Dichloropropane	5000	1,2,3,4	U083	C	1000 (454)
		Propylene dichloride					
Propane, 2-nitro-	79469	2-Nitropropane	1*	3,4	U171	A	10 (4.54)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide	1*	3,4	U193	A	10 (4.54)
2-Propenal	107028	Acrolein	1	1,2,3,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	3,4	U007	D	5000 (2270)
1-Propene, 1,3-dichloro-	542756	1,3'-Dichloropropene	5000	1,2,3,4	U084	B	100 (45.4)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,3,4	U009	B	100 (45.4)
2-Propenoic acid	79107	Acrylic acid	1*	3,4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester	140885	Ethyl acrylate	1*	3,4	U113	C	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	80626	Methyl methacrylate	5000	1,3,4	U162	C	1000 (454)
Propylene dichloride	78875	1,2-Dichloropropane	5000	1,2,3,4	U083	C	1000 (454)
		Propane, 1,2-dichloro-					
Propylene oxide	75569	.....	5000	1,3		B	100 (45.4)
1,2-Propylenimine	75558	Aziridine, 2-methyl-	1*	3,4	P067	X	1 (0.454)
		2-Methyl aziridine					
Quinoline	91225	.....	1000	1,3		D	5000 (2270)
Quinone	1,6514	p-Benzoquinone	1*	3,4	U197	A	10 (4.54)
		2,5-Cyclohexadiene-1,4-dione					
Quintobenzene	82688	Benzene, pentachloronitro-	1*	3,4	U185	B	100 (45.4)
		PCNB					
		Pentachloronitrobenzene					
Radionuclides (including radon)	N.A.	.....	1*	3			\$
Selenium and Compounds	N.A.	Selenium Compounds	1*	2,3			(**)
Selenium Compounds	N.A.	SELENIUM COMPOUNDS	1*	2,3			(**)
Styrene	100425	.....	1000	1,3		C	1000 (454)
Sulfuric acid, dimethyl ester	77781	Dimethyl sulfate	1*	3,4	U103	B	100 (45.4)
TCDD	1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	1*	2,3		X	1 (0.454)
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016	TCDD	1*	2,3		X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
1,1,2,2-Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro	1*	2,3,4	U209	B	100 (45.4)
Tetrachloroethene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
Tetrachloroethylene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethene	1*	2,3,4	U210	B	100 (45.4)
Toluene	108883	Benzene, methyl-	1000	1,2,3,4	U220	C	1000 (454)
Toluenediamine	95807	Benzenediamine, ar-methyl-	1*	3,4	U221	A	10 (4.54)
	496720	2,4-Toluene diamine					
	823405						
	25378458						
2,4-Toluene diamine	95807	Benzenediamine, ar-methyl-	1*	3,4	U221	A	10 (4.54)
	496720	Toluenediamine					
	823405						
	25378458						
Toluene diisocyanate	91087	Benzene, 1,3-diisocyanatomethyl-	1*	3,4	U223	B	100 (45.4)
	584849	2,4-Toluene diisocyanate					
	26471625						
2,4-Toluene diisocyanate	91087	Benzene, 1,3-diisocyanatomethyl-	1*	3,4	U223	B	100 (45.4)
	584849	Toluene diisocyanate					
	26471625						
o-Toluidine	95534	Benzenamine, 2-methyl-	1*	3,4	U328	B	100 (45.4)
Toxaphene	8001352	Camphene, octachloro Chlorinated camphene	1*	1,2,3,4	P123	X	1 (0.454)
Tribromomethane	75252	Bromoform Methane, tribromo-	1*	2,3,4	U225	B	100 (45.4)
1,2,4-Trichlorobenzene	120821		1*	2,3		B	100 (45.4)
1,1,1-Trichloroethane	71556	Ethane, 1,1,1-trichloro- Methyl chloroform	1*	2,3,4	U226	C	1000 (454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro-	1*	2,3,4	U227	B	100 (45.4)
Trichloroethane	79016	Ethene, trichloro- Trichloroethylene	1000	1,2,3,4	U228	B	100 (45.4)
Trichloroethylene	79016	Ethane, trichloro- Trichloroethene	1000	1,2,3,4	U228	B	100 (45.4)
2,4,5-Trichlorophenol	95954	Phenol 2,4,5-trichloro-	10	1,3,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,3,4	U231	A	10 (4.54)
Triethylamine	121448		5000	1,3		D	5000 (2270)
Urea, N-methyl-N-nitroso	684935	N-Nitroso-N-methylurea	1*	3,4	U177	X	1 (0.454)
Urethane	51796	Carbamic acid, ethyl ester Ethyl carbamate	1*	3,4	U238	B	100 (45.4)
Vinyl acetate	108054	Vinyl acetate monomer	1000	1,3		D	5000 (2270)
Vinyl acetate monomer	108054	Vinyl acetate	1000	1,3		D	5000 (2270)
Vinylidene chloride	75354	1,1-Dichloroethylene Ethene, 1,1-dichloro-	5000	1,2,3,4	U078	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Cat-egory	Pounds (kg)
† Indicates the statutory source as defined by 1,2,3 and 4 below. †† No reporting of releases of this hazardous substance is required if the diameter of the piece of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches). ††† The RQ for asbestos is limited to friable forms only. 1- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4). 2- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a). 3- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112. 4- Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001. * Indicates that the 1-pound RQ is a CERCLA statutory RQ. ## The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies. § The adjusted RQs for radionuclides may be found in Appendix B to this table. * Indicates that no RQ is being assigned to the generic or broad class.							

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
51796	Carbamic acid, ethyl ester. Ethyl carbamate. Urethane.
57749	Chlordane. Chlordane, alpha & gamma isomers. Chlordane (technical mixture and metabolites). 4,7-Methano-1H-Indene, 1,2,4,5,6,7,8,8,-octachloro- 2,3,3a,4,7,7a-hexahydro-
58899	γ-BHC. Cyclohexane, 1,2,3,4,5,6-hexachloro- (1α,2α,3β,4α,5α,6β)-. Hexachlorocyclohexane (gamma isomer). Lindane. Lindane (all isomers).
60117	Benzenamine, N,N-dimethyl-4-(phenylazo)-. Dimethyl aminoazobenzene. p-Dimethylaminoazobenzene.
72559	DDE. 4,4'-DDE.
74839	Bromomethane. Methane, bromo. Methyl bromide.
74873	Chloromethane. Methane, chloro- Methyl chloride.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
74884	Iodomethane. Methane, iodo- Methyl iodide.
75003	Chloroethane. Ethyl chloride.
75092	Dichloromethane. Methane, dichloro- Methylene chloride.
75252	Bromofom. Methane, tribromo- Tribromomethane.
75558	Azirdine, 2-methyl- 2-Methyl azirdine. 1,2-Propylenimine.
78933	2-Butanone. MEK. Methyl ethyl ketone.
82688	Benzene, pentachloronitro- PCNB. Pentachloronitrobenzene. Quintobenzene.
91087	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate. 2,4-Toluene diisocyanate.
92875	Benzidine. [1,1'-Biphenyl]-4,4' diamine.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
94757	Acetic acid (2,4-dichlorophenoxy)-, salts & esters. 2,4-D Acid. 2,4-D, salts and esters.
95807	Benzenediamine, ar-methyl- Toluenediamine. 2,4-Toluene diamine.
98828	Benzene, (1-methylethyl)- Cumene.
106514	p-Benzoquinone. 2,5-Cyclohexadiene-1,4-dione. Quinone.
106898	1-Chloro-2,3-epoxypropane. Epichlorohydrin. Oxirane, (chloromethyl)-.
106934	Dibromoethane. Ethane, 1,2-dibromo- Ethylene, dibromide.
117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ethylhexyl)phthalate. DEHP. Diethylhexyl phthalate.
123911	1,4-Diethyleneoxide. 1,4-Dioxane.
131113	Dimethylphthalate. 1,2-Benzenedicarboxylic acid, dimethyl ester.
151564	Azirdine.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
	Ethyleneimine.
496720	Benzenediamine, ar-methyl-Toluenediamine. 2,4-Toluene diamine.
510156	Benzeneacetic acid, 4-chloro- α -(4-chlorophenyl)- α -hydroxy-, ethyl ester. Chlorobenzilate.
534521	4,6-Dinitro-o-cresol, and salts. Phenol, 2-methyl-4,6-dinitro-, & salts.
542881	Bis(chloromethyl)ether. Dichloromethyl ether. Methane, oxybis(chloro)-.
584849	Benzene, 1,3-diisocyanatomethyl-Toluene diisocyanate. 2,4-Toluene diisocyanate.
823405	Benzenediamine, ar-methyl-Toluenediamine. 2,4-Toluene diamine.
1336363	Aroclors. PCBs. Polychlorinated biphenyls.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
1746016	TCDD. 2,3,7,8-Tetrachlorodibenzo-p-dioxin.
7803512	Hydrogen phosphide. Phosphine.
8001352	Camphene, octachloro-Chlorinated camphene. Toxaphene.
11096825	Aroclor 1260. Aroclors. PCBs. Polychlorinated biphenyls.
11097691	Aroclor 1254. Aroclors. PCBs. Polychlorinated biphenyls.
11104282	Aroclor 1221. Aroclors. PCBs. Polychlorinated biphenyls.
11141165	Aroclor 1232. Aroclors. PCBs. Polychlorinated biphenyls.
12672296	Aroclor 1248. Aroclors. PCBs. Polychlorinated biphenyls.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
12674112	Aroclor 1016. Aroclors. PCBs. Polychlorinated biphenyls.
25376458	Benzenediamine, ar-methyl-Toluenediamine. 2,4-Toluene diamine.
26471625	Benzene, 1,3-diisocyanatomethyl-Toluene diisocyanate. 2,4-Toluene diisocyanate.
53469219	Aroclor 1242. Aroclors. PCBs. Polychlorinated biphenyls.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

6. The authority citation for part 355 continues to read as follows:
 Authority: 42 U.S.C. 11002, 11004, and 11048.

7. Part 355 is amended by revising the following entries in appendices A and B, to read as set forth below:

APPENDIX A TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES
 [Alphabetical order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
79-11-8	Chloroacetic Acid		100	100/10,000
95-48-7	Cresol, o-		100	1,000/10,000
123-31-9	Hydroquinone	(1)	100	500/10,000
57-57-8	Propiolactone, Beta-		10	500
7550-45-0	Titanium Tetrachloride		100	100

* Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.
 Notes:

¹Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES
[CAS Number order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
57-57-8	Propiolactone, Beta-		10	500
79-11-8	Chloroacetic Acid		100	100/10,000
95-48-7	Cresol, o-		100	1,000/10,000
123-31-9	Hydroquinone	(¹)	100	500/10,000
7550-45-0	Titanium Tetrachloride		100	100

* Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

Notes:

¹Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

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Part VI

Department of Transportation

Federal Transit Administration

**Determinations of Equivalent Facilitation
for Accessibility of Transportation
Vehicles and Facilities; Notice**

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Determinations of Equivalent Facilitation for Accessibility of Transportation Vehicles and Facilities

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is publishing a summary of its determinations of equivalent facilitation for transportation vehicles and facilities under the Americans with Disabilities Act of 1990 (ADA). In addition to reporting the Agency's findings of equivalent facilitation, this Notice describes the process for making such requests, and summarizes denied requests and other related issues.

FOR FURTHER INFORMATION CONTACT: Robert W. Stout, Director, Office of Regional Operations, Office of Grants Management, Federal Transit Administration, Department of Transportation, at (202) 366-1656.

SUPPLEMENTARY INFORMATION: On September 6, 1991, the Department of Transportation issued its Final Rule on Transportation for Individuals with Disabilities (49 CFR parts 27, 37, and 38) (56 FR 45584), which includes a mechanism for determinations of equivalent facilitation. Section 38.2 entitled, "Equivalent Facilitation," states that "Departures from particular technical and scoping requirements of these guidelines by use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the vehicle. Departures are to be considered on a case-by-case basis under procedures set forth in § 37.7 of this title." Section 37.9(d) is a similar provision for transit facilities.

Many of the requests for determinations of equivalent facilitation received by the FTA have lacked some of the information necessary for such determinations. Often, the FTA must send a letter to the requester stating what must be included in a complete submission and asking for the additional information. 49 CFR 37.7(b) states: " * * * An entity wishing to employ equivalent facilitation in relation to a specification of part 38 of this title shall submit such a request to the (FTA) or the Federal Railroad Administration, as applicable, and include the following information:

(1) Entity name, address, contact person, and telephone number;

(2) Specific provision of part 38 of this title with which the entity is unable to comply;

(3) Reasons for inability to comply;

(4) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle (or facility) provided in part 38 of this title; and

(5) Public participation used in developing alternative method of compliance and input from that participation."

Such requests should be addressed to: Gordon J. Linton, Administrator, Federal Transit Administration, 400 Seventh Street, SW., Room 9315, Washington, DC 20590.

The FTA does not "approve" any product or configuration, nor does it maintain lists of products that are in compliance with the regulation. Products or configurations which meet the specifications set out in part 38 of the Final Rule are not eligible for equivalent facilitation. Products or configurations in compliance with the regulation thus need no approvals, compliance letters, or other FTA documentation.

Since publication of the Final Rule, the FTA has received several dozen requests for equivalent facilitation under section § 38.2. This Notice addresses the requests by grouping them according to the purpose for which a determination is requested; vehicle lifts and ramps, for instance, are treated together. The relevant portion of the regulation incorporating the Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards is presented, followed by a summary of the specific findings in that category. The FTA identified the following six categories: (1) Facilities: Detectable Warning Surfaces; (2) Facilities: Elevators; (3) Vehicles: Vehicle Lifts and Ramps; (4) Vehicles: Entryways; (5) Vehicles: Wheelchair Securements; and (6) Vehicles: Lighting.

Summary of Equivalent Facilitation Findings and Related Issues

(1) Facilities: Detectable Warning Surfaces

The ADAAG requirements for Detectable Warnings on Walking Surfaces (4.29.2) state: "Detectable Warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light.

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact."

Engineered Plastics sought equivalent facilitation for its "Armor-Tile" product. According to the drawings submitted by Engineered Plastics, its product meets the height requirement for truncated domes (nominal 2 inches), but its domes have a diameter of 1.325 inches, and the center-to-center spacing is 2.8 inches. Engineered Plastics submitted results from tests of its product conducted at transit properties in fulfillment of the public participation requirements.

The FTA responded to this request on January 30, 1992: "We have concluded our review of the data attached with your letter, which describes the technical specifications, the research, and the public participation efforts undertaken in the development and evaluation of the Armor-Tile design. Based on the results of the independent laboratory tests on the Armor-Tile and the public input obtained in the testing of the Armor-Tile at the Toronto Transit Commission and the Massachusetts Bay Transportation Authority, it is the finding of the Federal Transit Administration (FTA) that the Armor-Tile design provides equivalent facilitation to the requirements of Section 4.29.2."

In the area of detectable warnings particularly, there has been some confusion about the FTA's role in reviewing products. As stated above, the FTA does not "approve" any product or configuration, nor does it maintain lists of products which are in compliance with the regulation. Products or configurations which meet the specifications set out in part 38 of the Final Rule are not eligible for equivalent facilitation. However, a manufacturer or retailer does not need any written statement from the FTA if its product meets the specifications.

After publication of the ADAAG specifications for detectable warnings, the FTA issued letters to several manufacturers stating their products met the standard because the specifications could be construed as vague, and manufacturers and purchasers could not determine whether a product met the specifications. This situation has since been resolved by the United States Architectural and Transportation Barriers Compliance Board's (Access Board) publication of "Bulletin Number One: Detectable Warnings" in May 1992. Thus, there is no longer any need nor occasion for letters from the FTA or any other

Federal agency stating that products meet ADAAG specifications if the product meets the pattern and dimensions specified in Bulletin Number One.

(2) Facilities: Elevators

The ADAAG specifications for a Floor Plan of Elevator Cars (4.10.9) state: "The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown * * * (a minimum 54 inches in depth, and a minimum 68 inches in width; Fig. 22). The clearance between the car and platform sill and the edge of any hoistway landing shall be no greater than 1/4 in (32 mm)."

HNTB, an architectural, engineering, and planning firm, requested equivalent facilitation for hospital-style elevators at Syracuse Hancock Airport. According to the drawings and design specifications submitted, the elevators in question are 64 inches wide and 93.5 inches deep, four inches short of the minimum width but almost double the minimum depth.

The FTA responded to this request on November 10, 1992: "In the construction of new transportation facilities, ADAAG 4.10.9 addresses the floor plan of elevator cars, which is illustrated by ADAAG figure 2(b). The illustration specifies a minimum width of 68" and minimum depth of 51" on an elevator with a side opening door. The purpose of these minimum specifications was to permit a wheelchair user to turn around while inside the elevator."

According to your diagrams, the 64" width and 93.5" depth of your elevator would meet the intent of the ADAAG specifications by permitting an individual in a wheelchair to make a full 180 degree turn within the elevator, based on the 60" wheelchair turning space outlined in ADAAG section 4.2.3 (see ADAAG Figure 3(a)). In addition, Janice Hammerle, accessibility consultant for the Syracuse Center for Independent Living, stated "that the usability of such an elevator had been demonstrated after inspection of another elevator of the same size." The Administrator found that "this provides substantially equivalent access and usability as an elevator constructed to the specifications of ADAAG 4.10.9."

Hellmuth, Obata & Kassabaum requested equivalent facilitation for its inclined elevator design. According to the description and drawings submitted, the depth of the elevator cab is 84 inches, but its width is only 54 inches. However, as the accompanying letter explained, "The cab will be entered at

one end and then exited at the opposite end. Operating controls will also be located at each end of the cab * * *. It is similar in concept to a double opening hospital elevator cab design or passing through a vestibule."

The FTA responded on March 10, 1992: (The ADAAG guidelines state in part that) "The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Based on the sketch provided, it appears as though the proposed inclined elevator cab meets the provisions of the Guideline and therefore, a finding of equivalent facilitation is unnecessary."

(3) Vehicles: Vehicle Lifts and Ramps

The requirements for vehicle lifts in Buses, Vans, and Systems are contained in § 38.23(b). The first request focused on § 38.23(b) (2) Controls—(i) Requirements. "The controls shall be interlocked with the vehicle brakes, transmission, or door, or shall provide other appropriate mechanisms or systems to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged * * *."

Flxible Corporation sought a determination on its lift interlock system. Flxible's lift requires the lift platform, which forms the lower step surface in the entrance stepwell areas, to move outward for a short distance (1/2-1 inches, depending on adjustments) in order to activate limit switches, which then actuate and cause application of the vehicle's interlocks. Flxible requested a finding of equivalent facilitation to allow for this function.

The FTA responded on March 5, 1992: "The operation of the lift interlock system * * * is within the meaning of the regulations * * *. Therefore, no finding of equivalent facilitation is required."

Flxible also requested equivalent facilitation on the emergency operation of its lift. Section 38.23(b)(3) Emergency Operation, states: "The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions, and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary-lift intended to be stowed while occupied."

Flxible's letter explained its difficulty with meeting this requirement.

"With the loss of power to the wheelchair lift, the typical safeguards provided within the lift control logic would not be available. That is to say, in the case of Flxible's wheelchair lift, if power were lost, the load sensitive mat that would normally send a signal to the lift control logic indicating that the lift was occupied and in turn would prevent the lift from being stowed under power and at normal cycle speeds, would not be active. This could allow manual stowing with an occupant on the lift platform.

"As the manual stowing speeds are very slow, an operator, hand pumping the lift, could readily determine that he or she was stowing the platform long before any potential hazard could develop for the wheelchair lift occupant, whether in a wheelchair or standing on the platform."

The FTA continued: "The emergency operation of the lift mechanisms, as described in your letter, provides equivalent facilitation as long as the lift platform is in the direct line of sight of the operator while the emergency pump mechanism is being manually operated."

The FTA received several requests for determinations of equivalent facilitation for wheelchair lift and door height configurations for elevator-style bus lifts. The regulations state: "Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position." Section (38.23(b)(12). The regulations also require: "For vehicles in excess of 22 feet in length, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 68 inches." Section (38.25(c)).

Several manufacturers of elevator-style lifts requested equivalent facilitation on the grounds that, even though the clearance was less than 68 inches when the platform was in its raised position, the configuration provided equivalent vertical clearance because the platform itself rises entirely within the bus. An individual enters the bus and stands on the platform in its lowered position. When the platform rises, the standee is completely within the bus and the clearance is 68 inches or greater during the entire operation of the lift. Several specific examples follow.

Gillig Corporation requested equivalent facilitation for its elevator-style bus lift. Gillig argued that "the requirement for the door height

clearance makes good sense on a bus where the wheelchair lift "translates," or moves both up and in while lifting a standee into the vehicle. With a translating lift, a taller standee on the platform in its lowered position outside the bus could easily * * * knock his head on the door header as the raised lift travels from the outside to the inside of the bus. This will not happen on the Gillig elevator lift equipped bus.

"The Gillig installed 'elevator' lift raises and lowers, but does not move in and out of the bus. As the lift is raised and lowered, the inner portion of the platform is always inside the bus * * * and the platform stays in that same relative position throughout the raising and lowering process, without ever passing back and forth under the header. When the standee stands on the lift platform in the indicated preferred standing position * * * he is standing on that portion of the platform that is always inside the bus. Marking the interior preferred standing position with footprints and providing convenient inboard standee grabrails helps assure that standees walk into the bus on a lowered platform that is 95 inches below the door header, and are raised to floor level on the inside of the bus, inboard of the header * * *. In this way, a standee passenger on the lift platform is always raised from ground to floor level without concern of impacting or confronting a height limitation imposed by the door header."

The FTA responded to Gillig on March 20, 1992: "The information that you provided indicates that the lift used by Gillig Corporation is enclosed within the interior of the vehicle, and in its deployed position provides a patron an excess of 68 inches (172.72 cm) as the door opening is traversed. Based on this, we have determined that Gillig Corporation's lift and door configuration meets the intent of the specification and constitutes equivalent facilitation pursuant to 49 CFR, § 37.7, 56 FR 45625, September 6, 1991."

Thomas Built Buses requested Equivalent Facilitation for door height requirement for its-interior lift bus. This request, similar to Gillig's, stated that the Thomas elevator lift rises entirely within the interior of the vehicle as it transfers the passenger from ground level to bus floor level. The passenger proceeds from the lift to her seat once the platform reaches the full up position, without providing a clearance of less than 68 inches. In this full up position, the lift affords at least 73 inches clear headroom, depending on the type of bus in which it is installed.

The FTA responded on April 28, 1992. The Administrator wrote: "Based

on the information provided, since the lift used by Thomas Built is enclosed within the interior of the vehicle, and in its deployed position provides a patron in excess of 68 in. (1.72 meters) as the door opening is traversed, I have determined that the Thomas Built lift and door configuration meets the intent of the specification and constitutes equivalent facilitation * * *."

Transportation Manufacturing Corporation made a similar request and was granted equivalent facilitation on the same grounds. The regulations governing wheelchair ramps, § 38.23(c)(2) Ramp Surface, states: "The ramp surface shall be continuous and slip resistant; shall not have protrusions from the surface greater than 1/4 inch high; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids."

Independent Mobility Systems (IMS) requested equivalent facilitation for its wheelchair ramp. The ramp is manufactured by IMS for its conversions of minivans. The ramp width is determined by the Original Equipment Manufacturer (OEM) door opening width, which allows a ramp with a usable width of 29.2 inches. Modifications to increase the ramp width would require prohibitively expensive additional modifications. The slope of the ramp is relatively gradual in comparison with what the regulations allow. IMS also reported its previous safety record with this configuration and stated that testing has shown the ramp-equipped vehicle meets Federal Motor Vehicle Safety Standards.

The FTA responded to this request on April 28, 1992, stating in part: "I have reviewed these issues and determined that the ramp (29.2 inches in width) provided * * * meets the intent of the specifications and constitutes equivalent facilitation * * *." (IMS also requested equivalent facilitation for the door height requirements for minivans; see Vehicle Entryways, below.)

