8-16-91
Vol. 56 No. 159

federal register

Friday
August 16, 1991

United States
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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

8-16-91
Vol. 56 No. 159
Pages 40743-41054

federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-91-410FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; 1991-92 Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for the 1991-92 fiscal period (August 1-July 31) for the Texas Valley Citrus Committee (TVCC), established under Marketing Order No. 906. This action is needed by the TVCC to pay anticipated marketing order expenses, and will enable the TVCC to continue to perform its duties and the order to operate.

EFFECTIVE DATE: August 1, 1991 through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are about 135 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing order for Texas oranges and grapefruit, administered by the Department, requires that an annual budget of expenses be prepared by the TVCC and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The recommended budget is usually acted upon by the TVCC shortly before a season starts, or during the season when changes are needed, and expenses are incurred on a continuous basis. Therefore, budget approvals must be expedited so that the TVCC will have funds to pay its expenses.

A proposed rule concerning this action was published in the Federal Register (56 FR 33393, July 22, 1991), with a 10-day comment period ending August 1, 1991. No comments were received.

The TVCC met on June 18, 1991, and unanimously recommended a 1991-92 fiscal period budget with expenditures of $102,250. Of this total, $46,000 is for administration of the marketing order and $56,250 is for administration of TexaSweet Citrus Advertising, Inc. (TCAI). TCAI has carried out the TVCC's advertising and promotion program for the past several seasons and plans limited public relations activities for the 1991-92 season. Budgeted expenditures for 1990-91 were $107,810.

The TVCC's 1991-92 fiscal period expenditures are similar in size and scope to those of last fiscal year and are at a level needed to keep the marketing order functioning until Texas citrus production further recovers and increased supplies of fruit become available for the commercial market. The 1991-92 season Texas citrus crop is expected to be relatively small, due to long term damage to the citrus groves caused by a severe freeze in December of 1989. Due to the small expected crop, the TVCC recommended that no assessment rate be established for the 1991-92 fiscal year, the same recommendation it made last year for the 1990-91 season.

The TVCC plans to use funds from its reserve and an estimated $25,000 in interest income to finance its 1991-92 fiscal period expenditures. The TVCC estimates that its reserve fund will amount to about $458,600 on July 31, 1991, which is more than adequate to cover the anticipated deficit.

Based on the foregoing, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the TVCC, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because approval of the expenses must be expedited. The 1991-92 fiscal period began on August 1 and the TVCC needs

approval to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

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

2. A new section 906.231 is added to read as follows:

(Note: This § will not appear in the annual Code of Federal Regulations.)

§ 906.231 Expenses.

Expenses of $102,250 by the Texas Valley Citrus Committee are authorized for the fiscal period ending on July 31, 1992.

Dated: August 12, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–19640 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 931

[Docket No. FV–91–412FR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 931 for the 1991–92 fiscal period (July 1–June 30). This action is needed for the Northwest Fresh Bartlett Pear Marketing Committee (committee) established under M.O. 931 to incur operating expenses during the 1991–92 fiscal period and to collect funds during that period to pay those expenses. This will facilitate program operations.

EFFECTIVE DATE: July 1, 1991 through June 30, 1991 (§ 931.226).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 931 (7 CFR part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The Bartlett pear marketing order is effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 60 handlers of fresh Bartlett pears regulated under this marketing order each season and approximately 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Bartlett pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are pear handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of pears (in standard boxes). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met May 30, 1991, and unanimously recommended 1991–92 fiscal period expenditures of $91,062 and an assessment rate of $0.03 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1990–91 fiscal period budgeted expenditures were $78,485 and the assessment rate was $0.015.

These expenditures are primarily for program administration. Most of the expenditure items are budgeted at about last year's amounts with the exception of increases in salaries, office rent, reserve for contingencies, and education and compliance. The increase for education and compliance from $500 to $5,000 is for routine handler audits necessary to determine handler compliance with program requirements.

Assessment income for the 1991–92 fiscal period is expected to total $64,783 based on shipments of 2,159,433 packed boxes of pears at $0.03 per standard box or equivalent. Other available funds include a reserve of $23,779 carried into this fiscal period, $1,000 of prior year assessments, and $1,500 in miscellaneous income, primarily from interest bearing accounts. Total funds available equal $91,062, the same as the recommended budget.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1990–91 fiscal period be placed in its reserve. The reserve is within the limits authorized under the marketing order.