(4) Vehicles: Entryways (Width)

Section 38.153 contains requirements for over-the-road buses and systems. Section 38.153(c) states: "To the maximum extent practicable, doors shall have a minimum clear width when open of 30 inches, but in no case less than 27 inches."

The requests for determinations of equivalent facilitation the FTA has received in regard to this requirement deal primarily with the intrusion of hinges or other objects into the clear width area.

Prevost asked if its buses meet door specifications. The FTA responded to

this request, on June 10, 1992:

"According to the information you provided, the upper hinge on the H3-40/H5-60 plug-type door design protrudes 2.2 inches into the area 6.2 feet above the floor, while the lower hinge protrudes 2.2 inches into the area 15.5 inches above the floor. The upper hinge on the Mirage protrudes two inches into the area between 42 and 46 inches above the floor and the lower hinge protrudes two inches into the area between 2.5 and 6.5 inches above the floor. The upper hinge on the H3-40/H5-60 sedan-type door design protrudes 2 inches into the area between 41 and 45 inches above the floor, while the lower hinge protrudes two inches into the area between 8.5 and 12.5 inches above the floor.

"We have determined that the design for the H3-40/H5-60 plug-type door meets the minimum standards for compliance. However, neither the Mirage door nor the H3-40/H5-60 sedan-type door design meets the standard * * *. The lower hinges and actuators are located in a position where the potential for physical interference for (disabled) riders is greatly increased, and may impede these riders in boarding the vehicles."

Motor Coach Industries requested a waiver from bus door width requirements. Since the regulations do not provide for a waiver of the requirements, the FTA treated this as a request for equivalent facilitation. Motor Coach Industries manufactures an over-the-road bus that provides a door opening 27 inches wide up to a height of 58 inches. Between 41 to 47 inches above the floor level, the door hinge intrudes three inches into this clear space. The FTA determined on November 4, 1991, that this door design meets the intent of the requirements.

(4) Vehicles: Entryways (Height)

The requirement that has generated more correspondence than any other, except perhaps detectable warning surfaces, is the bus door height requirement. Section 38.25(c) states: "For vehicles in excess of 22 feet in length, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 68 inches. For vehicles of 22 feet in length or less, the overhead clearance between the top of the door opening and the raised lift platform, or highest point of a ramp, shall be a minimum of 56 inches."

The letters centered mostly on problems associated with this requirement and the use of elevator-style lifts, addressed above in the

section under lifts. For vehicles 22 feet or less in length, including minivans, the FTA received several dozen letters. Many of these letters focused on the product marketed by Fair Access, Inc., a company modifying minivans for paratransit use. After lowering the floors of these vehicles, the opening between the highest point of the ramp and the top of the door opening is 53 inches. Raising the roof would require substantial redesign and remanufacturing costs. The FTA responded to this and other requests on April 9, 1992:

"Because the specifications for accessible vehicles were developed by the Architectural and Transportation Barriers Compliance Board (Access Board), the Federal Transit Administration (FTA) has consulted that agency for its review and comment on your request. The FTA has been informed that the ADA regulation was based on data in the 'Guidelines for Aircraft Boarding Chairs,' a publication of the Access Board; and Human Factors Design Handbook, Wesley E. Woodson, 1981. Based on anthropometric data contained in these publications, when measuring the vertical distance from the sitting surface to the top of the head for a person in a relaxed position, the 95th percentile male has a sitting height of 38 inches. Adding the 18 inches for the seat height of a wheelchair results in an overall height of 56 inches. The 56 inch height requirement accommodates this height and is compatible with most vehicles. You also may be interested to know that no comments on the door height requirement were received during the rulemaking process * * *. Therefore, we will not be able to grant * * * relief from complying with the 56 inch door height requirement."

(5) Vehicles: Wheelchair Securements

The requirement for wheelchair securement devices is contained in § 38.23(d). Almost all of the letters received by the FTA on this subject request either a change in the requirement that all wheelchair securements be either forward or rearward facing, or a determination of equivalent facilitation for side-facing wheelchair securement devices. The regulation states: "In vehicles in excess of 22 feet in length, at least one securement device or system required by paragraph (a) of this section shall secure the wheelchair or mobility aid facing toward the front of the vehicle. Additional securement devices or systems shall secure the wheelchair or mobility aid facing forward, or rearward with a padded barrier, extending from a height of 38 inches from the vehicle

floor to a height of 56 inches from the vehicle floor with a width of 18 inches, laterally centered immediately in back of the seated individual. In vehicles 22 feet in length or less, the required securement device may secure the wheelchair or mobility aid either facing toward the front of the vehicle or facing rearward, with a padded barrier as described. Additional securement locations shall be either forward or rearward facing with a padded barrier. Such barriers need not be solid provided equivalent protection is afforded."

The FTA responded, explaining the origin of the standard: "To date, no one has provided test data indicating that side-facing wheelchair or mobility aid securement is as safe as forward or rearward facing securement positions * * *. Although we are sensitive to the economic effects of the ADA on the transportation industry, we are concerned about the safety of persons with disabilities who use public transportation services. We, therefore, based upon research data available to us, will be unable to grant you a finding of equivalent facilitation in meeting the requirements of the above-mentioned ADA rule.

"(The regulation prohibiting side-facing wheelchair securement in public transportation vehicles was developed by the Architectural and Transportation Barriers Compliance Board (Access Board), which considered the following information): "Wheelchair Securement on Bus and Paratransit Vehicles," prepared by the California Department of Transportation, July 1981, states that in impact testing, 'thus far, the side-facing tests have indicated this orientation is undesirable. The wheelchair user's neck, hips, and knees are subjected to bending in an abnormal direction, and the main wheels of the wheelchair usually collapse.' "Wheelchair Securement Systems in Transit Vehicles: A Summary Report," by Enid Brenner and R.V. Giangrande, August 1981, states that "Previous and current research has shown that there are definite advantages to some seating positions over others. For example, the rear-facing position is definitely the preferred position for frontal accidents; however, a rear-facing position has obvious disadvantages for some applications such as the driver of the van. The forward-facing orientation is the next preferred position from a safety standpoint and is recommended over side facing.

"* * * To date, no one has provided test data indicating that side-facing wheelchair or mobility aid securement is as safe as forward or rearward facing

securement positions. We would welcome the opportunity to review any such data."

(6) Vehicles: Lighting

Section 38.31(c) of DOT's Final Rule, dealing with vehicle lighting, states: "The vehicle doorways, including doorways in which lifts or ramps are installed, shall have outside light(s) which, when the door is open, provide at least one foot-candle of illumination on the street surface for a distance of 3 feet perpendicular to all points on the bottom step tread outer edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers."

Bus Industries of America (BIA) requested a determination of equivalent facilitation for its bus lighting configuration. Bus Industries indicated that when the doors of the bus are opened for entrance or exit, they partially block the illumination required in the regulation.

The FTA responded on July 24, 1992: "After reviewing the information submitted, I have determined that BIA's exterior door light design meets the purpose and intent of the lighting specification of § 38.31(c) of the Final Rule, and constitutes equivalent facilitation."

Section 38.39 Destination and Route Signs, states: "(a) Where destination or route information is displayed on the exterior of a vehicle, each vehicle shall have illuminated signs on the front and boarding side of the vehicle. (b) Characters on signs required by paragraph (a) of this section shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case X) of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front "heads signs," with "wide" spacing (generally, the space between letters shall be $\frac{1}{16}$ the height of upper case letters), and shall contrast with the background, either dark-on-light or light-on-dark."

Luminator requested a determination of equivalent facilitation for its MAX and SUPER MAX electronic destination signs. The FTA responded on January 30, 1992: "The data you supplied on the MAX destination sign indicates that its width-to-height and stroke-to-height ratios are outside the ranges permitted under the regulation (i.e., 0.492 instead of a minimum of 0.6, and 0.082 instead of a minimum of 1.0). Therefore, the MAX is found to be not in compliance with the ADA requirements. Your letter did not include any supporting data to indicate why the MAX destination sign

should be considered to be an acceptable facilitation under § 38.7(b). Therefore, I do not find that the MAX destination sign provides equivalent facilitation to the width-to-height and stroke-to-height ratios contained in 49 CFR 38.39(b).

"The data for the SUPER MAX destination sign indicates a width-to-height ratio of 0.578 (which is 3.7% below the minimum value) and a stroke-to-height ratio of 0.12 (which is above the minimum value), and a character

height of 8.3 inches (which exceeds the minimum requirement of 2 inches). The difference between the SUPER MAX width-to-height ratio and that required under the regulation has been determined to be within conventional engineering tolerances for material properties and conditions, and, therefore, deemed to be acceptable under § 38.4(b), dimensional tolerances. Therefore, the SUPER MAX is found to be in compliance with the ADA requirements."

This concludes the summary of determinations of equivalent facilitation made by the FTA through August 20, 1993. The FTA will, from time to time, report additional findings if it deems the information contained in them useful to industry or to the general public.

Issued: October 18, 1993.

Gordon J. Linton,
Administrator.

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**Friday
October 22, 1993**

Part VII

Department of Transportation

Coast Guard

33 CFR Part 157

**Structural and Operational Measures to
Reduce Oil Spills From Existing Tank
Vessels Without Double Hulls; Proposed
Rules**

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 157****[CGD 91-045]****RIN 2115-AE01****Structural and Operational Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations under the authority of section 4115(b) of the Oil Pollution Act of 1990 (OPA 90) that would require the owners or operators of existing tank vessels over 5,000 gross tons (GT) that do not have double hulls to comply with certain structural and operational measures. The Coast Guard finds these measures provide as substantial protection to the environment as is economically and technologically feasible.

DATES: Comments on this notice must be received on or before December 20, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-045), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Comments on collection of information requirements must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying in room 3406, U.S. Coast Guard Headquarters. **FOR FURTHER INFORMATION CONTACT:** Randall N. Crenwelge, Project Manager, OPA 90 Staff, (202) 267-6220, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking

(CGD 91-045) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address listed under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

Drafting Information

The principal persons involved in drafting this document are Randall N. Crenwelge, Project Manager, and Pamela M. Pelcovits, Project Counsel, OPA 90 Staff.

Background and Purpose

In section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90), Congress mandated two regulatory initiatives. These initiatives require vessels that carry oil in bulk as cargo (tank vessels) in water subject to the jurisdiction of the U.S. to be equipped with improved protection from oil spills due to collisions and groundings.

The first initiative, section 4115(a), amended title 46 U.S.C. by adding section 3703a which provides a timetable for phasing in the requirement that tank vessels be equipped with double hulls by no later than January 1, 2015. Under 46 U.S.C. 3703a, there are limited exceptions to the double hull requirement, the most important exception being for vessels used only to respond to a discharge of oil.

The second initiative, section 4115(b), which appears as a statutory note at the end of 46 U.S.C. 3703a, directs the Coast Guard to develop regulations for existing tank vessels over 5,000 gross tons (GT) subject to the double hull requirement based on the phase-in schedule ending January 1, 2015. These regulations are to mandate structural and operational requirements that provide as substantial protection to the

environment as is economically and technologically feasible.

The Coast Guard emphasizes that section 4115(b) of OPA 90 explicitly links the regulations developed under section 4115(b) to the requirement that existing tank vessels ultimately be equipped with double hulls or removed from service.

Regulatory Development

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) on November 1, 1991 (56 FR 56284). The ANPRM discussed the broad range of possible structural and operational measures that could be considered under the language of section 4115(b). In addition, the ANPRM included a request for data on the technical and economic feasibility of measures with respect to the various types of tank vessels covered by section 4115(b).

Background information contained in the ANPRM is not repeated in this notice of proposed rulemaking (NPRM) unless it is of substantial importance to the proposed regulations. After the deadline for comments to the ANPRM was extended to January 30, 1992 (57 FR 1243), more than 80 comments were received from U.S. and foreign sources, including ship operators' associations, individual ship and barge operating companies, pilots' associations, maritime academies, environmental groups, technology innovators, and Federal, State, and local government agencies. All comments were considered in developing the regulations proposed in this NPRM.

The comments, described below, were carefully reviewed. Most were subjective and did not offer specific technical or economic information supporting the particular comments. Several comments advocated systems or concepts that have not been proven to the Coast Guard's satisfaction to be technically feasible or demonstrated to be effective on a scale appropriate to oceangoing tank vessels. Other comments made suggestions or recommendations that fall outside the scope of this rulemaking.

The Coast Guard issued an interim final rule (IFR) on double hull standards (57 FR 36222) that became effective September 11, 1992. The double hull standards were developed with a recognition of the impact U.S. regulations would have on the substantial number of foreign flag vessels that transport oil into U.S. waters. Similar considerations were made in developing the regulations in this NPRM. The IFR also added the definition of "oil tanker" to part 157.

This definition includes a tank barge. This rulemaking will be based on that definition. Exclusions are discussed later in the preamble.

In March 1992, the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) adopted Regulation 13G to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Regulation 13G includes, in part, a requirement for tankers to be fitted with protectively located non-oil spaces (PL/Spaces), such as protectively located segregated ballast tanks (PL/SBTs). Other structural or operational arrangements are permissible as alternatives, such as hydrostatically balanced loading, provided they meet two requirements. The alternative devices must ensure at least the same level of protection as PL/Spaces against oil pollution in the event of a collision or stranding and they must be approved by, in the case of vessels subject to U.S. jurisdiction, the U.S. Coast Guard based on guidelines developed by the IMO.

Like double hulls, PL/Spaces keep cargo oil away from the side and/or bottom of a tank vessel. Regulation 13G requires the installation of PL/Spaces or an approved alternative before an existing oil tanker becomes 25 years old. The requirements of Regulation 13G take effect on July 6, 1995.

The Coast Guard recently has published its position on the applicability of Regulations 13F and 13G in U.S. waters (58 FR 39087; July 21, 1993).

A copy of IMO paper, MEPC/32/20, that contains Regulation 13G is in the public docket. The text of Regulation 13G was also included as an appendix to the IFR on double hull standards (57 FR 36222). Public comments are specifically requested concerning the effect of Regulation 13G on issues other than double hull implementation.

During the 34th session of MEPC (MEPC 34), a working group on oil tanker design met from July 5-9, 1993. Among other tasks, the working group developed draft guidelines (MEPC 34/8/1) for approval of alternative structural or operational arrangements for oil tankers, as required by Regulation 13G(7) of Annex I of MARPOL 73/78.

Included in the report of MEPC 34 is the reference to the first draft guidelines for oil tankers. These guidelines were based on information and comments submitted to an intersessional correspondence group and the discussions held during the 33rd session of MEPC. The guidelines provide damage and outflow criteria,

the methodology for the calculation of hypothetical oil outflow, and proposals for endorsing International Oil Pollution Prevention certificates. The guidelines also contain specifications for underpressure systems (UPS), hydrostatic balance loading (HBL), and rapid emergency transfer of cargo.

MEPC 34, noting that the draft guidelines had been developed, requested that the IMO Secretariat forward these guidelines to the relevant Maritime Safety Committee (MSC) subcommittees for review of the safety aspects of the various methods.

The Coast Guard is considering using the guidelines developed by the working group to evaluate alternatives to PL/Spaces (as explained below). Public comments are specifically requested on these guidelines to assist the Coast Guard in developing this rule and the U.S. Delegation in its IMO deliberations. A copy of the report of the committee (MEPC 34/WP.4) and a copy of the draft guidelines (MEPC 34/8/1) are in the public docket. Copies of the reports may be obtained by calling (202) 267-6740 or by faxing requests to (202) 267-4624.

Major Alternatives Examined in the Regulatory Impact Analysis

Of the ten major alternatives examined by the Coast Guard in the Regulatory Impact Analysis (RIA), four are unproven. The others, PL/Spaces; SBT; HBL; PL/Spaces and HBL; Double Bottoms; and Double Sides, were shown to reduce the amount of oil spilled (with the exception of Double Sides). Some are more effective, but all are costly. The Coast Guard is proposing PL/Spaces as the minimum measure to prevent oil outflow because it is the least costly measure.

Although the overall cost of HBL is more than four times that of PL/Spaces, HBL has a lower cost per barrel of oil not spilled. Despite that advantage, HBL will not be required. It would result in a 36 to 50 percent reduction in cargo carrying capacity and have a present value cost of \$3 billion. The rapid imposition of HBL in a very competitive and heavily regulated industry would subject the industry to sudden and severe financial shock. A significant exodus of existing vessels from the oil trade could result in economic dislocations and a possible shortfall in the capacity to supply the market, as well as increases in producer costs and consumer prices.

Furthermore, the reduced cargo carrying capacity would require more vessels to enter the industry to transport oil. This would increase traffic, hookups, and disconnections, thereby

increasing the likelihood of spills from collisions, groundings, and transfer operations.

If many existing vessels did leave the U.S. trade, the replacement vessels would be required to have double hulls. This early implementation of the double hull requirements would reduce the amount of oil spilled, but the cost would be \$73,000 per barrel of oil not spilled, significantly higher than the cost with PL/Spaces.

SBT also appears to have a lower cost per barrel of oil not spilled than PL/Spaces, but is twice as costly. Many owners of older, single hull vessels faced with the increased capital costs of retrofitting these pre-MARPOL vessels that have only a few years of service life left, would be forced to choose between removing the vessels from service earlier or paying significant capital costs. Since the costs of retrofitting could be amortized only over the remaining life of existing vessels, owners would introduce double hull vessels more quickly, accompanied by costs significantly higher than PL/Spaces.

Because OPA 90 requires the Coast Guard to address the issue of economic feasibility rather than merely cost per barrel of oil not spilled, the Coast Guard selected the option of PL/Spaces. Although HBL and SBT both may result in less cost per barrel of oil not spilled than PL/Spaces, they were not economically feasible.

Discussion of Proposed Amendments

1. Economic and Technological Feasibility

Section 4115(b) requires that the regulations include measures that provide as substantial protection to the environment as is economically and technologically feasible. However, there is no statutory formula or method to use to determine the technological or economic feasibility of measures that can be used to reduce oil spills from single hull vessels. This rulemaking, therefore, was developed by examining available information concerning—

(a) Oil outflow in groundings and collisions—the potential reduction in oil outflow attributable to each oil outflow prevention measure;

(b) Human interface required for effectiveness—the degree to which structural design or operator control contribute to prevent oil outflow;

(c) Operational history—the historic performance, if any, of a measure in the marine environment;

(d) Operational complexity—the additional burden to the operating crew of working with an inherently complex

system that would increase the probability of a spill due to human error;

(e) **Costs**—the capital costs to modify existing oil tankers and the costs associated with the loss in vessel cargo carrying capacity;

(f) **Benefits**—the number of barrels of oil not spilled associated with each oil outflow prevention measure; and

(g) **Impacts**—the consequences of each measure on the international industry serving U.S. markets, the ability of small owners/operators to finance required modifications, and the possibility that shipyards may not have the capacity for required modifications.

After collecting and reviewing this information, the Coast Guard proposes measures that it believes to be economically and technologically feasible. The Coast Guard seeks comment on the economic feasibility of PL/Spaces and other alternatives as they apply to each class of vessel.

2. Location Within the Regulations

The oil pollution prevention regulations for tank vessels, including standards for double hulls, are found in 33 CFR part 157. All citations in the discussion of the proposed amendments refer to 33 CFR unless otherwise noted.

The Coast Guard proposes to revise part 157 by adding subpart G, containing the requirements for structural and operational measures for existing oil tankers without double hulls. The Coast Guard is interested in comments addressing other possible locations for these regulations. If the Coast Guard issues the final regulations as subpart G to part 157, an explanatory note will be added to 46 CFR 30.01-5 to cross-reference these requirements.

In addition, a requirement for certain foreign flag tank vessels of 5,000 GT or more to report their IMO international number to the Captain of the Port is being proposed in § 160.207.

3. Applicability

Section 4115(b) applies to each tank vessel of more than 5,000 GT affected by 46 U.S.C. 3703a. Under the language of the Double Hull IFR, the requirement for double hulls applies to vessels constructed or adapted to carry oil in bulk as cargo. The 5,000 GT applicability threshold in section 4115(b) removes smaller tank vessels, including certain fishing vessels, and cargo vessels from the scope of the proposed regulations, although they meet the 46 U.S.C. 2101(39) definition of a tank vessel.

The proposed regulations do not address vessels over 5,000 GT that carry oil as a secondary cargo, including

various fishing industry vessels and cargo ships. The amount of cargo oil spilled from these vessels is negligible. Because these vessels carry such small volumes of oil and on such an infrequent basis, it is not economically feasible to impose structural or operational requirements on these vessels.

These regulations also do not apply to oil spill response vessels (including escort vessels) because these vessels are exempt from the double hull requirements by the terms of 46 U.S.C. 3703a.

The proposed regulations will cover oil tankers, as defined by 33 CFR 157.03(oo) to include tank barges, that are greater than 5,000 GT. The proposed rule would apply to oil tankers that unload cargo at deepwater ports or lightering zones located in waters of the United States. These oil tankers are not required to have double hulls until January 1, 2015, under 33 CFR 157.08(n)(3).

The Coast Guard solicits comments on whether it is appropriate to require specific structural or operational measures for oil tankers by trade, tonnage, etc.

4. Definition of "Oil"

The statutory definition of "oil" added to part 157 by the IFR for double hull standards (57 FR 36246) includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredge spoil. Additionally, this definition includes non-petroleum oils such as vegetable and animal oil.

Under international agreements to which the U.S. is a signatory, a different definition of "oil," excluding non-petroleum oils, is used for purposes of preventing pollution to the marine environment. The Coast Guard believes that this more limited definition is appropriate for this rulemaking because the number of spills involving non-petroleum oil (animal and vegetable oils) is negligible. Imposing construction or operational requirements on oil tankers carrying only non-petroleum oils would not be economically feasible. This definition of "oil" is consistent with international treaties and within the discretion permitted under section 4115(b) of OPA 90.

Accordingly, the proposed regulations apply the definition of "oil" provided in § 151.05, which is based on Annex I to the International Convention for Preventing of Pollution by Ships, 1973, as amended by the Protocol of 1978 (MARPOL). The NPRM also revises the language of § 157.03 to reflect this

definition, which excludes non-petroleum oils.

5. Interim Measures

In subpart G to part 157, the Coast Guard proposes two basic measurers for oil tankers covered by the regulations:

(1) 30 percent of the projected area of the sides or bottom of the cargo block of the oil tanker will have PL/Spaces or comply with a Coast Guard approved alternative measure; and

(2) Oil tankers will carry emergency lightering equipment. Additionally, § 160.207, as amended, would require foreign flag vessel owners and operators to provide their vessel's IMO international number when reporting advance notice of arrival. Each of these measures is discussed below.

In §§ 157.410 (b) and (c), the Coast Guard proposes the alternatives to PL/Spaces. An owner or operator of an existing oil tanker may submit an application to the Coast Guard Commandant (G-MVI) to use HBL or other alternative structural or operational measures as a substitute or the requirements of fitting 30 percent of the projected area of the sides or bottom of the cargo block with PL/Spaces. This flexibility allows owners and operators to submit alternatives that may be economically feasible and technically adequate for their vessels.

Structural or operational arrangements such as HBL will be considered by the Coast Guard as alternatives to PL/Spaces provided that such alternatives can also be shown to provide a substantial protection of the environment as economically and technologically feasible, and meet general safety considerations. Unproven oil outflow prevention arrangements will be considered on an individual basis by the Coast Guard.

In order to minimize the burden of compliance, the Coast Guard also considered two phase-in periods for the proposed regulations. The Coast Guard first considered requiring these structural changes to be made to an oil tanker during its next scheduled dry dock inspection, but not later than 3 years after the effective date of the final rule. The alternative was to require existing vessels over 5,000 GT to meet the phase-in schedule contained in Regulation 13G to Annex I of MARPOL 73/78, effective July 6, 1995. This NPRM requires compliance before an existing oil tanker becomes 25 years old. However, some overlap exists. Regulation 13G requires compliance earlier than the proposed regulations for those oil tankers reaching 25 years of age before July 6, 1995, or after that date

but in less than three years after the effective date of the final rule.

The cost-benefit analysis of these two phase-in periods is discussed below. However, the Coast Guard encourages interested parties to comment on these alternative phase-in periods.

6. PL/SBT and PL/Spaces

In § 157.410(a), the Coast Guard proposes to require that existing oil tankers of greater than 5,000 GT, without double hulls and operating in U.S. waters, be fitted with PL/Spaces, except as provided in § 157.410 (b) and (c) as previously discussed. The arrangement and location of the ballast tanks or void spaces must protect at least 30 percent of the cargo tank length encompassing the full depth on each side or encompassing at least 30 percent of the projected bottom area of the cargo tank length. The Coast Guard estimates that PL/Spaces will reduce the likelihood of oil outflow in collisions by 30 percent and reduce the outflow from groundings by 15 percent in comparison with a pre-MARPOL tanker.

The precise location of the PL/Spaces is not specified in these regulations. For U.S. waters, where groundings occur more often than collisions, 30 percent bottom protection may be more appropriate than 30 percent side protection. Moreover, locating this protective barrier toward the forward end of the cargo block might provide even better protection. However, the Coast Guard does not wish to specify the precise location of PL/Spaces, as it might be technically infeasible for the PL/Spaces to be in the same area on every existing oil tanker. For oil tankers of at least 20,000 deadweight tons (DWT) carrying crude oil and of at least 30,000 DWT carrying products, the structural requirements of proposed § 157.410(a) are consistent with Regulation 13G as adopted by MEPC. There are not similar international regulations for smaller oil tankers.

The proposed rule will affect oil tankers that do not meet the double hull requirements of § 157.10d. The proposed regulations do not change existing regulations for ballast capacity (to meet draft and trim requirements); instead, the ballast tanks or empty spaces must be protectively located in a specified manner.

Some existing oil tankers already will comply with the requirement to have 30 percent of the projected area of the sides or bottom of the cargo block protected by void spaces. These vessels include MARPOL 73/78 tankers required to meet the MARPOL requirements for PL/SBT. PL/SBT was required to eliminate environmental pollution from

operations as well as provide significant protection from collision and grounding incidents.

Other oil tankers, such as pre-MARPOL 73 tankers most likely will not meet the PL/Space requirement proposed in § 157.410(a). These pre-MARPOL tankers have not been required to comply with MARPOL provisions regarding cargo tank size limits, oil outflow limitations, or segregated ballast requirements. It is estimated that 75 to 80 percent of the world fleet of crude carriers is in this category.

Pre-MARPOL 78 tankers will also probably not meet the requirements of proposed § 157.410(a). While these tankers satisfy requirements for SBT under MARPOL 73 for minimum operational draft and trim values, they were not required to have PL/SBT on PL/Spaces. The SBT requirement was established to eliminate environmental pollution resulting from deliberate discharge of oily ballast. All U.S. flag tankers, regardless of year of build, were required to meet the SBT standard in § 157.24 and appendix C of this part, either by new construction or by conversion.

Comments to the ANPRM on requiring PL/SBT or PL/Spaces were evenly divided between supporters and opponents. Qualified support was expressed by two foreign shipowners associations, one foreign shipping company, and an agency of a large city government. Opposition on economic and technical grounds was expressed by two U.S. barge operators, an international oil company, and a foreign operator/charterer.

The Coast Guard encourages interested parties to submit data regarding the technical or economic impact of requiring PL/Spaces, particularly for oil tankers under 30,000 DWT.

7. HBL

In § 157.410(b), the Coast Guard proposes to allow existing oil tankers of greater than 5,000 GT operating in U.S. waters, without double hulls and not meeting the requirements of § 157.410(a) or (c), to meet the requirement for oil outflow protection by operating with HBL.

HBL refers to an operational measure in which cargo tanks are loaded so that the hydrostatic pressure exerted by the cargo and an inert gas system (IGS) inside the tank is equal to, or less than, the hydrostatic pressure exerted by the seawater outside the tank. The Coast Guard expects that hydrostatic balance will be achieved by changing only the static head of cargo, not by reducing IGS

pressures below the minimum 100 mm (4 inches) of water head currently required by 46 CFR 32.53-30. This balanced pressure will significantly mitigate oil outflow from a cargo tank in the event of damage because, in the event of a rupture to the bottom of the tank, seawater will flow into the tank, rather than oil flowing out. However, dynamic effects (such as currents, waves, or ebbing tides), could disturb the hydrostatic balance. Therefore, a safety factor is included in the proposed regulation. The Coast Guard estimates that if all existing oil tankers subject to this rulemaking employed HBL, oil outflow in collisions and groundings would be reduced by 15 percent and 96 percent, respectively.

While the Coast Guard recognizes that studies have been conducted that support the technical feasibility of HBL, the draft RIA concludes that this method is costly due to reduced cargo carrying capacity. The Coast Guard is also aware of some oil tankers which cannot be loaded in accordance with HBL due to expected structural problems when the sloshing of cargo oil increases loads. Comments are solicited regarding the costs of HBL, including indirect costs, and the economic feasibility of this method.

The technical definition of HBL, which includes a formula with three parts, is provided in proposed § 157.410(b). The first part is the liquid pressure exerted by the cargo on the bottom of the tank due to the static head of cargo. This value is obtained by multiplying the static head of cargo, the maximum density of cargo, the acceleration due to gravity, and a safety factor of 1.1. This safety factor ensures that this liquid pressure calculation could have a margin of error not exceeding 10 percent and still comply with the principle of HBL.

The second part of the formula expresses the pressure of the inert gas and cargo vapor in the ullage space above the cargo. This part of the formula is obtained by assuming that the pressure in this space will not exceed the maximum pressure setting of the pressure/vacuum relief valves in the tank. The sum of the first two parts is the total internal pressure exerted on the bottom of the tank.

The third part of the formula is the external pressure exerted by the seawater at the bottom of the tank. It is obtained by multiplying the minimum expected draft for the voyage by the density of seawater and the acceleration due to gravity. The result provides the maximum depth of cargo that can be loaded in each tank for that voyage.

Comments are solicited regarding the use of HBL and the definition of the measure as proposed in § 157.410(b). The Coast Guard is particularly interested in comments on the adequacy of the margin of safety in the formula for HBL. The factor is intended to account for the uncertainties associated with HBL that cannot be fully quantified. These uncertainties include variations of pressure due to motions of the vessel, waves, and currents; changes in density of seawater; changes in cargo temperature; and possible inaccuracies in the assumed pressure in the ullage spaces above the cargo.

If an owner or operator proposes to use HBL, the Coast Guard also must be satisfied that each oil tanker's structural integrity and stability would not be compromised. Accordingly, owners or operators would be required to obtain endorsements from their class society, or otherwise demonstrate that each oil tanker can, in fact, safely operate under HBL. The stability information for this documentation is already required under 46 CFR 170.110. Specific public comments concerning these issues are invited.

In the comments to the ANPRM, strong endorsements for HBL were received from foreign shipowners' associations, independent operators, and environmental groups. Comments did recognize enforcement difficulties. Significant opposition to HBL was expressed by major oil companies, and international association of tanker operators, and tug and barge operators.

8. Alternative Oil Outflow Measures That May Be Acceptable to the Coast Guard

In § 157.410(c), the Coast Guard proposes to provide a means by which owners and operators of existing oil tankers of greater than 5,000 GT operating in U.S. waters, without double hulls, may comply with § 157.410. In lieu of complying with proposed § 157.410 (a) or (b), an owner or operator of an oil tanker may submit a request for approval to the Commandant (G-MVI) to use an alternative measure. The alternative measure must be shown to provide as substantial protection to the environment as is economically and technologically feasible, and satisfy general safety considerations.

9. Emergency Lightening Connections

The availability of specified lightening equipment on board an oil tanker would facilitate the transfer of oil from a stricken oil tanker to another vessel for temporary storage. The crew of a stricken oil tanker could prepare for lightening and begin the transfer

immediately after the other vessel arrived on scene and the transfer hoses were connected. The time saved and the assurance that reducers would be on an oil tanker minimizes the likelihood of spillage from the cargo remaining aboard the oil tanker after an incident.

The Coast Guard has issued an IFR under the authority of OPA 90, "Vessel Response Plans" (VRP) (58 FR 7376; February 5, 1993), that also addresses lightening equipment requirements. The VRP IFR requires vessel owners and operators to show how they will obtain suitable equipment, rather than have it stored aboard the vessel. However, considering the moderate cost of storing connectors, the Coast Guard is proposing to require this specific equipment to be stored on board oil tankers subject to this rulemaking.

The proposed § 157.420 requires oil tankers to be equipped with certain size reducers; bolts, washers, nuts, gaskets, and appropriate quantities of spares; and certain additional hose connection equipment. Two of each size of reducers, would be required. The equipment must be stored in an on-deck locker as close to the manifolds as practical. This equipment must meet the requirements of 46 CFR 56.25 and conform to the descriptions set forth in each oil tanker's ship to ship transfer procedure as required by § 155.1035(c)(6) or 155.1040(d)(5).

The public is invited to comment on this lightening requirement which is in addition to the VRP requirements. Specific comments are requested concerning reducer sizes, bolting, and flange specifications, etc. Specific recommendations are requested concerning the reducer sizes.

Comments Relating to Other Operational or Structural Alternatives Mentioned in the ANPRM

In addition to comments on the measures selected, the Coast Guard received a significant number of comments on other measures.

10. Retrofit Double Hulls

Qualified support for the retrofit of double hulls was expressed in seven comments and opposed in three comments. Proponents included two U.S. shipyards, one U.S. based operator, and a foreign ship operators' association. The Coast Guard considers the retrofit of double hulls economically infeasible.

11. Retrofit Double Sides

Three comments were received regarding double sides. Comments were from a barge owner, a U.S. based ship owner, and a foreign ship operators'

association. All said that retrofitting double sides was not economically feasible. The Coast Guard agrees.

12. Retrofit Double Bottoms

The retrofit of double bottoms was supported by a municipal department of environmental protection and opposed by two barge companies, a U.S. based ship owner, and a foreign ship operators' association. The opponents said retrofitting double bottoms was not economically feasible. The Coast Guard agrees.

13. Underpressure Systems

The Coast Guard has received several proposals advocating the use of UPS (vacuum) systems to reduce oil outflow in the event of a hull rupture. Fourteen comments addressing this measure were supportive and nine were in opposition. Supporters included two foreign shipowners' associations and proponents of proprietary active systems. Opposition was expressed by an international tanker operator's group, two international oil companies, and two U.S. barge operators.

UPS technology is still in the developmental stage and has no operational history. Its practicality and reliability in the marine environment are unknown. The Coast Guard has reservations about its practical application aboard oceangoing oil tankers. In principle, the UPS works by creating a partial vacuum in the cargo tank ullage space, thereby keeping the internal oil pressure lower than the external seawater pressure.

Theoretically, UPS can reduce oil outflow in the event of grounding and can reduce the relative outflow in the event of certain collisions (when tanks are ruptured only below waterline). However, there are several technical concerns that the Coast Guard believes must be addressed and resolved before UPS can become practical.

The UPS must interact with the IGS required aboard certain vessels (46 CFR 32.53, International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS) Chapter II-2, Regulation 62). The basic premise of UPS is contrary to existing international tanker safety regulations that presently require IGSs with positive tank atmospheres. Any amount of IGS overpressure negates the underpressure effect; therefore, present IGS designs must be modified substantially in order to remain effective whenever the UPS is activated. A National Academy of Sciences study, titled "Tanker Spills: Prevention by Design," noted that the installation of such a system would require modifications to the cargo, vent, and

IGSS that include automation, elaborate sensing, and monitoring devices, as well as additional backup safeguards. The system also would have to conform to current U.S. regulations for vapor recovery systems on certain vessels.

The Coast Guard has not proposed UPS as a requirement because of unproven effectiveness, operational complexity, and the lack of operational history. However, their relatively inexpensive costs may make them appealing as an alternative. Owners and operators of oil tankers desiring to use this alternative could submit a request under § 157.410(c).

However, all of the concerns regarding the UPS would have to be addressed before the Coast Guard could make a determination on the feasibility of operating an UPS on a oil tanker. The Coast Guard invites specific comments regarding the use of UPSs.

14. Rescue Tanks/Emergency Transfer Systems

A number of different proprietary systems have been submitted to the Coast Guard that can be categorized as rescue tanks or emergency transfer systems. Comments received regarding the rescue tanks were all supportive. Concepts proposed generally involved oil transfers from damaged tanks to empty segregated ballast tanks and flexible containment bags. One comment recommended an emergency transfer system in combination with an UPS. Comments were received from proponents of proprietary systems, a foreign shipowners' group, system concept innovators, and environmental groups.

The Coast Guard recognizes that a number of these systems appear to be technologically feasible and, therefore, warrant further consideration. However, these systems have not been demonstrated yet as effective on a scale appropriate to the size of oil tankers addressed by this regulation.

Additionally, because this system is not a structural hull design alternative, the system's degree of effectiveness depends on varying degrees of human interaction. Effectiveness depends upon crew response after an incident and crew management and maintenance of electronic and mechanical equipment.

The Coast Guard has not proposed rescue tanks or emergency transfer systems as a requirement because of its operational complexity and lack of operational history. Owners and operators of oil tankers desiring to use this alternative could submit a request under § 157.410(c). It is the Coast Guard's intention to develop regulations under section 4115(b) of OPA 90

without limiting future development of economically feasible systems that can mitigate further oil outflow after an accident. Specific comments regarding the use of rescue tanks and emergency transfer systems are invited.

15. Other Operational Measures

The Coast Guard recognizes that certain operational, manning, and equipment carriage measures may reduce oil tanker casualties without excessively burdening oil tanker owners or operators. The comments to the ANPRM on these regulations (56 FR 56284) suggested a variety of measures the Coast Guard could take to increase the safety of oil tanker navigation. Under other sections of OPA 90, the Coast Guard is proceeding with a number of rulemakings addressing operational measures to reduce the risk of oil tanker casualties. These other sections apply to all tank vessels, not only those over 5,000 GT subject to the note under 46 U.S.C. 3703a.

Rulemakings under other provisions of OPA 90 that are being developed separately will not be discussed in this NPRM. Additional information is provided in other Federal Register documents for the following projects:

Automatic Pilot (CGD 91-046) (final rule).	58 FR 27628, May 10, 1993.
Discharge Removal Equipment (CGD 90-068).	57 FR 44912, Sept. 29, 1992.
Tug Escorts (CGD 91-202).	58 FR 16391, Mar. 26, 1993.
Vessel Traffic Service (CGD 90-020).	56 FR 36910, Aug. 1, 1991.
Engine Room Manning (CGD 91-203) (final rule).	58 FR 27628, May 10, 1993.
Vessel Communications (CGD 91-046) (final rule).	57 FR 14483, Apr. 21, 1992.
Second Officer on Bridge (CGD 91-222) (final rule).	58 FR 27628, May 10, 1993.

Comments on operational measures constituted the largest group of responses to the ANPRM. General support of these alternatives, in preference to more costly structural measures, was expressed by three U.S. government agencies, an association of U.S. operators, and an international oil company.

16. Advanced Navigation Equipment

Twelve comments suggested that the Coast Guard require that oil tankers carry certain types of advanced navigation equipment, such as a Global Positioning System (GPS) receiver and Electronic Chart Display and Information Systems (ECDIS).

Differential Global Positioning System (DGPS) (a system that enhances accuracy of the GPS signals) also was suggested as equipment that should be required. One comment said that the current standards are adequate. Support was broad-based and included U.S. government agencies, major oil companies, environmental groups, and pilots' associations.

The Coast Guard recognizes the value of GPS, DGPS, and ECDIS and believes that these systems will reduce the number of vessel groundings and oil spills. However, it is premature to require these systems, because none are fully operational. The GPS network is not scheduled to be fully operational until 1995, and DGPS will not be operational in U.S. coastal areas until 1996. The IMO is examining appropriate standards for electronic charts, but the Defense Mapping Agency and the National Ocean and Atmospheric Administration (NOAA) have not yet developed a complete electronic chart portfolio. Once these systems and standards are fully developed, the Coast Guard will consider issuing regulations for these systems.

A few comments suggested that other types of navigational equipment should be required, including a certain type of sonar, collision avoidance radar, and doppler speed logs. One comment suggested requiring a sonar that had an audible alarm to warn bridge personnel of nearby shoals. Presently, 33 CFR part 164 requires certain vessels to have an echo sounding device, automatic radar plotting aids (ARPA), and a device to indicate speed and distance.

None of the recommendations from the comments were incorporated into the proposed rule because other OPA 90 rulemakings and future advanced navigation equipment requirements will address the need for other navigational equipment. The issue of navigation equipment for all oil tankers will be addressed as a part of the Tanker Navigation Safety Study the Coast Guard has undertaken under the requirements of section 4111 of OPA 90. This study includes evaluating the adequacy of navigation equipment and systems.

17. Pilotage and Manning

A number of comments suggested that vessel manning and pilotage policies and laws are not adequate to ensure the safe navigation of vessels. Specific issues included training, licensing, work hours, qualifications, and enforcement of such regulations.

Section 4111 of OPA 90 requires the Coast Guard to determine whether existing laws and regulations regarding

vessel personnel are adequate to ensure safe oil tanker navigation in U.S. waters. In addition to its other rulemakings, the Coast Guard is conducting or sponsoring a number of studies required under section 4111 of OPA 90. These studies encompass areas such as training, simulators, appropriate crew sizes, crew qualifications, the pilotage system, and inspection standards. The Coast Guard will consider the results and recommendations of these studies and may take appropriate action to address any problems identified in the studies.

18. Speed Limits

Some comments addressed the issue of speed limits. All but one stated that a national rule governing the speed of oil tankers would not only be inappropriate but may be dangerous because of the maneuvering characteristics of oil tankers. The Coast Guard agrees that a national speed limit is not appropriate. Local regulations governing speed have been issued for certain areas such as vessel traffic service areas, but the Coast Guard is neither proposing nor considering a rule to limit the speed of oil tankers in all U.S. waters.

19. Other Measures

Two comments recommended limiting cargo loading to center tanks, one comment recommended a recessed bottom, and two others recommended "imaginary" double bottoms—a special water mixture in the bottom of the cargo tanks. A request for approval of these measures could be submitted under § 157.410(c).

One comment recommended the installation of tank level or pressure monitoring devices to detect the loss of oil from a cargo tank. Tank level and pressure monitoring devices are being addressed under a separate rulemaking. The Coast Guard published an ANPRM addressing minimum standards for and the use of tank level or pressure monitoring devices on May 7, 1991 (56 FR 21116).

Many comments endorsed more detailed inspections and maintenance requirements. There was a broad range of proposals for mandated inspections involving the Coast Guard and the International Association of Classification Societies. Specific recommendations included formal inspection of tugs and mandated drydocking intervals for older tankers and barges. The Coast Guard agrees that inspections and maintenance improve oil tanker safety. However, this rulemaking specifically addresses measures to reduce oil outflow after collisions and groundings and will not

include inspection and maintenance measures.

20. Special Notice of Arrival Requirement

The National Transportation Safety Board (NTSB) recommended that the Coast Guard require oil tankers to include their IMO international number when making their advance notice of arrival report required by § 160.207. The Coast Guard agrees.

On August 31, 1988, the cargo tank of the foreign oil tanker FIONA exploded while the vessel was moored in Long Island Sound. The Coast Guard was unable to identify the FIONA before its arrival in the U.S. because the FIONA had previously changed names. If properly identified, the Coast Guard might have determined from its Marine Safety Information System (MSIS) data that the FIONA was a vessel requiring special attention.

In 1987, IMO established the Ship Identification Number Scheme, which uses the Lloyd's Register of Shipping Identification Numbers. Lloyd's assigns an identification number to an oil tanker when it enters service. This number remains with that particular vessel forever. By using such a system, the Coast Guard would be able to better identify and target oil tankers for boarding. Section 160.207 will be amended to require the owners or operators of all foreign flag vessels constructed or adapted to carry, or that carry, oil in bulk as cargo or cargo residue to include their IMO international number when reporting the arrival of their vessel. This proposed regulation will also require new tank vessels which are not subject to section 4115(b) of OPA 90, to report their international number under the authority of 33 U.S.C. 1231.

Regulatory Evaluation

This proposal is major under Executive Order 12291 because the cost to the economy would be over \$100 million annually for at least 5 of the 17 years the regulation is in effect. This proposed regulation is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) because of substantial public interest in the proposed rule. A draft RIA is available in the docket for inspection or copying where indicated under "ADDRESSES."

The Coast Guard intends to conduct a comprehensive, programmatic RIA for all regulations issued under titles IV and V of OPA 90, once they are all completed. This comprehensive RIA will evaluate the interaction of rules relative to each other and assess their

impacts in toto. However, since the rules will be promulgated individually over several years, each rule, as it is developed, undergoes an interim evaluation against a baseline that assumes other OPA 90 requirements are not implemented.

The proposed structural and operational measures mandated by this rule would apply to certain tank vessels greater than 5,000 GT operating in U.S. waters. These vessels would be required to be fitted with protectively located non-oil spaces (PL/Spaces) or have other structural or operational arrangements, such as HBL, if those alternatives ensure equal protection against oil pollution in the event of collision or grounding as would be offered by PL/Spaces. Vessels would also be required to carry lightering equipment. In addition, each foreign flag vessel would be required to report its IMO shipping number to the Coast Guard Captain of the Port when reporting its advance notice of arrival. The requirements would take effect 3 years from the publication date of the final rule.

The costs and benefits of the alternatives are based on "economically feasible conversions." This approach evaluates the opportunity costs of retiring a vessel and the costs to retrofit a vessel with only a few years of service remaining. The approach recognizes that if the cost of retrofitting a vessel is greater than the cost of retiring it, the vessel will be retired.

Costs

The present value of the cost of this regulation for the period 1998 through 2015, when the double hull rule is phased-in, is estimated at \$579 million. When the money is allocated on the basis of project type, the bulk of these costs, \$573 million, are associated directly with structural modifications to build PL/Spaces. The remaining \$6 million covers additional required emergency lightering equipment. When the costs are allocated on the basis of vessel type, costs for tankships are estimated at \$561 million and costs for U.S. flag barges are estimate at \$18 million. Jones Act vessels account for \$125 million of total costs.

The principal costs of PL/Spaces and alternatives arise from capital costs, opportunity costs while the vessel is out of service for modifications, increases in operating costs resulting from required modifications, and reduced revenue attributable to loss of cargo carrying capacity and resulting decreases in operating efficiencies.

The projected annual cost of implementing this regulation peaks at \$164 million in 1977 and declines to 0

by the year 2015. The decline is attributable to retirement of older ships resulting from the phased-in implementation of double hull requirements.

Summary of Benefits

The principal benefit from the proposed regulation for existing vessels is the reduction of oil spilled in the marine environment with a corresponding reduction in natural resource damages and cleanup costs. Benefits are expressed as barrels of oil not spilled, but are quantified in monetary terms because of the complexities of valuing a non-occurrence. These benefits are assumed to begin in 1997 and continue until the vessels are retired in accordance with the OPA 90 double hull implementation schedule (See part 157, appendix G). In determining the probable benefits of this proposed regulation, the Coast Guard did not consider the potential interaction between the existing vessel requirements and other regulations under OPA 90 rulemakings.

The Coast Guard estimated that the requirements for PL/Spaces would reduce oil outflows by 30 percent from vessels built according to pre-MARPOL specifications which are involved in collisions. For groundings, this oil spill reduction was estimated at 15 percent. Spills due to structural failure were also estimated to be reduced by 15 percent.