Notice of this action was published in the July 23, 1991, issue of the **Federal Register**. The comment period ended August 2, 1991. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have

a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Approval of expenses and assessment rate for the Bartlett pear program should be expedited because the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of these actions until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 931

Bartlett pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

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

2. New § 931.226 is added to read as follows:

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

§ 931.226 Expenses and assessment rate.

Expenses of $91,062 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.03 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1992. Unexpended funds from the 1990–91 fiscal period may be carried over as a reserve.

Dated: August 12, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–19623 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1485

Cooperative Agreements for the Development of Foreign Markets for Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The regulations set forth in subpart B are applicable to the Market Promotion Program authorized by section 203 of the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, enacted November 28, 1990. This program is intended to maintain, develop, and expand commercial markets for U.S. farm products and to assist exporters affected by unfair trade practices.

DATES: This interim rule is effective August 16, 1991. Comments must be received in writing within 60 days of the effective date of this interim rule (October 15, 1991).

ADDRESS: Send comments to the Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenues, SW, Washington, DC 20250–1000. Telephone: (202) 447–5521.

FOR FURTHER INFORMATION CONTACT: Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1000. Telephone: (202) 447–5521. The Regulatory Impact Analysis concerning this rule is available on request from the Director, Planning and Evaluation Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1000. Telephone: (202) 245–5198.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as major, with an annual impact on the economy of $100 million or more. It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required under 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It is also not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (see the Notice related to 7 CFR part 3015, subpart V, 48 FR 29115). This interim rule has been submitted to the Office of Management and Budget (OMB) for review. It is expected that OMB will assign it a control number for the purpose of the Paperwork Reduction Act.

Background

Statutory Background

Section 203 of the Agricultural Trade Act of 1978, as amended by section 1531 of 1990 Act, directs the CCC to carry out a program to encourage the development, maintenance and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations. Such assistance is to be provided on a priority basis in the case of unfair trade practices and may be provided in the form of CCC funds or CCC owned commodities.

In order to participate in this program, an "eligible trade organization" must be: (1) A United States agricultural trade organization or regional State-related organization that promotes the export and sale of agricultural commodities and that does not stand to profit directly from specific sales; (2) a cooperative organization or a State agency that promotes the export and sale of agricultural commodities; or (3) a private organization that promotes the sale of agricultural commodities should the Secretary of Agriculture determine that such organization would significantly contribute to United States export market development. Generally, activities receiving cost-share assistance may promote agricultural exports on a generic or brand identified basis. However, any assistance for brand promotion is limited to no more than 50 percent of the cost of implementing the activities, except in the case of commodities with respect to which there has been a favorable decision by the United States Trade Representative under section 301 of the Trade Act of 1974, or in the case of participants that received assistance under section 1124 of the Food Security Act of 1985 (the Targeted Export Assistance Program (TEA)) at a higher level. In the latter case, assistance must be phased down to a maximum of 50 percent in equal installments over a 5-year period.

Participants in the program are required to submit a marketing plan (referred to in the regulations as an "activity plan") describing the activities to be carried out with respect to which assistance is to be provided that details the manner in which funds will be expended, establishing specific marketing goals, and other information, as required by CCC.

Initiating Program Activities

CCC has established the Market Promotion Program (MPP) to carry out the mandate of section 203 of the Agricultural Trade Act of 1978. The

program will be implemented through two basic types of agreements: Market Promotion Program Agreements (MPP Agreements) and Export Incentive Program/Market Promotion Agreements (EIP/MPP Agreements). EIP/MPP Agreements are only entered into with U.S. commercial entities for brand promotion activities when CCC determines that brand promotion would significantly contribute to export market development. Generally, programs will be initiated as follows:

1. CCC will annually announce the total available funding for MPP and EIP/MPP agreements through a Notice in the Federal Register. The Notice will invite applications for funding to be submitted to CCC by a specified date containing the information required by the regulations. At this time, any U.S. commercial entity can apply for CCC resources to enter into an EIP/MPP Agreement. However, before CCC enters into any specific EIP/MPP Agreement, a subsequent announcement will be made as to the commodities that CCC determines, based upon submissions received, would significantly contribute to export market development. Any interested U.S. commercial entity must then submit a specific application for an EIP/MPP Agreement containing all required information if it has not already done so. In this manner, CCC will assure that all interested entities have an equitable opportunity to participate.