The present value of benefits due to spill prevention would be 20,644 barrels of oil not spilled. This quantity was calculated using a 10 percent discount rate over the 17 year life of this regulation. Unit costs of benefits would total \$28,000 per barrel of oil not spilled. After the development of the

RIA but prior to the publication of this NPRM, the Office of Management and Budget (OMB) issued new guidance on preparation of benefit-cost analyses (Circular No A-94, 57 FR 53519, November 10, 1992). The Coast Guard will use that guidance in preparing the RIA to accompany the final rule.

The principal benefit of carrying lightering equipment on board would be to facilitate rapid oil transfer from a stricken tank vessel to a temporary storage vessel. This ability to rapidly transfer oil will minimize the risk of further spillage by removing cargo, as when the EXXON VALDEZ lightered to the EXXON BATON ROUGE. Although the probable benefits of lightering equipment on board tankers cannot be calculated, substantial benefits could accrue in the small number of cases these connectors may be used.

Phase-In Alternates

The principal alternative considered was to require existing vessels over 5,000 GT to meet the phase-in schedule contained in Regulation 13G to Annex I of MARPOL 73/78, effective July 6, 1995. This regulation requires conversion when an existing oil tanker becomes 25 years old. The present value of the cost of this proposal from 1995 through 2015 (the year in which the double hull rule is fully phased-in) is estimated to be \$141 million. The present value of the benefits of this provision would be 3,605 barrels of oil not spilled.

The principal choice of timeframes was between a three year phase-in of proposed requirements for existing vessels, and the Regulation 13G phase-in. The three year phase-in would cost the industry an estimated \$579 million

net present value to comply, but the domestic fleet would bear only 15 percent of the total cost, an estimated \$86 million. Under the Regulation 13G phase-in option, the domestic fleet would carry 100 percent of the total cost, or an estimated \$141 million.

Further, under the three year phase-in option, an estimated 20,644 barrels of oil would not be spilled with the proposed measures, providing a cost-to-benefit ratio of \$28,000 per barrel of oil not spilled. Under the 13G phase-in option, only an estimated 3,605 barrels of oil would not be spilled with the proposed measures, resulting in a cost-to-benefit ratio of \$39,000 per barrel of oil not spilled.

The Coast Guard is cognizant of Congress's desire to improve the condition of the existing vessel fleet as soon as possible. While the Regulation 13G option would start compliance sooner on vessels already over 25 years old, it would allow younger vessels to delay compliance for years, and the international fleet would never comply. The three-year phase-in option would require prompt compliance by all tank vessels regardless of age.

In sum, the advantages of the three year phase-in option, as compared to the Regulation 13G phase-in option, would be: (1) Less cost to the domestic fleet; (2) greater environmental benefit; (3) improved cost/benefit ratio; and (4) consistency with Congressional intent. The singular significant—but not overriding—disadvantage of the three-year phase-in option would be the greater overall cost to industry. Comparison data are summarized in the following table.

SECTION 4115(b) EXISTING TANK VESSEL HULL REQUIREMENTS COMPARISON OF PROTECTIVELY LOCATED SPACES REQUIREMENT UNDER 3-YEAR PHASE-IN V. MARPOL 13-G REQUIREMENTS¹

Item ²	Economically feasible conversions		
	3-year phase-in	13-G option	Percent difference 3-year/13-G
Costs (\$ million NPV):³			
Barges	18	48	-63
Sml tankers	251	27	830
Sml vels	269	75	259
Lge vels	310	66	370
Total	579	141	311
Jones Act	86	141	-39
Benefits (barrels not spilled, NPV):³			
Barges	10,622	3,074	246
Sml tankers	5,795	454	1176
Sml vels	16,417	3,528	365
Lge vels	4,227	77	5390

SECTION 4115(b) EXISTING TANK VESSEL HULL REQUIREMENTS COMPARISON OF PROTECTIVELY LOCATED SPACES REQUIREMENT UNDER 3-YEAR PHASE-IN V. MARPOL 13-G REQUIREMENTS 1—Continued

Item ²	Economically feasible conversions		
	3-year phase-in	13-G option	Percent difference 3-year/13-G
Total	20,644	3,605	473
Jones Act	12,533	3,605	248
Cost/benefit (\$ per barrels not spilled, NPV): ³			
Barges	2,000	16,000	-88
SmI tnks	43,000	59,000	-27
SmI vsIs	16,000	21,000	-24
Lge vsIs	73,000	857,000	-91
Aggregate	28,000	39,000	-28
Jones Act	7,000	39,000	-82

¹ Effective date of final rule: 31 DEC 1994; MARPOL 13G requirement effective 6 JUL 1995; 3 yr. phase-in period results in compliance of 31 DEC 1997.

² Barges (U.S. flag) and small tanker categories add to small vessels. Small vessel and large vessel categories add to total. Jones Act vessels are included within both small and large vessel categories.

³ Discounted to 1992 dollars at 10 percent.

A second alternative considered was to require that vessels be loaded only to the point of hydrostatic balance. Hydrostatic balance results when the cargo pressure and vapor pressure exerted on the bottom shell plating which forms a single boundary between the cargo and the sea do not exceed the external hydrostatic water pressure. "Economically feasible conversion" analysis indicated that 155 vessels would need to be retired under this alternative. The present value of the cost of using HBL, including the cost of retiring 155 vessels, is estimated to be \$3.0 billion. The present value of this alternative's benefit would be 163,880 barrels of oil not spilled. Compared with PL/Spaces, this alternative would provide substantially greater benefits in terms of barrels not spilled, but at substantially greater costs to industry. The Coast Guard will accept this method as a suitable means of compliance with this regulation.

A third alternative considered was to require PL/Spaces plus HBL together. "Economically feasible conversion" analysis indicated that 231 vessels would be retired under this alternative. The present value of the cost of PL/Spaces plus HBL together would total \$4.2 billion and the present value of expected benefits would be 145,159 barrels of oil not spilled.

This alternative would be 40 percent more costly than HBL alone and compared with HBL alone, would yield an 11 percent reduction in benefits, in large part because none of the existing fleet already comply and, in contrast with HBL alone, 76 additional tank vessels would likely be retired rather than converted.

However, the combined use of PL/Spaces and HBL would yield substantial benefits in barrels of oil not spilled, the Coast Guard will accept this method as a suitable means of compliance with this regulation.

A fourth alternative considered was to require double bottoms. The present value of the cost of double bottoms would total \$1.2 billion, which would be expected to yield benefits at a present value totaling 38,163 barrels of oil not spilled. Although the double bottom alternative would be far less costly than either HBL alone or HBL plus PL/Spaces, the double bottom alternative would be more than twice as expensive as PL/Spaces alone. However, the present value of benefits exceed those for PL/Spaces, so the Coast Guard will accept double bottoms as a suitable method of compliance with this rulemaking.

A fifth alternative considered was to require double sides. The present value of the cost of double sides would be \$1.7 billion. The RIA prepared for the Coast Guard indicated that this costly alternative would yield no clear benefits. However, the Coast Guard recognizes that double sides may prevent oil discharges during certain casualties and therefore, the Coast Guard will accept double sides as a suitable method of compliance with this rulemaking.

A sixth alternative considered was the use of emergency rescue systems (ERS). An analysis of the system based upon the proprietary design of the system's principal proponents indicated that the present value of the system's cost would be \$1.2 billion, resulting in benefits of 148,334 barrels of oil not spilled, net present value.

According to the manufacturer, the ERS is located inside the tank vessel. In the event of a grounding or collision, the ERS is designed to quickly contain the oil while the oil is still in the tank. This is accomplished using high flow rate pumps attached to flexible containment bags that expand and conform to the internal structure of the tank. The system's effectiveness is inversely proportional to the initial oil outflow rate from the breached hull and proportional to the design flow rate of the ERS. This alternative has not been proven and the costs and benefits shown above are based on manufacturer's representations. The Coast Guard will evaluate all proposals using ERS on an individual vessel basis.

A seventh alternative considered was the use of ERS and HBL together. The present value of the cost for such an alternative would be \$2.1 billion. The present value of benefits for ERS plus HBL would be 203,719 barrels of oil not spilled. Based on "economically feasible conversion" analysis partially dependent on manufacturer's representations, the benefits of the ERS plus HBL system total nearly one-third greater than the benefits for HBL alone. However, as indicated in the discussion of the sixth alternative, the ERS component of this combination has not been proven effective, and the Coast Guard will evaluate this proposed combination of systems on an individual vessel basis.

An eighth alternative considered was the use of UPS. The present value of the cost of this option would be \$367 million. The present value of the benefits are estimated to be 245,962 barrels of oil not spilled. UPS is an active inert gas control system that

controls the underpressure in the tank ullage space to a valve that would prevent oil spillage above the line of rupture. The system equalizes the pressure forces inside and outside ruptured tanks using exhaust hoses tapping into the IGS. This alternative has not been proven. Costs and benefits as shown are based on manufacturer's representations. The Coast Guard will evaluate all proposals using UPS on an individual vessel basis.

Finally, the Coast Guard considered an alternative to require the use of emergency rapid transfer systems (ERTS). According to an analysis of data provided by this system's main proponents concerning the propriety design, the present value of the cost of ERTS would be \$2.9 billion. The present value of benefits would be 242,606 barrels of oil not spilled. ERTS consists of pipes with blank flanges that connect cargo tanks to ballast tanks. When damage to a tank occurs and the cargo level drops, sensors automatically cause the flange bolts to be ruptured. Cargo flows rapidly from the damaged tank into the empty ballast tank by force of gravity. This alternative has not been proven and the above costs and benefits are based on manufacturer's representations. The Coast Guard will evaluate all proposals using ERTS on an individual vessel basis.

The Coast Guard used capital cost and benefit estimates provided by proponents of the ERS, UPS, and ERTS to evaluate those systems. The accuracy of those data cannot be verified.

The Coast Guard proposes PL/Spaces for several reasons. This option will reduce the amount of oil spilled into the marine environment, requires no human interface, uses simple principles, is relatively inexpensive, and has proven to be effective.

The RIA showed that some of the alternatives are associated with more benefits or lower costs than PL/Spaces. However, the Coast Guard decided not to require installation of some of these measures on oil tankers because the effectiveness of such measures has not been proven. As noted earlier in the NPRM, the Coast Guard would allow other measures in lieu of PL/Spaces to be installed on existing vessels after consideration on a vessel-by-vessel basis. The Coast Guard found that the ideas of parties who commented on the ANPRM have merit and that those ideas should not be discarded merely because the effectiveness of measures proposed in their comments has not yet been proven.

The Coast Guard does not wish to inhibit progress and expects that owners and operators of oil tankers may pursue

measures and systems costing less than PL/Spaces if they are convinced of their reliability and safety. As a result, the total cost to implement the measures required by this rule may be less than the \$579 million estimated herein.

The Coast Guard also does not wish to limit innovation in the methods utilized to achieve the goal of increased environmental protection at the lowest practical cost. To that end, the Coast Guard specifically seeks recommendations and comments on the possibility of providing economic incentives with regard to this proposed rulemaking.

The purpose of an economic incentives program for this rulemaking must be clearly focused. The Coast Guard envisions that such a program would need to be focused on either improving potential total benefits, for example, in terms of estimated barrels of oil not spilled, or reducing potential costs. It is not practical to promote faster conversion because urgency is already a prime consideration. The proposal calls for implementation within three years of publication of the final rule. Earlier implementation is impractical because the rule is designed to permit vessel owners to accomplish measures during normal drydocking. Postponement is impractical because some vessels would avoid conversion, benefits would be substantially reduced, and Congressional intent would be thwarted.

Economic incentives have been used successfully in air pollution abatement and aircraft noise pollution reduction programs. It may be possible to develop an innovative program as part of this rulemaking which would achieve the same level of environmental protection while significantly lowering the overall cost to industry. The EPA air pollution abatement program allows companies which do not expend the full limit of their air pollution permit to sell the remainder of their permit to another company. The FAA aircraft noise pollution reduction program allows an airline which improves one airplane earlier than required to delay the improvement of another airplane. While neither of these concepts may be directly transferable to this particular rulemaking, they do illustrate the types of innovative programs which are sought here. In the case of this rulemaking, there are large differences in the cost-effectiveness of alternative actions, both within and across the vessel categories. On its face, this fact suggests that a carefully designed economic incentive mechanism has the potential for large cost savings and/or improved environmental protection.

Table 2 is derived from research presented in the Existing Vessel Hull RIA (July 1993) and shows prospective costs and benefits of the proposed rulemaking by type of vessel and type of measure in three displays—descending in order of benefits, ascending order to costs, and ascending order of cost-per-benefit. The table is based on economically feasible conversions to proven technologies, rather than unproven technologies for which data are based on the manufacturer's representations. With the exception of the zero cost-and-benefit items, each display highlights toward the top of the list the most favorable measures upon which the display is ordered. By reading down the table and including a selection from each vessel category—barges, small tankers, and large vessels—the "best" selections for maximizing benefits, minimizing costs, and minimizing costs per benefit can be identified. (Jones Act vessels are shown for information only and do not comprise a single, additive category.)

Table 2-a shows that by using proven measures (rather than unproven technologies for which data are based on manufacturer's representations), a combination of HBL for small tankers, PL/S+HBL for large vessels, and PL/S for barges yields the maximum potential benefit for the measures tested.

- Combined benefits for economical fleet conversion to maximize benefits would be an estimated: 307,346 barrels of oil not spilled.
- However, the cost to achieve this maximum level of benefit would be: \$4.517 billion.
- Cost-per-benefit would average an estimated: \$14,700 per barrel not spilled.

Table 2-b shows that among proven measures, PL/Spaces for barges, small tankers, and large vessels minimizes cost. (PL/Spaces is the basic measure recommended in this proposed rulemaking, although the Coast Guard will permit any proven approach and will consider proposals for unproven technology on an individual basis.) Under PL/Spaces—

- Combined benefits for economical fleet conversion to minimize costs would be an estimated: 20,684 barrels of oil not spilled.
- However, the cost of achieving this level of benefit would be only: \$579 million.
- Cost-per-benefit would average an estimated: \$27,990 per barrel not spilled.

Table 2-c shows that the lowest cost-per-benefit would be achieved by using

PL/Spaces for barges, HBL for small tankers, and SBT for large vessels.

- Combined benefits for economical fleet conversion to minimize costs would be an estimated: 260,493 barrels of oil not spilled.

- However, the cost of this benefit would nearly quadruple to: \$2.203 billion.

- But cost-per-benefit would average an estimated: \$8,457 per barrel not spilled, almost half the level of the maximum potential environmental benefits, and less than one-third the level which minimizes costs.

Table 3 is identical to Table 2, except that the models are highlighted to show choices that would result, were speculative approaches freely permitted in an economic incentive scheme. Speculative approaches are those which are unproven and for which data were provided by the measures' promoters. These are UPS, ERS, and ERTS. Table 3-a shows that the environmental view would remain the same. However, both the industry view and the economic view would shift choices to the UPS system, which could be applied to all vessels.

- Were UPS data in fact correct and the system proven, reliable and effective, combined benefits for economical fleet conversion would be an estimated: 245,962 barrels of oil not spilled.

- However, the cost of this benefit would be the lowest of all alternatives, only: \$367 million.

- And the cost-per-benefit would average an estimated: \$1,492 per barrel not spilled.

As written, this proposed rulemaking recommends the internationally accepted PL/Spaces approach, but will permit alternative options. The Coast Guard recognizes that in the absence of a command-and-control regulation that mandates either benefit maximization or cost-per-benefit minimization, and without a well-designed economic incentive system, vessel owners will gravitate to the PL/Spaces option. It is the least expensive measure using proven technology, and it conforms with the international hardware requirements of MARPOL Regulation 13C.

Economic incentives would need to be designed to cause measures which would result in either greater benefits for some vessel groups, or a lower cost-per-benefit for some vessel groups, than PL/Spaces, to be more financially attractive than PL/Spaces. To this end, the Coast Guard solicits detailed, clear comments on the specific nature of such incentives.

Coast Guard also solicits comments on how the public views the additional overhead necessary to administer such a program and requests views concerning funding the administration of such an economic incentives program. The Federal Aviation Administration reports that a desktop computer, a specialist to track the program, plus some setup costs and supervisory time are satisfactory to administer the carry-forward compliance credit provisions of their noise abatement rules. In contrast to a worldwide fleet of about 5,000 airplanes reported by FAA as being tracked under their rule, the Coast Guard would need to track credits for about 800 vessels. However, the program might become considerably more complex if the credits were marketable, as companies would likely be required to report credit transfers or sales to the Coast Guard.

In addition, the Coast Guard requests comments on an approach in which Coast Guard would assign credit points for certain measures and combinations of measures for improving existing vessel hulls. As-yet-unconverted vessels would receive no points. Vessels that converted to the baseline lowest-cost proven measure, PL/Spaces, or already have PL/Spaces, would receive a Coast Guard Certificate of Measures and Points for, say, one point. Vessels that converted to more beneficial measures would receive Coast Guard Certificates of Measures and Points that certified additional points.

The point system would serve as an indicator of environmental risk, in which the most points indicated the most risk reduction. Vessel owners or operators could then present the Coast Guard Certificate of Measures and Points to insurers. In turn, insurers would make market-based judgments over the life of the vessel, based in large part upon the level of points certified by

the Coast Guard. Insurers would rule on the actual value of the measures, and express those values in insurance premium levels.

One market incentive alternative would be to allow the unrestricted exchange and use of credits among vessel owners. Owners of vessels for which highly protective measures were relatively inexpensive could generate credits by implementing such measures. Those credits would then be available for vessels whose compliance costs would otherwise be prohibitively expensive.

However, there are some practical problems with respect to evaluating programs such as PL/Space credits. Principally, available economic models evaluate costs for economic or total fleet conversions to each measure. But they do not reveal total per-vessel costs or the interactive effects of fleet segments converting to a range of measures. Because of the extremely high cost of having the models reworked and limited available resources, the Coast Guard must estimate costs and benefits of measures and combinations based on data available in its RIA.

There are also policy problems with regard to such a program. These problems include (1) The basic differences between regulating fixed industrial facilities and mobile vessels which spend a significant amount of their time out of U.S. jurisdiction; (2) the inconsistency which this would create with the international regulatory system and the fact that any "credits" acquired under a market incentives system could not be used in foreign waters; and (3) the fact that while air pollution and noise pollution are authorized at certain levels, there is no authorized level of oil pollution.

For several reasons, the Coast Guard does not believe it can or should allow a market incentive mechanism that would permit some carriers an exemption from or reduction of the basic "floor" requirement for improvement measures set forth in this proposed rulemaking. The Coast Guard seeks comment on these and other issues, with particular emphasis on whether, and how, these problems might be overcome.

TABLE 2.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, BASED ON PROVEN APPROACHES

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	\$million	\$1,000/bbls ns
Table 2-a.—Environmental (Benefit Maximization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by benefits			
All vsls: UPS	245,962	367	1
Not bgs: ERTS	242,606	2,860	12
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERS	148,334	1,166	8
Sml Tnkr: HBL	115,270	894	8
Sml tnkr: HBL - PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: HBL - PM	96,488	305	3
Lge vsi: PLS+HBL	76,912	2,927	38
Sml tnkr: PLS+HBL	68,247	1,310	19
Sml tnkr: SBT	65,795	544	8
Lge vsi: HBL	47,858	2,122	44
Lge vsi: SBT	30,059	613	20
Lge vsi: DB	27,346	722	26
Jones: SBT	22,175	115	5
Lge vsi: HBL - PM	14,531	1,028	71
Jones: PLS	12,533	86	7
Sml tnkr: DB	10,817	452	42
Barges: PLS	10,662	18	2
Jones: PLS+HBL	10,225	626	61
Sml tnkr: PLS	5,795	251	43
Lge vsi: PLS	4,227	310	73
Jones: DB	3,284	265	81
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERTS	0	0	0
Barges: DB	0	0	0
Barges: HBL - PM	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Model Results	307,346	4,517	14.697

Table 2-b.—Vessel Owner/Operator (Cost Minimization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by costs

Barges: ERS+HBL	0	0	0
Barges: HBL - PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: PLS+HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: PLS	10,662	18	2
Jones: PLS	12,533	86	7
Jones: SBT	22,175	115	5
Sml tnkr: PLS	5,795	251	43
Jones: DB	3,284	265	81
Jones: HBL - PM	96,488	305	3
Lge vsi: PLS	4,227	310	73
All vsls: UPS	245,962	367	1
Sml tnkr: DB	10,817	452	42
Sml tnkr: SBT	65,795	544	8
Lge vsi: SBT	30,059	613	20
Jones: PL/S+HBL	10,225	626	61
Jones: HBL	103,879	648	6
Sml tnkr: HBL - PM	104,502	678	6
Lge vsi: DB	27,346	722	26
Sml Tnkr: HBL	115,270	894	8
Lge vsi: HBL - PM	14,531	1,028	71
Not bgs: ERS	148,334	1,166	8
Sml tnkr: PL/S+HBL	68,247	1,310	19
Not bgs: ERS+HBL	203,719	2,094	10
Lge vsi: HBL	47,858	2,122	44

TABLE 2.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, BASED ON PROVEN APPROACHES—Continued

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	\$million	\$1,000/ bbls ns
Not bgs: ERTS	242,606	2,860	12
Lge vsi: PLS+HBL	76,912	2,927	38
Model Results	20,684	579	27.993

Table 2-c.—Economic (Cost Per Benefit Unit) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by cost-per-benefit ratio

Barges: HBL—PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
All vsis: UPS	245,962	367	1
Barges: PLS	10,662	18	2
Jones: HBL—PM	96,488	305	3
Jones: SBT	22,175	115	5
Sml tnkr: HBL—PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: PLS	12,533	86	7
Not bgs: ERS	148,334	1,166	8
Sml Tnkr: HBL	115,270	894	8
Sml tnkr: SBT	65,795	544	8
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERTS	242,606	2,860	12
Sml tnkr: PLS+HBL	68,247	1,310	19
Lge vsi: SBT	30,059	613	20
Lge vsi: DB	27,346	722	26
Lge vsi: PLS+HBL	76,912	2,927	38
Sml tnkr: DB	10,817	452	42
Sml tnkr: PLS	5,795	251	43
Lge vsi: HBL	47,858	2,122	44
Jones: PLS+HBL	10,225	626	61
Lge vsi: HBL—PM	14,531	1,028	71
Lge vsi: PLS	4,227	310	73
Jones: DB	3,284	265	81
Model Results	260,493	2,203	8.457

Measures abbreviations:

PLS: Protectively located non-cargo tanks

SBT: Segregated ballast tanks

DB: Double bottoms

ERTS: Emergency Rapid Transfer System

ERS: Emergency Rescue System

Vessel abbreviations:

Vsi: Vessels

Bgs: Barges

Sml: Small

Tnkr: Tanker

Lge: Large

Jones: Jones Act vessels

Other abbreviations:

bbls ns: barrels of oil not spilled

* . . . *: Highlights measures that satisfy the model

UPS: Under Pressure System

HBL: Hydrostatic Balanced Loading

PM: Pre-MARPOL

TABLE 3.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, PERMITTING SPECULATIVE APPROACHES

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	\$million	\$1,000/ bbls ns
Table 3-a.—Environmental (Benefit Maximization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by benefits			
All vsls: UPS	245,962	367	1
Not bgs: ERTS	242,606	2,860	12
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERS	148,334	1,166	8
Sml Tnkr: HBL	115,270	894	8
Sml Tnkr: HBL-PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: HBL-PM	96,488	305	3
Lge vsi: PLS+HBL*	76,912	2,927	38
Sml tnkr: PLS+HBL	68,247	1,310	19
Sml tnkr: SBT	65,795	544	8
Lge vsi: HBL	47,858	2,122	44
Lge vsi: SBT	30,059	613	20
Lge vsi: DB	27,346	722	26
Jones: SBT	22,175	115	5
Lge vsi: HBL-PM	14,531	1,028	71
Jones: PLS	12,533	86	7
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Jones: PLS+HBL	10,225	626	61
Sml tnkr: PLS	5,795	251	43
Lge vsi: PLS	4,227	310	73
Jones: DB	3,284	265	81
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERTS	0	0	0
Barges: DB	0	0	0
Barges: HBL-PM	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Model Results	307,346	4,517	14.697
Table 3-b.—Vessel Owner/Operator (Cost Minimization) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by costs			
Barges: ERS+HBL	0	0	0
Barges: HBL - PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: PLS+HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
Barges: HBL	0	0	0
Barges: PLS	10,662	18	2
Jones: PLS	12,533	86	7
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Sml tnkr: PLS	5,795	251	43
Jones: DB	3,284	265	81
Jones: HBL - PM	96,488	305	3
Lge vsi: PLS	4,227	310	73
All vsls: UPS	245,962	367	1
Sml tnkr: DB	10,817	452	42
Sml tnkr: SBT	65,795	544	8
Lge vsi: SBT	30,059	613	20
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Not bgs: ERS+HBL	203,719	2,094	10
Lge vsi: HBL	47,858	2,122	44

TABLE 3.—EXISTING VESSEL HULL MEASURES: SELECTED MODELS TO MAXIMIZE BENEFITS, COSTS, AND COST-PER-BENEFIT RATIO, PERMITTING SPECULATIVE APPROACHES—Continued

Vessel type and measure	Benefit	Cost	Cost per benefit
	Bbls ns	\$million	\$1,000/ bbls ns
Not bgs: ERTS	242,606	2,860	12
Lge vs: PL/S+HBL	76,912	2,927	38
Model Results	245,962	367	1.492

Table 3-c.—Economic (Cost Per Benefit Unit) Model: Existing vessel hull costs & benefits shown by vessel type and measures, ordered by cost-per-benefit ratio			
Barges: HBL - PM	0	0	0
Barges: DB	0	0	0
Barges: ERTS	0	0	0
Barges: ERS+HBL	0	0	0
Barges: PLS+HBL	0	0	0
Barges: HBL	0	0	0
Barges: SBT	0	0	0
Barges: ERS	0	0	0
All vs: UPS	245,962	367	1
Barges: PLS	10,662	18	2
Jones: HBL - PM	96,488	305	3
Jones: SBT	22,175	115	5
Sml tnkr: HBL - PM	104,502	678	6
Jones: HBL	103,879	648	6
Jones: PLS	12,533	86	7
Not bgs: ERS	148,334	1,166	8
Sml tnkr: HBL	115,270	894	8
Sml tnkr: SBT	65,795	544	8
Not bgs: ERS+HBL	203,719	2,094	10
Not bgs: ERTS	242,606	2,860	12
Sml tnkr: PLS+HBL	68,247	1,310	19
Lge vs: SBT	30,059	613	20
Lge vs: DB	27,346	722	26
Lge vs: PLS+HBL	76,912	2,927	38
Sml tnkr: DB	10,817	452	42
Sml tnkr: PLS	5,795	251	43
Lge vs: HBL	47,858	2,122	44
Jones: PLS+HBL	10,225	626	61
Lge vs: HBL - PM	14,531	1,028	71
Lge vs: PLS	4,227	310	73
Jones: DB	3,284	265	81
Model Results	245,962	367	1,492

Measures abbreviations:

PLS: Protectively located non-cargo tanks

SBT: Segregated ballast tanks

DB: Double bottoms

ERTS: Emergency Rapid Transfer System

ERS: Emergency Rescue System

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Bgs: Barges

Sml: Small

Tnkr: Tanker

Lge: Large

Jones: Jones Act vessels

Other abbreviations:

bbls ns: barrels of oil not spilled

...: Highlights measures that satisfy the model

UPS: Under pressure System

HBL: Hydrostatic Balanced Loading

PM: Pre-MARPOL

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small

entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard has evaluated the impact of this rule on small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Using the Small Business Administration's (SBA) definition of "small entities," there are only 11 U.S.

companies operating foreign flag tank vessels over 5,000 GT that could potentially qualify as small businesses. There are 363 foreign companies involved in the international shipping of oil to the U.S. market that could potentially qualify as small businesses. If this regulation were unduly burdensome to these companies, they would have the ability to remove their vessels from U.S. trade and still operate in other international trade.

Compared with the international tanker industry, the U.S. coastal tanker and barge industries are relatively small. The coastal tanker segment consists of 28 operators with 147 tankers; and 52 barge companies operating 191 barges. Of these, 14 companies operating tank ships or tank barges in the U.S. coastal trade are small entities.

Some U.S. companies operate both ships and barges. Among barge owners, three companies control almost 40 percent of coastal barges. However, 24 companies have only one barge. Compared with the barge industry, the tank vessel industry is less concentrated. The two largest companies control less than 20 percent of the market and three companies operate only one tanker each.

The Coast Guard supports PL/Spaces as the alternative of choice to meet the requirements of this rulemaking. Among the proven technologies, PL/Spaces is the least costly alternative on a per-vessel basis. For the foreign flag fleet, projected conversion costs range from an average of \$40,000 per vessel for the smallest vessels covered by this rulemaking to an average \$200,000 for the largest vessels. For U.S. flag vessels, projected conversion costs range from an average of \$50,000 per vessel for the smallest vessels covered by this rulemaking to an average \$220,000 for the largest vessels and \$380,000 for barges of 5,000 GT and over. In the majority of cases, these costs are not out of line with the firm's capital investment. However, the Coast Guard has proposed to exclude from this rulemaking the U.S. barge and tank vessel fleet under 5,000 GT.

In addition, the Coast Guard has integrated measures into the rule to provide flexibility and accommodation to small entities affected by this rulemaking. Firms affected by the rule are not required to choose the Coast Guard's favored method of compliance, but may, subject to Coast Guard consideration and approval, either choose among the alternatives presented or propose their own alternatives. Small firms could explore approaches that would further reduce costs.

And, the Coast Guard has proposed a three-year phase-in of the rule from the date that the final rule is published. The Coast Guard estimates that the rule would become effective in early 1998. The phase-in period would permit affected entities to schedule conversions during normal drydocking periods, without the lost profits from removing their vessels from trade at an inconvenient time. This phase-in would also grant significant periods of time in which small entities could explore available alternatives, line up capital to perform conversions, and pre-arrange contracts with shipyards so as not to be shut out by large operators in a rush for shipyard space, were there no phase-in period. Domestic shipyards are in an excess capacity position, and bargaining power is expected to weigh in favor of the small operators with the foresight to plan ahead and take strategic advantage of the grace period permitted by the phase-in.

While this rule may result in the early retirement of some U.S. flag vessels from the domestic oil transportation business, the Coast Guard believes that this rule will not result in a significant impact on a substantial number of small entities, for several reasons: The exemption of tank vessels of less than 5,000 GT from this rulemaking, the flexibility of choosing among the options presented or to propose their other options, and the extension of the phase in period. However, if you are a small entity owner and believe that you will be significantly impacted by this rule, the Coast Guard requests that you send specific comments on the issue.

Collection of Information

Under the Paperwork Reduction Act of (44 U.S.C. 3501, *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains new collection of information requirements in section § 157.415. The following particulars apply:

DOT No: 2115.

OMB Control No. XXXX.

Administration: U.S. Coast Guard.

Title: Structural and Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls.

Need for Information: OPA 90 requires certain existing oil tankers without double hulls to comply with

measures that provide as substantial protection to the environment as is economically and technologically feasible. The proposed rule specifically requires that existing single hull tank vessels over 5,000 GT that carry oil be fitted with PL/Spaces, or use measures equivalent to PL/Spaces that meet Coast Guard approval. The purpose of this rule is to reduce oil outflow from single hull vessels.

Plans, calculations, specifications, and operating manuals for an oil outflow protection system must be submitted to the Commandant (G-MVT), U.S. Coast Guard, Washington, DC 20593-0001 for approval prior to installation.

The Coast Guard's Marine Safety Program uses this information to ensure compliance with the proposed regulations for oil outflow prevention measures. It is a one-time submission of information. If no records were submitted, there would be no way of knowing if vessels are in proper compliance with the regulation. Without this information, each vessel would be subject to detailed and lengthy annual inspections to verify compliance.

Proposed Use of Information: The Coast Guard intends to use this collection of information to ensure regulatory compliance with required oil outflow prevention measures. Measures include: protectively located spaces and hydrostatic balance or an approved equivalent.

Frequency of Response: One time.

Burden Estimate: 592,956 hours.

Respondents: 234.

Average Burden Per Respondent: 2,534 hours/respondent.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard as indicated in the "ADDRESSES" section of the preamble.

In addition, this NPRM contains a provision that would require the master, owner, or agent of each foreign flag vessel constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue to include the oil tanker's international number in a report required under 33 CFR 160.207, "Notice of arrival." This required report is an approved collection of information (OMB control number 2115-0557) and expires July 19, 1993. The proposed addition is extremely minor and the information is readily available. Under OMB regulations (5 CFR 1320.14), the Coast Guard will include this new

requirement in its next request for renewed clearance.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This NPRM proposes requirements for the installation and use of structural and operational measures on single hull tank vessels over 5,000 GT. The authority to regulate tank vessel equipment is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute.

Because tank vessels move between U.S. ports in the national marketplace and between U.S. and foreign ports in the international marketplace, standards for certain single hull tank vessels and their use are a matter for which regulations should be of national scope to avoid unreasonably burdensome variations. The Coast Guard intends these regulations to preempt State action addressing the same subject matter.

Environment

The Coast Guard has considered the environmental impact of this proposed rulemaking under COMDTINST M16475.1B. A draft Environmental Assessment (EA) is available in the docket for copying and inspection as indicated in the "ADDRESSES" section of this preamble. The draft EA discusses and compares the proposed action and alternatives, subsequent expected environmental impacts, and overall need for action.

By the year 2015, all vessels over 5,000 DWT operating in U.S. waters will be equipped with double hulls. In the interim, the Coast Guard has been given wide latitude under OPA 90 section 4115(b) to set structural and operational standards for single hull vessels for the purpose of reducing the amount of oil spilled into the marine environment. The Coast Guard has determined that compliance with either MARPOL structural specifications providing for PL/Spaces or an equivalent measure of protection will reduce the amount of oil spilled. Vessel owners or operators may instead use other measures, such as HBL, which the Coast Guard accepts as providing equally substantial environmental protection. Whatever alternative is chosen, however, the Coast Guard has proposed that all vessels must also carry lightering equipment. Foreign flag vessels must

also report their international identification number.

Actual reductions in the numbers of oil spills and the volume of spilled oil as a result of the proposed regulation cannot be accurately estimated, due to the interrelationships of different prevention and mitigation regulations promulgated under OPA 90. Further, by complying with this proposed regulation, owners and operators may also be in compliance with the MARPOL requirements for existing vessels.

Sound structural design and efficient operational procedures, when combined with other requirements of OPA 90, should contribute to increased environmental protection and human safety. The impact of section 4115(b), however, is not expected to result in significant impact on the quality of the human environment, as defined in the National Environmental Policy Act (NEPA).

List of Subjects

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 157 and 160 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 is revised to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46. Subpart G also is issued under section 4115(b), Pub. L. 101-380, 104 Stat. 520.

§ 157.03 [Amended].

2. Section 157.03 is amended by revising the introductory text to read "Except as otherwise stated in a subpart."

3. Subpart G is added to part 157 to read as follows:

Subpart G—Structural and Operational Measures for Certain Oil Tankers Without Double Hulls

Sec.
157.400 Purpose and scope.

Sec.

- 157.410 Oil outflow protection for existing oil tankers.
157.415 Submission of oil outflow protection system designs.
157.420 Emergency lightering requirements for oil tankers.

Subpart G—Structural and Operational Measures for Certain Oil Tankers Without Double Hulls

§ 157.400 Purpose and scope.

(a) The Oil Pollution Act of 1990 requires certain existing oil tankers without double hulls to comply with measures that provide as substantial protection to the environment as is economically and technologically feasible.

(b) For the purposes of this subpart, "oil" has the same meaning as provided in § 151.05 of this chapter.

(c) This subpart is effective [Insert date three years from the date of publication of final rule].

(d) This subpart applies to each existing oil tanker of 5,000 gross tons or more that is not currently equipped with a double hull but required to be equipped with a double hull at a date set out in 46 U.S.C. 3703a(b)(3) and (c)(3). The timetable established by 46 U.S.C. 3703a(c) is contained in appendix G to this part.

§ 157.410 Oil outflow protection for existing oil tankers.

Each oil tanker covered by this subpart must be fitted or operated with one of the following measures no later than [Insert date three years from the date of publication of the final rule]—

(A) A double bottom or double sides as follows—

(1) On an oil tanker of 20,000 deadweight tons (DWT) or more that carries crude oil or an oil tanker of 30,000 DWT or more that carries oil other than crude oil—

(i) Double side tanks fitted in accordance with section 2(b)(1) of Appendix C to this part such that— $EPA_c = J[L_x \times D]$, for each side where $J = 0.30$; or

(ii) Double bottom tanks fitted in accordance with section 2(b)(2) of appendix C to this part such that— $EPA_b = J[L_x \times B]$, where $J = 0.30$;

(2) On an oil tanker of less than 20,000 DWT that carries crude oil or an oil tanker of less than 30,000 DWT that carries oil other than crude oil—

(i) Double side tanks, of the dimensions prescribed in § 157.10d(c)(1) or § 157.10d(d)(1) as appropriate, extending for the full depth of the side along at least 30 percent of each side within the cargo tank length; or

(ii) Double bottom tanks of the dimensions prescribed in § 157.10d(c)(2) or § 157.10d(d)(2), as appropriate, protecting at least 30 percent of the bottom plate area within the cargo tank length.

(b) Hydrostatic balanced loading.

(1) For purposes of this subpart, hydrostatic balanced loading means loading so that the cargo and vapor pressure exerted on the bottom shell plating (the plating which forms a single boundary between the cargo and the sea) does not exceed the external hydrostatic water pressure.

(2) The external hydrostatic water pressure is expressed by the following formula—

$$(f)(hc)(Rc)(g)+(100)(dP)<or=(dn)(Rs) (g);$$

where—

f=safety factor=1.1; and,

hc=height of cargo in contact with the bottom shell plating in meters;

Rc=maximum cargo density in tons/cubic meter;

g=standard acceleration of gravity (9.81 meters/second squared);

dn=minimum operating draft under any expected loading conditions in meters;

dP=maximum set pressure of pressure/vacuum valve provided for the cargo tank in bars;

Rs=density of seawater in tons/cubic meter.

(c) Other structural or operational arrangements provided that the Commandant (G-MVI), U.S. Coast

Guard determines that such arrangements provide as substantial protection to the environment as is economically and technologically feasible, and meet general safety considerations.

§ 157.415 Submission of oil outflow protection measure designs.

(a) Plans, calculations, specifications, and operating manuals for an oil outflow protection measure to be fitted or operated in accordance with § 157.410(b) or (c) must be submitted to the Commandant (G-MVI), U.S. Coast Guard, Washington, DC 20593-0001 for approval prior to installation.

(b) Upon satisfactory completion of plan review and inspection of the oil outflow protection measure, the Officer in Charge, Marine Inspection, shall endorse the Certificate of Inspection for U.S. flag vessels, or the Certificate of Compliance for foreign flag vessels to reflect that the vessel meets the requirements found in subpart G of this part.

§ 157.420 Emergency lightering requirements for oil tankers.

No later than [Insert date three years after the date of publication of the final rule], each oil tanker to which this subpart applies shall carry the following items in an on-deck locker located as close to the cargo manifold as practical:

(a) Reducers, bolts, and gaskets to allow at least two simultaneous transfer connections to be made from the

vessel's cargo manifold to 6-inch, 8-inch, and 10-inch cargo hoses. All reducers must be permanently marked with sizes.

(b) One extra set of bolts, washers, nuts, and gaskets per reducer set must be carried as spares.

(c) Reducers, bolts, and gaskets must meet the requirements of 46 CFR 56.25.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

4. The authority citation for part 160 continues to read as follows:

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

5. In § 160.207, paragraph (c)(5) is added to read as follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

(5) No later than [Insert date three years after the date of publication of the final rule], the International Maritime Organization (IMO) international number of each foreign flag vessel of 5,000 gross tons or more, which is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue.

Dated: October 18, 1993.

J.W. Kims,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 93-26074 Filed 10-21-93; 8:45 am]

BILLING CODE 4910-14-M

Federal Register

Friday
October 22, 1993

Part VIII

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**Federal Acquisition Regulation; 1993
Consolidated Reprint, Looseleaf Edition;
Notice**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****Federal Acquisition Regulation (FAR);
1993 Consolidated Reprint, Looseleaf
Edition**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of procedures for Federal agencies and departments to order the 1993 consolidated reprint of the looseleaf edition of the Federal Acquisition Regulation (FAR).

SUMMARY: This notice is to advise Federal agencies and departments to submit their copy requirements for the new 1993 consolidated reprint of the looseleaf edition of the FAR to the Government Printing Office (GPO). A consolidated reprint is a compilation of all current FAR pages with each page bearing the most recent FAC number, issuance date and change bars. It is the basic FAR with all FACs prefiled. Current subscribers who have maintained up-to-date FAR editions need not subscribe. Individual agency offices are responsible for making their requirements known to their agency GPO Liaison Officer. Agency GPO Liaison Officers are responsible for submitting agency copy requirements to GPO through their Printing and Publishing Official.

DATES: Agencies must submit their FAR copy requirements to GPO by November 30, 1993. The 1993 Consolidated Reprint will be distributed to agencies

by GPO, beginning February 1994, based on agency-established copy requirements.

FOR FURTHER INFORMATION CONTACT: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

(1) The Federal Acquisition Regulation (FAR), established on April 1, 1984, is located in the Code of Federal Regulations at title 48, chapter 1. It is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds.

(2) The previous 1990 looseleaf edition of the FAR was distributed to agencies by the GPO, based on agency-established copy requirements. Updates (Federal Acquisition Circulars, FACs) to that edition were distributed in fiscal years (FY) 1990 through 1993, and also based on agency-established copy requirements for those years. GPO now requires agencies to submit by November 30, 1993, their copy requirements for the new 1993 Consolidated Reprint.

(3) Agency GPO Liaison Officers responsible for managing FAR distribution are being reminded to consolidate their agency's FAR copy requirements to make those requirements known to GPO through their agency Printing and Publication Official. All production costs will be prorated to participating agencies by GPO. The two volume set of the 1993 Consolidated Reprint of the FAR is expected to cost \$13.

(4) Federal employees unable to obtain the new 1993 Consolidated Reprint through their agency GPO

Liaison Officer may subscribe to the FAR directly with GPO by following the procedures in paragraph six of this notice. Agencies not submitting their Standard Form (SF) 1, Printing and Binding Requisition, for new copy requirements to GPO by November 30, 1993, will not be permitted to order by rider requisition; agencies will have to purchase their requirements from the Superintendent of Documents at a significantly increased per copy cost.

(5) FAC's will be issued in FY 1994, to be filed in the new basic 1993 consolidated reprint looseleaf edition of the FAR. Federal agencies/departments will also be required to submit by separate SF-1, their FY 1994 updated (FAC) requirements, when advised by GPO's Circular Letter to each agency Federal Printing and Publication Official.

(6) Private sector companies, associations, businesses, and other interested parties wishing to receive the 1993 consolidated reprint of the looseleaf edition of the FAR may place subscription orders with GPO by writing or calling: Superintendent of Documents, Government Printing Office, Washington, DC 20401, telephone: (202) 783-3238.

The price for each domestic or foreign subscription order is established by the Superintendent of Documents. GPO requires payment in advance unless charged to MasterCard, Visa, or GPO charge account.

Dated: October 18, 1993.

Albert A. Vicchiolla,

*Director, Office of Federal Acquisition Policy,
General Services Administration.*

[FR Doc. 93-25984 Filed 10-21-93; 8:45 am]

BILLING CODE 6220-34-M

Federal Register

Friday
October 22, 1993

Part IX

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Final
Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

(FRL-4792-6)

RIN 2060-AD51

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA promulgates stratospheric ozone protection regulations required under Title VI of the Clean Air Act Amendments of 1990. This action promulgates regulations implementing the requirements of section 613 of the Act. The regulations also complement the Executive Order issued by President Clinton on April 21, 1993. This rule requires each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under section 612 of the Act. The rule also requires each department, agency, and instrumentality of the United States to certify to OMB within twelve months of the final publication of this regulation that its procurement regulations have been modified in accordance with this rule. The promulgation of this rule satisfies EPA's obligation under section 613 of the Clean Air Act.

The substances affected by this rule are ozone-depleting substances which are listed as either class I or class II substances under rules promulgated under sections 604 and 606 of the Act. This regulation has been developed in consultation with the Administrator of the General Services Administration and the Secretary of Defense, as required by section 613.

EFFECTIVE DATE: This rule is effective on November 22, 1993.

ADDRESSES: Materials relevant to this rulemaking are contained in Air Docket A-93-12 at the U.S. Environmental Protection Agency (LE-131) 401 M Street SW., Washington, DC 20460. The Docket is located in room M-1500, First Floor, Waterside Mall. Material relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter Voigt at (202) 233-9185, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air

and Radiation, 6205), 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Outline

- I. Background
- II. Section 613—Federal Procurement
- III. Summary of and Response to Comments on the Proposed Rule
 - A. Class II Substances as Substitutes for Class I
 - B. Stringency of Procurement Policies
 - C. Section 610 Requirements
 - D. Compliance with Title VI Requirements
 - E. Impact of the Rule on Suppliers
 - F. EPA Outreach Efforts
- IV. Other Requirements of Title VI of the Clean Air Act
 1. Sections 604, 605, and 606—Phaseout of Ozone-depleting Substances
 2. Section 608—National Recycling and Emission Reduction Program
 3. Section 609—Servicing of Motor Vehicle Air Conditioners
 4. Section 610—Nonessential Products Containing Ozone-depleting Substances
 5. Section 611—Labeling
 6. Section 612—Significant New Alternative Policy (SNAP) Program
- V. Implementation of Requirements Imposed Under Section 613
- VI. Summary of Supporting Analyses
 - A. Executive Order 12291
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act

I. Background

During the past decade, there has been a significant decrease in the detected amount of stratospheric ozone. Broad scientific consensus has emerged that such continuing depletion of the stratospheric ozone will lead to increased levels of UV-B radiation penetrating to the earth's surface, resulting in potential health and environmental harm, including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics. According to information released on December 17, 1991, by the United Nations Environment Programme (UNEP) Scientific Assessment of Ozone Depletion, the rate of ozone depletion is significantly greater than originally estimated in 1989. To address this problem, the United Nations Environment Programme sponsored the successful negotiation of the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol). In effect since 1988, the Protocol requires each nation party to it to control the production and consumption of substances which deplete stratospheric ozone. These substances include chlorofluorocarbons (CFCs), halons,

carbon tetrachloride, methyl chloroform and hydrochlorofluorocarbons. The United States is a party to this international agreement. (For a more detailed explanation of the issues involved, see 57 FR 33755-33757 (July 30, 1992).)

The Clean Air Act, like the Montreal Protocol, establishes controls in the production and consumption of ozone-depleting substances and also creates additional regulatory programs aimed at reversing the trend of ozone depletion. As a result, EPA has issued, or will be issuing, a series of regulations which deal with the production, consumption, use, and treatment of ozone-depleting chemicals.

II. Section 613—Federal Procurement

Among the regulations that EPA must issue to address the use of ozone-depleting substances is a rule requiring federal agencies to modify their procurement regulations to maximize the use of safe alternatives to ozone-depleting substances and otherwise conform those regulations to the Clean Air Act's policies and requirements regarding ozone protection. This rule is required by section 613 of the Act which states: "Not later than 18 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this Title and to maximize the substitution of safe alternatives identified under section 612 for class I and class II substances. Not later than 30 months after the enactment of the Clean Air Act Amendments of 1990, each department, agency and instrumentality of the United States shall conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section." As required by the statute, EPA consulted with the General Services Administration and with the Department of Defense in developing this rule.