2. Applications are reviewed and the request for funding may be rejected or adjusted based upon the criteria set forth in the regulations. CCC will issue a public announcement concerning the allocations of resources among the applicant organizations. CCC and the successful applicant organization (Participant) will then enter into a specific agreement.

3. The participant must submit an annual activity plan (the initial activity plan may be submitted prior to signing the agreement) proposing specific market development activities against which expenditures will be reimbursed with CCC resources. The regulation contains detailed requirements concerning the contents of an activity plan. Generally, only activities approved in the activity plan are eligible for reimbursement.

4. CCC reviews the activity plan and may require revisions thereto prior to approval. The participant will be notified in writing of the approval activity plan and any required revisions.

Significant Program Provisions

Following is a listing of some significant provisions made applicable to MPP or EIP/MPP Agreements by virtue of these regulations that were not part of prior market development programs administered by the Foreign Agricultural Service or CCC. Entities that have participated in the Cooperator program, the TEA program, or currently have MPP agreements should carefully review all regulations.

1. Participants in MPP Agreements will be required to provide a minimum level or resource contribution of no less than 5 percent of expended CCC resources.

2. CCC resources will not be used for acquisition, maintenance or insurance of residential property.

3. A limitation is established on the use of CCC resources for reimbursing salary and allowance expenses of MPP participant overseas employees and consultants.

4. Reimbursement for travel is made subject to the rules of the standard U.S. travel regulations, 41 CFR part 301.

5. Limitations are established on reimbursement for demonstration or training activities.

6. Except as stated below, reimbursement for any branded promotion, whether in an EIP/MPP agreement or part of a MPP agreement, will be no higher than 50 percent of the cost of the eligible expense. However, the actual percentage of reimbursement will be based upon the percentage of U.S. agricultural commodity content of the brand product being promoted. Thus, if a product being promoted has a 30 percent U.S. agricultural commodity content, reimbursement will be made at 30 percent of the cost of the approved expense but, in no event, will reimbursement exceed 50 percent.

There are two basic exceptions to this general reimbursement rule. First, if a participant had received reimbursement at a rate higher than 50 percent of the eligible expense during 1990 under the TEA program, the rate of reimbursement will be phased down beginning with the 1991 EIP/MPP program to 50 percent of the cost of the eligible expense over a five year period. At the end of the five year period, the participant would be reimbursed as stated above.

Second, in the case of commodities with respect to which:

1. There has been a favorable decision by the U.S. Trade Representative under section 301 of the Trade of 1974;

2. Action taken as a result of such favorable decision has not been terminated; and,

3. The volume of trade has not maintained the same market share or has not increased, reimbursement may be made at a rate higher than the percentage of U.S. content in product being promoted, and even higher than 50 percent of the cost of the eligible activity. The rate of reimbursement to apply in such circumstances will be the rate determined by CCC to be necessary to undertake activities to effectively encourage the development, maintenance, and expansion of commercial markets for the product.

It is intended that a "favorable decision" refers to an affirmative determination by the U.S. Trade Representative, with respect to the agricultural commodity being promoted, that:

1. The rights of the United States under any trade agreement are being denied; or,

2. An act, policy, or practice of a foreign country:

(i) Violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or,

(ii) Is unjustifiable and burdens or restricts United States commerce.

The acceptance of a petition for investigation by the U.S. Trade Representative is not sufficient. This eligibility for a higher rate of reimbursement will continue until the U.S. Trade Representative terminates action taken in response to the favorable decision made under section 301 of the Trade Act of 1974.

Effective Date

Section 404 of the Agricultural Act of 1978, as amended, requires that regulations implementing the Market Promotion Program be issued within 180 days after enactment of the Food, Agriculture, Conservation, and Trade Act of 1990. This rule is made effective on the date of publication in the Federal Register.

As stated in § 1485.29, these regulations will only apply to new activities, or any revisions to existing activities, that are approved on or after October 1, 1991. Therefore, present participants will not be required to revise previously approved activity plans in order to comply with the new rules and should have sufficient time to take the new rules into consideration in the planning of future activities.