In a separate action on April 21, 1993, President Clinton issued Executive Order No. 12843 titled "Procurement Requirements and Policies For Federal Agencies For Ozone-Depleting Substances." The Executive Order requires that Federal agencies revise their procurement practices and implement cost-effective programs both to modify specifications and contracts that require the use of ozone-depleting

substances and to substitute non-ozone-depleting substances to the extent economically practicable. The terms of this order are similar to the regulation being issued today. However, today's rule applies to broader groups of Federal entities than are covered by the executive order.

The aim of section 613, E.O. 12843, and today's regulation is the establishment of affirmative procurement programs in all federal agencies that will maximize the substitution of safe alternatives to ozone-depleting substances and further implementation of the other policies and requirements of Title VI.

Most Federal procurement is governed by the Federal Acquisition Regulation ("FAR"). The FAR is prepared, issued and maintained jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration. Revisions to the FAR are issued through two councils, the Defense Acquisition Regulations Council, and the Civilian Agency Acquisition Council. (See generally 48 CFR Subparts 1.1 and 1.2.) In addition, many, but not all, Federal agencies have promulgated regulations to supplement the FAR, which appear at 48 CFR parts 2 through 63.

This rule requires each Federal agency to amend its procurement regulations in Title 48 (or, where it has no such regulations at present, to adopt new regulations) to conform with the requirements and policies of Title VI of the Clean Air Act and the policies and requirements specified in this rule, and to direct that purchasing of safe substitutes for ozone-depleting substances will be maximized to the extent practicable. EPA believes that in implementing Title VI and these regulations, agencies should take into account the technical feasibility and costs of conversion as changes are made. These considerations are discussed in greater detail in section VI of this preamble.

At the same time, the councils responsible for amending the FAR and the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget are working with EPA to amend the FAR itself in a similar manner. Once the FAR is amended in this fashion, there would be no need for individual agencies subject to the FAR to adopt regulations, and the rule published today would relieve them of the need to do so in that event.

As noted at the time of the proposed rule, some agencies that fall within the term "department, agency or instrumentality of the United States" as

defined in today's rule are not subject to the FAR, and each such entity will be required by this rule to adopt its own regulation, whether or not they are within the scope of the Executive Order. The entities most clearly affected in this way are the Postal Service, the Postal Rate Commission, the Senate, House of Representatives, and the Architect of the Capitol, all of which do not fall within the scope of the FAR or of the Executive Order.

It was also noted at proposal that decisions about what to purchase, or decisions on specifications for items to be purchased, are generally made by officials other than those who carry out the procurement process. Each agency should, therefore, take the steps necessary to ensure that officials responsible for substantive purchasing decisions are aware of, and properly implement, the requirements imposed by the regulations adopted pursuant to today's rule.

III. Summary of and Response to Comments on the Proposed Rule

A. Class II Substances as Substitutes for Class I

The Agency received a number of comments regarding the proposed rule. The most frequent comment indicated that the notice of proposed rulemaking seemed to treat class I and class II as equivalent and require agencies to find substitutes for both immediately, whereas class II substances are in fact frequently viable substitutes for class I substances. Commenters suggested that the preamble to the rule should indicate clearly that class II substances are viewed as viable substitutes for class I substances under both Title VI and under section 612, Significant New Alternative Program, regulations (58 FR 28094). It was indicated that the Agency should distinguish between the urgency of phasing out class I substances and the use of class II substances as viable interim alternatives.

In response, EPA intends that this rule mirror the policies enacted in Title VI, and these policies clearly indicate that class II substances may serve as interim substitutes for class I substances (i.e., prior to the statutory phaseout of class II substances). The Agency does not intend in today's rule to require or suggest to federal agencies that they should not use a class II ozone-depleting substance where such substitution is not precluded by section 612 and not precluded by the section 610 bans on nonessential products. The rule has been modified to make this clear.

Federal officials should look to section 612 requirements as they deal

with the acquisition of ozone-depleting substances. The regulation implementing section 612, which was issued as a proposal on May 12, 1993 (58 FR 28093), will provide agencies with a source of information regarding acceptable and unacceptable substitutes and will promote the use of safe substitutes and processes in the elimination of ozone-depleting substances.

It should be noted that class I and class II substances are being phased out on different schedules. These schedules reflect both the variation in the ozone-depletion potential of these substances as well as the intended use of class II substances as substitutes for class I substances. Agencies should be aware of the phaseout schedules of these substances, the requirements of section 612, and all of the requirements of title VI when making purchasing decisions. Nothing in today's rule, however, precludes using class II substances in place of class I substances prior to the phaseout of class II substances.

B. Stringency of Procurement Policies

One commenter indicated that federal agencies should not be allowed to adopt procurement requirements that are inconsistent with any section of Subtitle VI of the Clean Air Act. It was suggested EPA prohibit agencies from adapting that differing requirements or policies that are more stringent than the recently published section 612 regulations because such policies could impact the marketplace, economics, product availability and the competitive bidding process.

EPA agrees with the principle that agencies' procurement policies and practices should be consistent with the policies and requirements of Subtitle VI. However, phasing out uses of ozone-depleting substances more quickly than the law requires that production be phased out is not inconsistent with the statute. Moreover, purchasing decisions rest with the individual agencies. EPA believes that federal agencies making purchasing decisions, like other consumers of goods and services, are influenced by product price and availability. As a result, it is believed that these market forces will continue to be the primary determinant in buying decisions made by agencies under this rule. However, it is within the discretion of agencies to eliminate the use of ozone-depleting substances on any schedule that satisfies these requirements.

The primary thrust of Subtitle VI is to phase out the availability of ozone-depleting substances under sections 604 and 606. Therefore, it is anticipated that

the decreasing availability of class I substances, coupled with the guidance on safe substitutes promulgated under section 612, will play a major role in changing the buying practices of federal agencies consistent with the intent of Title VI. This policy is reflected in § 82.84(a)(2) as promulgated in this rule.

C. Section 610 Requirements

One commenter indicated that the preamble to the proposed rule specifically cited banning the distribution of "any plastic foam product which contains or is manufactured with a class II substance" under section 610 without indicating that under section 610(d)(3)(4), foam insulation products are excluded from that prohibition. The commenter is correct in noting that section 610 contains certain exclusions, and the purchase of such products would not be prohibited under today's rule. No change from the proposed rule is required by this comment.

D. Compliance With Title VI Requirements

A commenter indicated that the federal government should be mindful of the leeway granted to industry in complying with the labeling regulation that became effective in May, 15, 1993, but which, according to the commenter, "EPA will not enforce for 9 months to give the industry an opportunity to comply."

EPA recognizes that because of concerns over the short time period in which companies had to comply, no enforcement actions will be taken until nine months after the date of the publication of the rule on labeling (i.e., before November 11, 1993). This nine month period is intended to recognize that some companies are making their best faith efforts to be in compliance with the regulations by either switching to an alternative technology/substance, or by implementing a labeling process. This is not meant as an extension of the May 15, 1993, effective date. However, it is not anticipated that the amendments to agency purchasing regulations pursuant to today's rule are likely to be finalized prior to November 1993, and certainly purchases under the amended rule are unlikely to occur prior to that date. Therefore, EPA does not expect that today's rule will have any impact inconsistent with its enforcement approach with respect to labeling.

The commenter further indicated that EPA should: (1) Encourage agencies to participate in a refrigerant banking program and bank only with an EPA-certified reclaiming; (2) maintain existing

equipment in good working order and repair all substantial leaks; (3) require the certification of service technicians of [refrigeration] equipment.

EPA recognizes that several of these suggestions may be sound policy for adoption by some federal agencies. The use of halon banking was specifically recommended in the preamble to the proposed rule. However, this regulation is limited in scope to federal agency procurement regulations. It is beyond the scope of this regulation to mandate specific purchases or agency policies to reduce the need for purchases of class I or class II substances. Further, in developing policies and practices to meet the Title VI requirements, agencies should rely on the specific regulations governing each of the sections of Title VI as they are outlined below.

E. Impact of the Rule on Suppliers

One commenter raised several questions regarding the impact of amending federal procurement regulations on government contractors and suppliers. The questions centered on the allocation of cost burdens of implementing new processes under existing contracts, the costs of acceptance testing, whether preferential treatment would be given in awarding contracts if ozone-depleting substances are eliminated, and whether procurement regulations will promote the use of unsafe processes in order to achieve such elimination.

In response, these are issues to be dealt with by federal agencies in adopting and implementing revisions to their procurement regulations. They are beyond the scope of today's rule, which simply requires agencies to make such revisions. EPA notes, however, that the safety of alternative products and substances is a consideration that agencies might choose to take into account in determining whether substitution is practicable.

F. EPA Outreach Activities

Several agencies requested that EPA establish activities to keep federal agencies informed of requirements and developments in this area. In addition, information on the requirements of all of the sections of Title VI was requested by agencies.

As was discussed at greater length in the preamble to the proposed rule, EPA is prepared to assist agencies in implementing the requirements of E.O. 12843, as well as the requirements of this regulation. In addition, as indicated previously, the section 612 regulation will be the definitive source of information regarding safe alternatives. In addition, the Agency is collecting

information on model processes, specifications and substitution efforts. Materials regarding successful practices should be sent to and can be obtained from the contact person identified in the summary section at the beginning of this regulation.

IV. Other Requirements of Title VI of the Clean Air Act

Because the rule requires all agencies to conform their procurement regulations to the whole range of ozone protection policies and requirements, familiarity with many of the other regulations to be issued by EPA is important. Provisions of Title VI particularly relevant to today's proposed rule include the following:

- (1) Phaseout of the Production and Importation of Controlled Substances (Sections 604, 605, and 606);
- (2) Recycling and Reduction in Emissions of Ozone-depleting Substances (Section 608);
- (3) Servicing of Motor Vehicle Air Conditioners (Section 609);
- (4) Bans on Nonessential Products Containing Ozone-depleting Substances (Section 610);
- (5) Labeling of Products Made with or Containing Controlled Substances (Section 611); and
- (6) Safe Alternatives Policy (Section 612).

Familiarity with those requirements and policies will be essential to the development of agency regulations and practices under this rule. Therefore, a more detailed description of the proposed regulations follows.

1. Sections 604, 605, and 606—Phaseout of Ozone-Depleting Substances

Section 604 and 605 of the Act place production and consumption limits on class I and class II ozone-depleting chemicals, respectively. The same sections also require the phasing out of the production and consumption of these chemicals. Section 606 allows the Administrator of EPA to accelerate the phaseout of these chemicals if: (1)—"the Administrator determines that a more stringent schedule may be necessary to protect human health and the environment"—; (2)—"the Administrator determines that a more stringent schedule is practicable"—; or (3)—"the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this Title".

The phaseout of the class I substances addressed in today's rule is governed by regulations contained in 40 CFR part 82. An accelerated phaseout was proposed

on March 18, 1993 (58 FR 15014) in response to recent scientific findings and to changes in the Montreal Protocol. The proposal would phase out halons by January 1, 1994, and CFCs, carbon tetrachloride, halons, and methyl chloroform by January 1, 1996. In addition, hydrobromofluorocarbons (HBFCs) would be added and scheduled for phaseout on January 1, 1996, and methyl bromide would be added and scheduled for phaseout on January 1, 2001. HCFCs would also be scheduled for phaseout, beginning with HCFC 141b on January 1, 2003.

The phaseout requirements of section 604, 605, and 606, and the regulations to be promulgated thereunder, do not bear directly on the purchase of goods and services; rather, they are directed at the production, import and export of class I and class II substances. Therefore, the phaseout of the production and imports of these substances will affect the ability of federal agencies to obtain these substances, and products containing or made with them. As a result, familiarity with the phaseout is important for agency officials making purchasing decisions. At the same time, compliance with today's rule will reduce the demand for such products by federal agencies; therefore, this rule complements the phaseout requirements.

Given the proposed schedules for the accelerated phaseout, it is vital that efforts to implement the use of substitute chemicals and processes be conducted as quickly as possible. Agencies should take steps to convert existing equipment and processes to the use of alternatives in order to ensure compliance with the impending regulatory deadlines under Title VI of the Act.

Further, the accelerated phaseout proposal also addresses the phaseout of certain HCFCs on an accelerated schedule based on their ozone depletion potential. The faster phaseout of these substances was proposed as a result of longer term concerns regarding ozone depletion, and the actual or anticipated availability of non-ozone-depleting substitutes. These substances are at this time used primarily as substitutes for CFCs in refrigeration and cooling systems and insulation.

The proposed accelerated phaseout rule also contains provisions for considering exemptions for the manufacture of these substances for essential uses after the phaseout. In separate notices, EPA provided information regarding the requirements for and the procedures to be followed in applying for an "essential use"

exemption. Copies of these notices (58 FR 6788 and 58 FR 29410) can be obtained by writing or calling the information contact listed in that proposed regulation. It should be noted that while the Act allows very limited exceptions, there is no guarantee that such exceptions will be granted. Such nominations for exemptions, if accepted by EPA and the United States, must also be authorized by Parties to the Montreal Protocol.

2. Section 608—National Recycling and Emission Reduction Program

Section 608 requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the handling of ozone-depleting refrigerants during the service, repair, or disposal of refrigeration and air-conditioning equipment. Under section 608, EPA promulgated final regulations on May 14, 1993, (58 FR 28660) to recapture and recycle these substances. The requirements of section 608 include regulations covering class I and class II substances used or disposed of during the service, maintenance, repair, and disposal of air-conditioning and refrigeration equipment. In addition to mandating an effective date for regulations requiring recycling of class I refrigerants, section 608 specifically prohibits knowingly venting of both class I and class II refrigerants during service, maintenance, repair and disposal of air-conditioning and refrigeration equipment, effective July 1, 1992. "De minimis" releases associated with good faith efforts to recover or recycle are exempt from the prohibition.

EPA's final rule for section 608 has five main elements, which, taken together, satisfy the criteria for recycling, emission reduction, and disposal. First, the Agency requires technicians servicing and disposing of air-conditioning and refrigeration equipment to observe certain service practices that reduce refrigerant emissions. Second, EPA requires technicians servicing air-conditioning and refrigeration equipment to obtain certification through an EPA-approved testing organization and restricts sales of refrigerant to these certified technicians. Third, EPA regulations establish equipment and reclaimer certification programs. These have the goal of verifying: (1) That all recycling and recovery equipment sold is capable of minimizing emissions and (2) that reclaimed refrigerant on the market is of known and acceptable quality to avoid equipment failures from contaminated refrigerant. Fourth, EPA requires repairs of substantial leaks, based on annual

leak rates which vary according to two categories of refrigeration equipment. Fifth, to implement the safe disposal requirements, EPA requires ozone-depleting refrigerants in appliances, machines and other goods to be removed from these items prior to their disposal, and that all air-conditioning and refrigeration equipment except for small appliances and room air-conditioners be provided with a servicing aperture that would facilitate the recovery of refrigerant.

At this time EPA believes that continued use of class I substances in existing equipment through recycling can serve as a useful bridge to alternative products while minimizing disruption of the current capital stock of equipment, preventing costly early retirement of equipment. Agencies will need to be aware of this as they develop their procurement policies, their plans for the management of refrigerants, and their schedules for retrofitting equipment currently requiring the use of ozone-depleting substances.

The requirements of section 608, and the regulations promulgated thereunder, apply to federal agencies independently of today's proposed rule. In addition, compliance with section 608 is a requirement of the procurement regulation being issued today.

3. Section 609—Servicing of Motor Vehicle Air Conditioners

Section 609 was established to control the release of refrigerant during servicing of motor vehicle air conditioners. Although each automobile has a relatively small refrigerant charge, it is estimated that motor vehicle air-conditioners consumed over 48,000 metric tons of CFC-12 in 1989. This amounts to 21.3 percent of total CFC use in the United States.

Section 609 provides that any person repairing or servicing motor vehicle air conditioners (MVACs) for consideration must properly use refrigerant recycling equipment that has been approved by EPA. All such persons must be properly certified.

The section 609 rule, 40 CFR 82.30-82.42, established standards for refrigerant recycling equipment and proper use of such equipment. The rule also established the criteria for technician certification programs and the standard for recycling equipment. Two independent testing organizations were approved by EPA to verify that the equipment meets the established standards. The Agency maintains the list of approved equipment. The sale in interstate commerce of any class I or class II substance suitable for use in a motor vehicle air-conditioning system

in small containers (less than 20 pounds) is also restricted to certified technicians.

The requirements of section 609, and the regulations promulgated thereunder, apply to federal agencies independently of today's proposed rule. Therefore, in servicing, replacing or retrofitting their vehicle fleets, agencies need to be cognizant of these requirements. However, compliance with these regulations will reduce the need for agencies to purchase class I substances.

Agency regulations adopted pursuant to today's rulemaking action, should specifically restrict the purchase of substances whose sale is restricted under section 609. Furthermore, agencies would be required to make compliance with section 609 and the regulations promulgated thereunder a condition of any contract involving the performance of a service activity subject to section 609.

4. Section 610—Nonessential Products Containing Ozone-Depleting Substances

Section 610 of the Act requires EPA to "identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce." Specific products to be prohibited that use class I substances include "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment."

EPA is further required to prohibit at a minimum "other consumer products" that are determined to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is instructed to consider: "the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substances, safety, health, and other relevant factors." EPA promulgated regulations that include a ban on congressionally banned products and flexible packaging foam and certain aerosol products not covered by the statutory ban. On January 15, 1993, the final regulation on the ban of nonessential products releasing class I ozone-depleting substances and requiring elimination of emissions from products using class I substances was promulgated. See 40 CFR 82.60–82.68.

In addition, section 610(d) states that after January 1, 1994, "it shall be

unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—

(A) Any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance." Some exceptions that can be made by EPA are specified in the statute.

EPA believes that, unlike the class I ban, the class II ban is self-effectuating. EPA believes it has the authority to issue regulations as necessary to implement the class II ban under section 610 of the Clean Air Act, as amended, and is currently preparing a proposal.

Section 610 and the regulations promulgated thereunder apply to the sale, rather than the purchase, of nonessential products. However, to ensure conformity with the requirements and policies of Title VI, agency regulations adopted under today's rule prohibit the purchase of any product whose sale has been prohibited under section 610. Of course, to carry out the more general requirement of maximizing the substitution of safe alternatives to ozone-depleting substances, agencies will have to consider their need to purchase all such products, not just those prohibited under section 610.

5. Section 611—Labeling

Section 611 and the regulations promulgated thereunder specify labeling requirements, effective May 15, 1993, for containers of class I and class II substances, and products containing or manufactured with class I substances. See 58 FR 8136, 40 CFR 82.100–82.124. The Act stipulates that "no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating: "Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

Section 611 also mandates that this same labeling requirement "shall apply to all products manufactured with a process that uses such class I substances, unless the Administrator determines that there are no substitute products or manufacturing processes that: (A) Do not rely on the use of such class I substance; (B) reduce the overall risk to human health and the environment; and (C) are currently or potentially available." The label for products manufactured with a class I substance is required to state: "Warning:

Manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere."

After May 15, 1993 and before 2015, the labeling requirement shall apply to products containing or manufactured with a class II substance only "if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes: (A) That do not rely on the use of such class II substance; (B) that reduce the overall risk to human health and the environment; and (C) that are currently or potentially available." The label is required to have the same wording as that for class I substances. After 2015, these labeling requirements shall apply to all products containing or manufactured with a class I and a class II substance.

Section 611 and the regulations thereunder apply to the labeling of products and containers, not to their purchase. However, to ensure conformity with the regulations and policies of Title VI, agency regulations adopted by today's rule must make compliance with section 611 a specification for the purchase of any product or container to which section 611 applies.

6. Section 612—Significant New Alternatives Policy (SNAP) Program

Section 612 states as a policy that "to the extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment." Substitutes can be either existing or new, currently or potentially available.

Section 613 specifically refers to the substitution of safe alternatives identified under section 612 for class I and class II substances. Thus, the above policy, as well as the other requirements of section 612, are relevant to this final rule.

Under section 612, EPA published on May 12, 1993, (58 FR 28094) a proposed list of unacceptable substitutes and a preliminary list of acceptable alternatives. In the same Notice of Proposed Rulemaking, EPA also described the structure of the SNAP Program, including the mechanism for ongoing expansion of the lists as new substitutes are developed, as well as the requirements for a petition process to add or remove substances from either of the two lists once they are finally issued. The authority provided in section 612(c) allows EPA to promulgate

regulations making it unlawful to replace any class I or class II substance with any substitute which may present adverse effects to human health or the environment, where an alternative to such a replacement has been identified that reduces overall risk and is currently or potentially available. Based on language in section 612, EPA's proposal defined a substitute as any new or existing chemical, product substitute, or alternative manufacturing process that is currently or potentially available. It should be noted that section 612 does not mandate the use of safe substitutes. Rather this section bans the use of unacceptable substitutes.

In evaluating substitutes, EPA's characterization of overall risk includes such factors as chlorine loadings, ozone-depletion potential, toxicity to human health, air, water, and solid/hazardous waste effects, exposure to workers, consumers, the general population, and aquatic organisms, flammability, and global-warming potential. Substitutes are evaluated by use and in the context of: (1) The risks the substitute is replacing (i.e., the risks of continued use of the class I or class II substances); and (2) the risks from other substitutes. Given the particular use of a substance within a given sector, effects on human health and the environment can vary significantly. Thus, risk characterizations are specific to each use sector and application.

In addition, economic feasibility must be assessed to ensure that the initial list of acceptable substitutes includes alternatives that are available and reasonable in terms of the cost of conversion. The Agency believes that such an examination helps to minimize uncertainty in the marketplace and encourage many to substitute sooner rather than later. EPA intends to issue the final SNAP rulemaking in early 1994.

At the same time as the publication of the final SNAP rule, EPA will also publish its revised list of acceptable substitutes and will promulgate the list of prohibited substitutes. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program will need to be submitted for review under the SNAP program once it becomes effective.

Today's rule is closely related to section 612, as the purchase of safe alternatives is expected to be the principal means through which agencies will minimize their purchase of ozone-depleting substances. To ensure conformity with section 612, the regulations adopted by agencies pursuant to today's rule require agency officials both to comply with the policy

in section 612(a) of maximizing the use of alternatives to class I and class II substances in making agency purchasing decisions, and to comply with the regulations issued by EPA identifying unacceptable substitutes. It must be noted that class II substances are frequently considered safe alternatives to class I substances under the SNAP rule, and purchase of these substances as appropriate will be in compliance with section 612.

V. Implementation of Requirements Imposed Under Section 613

As indicated earlier, Executive Order 12843 has already directed agencies to take the actions necessary to take into account the phaseout of ozone-depleting substances. Many agencies are already implementing these requirements. However, the following discussion may provide additional information to agencies and assist them in their implementation activities. Much of this discussion appeared in the preamble to the proposed rule, but is restated here for the benefit of agency personnel affected by the rule.

Section 613 does not require EPA to issue detailed rules specifying the manner in which federal agencies are to reduce their use of ozone-depleting substances or related products, and substitute safer alternatives, and EPA is not attempting to do so here. Rather, EPA expects that these details will be addressed when agencies adopt and subsequently implement the regulations or other procedures required by today's rule. Because of the immense variety and complexity of agency decisions regarding which products to purchase to meet its mission, as well as the variety of agency procurement processes, EPA does not consider it appropriate to specify what agencies must adopt in greater detail than is specified here.

Translating the general requirement of this proposed rule into actual purchasing decisions will of course require further efforts by agencies to identify alternatives to currently used products, or to find entirely different approaches that avoid the need to purchase such products altogether. For example, agencies may change the specifications for cleaning requirements of electronic components from solvents that are ozone-depleting to cleaning agents that are safe, non-ozone-depleting substitutes. Based upon these efforts, agencies will need to develop internal plans, policies or guidance that will ensure compliance with the general requirement of maximizing the use of safe substitutes for ozone-depleting substances. However, EPA does not consider it appropriate to specify in this

rule the precise nature of how such policies should be developed and structured in each agency, which is a matter of internal management.