Comments on the provisions of these regulations are invited and must be received within 60 days of the effective date. Appropriate changes will be implemented through the rulemaking process. Upon adoption of a final rule to replace this interim rule, CCC will provide a detailed analysis of all comments received that have a bearing on the Market Promotion Program.

Information Collection Requirements

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget for approval under the provision of 44 U.S.C. Chapter 35. Public reporting for these collections is estimated at 80 hours per response, including time for reviewing instructions, searching existing 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 Department of Agriculture, Clearance Officer, OIRM room 404–W, Washington, DC 20250–1000, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

Accordingly, part 1485 of title 7 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 1485 is transferred to subpart A and continues to read as follows:

Authority: Sec. 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714(c)(f)).

2. A subpart A heading is added immediately preceding § 1485.1 to read as follows:

SUBPART A—TARGETED EXPORT ASSISTANCE PROGRAM

§ 1485.1 [Amended]

3. Section 1485.1 is amended by removing the word "part" and adding, in its place, the word "subpart".

4. A new subpart B is added to part 1485 to read as follows:

Subpart B—Market Promotion Program

Sec.

Authority: Sec. 203, 402–404 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5623, 7 U.S.C. 5662–5664).

Subpart B—Market Promotion Program

§ 1485.10 Purpose and scope.

This subpart sets forth policies and requirements with respect to Commodity Credit Corporation (CCC) operation of the Market Promotion Program (MPP).

§ 1485.11 Definitions.

For purposes of this subpart:

(a) *Activity* means a specific market development effort undertaken in a foreign market by a program participant the expenses of which may be reimbursed with CCC resources or claimed as a contribution.

(b) *Activity Plan* means the document which describes a participant's export promotion strategy and expenses with respect to activities that may be reimbursed with CCC resources or claimed as contributions. Activities specified in an activity plan are designed on an annual basis to move either gradually or immediately toward meeting the objectives of the strategic plan. "Activity Plan" is used in lieu of the term "Marketing Plan" found in section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624).

(c) *Administrative Expense* means an expenditure incurred by a participant necessary for administration of an activity plan, as differentiated from an expenditure incurred in carrying out the plan's activities.

(d) *Administrator* means the Administrator, FAS, USDA, or his designees. The Administrator is also a Vice President of the CCC.

(e) *Affiliate* or *Affiliated Organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the participant has an investment other than in a mutual fund.

(f) *Agricultural Commodity* or *Commodity* means any food, feed, fiber or wood product; and, fish, harvested by a vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country, or harvested from a U.S. aquaculture farm.

(g) *Agricultural Product* or *Product* means any article processed, manufactured, or otherwise derived wholly or in part from one or more agricultural commodities.

(h) *APAR* means activity plan amendment request.

(i) *Attache/Counselor* means the FAS employee having responsibility for representing USDA interests in the foreign country in which promotional activities will be conducted.

(j) *Brand Product* or *Brand Commodity* means a privately owned brand name agricultural commodity or product.

(k) *Brand Promotion* means an activity which promotes one or more brand commodities or brand products.

(l) *CCC* means the Commodity Credit Corporation.

(m) *CCC Resources* means the funds or CCC commodity certificates made available to MPP and EIP/MPP participants under a MPP agreement or an EIP/MPP agreement.

(n) *Consumer Promotion* means an activity intended to positively influence consumer preferences toward a commodity or product.

(o) *Constraint* means an impediment to U.S. exports of an agricultural commodity or product in a specific market.

(p) *Contribution* means an expense incurred by a MPP participant, U.S. industry or foreign third party, as budgeted for and described in an approved activity plan, that is not reimbursed with CCC resources or by any other entity.

(q) *Division Director* means the Director of a Commodity Division, Commodity and Marketing Programs, FAS, USDA, having responsibility for the agricultural commodity or product covered by an MPP or an EIP/MPP agreement.

(r) *EIP/MPP* means the Export Incentive Program/Market Promotion Program.

(s) *EIP/MPP Agreement* means the written agreement between CCC and the EIP/MPP participant.

(t) *EIP/MPP Participant* means a U.S. commercial entity entering into an EIP/MPP agreement.

(u) *FAS* means the Foreign Agricultural Service, USDA.

(v) *Fiscal Year* means the period October 1 through September 30.

(w) *Foreign Third Party* means a foreign government or private organization that has entered into a written agreement with a participant to assist in promoting the export of a commodity or product.