It is important to note that today's regulation is intended to cover both new contracts and purchasing agreements, and contract renewals. Because the availability of class I and class II substances will be severely limited in the near future, agencies may also need to renegotiate existing contracts, or contract renewals, to ensure the successful conversion to substances and processes which do not require the use of controlled substances in time to comply with the requirements of Title VI of the Act.

It should also be noted that, consistent with the policy stated in section 612 of the Act, these proposed regulations require that agencies maximize the substitution of safe alternatives "to the extent practicable." This approach is intended to give agencies flexibility to deal with conditions resulting from the phaseout of ozone-depleting substances.

Not all agency practices that result in the potential release of ozone-depleting substances are within the scope of section 613. For example, existing equipment containing CFCs may be a potential source of releases, and neither section 613, nor today's proposed rule, requires that such equipment be immediately taken out of service. However, to the extent that the maintenance of such equipment requires the purchase of replacement CFCs, it would be affected by this rule, and agencies should adopt appropriate policies that maximize the substitution of safe alternatives to ozone-depleting substances to the extent practicable. This may include modifying existing equipment, or replacing it on a more rapid schedule than would otherwise be the case. In addition, where the purchase of ozone-depleting substances is unavoidable, agencies are strongly encouraged under today's proposal to further the broad aims of Title VI.

To the extent that the operation of existing equipment does not incur purchases or substitution and is thus beyond the scope of today's proposed rule, but otherwise involves the use of ozone-depleting substances, EPA urges agencies to adopt policies designed to minimize the release of ozone-depleting substances and to maximize recycling and conservation of the substances as required by sections 608 and 609 of the Act. For example, agencies dismantling halon systems might consider recycling these chemicals and providing them to halon banks. In addition, agencies are required to comply with the

prohibitions on venting under section 608 of Title VI of the Act and any requirements regarding recycling and emission control under that section and section 609.

EPA recognizes that there often are substantial financial requirements inherent in making conversions to processes that do not use ozone-depleting substances. The practicability feature of the rule will allow such considerations to be taken into account in selecting methods to reduce demand for ozone-depleting substances. The immense variety of equipment and processes used by the federal government make it impossible for EPA to specify in detail what types of actions must be taken and what lengths of time should be allowed to take them. EPA also notes that time is a consideration in determining what is practicable. What is impracticable in the short-term may be feasible over a longer period of time.

VI. Summary of Supporting Analyses

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to 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 or state 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.

EPA has determined that this regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA believes that this rule will not have a significant economic impact, since its underlying purpose is to prepare Federal agencies to deal with the phaseout of ozone-depleting substances required under Title VI of the Clean Air Act.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal Agencies examine the impact of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a

rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that the regulation will not have a significant impact on a substantial number of small entities and has concluded that an RFA is unnecessary. This regulation requires Federal agencies to conform their procurement regulations to the regulations, policies and procedures governing the phaseout of ozone-depleting substances. EPA believes that most companies in industries supplying goods and services made with or containing ozone-depleting substances to the Federal government are already aware of the requirements of Title VI. Therefore, these companies are prepared to offer alternatives to meet amended or new federal procurement specifications required by this regulation. This regulation primarily affects government procurement specifications, to which small entities respond at a cost level appropriate to the goods and services purchased.

C. Paperwork Reduction Act

There are no information collection requirements under this rule which are covered by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Rather, this rule requires that those agencies that are not covered by the FAR certify to the Office of Management and Budget that their procurement regulations have been modified as required. Therefore, no Information Collection Request document has been prepared.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce.

Dated: October 15, 1993.

Carol M. Browner,
Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671(q).

2. A new subpart D is added to read as follows:

Subpart D—Federal Procurement

Sec.
82.80 Purpose and scope.

Sec.
82.82 Definitions.
82.84 Requirements.
82.86 Reporting requirements.

Subpart D—Federal Procurement

§ 82.80 Purpose and scope.

(a) The purpose of this subpart is to require Federal departments, agencies, and instrumentalities to adopt procurement regulations which conform to the policies and requirements of Title VI of the Clean Air Act as amended, and which maximize the substitution in Federal procurement of safe alternatives, as identified under section 612 of the Clean Air Act, for class I and class II substances.

(b) The regulations in this subpart apply to each department, agency, and instrumentality of the United States.

§ 82.82 Definitions.

(a) *Class I substance* means any substance designated as class I by EPA pursuant to 42 U.S.C. 7671(a), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform.

(b) *Class II substance* means any substance designated as class II by EPA pursuant to 42 U.S.C. 7671(a), including but not limited to hydrochlorofluorocarbons.

(c) *Controlled substance* means a class I or class II ozone-depleting substance.

(d) *Department, agency and instrumentality of the United States* refers to any executive department, military department, or independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, any wholly owned Government corporation, the United States Postal Service and Postal Rate Commission, and all parts of and establishments within the legislative and judicial branches of the United States.

§ 82.84 Requirements.

(a) No later than October 24, 1994, each department, agency and instrumentality of the United States shall conform its procurement regulations to the requirements and policies of Title VI of the Clean Air Act, 42 U.S.C. 7671-7671g. Each such regulation shall provide, at a minimum, the following:

(1) That in place of class I or class II substances, or of products made with or containing such substances, safe alternatives identified under 42 U.S.C. 7671k (or products made with or containing such alternatives) shall be substituted to the maximum extent practicable. Substitution is not required for class II substances identified as safe

alternatives under 42 U.S.C. 7671k, or for products made with or containing such substances, and such substances may be used as substitutes for other class I or class II substances.

(2) That, consistent with the phaseout schedules for ozone-depleting substances, no purchases shall be made of class II substances, or products containing class II substances, for the purpose of any use prohibited under 42 U.S.C. 7671d(c);

(3) That all active or new contracts involving the performance of any service or activity subject to 42 U.S.C. 7671g or 7671h or regulations promulgated thereunder include, or be modified to include, a condition requiring the contractor to ensure

compliance with all requirements of those sections and regulations;

(4) That no purchases shall be made of products whose sale is prohibited under 42 U.S.C. 7671h, except when they will be used by persons certified under section 609 to service vehicles, and no purchase shall be made of nonessential products as defined under 42 U.S.C. 7671i;

(5) That proper labeling under 42 U.S.C. 7671j shall be a specification for the purchase of any product subject to that section.

(b) For agencies subject to the Federal Acquisition Regulation, 48 CFR part 1, amendment of the FAR, consistent with this subpart, shall satisfy the requirement of this section.

§ 82.86 Reporting requirements.

(a) No later than one year after October 22, 1993, each agency, department, and instrumentality of the United States shall certify to the Office of Management and Budget that its procurement regulations have been amended in accordance with this section.

(b) Certification by the General Services Administration that the Federal Acquisition Regulation has been amended in accordance with this section shall constitute adequate certification for purposes of all agencies subject to the Federal Acquisition Regulation.

[FR Doc. 93-26042 Filed 10-21-93; 8:45 am]

BILLING CODE 6560-50-P

Federal Register

Friday
October 22, 1993

Part X

**Department of
Education**

34 CFR Part 668
Student Assistance General Provisions;
Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AB86

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions. These amendments are necessary to implement the Higher Education Amendments of 1992. The proposed regulations would require an institution of higher education to disclose certain consumer information to students and employees. The proposed rules also propose minor technical changes to subparts D and F of the Student Assistance General Provisions regulations, entitled Student Consumer Information Services and Misrepresentation, respectively.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed as follows: Paula M. Husselmann, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, Regional Office Building 3, Washington, DC 20202-5346.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT:

Paula M. Husselmann, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, ROB-3, Washington, DC 20202-5346. Telephone: (202) 708-7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions (34 CFR part 668) apply to all institutions that participate in the Student Financial Assistance Programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). For purposes of subparts D and F, the title IV, HEA Student Financial Assistance Programs include the Federal Pell Grant, Federal Stafford Loan, Federal PLUS Loan, Federal Supplemental Loans for Students (SLS), Federal Direct Student Loan, State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental

Educational Opportunity Grant (FSEOG) programs. The proposed changes in these regulations are necessary to implement the changes to the HEA made by the Higher Education Amendments of 1992, Pub. L. 102-325.

Encouraging students to pursue high quality postsecondary education is an important element of the National Education Goals; a safe campus environment facilitates education.

Negotiated Rulemaking

Part G, section 492 of the HEA contains procedural requirements that the Secretary is to follow in developing proposed regulations for parts B, G, and H of title IV of the HEA, as amended by the Higher Education Amendments of 1992 (Pub. L. 102-325). Section 492(a) requires the Secretary to convene regional meetings to gain input on the content of proposed regulations. Participants at these meetings are to include individuals and representatives of the groups involved in student financial assistance programs, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies. During the meetings, the Secretary is to provide for a comprehensive discussion and exchange of information concerning the implementation of parts B, G, and H, and is to take information received at the meetings into account in the development of these proposed regulations.

Subsequent to these meetings, part G, section 492(b) of title IV of the HEA requires the Secretary to draft and submit regulations implementing parts B, G, and H to a negotiated rulemaking process. Section 492(b) provides that participants in the negotiations process shall be chosen by the Secretary from individuals nominated by groups participating in the regional meetings and shall reflect the diversity and sizes of organizations providing financial aid services to both local areas and national markets.

In accordance with these requirements, the Secretary convened four regional meetings to discuss issues related to implementation of parts B, G, and H. For purposes of these regulations that implement part G, student consumer provisions, the primary issues concerned: A requirement that an institution disclose to title IV borrowers various information about their loans, otherwise known as "exit counseling" as required by the Title IV loan programs; a requirement that an institution disclose to students a

statement that a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for Title IV purposes; and a requirement that an institution disclose to students and employees statistics concerning the number of sex offenses that occurred on campus, a statement of the institution's policy concerning sexual assault programs to prevent these crimes, and procedures to follow when a sex offense occurs. Meetings were held in New York, New York; San Francisco, California; Atlanta, Georgia; and Kansas City, Missouri during the month of September, 1992. Participants in the meetings were invited to nominate individuals to serve as participants in the negotiated rulemaking sessions, which were held in January and February, 1993 in Washington, DC. Taking into account views expressed at the regional meetings, the Department prepared draft regulations on the primary issues discussed, which served as the basis for the negotiated rulemaking process.

The Secretary submitted for discussion at the negotiated rulemaking sessions the issues described above; however, a consensus was not reached on the language of the draft regulations. A summary of the significant changes proposed by these regulations follows:

Summary of Proposed Changes*Section 668.43 Financial Assistance Information (Section 485(a)(1)(M) of the HEA)*

This section of the regulations requires an institution to publish and make readily available to current and prospective students certain consumer information on financial assistance. Section 668.43 would be revised to require a disclosure concerning information the institution must provide and collect during an exit counseling interview for borrowers under the Federal Direct Student Loan Program, the Federal Stafford Loan Program, the Federal SLS Program, and the Federal Perkins Loan Program. An exit counseling interview may be made individually or in groups and is counseling made available to these borrowers before they complete the course of study for which they are enrolled or at the time the borrower leaves the institution. The institution must disclose information such as the average indebtedness of students, the average anticipated monthly repayment based on the average indebtedness, available repayment options, management strategies to assist repayment, etc. A cross-reference is

made to other sections of regulations, 34 CFR 674.42 and 682.604, respectively, that will list the actual disclosures to be made. In the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), the Secretary has proposed renumbering § 668.43 as § 668.44.

Section 668.44 Institutional Information (Section 485(a)(1)(N))

This section of the regulations requires an institution to publish and make readily available to current and prospective students certain consumer information concerning the institution. Section 668.44 would be revised to include another disclosure, that is a statement that a student who is enrolled in a program of study abroad that is approved for credit by the home institution may be considered enrolled in the home institution for the purpose of applying for assistance under the Title IV, HEA programs. Specific rules for regulating a student's enrollment in a program of study abroad will be proposed in other sections of the Student Assistance General Provisions. In the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), the Secretary has proposed renumbering § 668.44 as § 668.45.

Section 668.48 Institutional Security Policies and Crime Statistics (Section 485(f))

This section is a new section, contained on pages 30832-30833 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), to implement section 485(f) of the HEA, as added by the Student Right-to-Know and Campus Security Act, Pub. L. 101-542, and amended by the Higher Education Amendments of 1991, Pub. L. 102-26. The Higher Education Amendments of 1992 have further amended section 485(f). In general, section 485(f) requires institutions to publish and distribute an annual security report containing campus security policies and procedures as well as campus crime statistics. The institution must distribute the annual security report to all current students and employees, and to any applicant for enrollment or employment on request.

The Higher Education Amendments of 1992 require an institution to make additional disclosures as part of its annual security report, and replaces the disclosure of statistics concerning the occurrence of rape on campus with the disclosure of forcible and nonforcible sex offenses. In addition, the 1992 Amendments require an institution to disclose a statement of policy concerning its campus sexual assault

programs designed to prevent sex offenses, and the procedures to follow once a sex offense occurs. The Secretary has reordered the disclosures required by the statute so that the disclosures follow a more logical sequence from notification of education programs to promote awareness through sanctions to be imposed following a sex offense. The statement of policy must include—

(1) Education programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(2) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of a criminal offense, and to whom the alleged offense should be reported;

(3) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and that institutional personnel will assist the student in notifying these authorities, if the student requests;

(4) Notifying students of existing on and off-campus counseling, mental health, or student services for victims of a sex offense;

(5) Notifying students that the institution will change the victim's academic and living situations after an alleged sex offense and the options for these changes, if these changes are requested by the victim and are reasonably available;

(6) Procedures for an institutional disciplinary action in a case of alleged sex offense, including a statement that the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, and that both the accuser and the accused will be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense; and

(7) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

Disclosures number two and three raise the issue of to whom an alleged sex offense should be reported. During the negotiated rulemaking meetings, members of the academic community recommended that institutions be permitted to develop their own policies regarding to whom a sex offense should be reported. Moreover, these members of the community believe that students should have the right to decide whether or not to report an incident of this nature. However, they believe that

institutions should facilitate the reporting of sex offenses. Section 485(f) of the HEA requires that certain crimes, including sex offenses, that are reported to a campus security authority must be acted upon by the institution to prevent the same crime from occurring again. The proposed rule of July 1992 proposed a definition of a campus security authority for institutions to follow when a crime is reported; the final regulations will address the comments received from the public concerning this definition.

Disclosure number two also requires a statement concerning the "importance of preserving evidence as may be necessary to the proof of criminal sexual assault." During the negotiated rulemaking meetings, members of the academic community recommended two approaches regarding the disclosure concerning preserving evidence.

The first recommendation was that the institution, not the Secretary, define what is meant by "preserving evidence as may be necessary to the proof of criminal sexual assault." The Secretary agrees with this recommendation and, therefore, has not regulated with respect to "preserving evidence." The second recommendation was to request that the Secretary consult with the Federal Bureau of Investigation (FBI) and "justice intervention groups," i.e., rape or crisis intervention centers or other victim-support groups, to determine the broader legal implications of preserving such evidence. The Secretary consulted with the FBI and on the basis of that consultation, the Secretary strongly urges institutions to consult with their campus security officials, local law enforcement officials, and to solicit guidance from the institution's local prosecutor's office in the development of the institution's specific disclosures, particularly with respect to the "preserving of evidence." The rape crisis professional contacted by the Secretary strongly supported the institution's consulting the local prosecutor's office, and further suggested that the institution develop a working relationship with the local emergency room and the local rape crisis program.

Disclosure number five concerns options for changing the living and academic circumstances of a victim after an alleged sexual assault, if the victim requests such a change and if the institution can reasonably provide such a change. The actual language of the statute requires "Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the

victim and if such changes are reasonably available." The Secretary has interpreted the language of the statute to require disclosure that an institution "will change" a victim's academic and living situations, if requested and if the change is "reasonably available." Some negotiators objected to the "will change" language as creating an unlimited obligation to accommodate the victim; these negotiators believe the statute simply requires an institution to notify students of options available to a victim. Similarly, other negotiators recommended that institutions be required only to accommodate a victim's request for a change in his or her living situation with respect only to housing under the control of the institution.

The Secretary strongly believes that the Congress intended that institutions will actually accommodate a victim's needs where possible and not merely provide "lip service" to availability of options. An institution is required only to make changes that are "reasonably available." Thus, the Secretary also believes that the Congress intended that reasonable assistance to the victim of a sexual assault would not necessarily be limited only to options exclusively under the control of an institution. An institution may, if housing is reasonably available, be quite able to facilitate a change of housing within the local community. For example, if alternative housing is not available on campus, an institution could release a student from an on-campus housing contract without penalty so that he or she could seek off-campus housing and assist the student in locating off-campus housing if it is reasonably available. Some negotiators strongly supported the Secretary's interpretation of the statute pertaining to these issues; it should be particularly noted that the student negotiators strongly supported the Secretary's interpretation.

As indicated in disclosure number six, the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. For the purpose of that disclosure, the Secretary proposes that the outcome of an institutional disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused. This proposed definition of outcome results from changes made by the Secretary pursuant to the negotiators' recommendation and reflects language agreed to by the negotiators.

As indicated in disclosure number seven, the institution must disclose

possible sanctions to be imposed following the final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

During the negotiated rulemaking meetings, members of the academic community recommended that the Secretary allow an institution to define the sanctions it wishes to impose. The Secretary agrees with this recommendation.

During the negotiated rulemaking meetings, members of the academic community recommended that the institution define the term "campus", and that this term not be defined in regulations. The Secretary is unable to accept this recommendation because the term "campus" is defined in section 485(f) of the HEA and subsequently in the July 10, 1992 Notice of Proposed Rulemaking (57 FR 30826).

Additional comments from the negotiated rulemaking meetings included a request that additional regulations not be put into effect until current regulations are effective. With respect to delaying additional regulations concerning campus security, the Higher Education Amendments of 1992 require that certain policies and procedures be in place on certain dates mandated by this statute. An institution must have had the actual policies and procedures concerning the prevention of forcible and nonforcible sex offenses in place by July 1, 1993, and have included them in the annual security report that the institution must disclose on September 1, 1993. Therefore, it is not within the Secretary's authority to delay these regulations.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities affected by these regulations are small institutions of higher education. However, the regulations would not have a significant economic impact on the small institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal burdens necessary to implement statutory requirements.

Paperwork Reduction Act of 1980

Sections 668.44, 668.45, and 668.48 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a

copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect the following types of entities that participate in the title IV, HEA programs: Businesses or other for-profit, and non-profit institutions. The Department administers the collection and reporting of this information by institutions to assist student consumerism by all current and prospective students. If the collection and reporting of information were not conducted, the Department would be improperly implementing its responsibility to administer certain aspects of the HEA.

Annual public reporting burden for this collection of information is estimated to average 1 hour per response for 7,000 institutions, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In addition, a one-time public reporting burden for this collection of information is estimated to average 0.25 hours per response for 8,500 institutions, including the time for reviewing instructions and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4318, ROB-3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities,

Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141.

Dated: July 27, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; Catalog of Federal Domestic Assistance Numbers for the Federal Direct Loan Demonstration Program, National Early Intervention Scholarship and Partnership Program, and Presidential Access Scholarship Program have not been assigned)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.43, as proposed to be redesignated as § 668.44 on page 30830 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is amended by removing the word "and" at the end of paragraph (c)(4); removing the period in paragraph (c)(5) and adding in its place "; and"; and adding a new paragraph (c)(6) to read as follows:

§ 668.44 Financial assistance information.

* * * * *

(c) * * *

(6) The institution shall provide and collect exit counseling information as required by 34 CFR 674.42 for borrowers under the Federal Perkins Loan Program

and by 34 CFR 682.604 for borrowers under the Federal Stafford Loan Program and the Federal Supplemental Loans for Students Program.

* * * * *

3. Section 668.44, as proposed to be redesignated as § 668.45 on page 30830 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is amended by removing "§ 668.45" in paragraph (a)(7), and adding, in its place, "§ 668.49".

4. Section 668.44, as proposed to be redesignated as § 668.45 on page 30830 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is further amended by removing "and" at the end of paragraph (a)(6), removing the period at the end of paragraph (a)(7), adding in its place "; and", and adding a new paragraph (a)(8) to read as follows:

§ 668.45 Institutional information.

(a) * * *

(8) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

* * * * *

5. Section 668.48, as proposed to be added on pages 30832-30833 in the Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30826), is amended by adding a new paragraph (a)(12) to read as follows:

§ 668.48 Institutional security policies and crime statistics.

(a) * * *

(12) A statement of policy regarding its campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs, that includes—

(i) Education programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of

preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and that institutional personnel will assist the student in notifying these authorities, if the student requests;

(iv) Notifying students of existing on- and off-campus counseling, mental health, or student services for victims of sex offense;

(v) Notifying students that the institution will change the victim's academic and living situations after an alleged sex offense and of the options for such changes, if a change is requested by the victim and is reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

* * * * *

6. Section 668.72 is amended by removing "§ 668.44" in paragraph (l), and adding, in its place, "§§ 668.45 and 668.46."

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Federal Register

Friday
October 22, 1993

Part XI

The President

**Proclamation 6616—National Biomedical
Research Day, 1993**

**Executive Order 12873—Federal
Acquisition, Recycling, and Waste
Prevention**

**Executive Order 12874—Establishing an
Emergency Board To Investigate a
Dispute Between The Long Island Rail
Road and Certain of Its Employees
Represented by the United Transportation
Union**

Presidential Documents

Title 3—

Proclamation 6816 of October 20, 1993

The President

National Biomedical Research Day, 1993

By the President of the United States of America

A Proclamation

The Congress has designated October 21, 1993, as "National Biomedical Research Day." On this day, we celebrate the central role played by biomedical research in improving human health and longevity, and we acknowledge the promise this wide-ranging endeavor holds for securing the future physical and mental well-being of people around the world. Biomedical research not only yields the requisite information that scientists and physicians need to prevent and treat diseases but also reveals the fundamental nature of life in humans, other animals, and plants.

There is an intriguing quality to biomedical research: A discovery does not always predict its future uses. As a consequence, it is essential that the Nation continue to champion broad-based studies of both the normal and the disease processes. These studies will yield a fundamental understanding of biological systems and will provide us with the foundation of knowledge needed to ensure successful responses to current and future health problems.

An event that took place 40 years ago illustrates how vital such fundamental knowledge is. In 1953, Nobel laureates Drs. James D. Watson and Francis H.C. Crick described the structure of DNA, the genetic material of all living things. Today, as a direct outcome of their basic research, gene therapy has been devised for children with severe combined immune deficiency; accurate diagnostic tests are available for many life-threatening diseases and conditions; and the genetic mechanisms underlying disorders like cystic fibrosis and Huntington's disease have been identified.

The discovery of the structure of DNA also set the stage for the development of recombinant DNA technology, out of which has blossomed the biotechnology industry. In just the past 10 years, some 1,300 biotechnology companies have been formed. Through biotechnology, chemists and biologists are able to design and produce novel medicines and vaccines for clinical use. Scientists have learned how to commandeer the cellular machinery of living organisms, so that these organisms produce needed proteins and other biological molecules. Researchers have also genetically "engineered" crop plants to make them hardier and resistant to pests. The success of the biotechnology industry has also enhanced the economic competitiveness of the United States in the world marketplace. There is no doubt that the future fruits of biotechnology, both medical and economic, will be even greater.

The continuing preeminence of the United States in biomedical research reflects the contributions of many groups of dedicated professionals at work in Federal agencies such as the National Institutes of Health and the Centers for Disease Control and Prevention and in government-supported laboratories at universities, hospitals, and private research facilities. Teachers at all levels—from those who encourage our kindergartners to those who train biomedical specialists—are also helping to ensure the future success of biomedical research, an enterprise that cannot go forward without both strong practitioners and a supportive public.

Unraveling the mysteries of living organisms remains a daunting task. But, through biomedical research, the ceaseless whooping coughs of children have been silenced; smallpox no longer exacts a human toll anywhere on the Earth; and vaccines, treatments, and cures are at hand for many diseases. As the struggles continue against AIDS, cancer, heart and lung diseases, arthritis, diabetes, Alzheimer's disease, epilepsy, multiple sclerosis, and a host of other afflictions, we look to the successes of the biomedical community for our inspiration.