(x) *Incurred Expense* means an expenditure by a participant to carry out an approved activity plan. An expense is deemed to be "incurred" on the date the participant receives the goods or services ordered.

(y) *MPP* means the Market Promotion Program. References to MPP do not include the EIP/MPP except as may be specifically provided for in this Subpart.

(z) *MPP Agreement* means the written agreement between CCC and the MPP participant.

(aa) *MPP Participant* means any nonprofit agricultural trade association, State Group, cooperative organization, or State agency that enters into a MPP agreement within the scope of this subpart.

(bb) *MPP Participant Overseas Office* means an entity established by a MPP participant in a foreign country for purposes of administering an approved activity plan and otherwise representing the MPP participant in that country.

(cc) *Participant* means any EIP/MPP or MPP participants. EIP/MPP participant refers only to a participant in the EIP/MPP and MPP participant refers only to a participant in the MPP.

(dd) *Research* means an activity to provide information that will enable the participant to identify market opportunities and assist in the future in developing an activity plan.

(ee) *Sales Team* means a group of individuals engaged in activities intended to result in specific sales by its members.

(ff) *State Group* means an association of State departments of agriculture.

(gg) *Strategic Plan* means a written outlook covering three or more forward years which describes the overall export objectives for a commodity or product in each country market to be promoted, the specific market conditions/constraints affecting exports of the commodity, the general approach needed to overcome such constraints, and the expected results of overcoming them through use of CCC resources. A strategic plan is required with each application for CCC resources.

(hh) *Technical Assistance* means an activity intended to address technical problems related to sale, movement, processing, marketing or use of agricultural commodities or products.

(ii) *Trade Servicing* means an activity intended to influence foreign traders, importers, wholesalers and retailers involved in the import, distribution and marketing of an agricultural commodity or product.

(jj) *Trade Team* is a group engaged in activities to promote the interests of the entire agricultural sector represented by the MPP participant.

(kk) *Unfair Trade Practice* means any act, policy, or practice of a foreign government that: (1) Violates, is inconsistent with, or otherwise denies benefits to the United States under any trade agreement to which the United States is a party; (2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce; or, (3) is otherwise inconsistent with a favorable section 301 determination by the United States Trade Representative.

(ll) *U.S. Commercial Entity* means any agricultural cooperative or for profit U.S. firm that is engaged in the export and/or promotion of an agricultural commodity or product.

(mm) *U.S. Industry Contribution* means the U.S. dollar value of a cash or in-kind good or service (e.g., personnel, materials, facilities, services, or supplies) provided by a U.S. industry entity in direct support of an approved activity and for which such entity will not be reimbursed by another party.

(nn) *USDA* means United States Department of Agriculture.

§ 1485.12 General program requirements and application procedures.

(a) *Agreements.* MPP and EIP/MPP agreements are intended to encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities and products through cost-share assistance. Participants may undertake activities directly or through a foreign third party and are accountable for any expenses incurred in carrying out such activities. The MPP participant must contribute cash or in-kind resources toward administration and/or completion of approved activities in accord with specific contribution obligations detailed in the activity plan approval letter. EIP/MPP agreements are limited to the promotion of specific brand commodities or brand products. EIP/MPP agreements are entered into between CCC and a U.S. commercial entity when CCC has determined such agreement would significantly contribute to export market development. CCC will make CCC commodity certificates, or at the option of CCC, U.S. dollar funds, available to participants to conduct activities under MPP or EIP/MPP agreements.

(b) *Application Procedures*—(1) *General.* CCC announces the MPP and EIP/MPP annually through publication of a Notice in the **Federal Register**. Prospective participants must apply directly to CCC by the deadline specified in the Notice. CCC may require applicants for EIP/MPP agreements to work directly through a MPP participant.