We look to the future with our eyes open and with unflagging support for continued biomedical research that is broad enough and deep enough to establish a firm foundation of knowledge from which effective cures and therapies will emerge.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 21, 1993, as National Biomedical Research Day. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, and the appropriate officials of all other jurisdictions under the American flag, to issue similar proclamations. I ask every beneficiary of biomedical research; that is, every citizen of this country, to acknowledge the true worth of biomedical research. I ask biomedical researchers, health care professionals, schools and universities, community organizations, and businesses to join in efforts to celebrate the successes of biomedical research and to promote this enterprise.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of October, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-26282

Filed 10-21-93; 11:23 am]

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Presidential Documents

Executive Order 12873 of October 20, 1993

Federal Acquisition, Recycling, and Waste Prevention

WHEREAS, the Nation's interest is served when the Federal Government can make more efficient use of natural resources by maximizing recycling and preventing waste wherever possible;

WHEREAS, this Administration is determined to strengthen the role of the Federal Government as an enlightened, environmentally conscious and concerned consumer;

WHEREAS, the Federal Government should—through cost-effective waste prevention and recycling activities—work to conserve disposal capacity, and serve as a model in this regard for private and other public institutions; and

WHEREAS, the use of recycled and environmentally preferable products and services by the Federal Government can spur private sector development of new technologies and use of such products, thereby creating business and employment opportunities and enhancing regional and local economies and the national economy;

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94-580, 90 Stat. 2795 as amended (42 U.S.C. 6901-6907), and section 301 of title 3, United States Code, hereby order as follows:

PART 1—PREAMBLE

Section 101. Consistent with the demands of efficiency and cost effectiveness, the head of each Executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products.

Sec. 102. Consistent with policies established by Office of Federal Procurement Policy ("OFPP") Policy Letter 92-4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

Sec. 103. This order creates a Federal Environmental Executive and establishes high-level Environmental Executive positions within each agency to be responsible for expediting the implementation of this order and statutes that pertain to this order.

PART 2—DEFINITIONS

For purposes of this order:

Sec. 201. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Sec. 202. "Executive agency" or "agency" means an Executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

Sec. 203. "Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material".

Sec. 204. "Acquisition" means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 205. "Recovered materials" means waste materials and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Sec. 206. "Recyclability" means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

Sec. 207. "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

Sec. 208. "Waste prevention," also known as "source reduction," means any change in the design, manufacturing, purchase or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

Sec. 209. "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Sec. 210. "Life Cycle Cost" means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs and disposal costs discounted over the lifetime of the product.

Sec. 211. "Life Cycle Analysis" means the comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

PART 3—THE ROLE OF THE FEDERAL ENVIRONMENTAL EXECUTIVE AND AGENCY ENVIRONMENTAL EXECUTIVES

Sec. 301. *Federal Environmental Executive.* (a) A Federal Environmental Executive shall be designated by the President and shall be located within the Environmental Protection Agency ("EPA"). The Federal Environmental Executive shall take all actions necessary to ensure that the agencies comply with the requirements of this order and shall generate an annual report to the Office of Management and Budget ("OMB"), at the time of agency budget submissions, on the actions taken by the agencies to comply with the requirements of this order. In carrying out his or her functions, the

Federal Environmental Executive shall consult with the Director of the White House Office on Environmental Policy.

(b) *Staffing.* A minimum of four (4) full time staff persons are to be provided by the agencies listed below to assist the Federal Environmental Executive, one of whom shall have experience in specification review and program requirements, one of whom shall have experience in procurement practices, and one of whom shall have experience in solid waste prevention and recycling. These four staff persons shall be appointed and replaced as follows:

(1) a representative from the Department of Defense shall be detailed for not less than one year and no more than two years;

(2) a representative from the General Services Administration ("GSA") shall be detailed for not less than one year and no more than two years;

(3) a representative from EPA shall be detailed for not less than one year and no more than two years; and

(4) a representative from one other agency determined by the Federal Environmental Executive shall be detailed on a rotational basis for not more than one year.

(c) *Administration.* Agencies are requested to make their services, personnel and facilities available to the Federal Environmental Executive to the maximum extent practicable for the performance of functions under this order.

(d) *Committees and Work Groups.* The Federal Environmental Executive shall establish committees and work groups to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the Federal Environmental Executive. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, waste prevention, and recycling, and others as needed to staff and work on the initiatives of the Executive.

(e) *Duties.* The Federal Environmental Executive, in consultation with the Agency Environmental Executives, shall:

(1) identify and recommend initiatives for government-wide implementation that will promote the purposes of this order, including:

(A) the development of a federal plan for agency implementation of this order and appropriate incentives to encourage the acquisition of recycled and environmentally preferable products by the Federal Government;

(B) the development of a federal implementation plan and guidance for instituting economically efficient federal waste prevention, energy and water efficiency programs, and recycling programs within each agency; and

(C) the development of a plan for making maximum use of available funding assistance programs;

(2) collect and disseminate information electronically concerning methods to reduce waste, materials that can be recycled, costs and savings associated with waste prevention and recycling, and current market sources of products that are environmentally preferable or produced with recovered materials;

(3) provide guidance and assistance to the agencies in setting up and reporting on agency programs and monitoring their effectiveness; and

(4) coordinate appropriate government-wide education and training programs for agencies.

Sec. 302. Agency Environmental Executives. Within 90 days after the effective date of this order, the head of each Executive department and major procuring agency shall designate an Agency Environmental Executive from among his or her staff, who serves at a level no lower than at the Deputy Assistant

Secretary level or equivalent. The Agency Environmental Executive will be responsible for:

(a) coordinating all environmental programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics;

(b) participating in the interagency development of a Federal plan to:

(1) create an awareness and outreach program for the private sector to facilitate markets for environmentally preferable and recycled products and services, promote new technologies, improve awareness about federal efforts in this area, and expedite agency efforts to procure new products identified under this order;

(2) establish incentives, provide guidance and coordinate appropriate educational programs for agency employees; and

(3) coordinate the development of standard agency reports required by this order;

(c) reviewing agency programs and acquisitions to ensure compliance with this order.

PART 4—ACQUISITION PLANNING AND AFFIRMATIVE PROCUREMENT PROGRAMS

Sec. 401. Acquisition Planning. In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider the following factors: elimination of virgin material requirements; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal, as appropriate. These factors should be considered in acquisition planning for all procurements and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

Sec. 402. Affirmative Procurement Programs. The head of each Executive agency shall develop and implement affirmative procurement programs in accordance with RCRA section 6002 (42 U.S.C. 6962) and this order. Agencies shall ensure that responsibilities for preparation, implementation and monitoring of affirmative procurement programs are shared between the program personnel and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other Federal agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance and availability considerations, and shall adjust bid solicitation guidelines as necessary in order to accomplish this goal.

(a) Agencies shall establish affirmative procurement programs for all designated EPA guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within one year from the date EPA designated the new items.

(b) For the currently designated EPA guideline items, which are: (i) concrete and cement containing fly ash; (ii) recycled paper products; (iii) re-refined lubricating oil; (iv) retread tires; and (v) insulation containing recovered materials; and for all future guideline items, agencies shall ensure that their affirmative procurement programs require that 100 percent of their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

(c) The Agency Environmental Executives will track agencies' purchases of designated EPA guideline items and report agencies' purchases of such guideline items to the Federal Environmental Executive. Agency Environmental Executives will be required to justify to the Federal Environmental Executive as to why the item(s) have not been purchased or submit a

plan for how the agencies intend to increase their purchases of the designated item(s).

(d) Agency affirmative procurement programs, to the maximum extent practicable, shall encourage that:

(1) documents be transferred electronically,

(2) all government documents printed internally be printed double-sided, and

(3) contracts, grants, and cooperative agreements issued after the effective date of this order include provisions that require documents to be printed double-sided on recycled paper meeting or exceeding the standards established in this order or in future EPA guidelines.

Sec. 403. *Procurement of Existing Guideline Items.* Within 90 days after the effective date of this order, the head of each Executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

Sec. 404. *Electronic Acquisition System.* To reduce waste by eliminating unnecessary paper transactions in the acquisition process and to foster accurate data collection and reporting of agencies' purchases of recycled content and environmentally preferred products, the executive branch will implement an electronic commerce system consistent with the recommendations adopted as a result of the National Performance Review.

PART 5—STANDARDS, SPECIFICATIONS AND DESIGNATION OF ITEMS

Sec. 501. *Specifications, Product Descriptions and Standards.* Where applicable, Executive agencies shall review and revise federal and military specifications, product descriptions and standards to enhance Federal procurement of products made from recovered materials or that are environmentally preferable. When converting to a Commercial Item Description (CID), agencies shall ensure that environmental factors have been considered and that the CID meets or exceeds the environmentally preferable criteria of the government specification or product description. Agencies shall report annually on their compliance with this section to the Federal Environmental Executive for incorporation into the annual report to OMB referred to in section 301 of this order.

(a) If an inconsistency with RCRA Section 6002 or this order is identified in a specification, standard, or product description, the Federal Environmental Executive shall request that the Environmental Executive of the pertinent agency advise the Federal Environmental Executive as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that agency's Environmental Executive to monitor and implement the plan for revising it.

Sec. 502. *Designation of Items that Contain Recovered Materials.* In order to expedite the process of designating items that are or can be made with recovered materials, EPA shall institute a new process for designating these items in accordance with RCRA section 6002(e) as follows. (a) EPA shall issue a Comprehensive Procurement Guideline containing designated items that are or can be made with recovered materials.

(1) The proposed guideline shall be published for public comment in the Federal Register within 180 days after the effective date of this order and shall be updated annually after publication for comment to include additional items.

(2) Once items containing recovered materials have been designated by EPA through the new process established pursuant to this section and in compliance with RCRA section 6002, agencies shall modify their affirma-

tive procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

(b) Concurrent with the issuance of the Comprehensive Procurement Guideline required by section 502(a) of this order, EPA shall publish for public comment in the **Federal Register** Recovered Material Advisory Notice(s) that present the range of recovered material content levels within which the designated recycled items are currently available. These levels shall be updated periodically after publication for comment to reflect changes in market conditions.

Sec. 503. Guidance for Environmentally Preferable Products. In accordance with this order, EPA shall issue guidance that recommends principles that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products.

(a) Proposed guidance shall be published for public comment in the **Federal Register** within 180 days after the effective date of this order, and may be updated after public comment, as necessary, thereafter. To the extent necessary, EPA may issue additional guidance for public comment on how the principles can be applied to specific product categories.

(b) Once final guidance for environmentally preferable products has been issued by EPA, Executive agencies shall use these principles, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and shall modify their procurement programs by reviewing and revising specifications, solicitation procedures, and policies as appropriate.

Sec. 504. Minimum Content Standard for Printing and Writing Paper. Executive agency heads shall ensure that agencies shall meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper:

(a) For high speed copier paper, offset paper, forms bond, computer print-out paper, carbonless paper, file folders, and white woven envelopes, the minimum content standard shall be no less than 20 percent postconsumer materials beginning December 31, 1994. This minimum content standard shall be increased to 30 percent beginning on December 31, 1998.

(b) For other uncoated printing and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be 50 percent recovered materials, including 20 percent postconsumer materials beginning on December 31, 1994. This standard shall be increased to 30 percent beginning on December 31, 1998.

(c) As an alternative to meeting the standards in sections 504(a) and (b), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product which would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(1) The decision not to procure recycled content printing and writing paper meeting the standards specified in this section shall be based solely on a determination by the contracting officer that a satisfactory level of competition does not exist, that the items are not available within a reasonable time period, or that the available items fail to meet reasonable performance standards established by the agency or are only available at an unreasonable price.

(2) Each agency should implement waste prevention techniques, as specified in section 402(d) of this order, so that total annual expenditures for recycled content printing and writing paper do not exceed current annual budgets for paper products as measured by average annual expenditures, adjusted for inflation based on the Consumer Price Index or other suitable

indices. In determining a target budget for printing and writing paper, agencies may take into account such factors as employee increases or decreases, new agency or statutory initiatives, and episodic or unique requirements (e.g., census).

(3) Effective immediately, all agencies making solicitations for the purchase of printing and writing paper shall seek bids for paper with postconsumer material or recovered waste material as described in section 504(c).

Sec. 505. Revision of Brightness Specifications and Standards. The General Services Administration and other Federal agencies are directed to identify, evaluate and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete the review and revision of such specifications within six months after the effective date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

Sec. 506. Procurement of Re-refined Lubricating Oil and Retread Tires. Within 180 days after the effective date of this order, agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires.

(a) Commodity managers shall finalize revisions to specifications for re-refined oil and retread tires, and develop and issue specifications for tire retreading services, as commodity managers shall take affirmative steps to procure these items in accordance with RCRA section 6002.

(b) Once these items become available, fleet managers shall take affirmative steps to procure these items in accordance with RCRA section 6002.

Sec. 507. Product Testing. The Secretary of Commerce, through the National Institute of Standards and Technology ("NIST"), shall establish a program for testing the performance of products containing recovered materials or deemed to be environmentally preferable. NIST shall work with EPA, GSA and other public and private sector organizations that conduct appropriate life cycle analyses to gather information that will assist agencies in making selections of products and services that are environmentally preferable.

(a) NIST shall publish appropriate reports describing testing programs, their results, and recommendations for testing methods and related specifications for use by Executive agencies and other interested parties.

(b) NIST shall coordinate with other Executive and State agencies to avoid duplication with existing testing programs.

PART 6—AGENCY GOALS AND REPORTING REQUIREMENTS

Sec. 601. Goals for Waste Reduction. Each agency shall establish a goal for solid waste prevention and a goal for recycling to be achieved by the year 1995. These goals shall be submitted to the Federal Environmental Executive within 180 days after the effective date of this order. Progress on attaining these goals shall be reported by the agencies to the Federal Environmental Executive for the annual report specified in section 301 of this order.

Sec. 602. Goal for Increasing the Procurement of Recycled and Other Environmentally Preferable Products. Agencies shall strive to increase the procurement of products that are environmentally preferable or that are made with recovered materials and set annual goals to maximize the number of recycled products purchased, relative to non-recycled alternatives.

Sec. 603. Review of Implementation. The President's Council on Integrity and Efficiency ("PCIE") will request that the Inspectors General periodically review agencies' affirmative procurement programs and reporting procedures to ensure their compliance with this order.

PART 7—APPLICABILITY AND OTHER REQUIREMENTS

Sec. 701. Contractor Operated Facilities. Contracts that provide for contractor operation of a government-owned or leased facility, awarded after the effective date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations. In addition, to the extent permitted by law and where economically feasible, existing contracts should be modified.

Sec. 702. Real Property Acquisition and Management. Within 90 days after the effective date of this order, and to the extent permitted by law and where economically feasible, Executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of federally owned and leased space. GSA and other Executive agencies shall also include environmental and recycling provisions in the acquisition of all leased space and in the construction of new federal buildings.

Sec. 703. Retention of Funds. Within 90 days after the effective date of this order, the Administrator of GSA shall develop a legislative proposal providing authority for Executive agencies to retain a share of the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

Sec. 704. Model Facility Programs. Each Executive department and major procuring agency shall establish model facility demonstration programs that include comprehensive waste prevention and recycling programs and emphasize the procurement of recycled and environmentally preferable products and services using an electronic data interchange (EDI) system.

Sec. 705. Recycling Programs. Each Executive agency that has not already done so shall initiate a program to promote cost effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements. Federal agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

PART 8—AWARENESS

Sec. 801. Agency Awards Program. A government-wide award will be presented annually by the White House to the best, most innovative program implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated government-wide.

Sec. 802. Internal Agency Awards Programs. Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Winners of agency-wide awards will be eligible for the White House award program.

PART 9—REVOCATION, LIMITATION AND IMPLEMENTATION

Sec. 901. Executive Order No. 12780, dated October 31, 1991, is hereby revoked.

Sec. 902. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

Sec. 903. The policies expressed in this order, including the requirements and elements for effective agency affirmative procurement programs, shall be implemented and incorporated in the Federal Acquisition Regulation (FAR) within 180 days after the effective date of this order. The implementation language shall consist of providing specific direction and guidance on agency programs for preference, promotion, estimation, certification, reviewing and monitoring.

Sec. 904. This order shall be effective immediately.

William Clinton

THE WHITE HOUSE,
October 20, 1993.

[FR Doc. 93-28280
Filed 10-21-93; 11:24 am]
Billing code 3195-01-P

Presidential Documents

Executive Order 12874 of October 20, 1993

Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and Certain of Its Employees Represented by the United Transportation Union

A dispute exists between The Long Island Rail Road and certain of its employees represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(c) of the Act provides that the President, upon such request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective October 20, 1993, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this order.



THE WHITE HOUSE,
October 20, 1993.



Federal Register

Friday
October 22, 1993

Part XII

Federal Communications Commission

Alaska Federal-State Joint Board to
Convene an Open Meeting; Notice

**FEDERAL COMMUNICATIONS
COMMISSION**

**Alaska Federal-State Joint Board to
Convene an Open Meeting, Tuesday,
October 26, 1993**

[CC Docket No. 83-1376]

Released: October 19, 1993.

The Alaska Federal-State Joint Board
in CC Docket 83-1376 will convene an

open public meeting on Tuesday,
October 26, 1993, at 9:30 a.m. at the
Federal Communications Commission,
1919 M St. NW., Washington, DC in
room 856. The meeting will be held to
consider a Joint Board Final
Recommendation addressing interstate
telecommunications market structure
issues for Alaska. Interested persons
may attend the meeting.

Additional information concerning
this meeting may be obtained from Rose

Crellin, Common Carrier Bureau, FCC,
at (202) 632-1292, or Kent Nilsson,
Common Carrier Bureau, FCC, at (202)
632-1302.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-26141 Filed 10-21-93; 11:50
am]

BILLING CODE 6712-01-M

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This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.J. Res. 218/P.L. 103-108

Designating October 16, 1993, and October 16, 1994, each as World Food Day. (Oct. 18, 1993; 107 Stat. 1034; 2 pages)

H.J. Res. 265/P.L. 103-109

To designate October 19, 1993, as "National Mammography Day". (Oct. 18, 1993; 107 Stat. 1036; 1 page)

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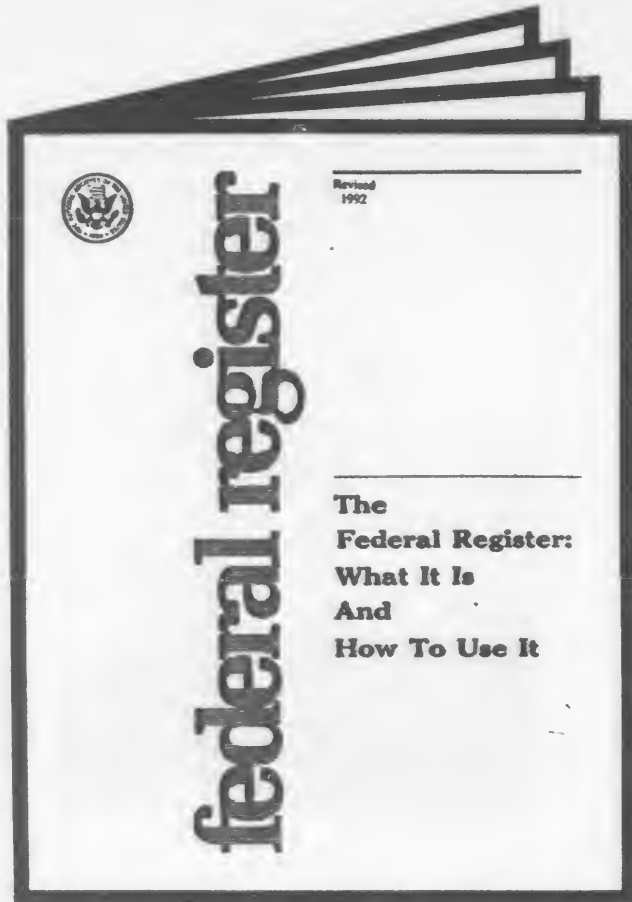
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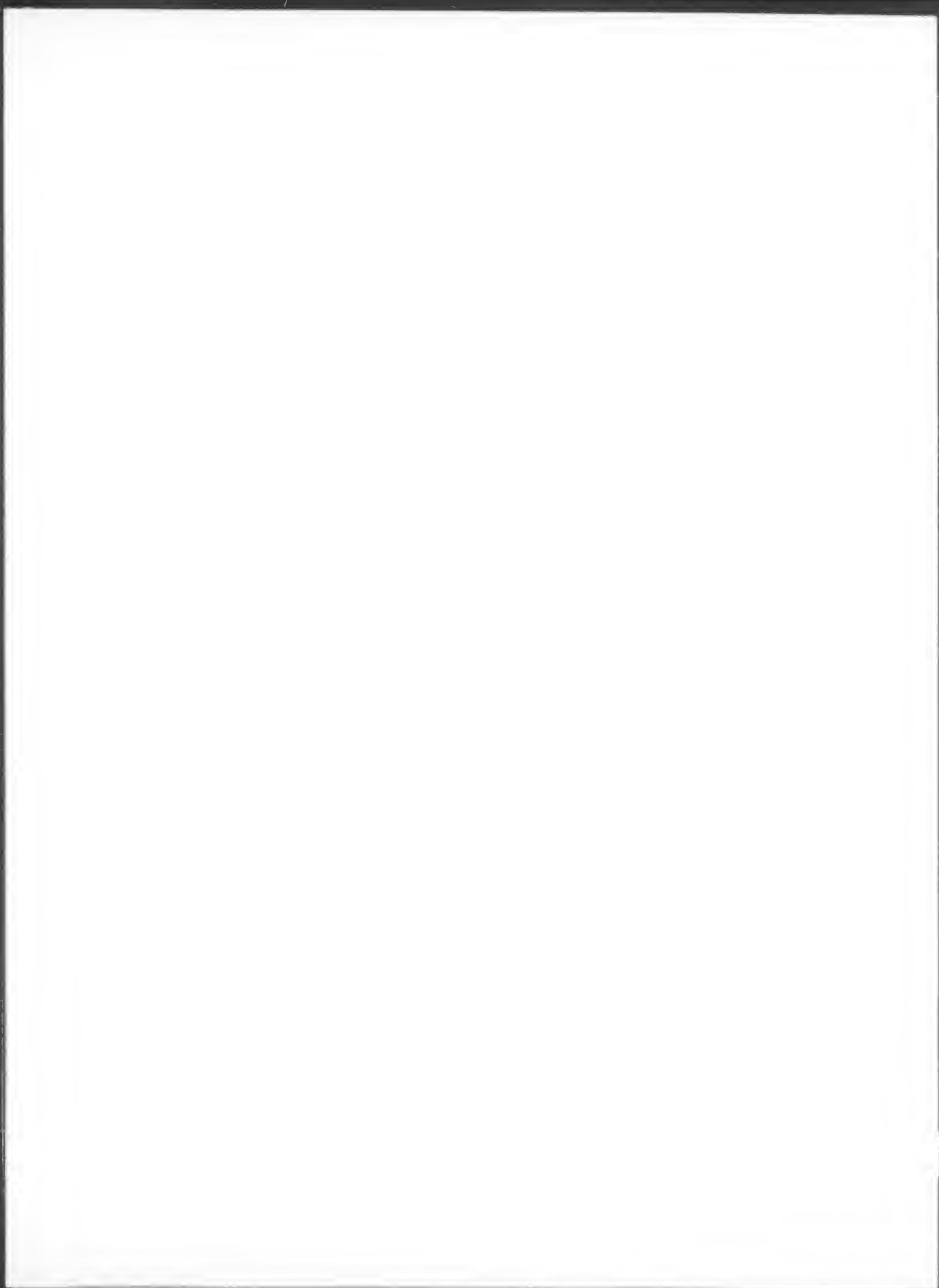
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