(2) *Contents.* MPP and EIP/MPP applicants must submit a written proposal which includes:

(i) A description of the agricultural commodity, product, or brand product for which CCC resources are being requested, including the percentage of U.S. origin agricultural commodity by weight, exclusive of added water;

(ii) The anticipated export availability of the agricultural commodity, product, or brand product over the duration of the proposed agreement;

(iii) The volume and value of U.S. exports of the agricultural commodity, product or brand product during the most recent three year prior for which data are available and the source of such information;

(iv) Description of the unfair trade practice, if any, affecting trade in the agricultural commodity, product or brand product;

(v) A strategic plan;

(vi) For nonprofit organizations, a description of the organization, its membership, and its membership criteria; its Articles of Incorporation and Internal Revenue tax exempt identification number, and the identity of affiliated organizations and their involvement in export of the commodity or product described in the application. Also include information concerning prior export promotion and other experience which evidences the organization's ability to manage a program of the size proposed, and the staff year equivalent, by position, of U.S. personnel who will be directly responsible for operating the proposed program;

(vii) The anticipated dollar value of MPP participant contributions, the total contribution as a percent of requested CCC resources and its source. Applicant nonprofit organizations must also describe any amounts expected to be received from other Federal or State government programs for the same or similar purposes for which CCC resources are being requested and if such amounts will be claimed as MPP participant contributions (the percentage contribution obligation of the participant can be no less than that specified in the application, regardless of the level of funding which is approved by CCC);

(viii) The amount of CCC resources requested; and,

(ix) A statement as to whether the duration of the proposal is for two or more years (a "multiyear" proposal), detailing why the proposal should be funded with CCC resources on such a multiyear basis.

(x) Other information, as determined appropriate by CCC, to effectively administer and evaluate program operations, such as market share and export sales goals, types of activities and related goals, proposed expenditures by country market, and total allocation of CCC funding necessary to meet total proposed expenditure levels.

(3) Additional application procedures for applicants for EIP/MPP agreements are specified in § 1485.13(c).

(4) Additional application procedures for applicants for MPP agreements desiring to undertake brand promotion activities are specified in § 1485.14(e).

(5) *Signatures.* The application must bear the original signature of the Chief Executive Officer (CEO) of the corresponding organization or a designee so authorized for that purpose in writing by the CEO.

(6) *Submission.* Send applications to CCC at the following address: Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1485.13 Special requirements of the Export Incentive Program.

(a) *General.* The provisions in this section pertain only to the EIP/MPP and are in addition to provisions specified in § 1485.12.

(b) *Agreements.* (1) CCC enters into EIP/MPP agreements only with U.S. commercial entities which either own the brand(s) of the product(s) to be promoted or have sole agency agreements for such brand(s) in each of the markets in which CC resources will be used.

(2) For any given expense eligible for reimbursement under an EIP/MPP agreement, the percentage of such expense for which CCC will reimburse the participant shall equate to the percentage of the U.S. origin content of the commodity or product being promoted for which such expense was incurred, but in any event not more than 50 percent. "U.S. origin content" is the percent weight of the U.S. produced agricultural commodity content, excluding added water, of the total net weight of the brand commodity or product being promoted.

(3) Notwithstanding paragraph (b)(2) of this section, if during fiscal year 1990 the U.S. commercial entity was reimbursed at more than 50 percent for eligible expenses under the Targeted Export Assistance Program authorized by section 1124 of the Food Security Act of 1985, reimbursement under an EIP/MPP agreement shall be at such higher rate reduced in equal increments each year over a five year period beginning fiscal year 1991, to a level of 50 percent by fiscal year 1995.

(4) Notwithstanding paragraph (b)(2) of this section, a commodity may be eligible for reimbursement above 50 percent if:

(i) With respect to the commodity being promoted there has been a favorable decision by the U.S. Trade Representative under section 301 of the Trade Act of 1974 and the U.S. Trade Representative has not terminated action taken as a result of such favorable decisions; and,

(ii) The participant shows, in comparison to the year the unresolved section 301 case was initiated, that the commodity's total export volume has not maintained market share or increased.

(5) Should the commodity qualify for a rate of reimbursement above 50 percent, as specified in the preceding paragraph, the actual rate of reimbursement shall be a rate determined by CCC to be necessary to undertake activities to effectively encourage the development, maintenance, and expansion of commercial markets for the product or commodity which is the subject of the unresolved section 301 decision.

(6) An EIP/MPP participant may undertake promotional activities directly or through a foreign third party provided the participant remains fully responsible and accountable for any reimbursements with CCC resources related to expenses incurred in such activities.

(7) An EIP/MPP agreement is entered into with CCC when CCC determines:

(i) Such an agreement with a U.S. commercial entity could contribute to development, expansion, or maintenance of exports of the corresponding agricultural commodity or product;

(ii) There is sufficient U.S. industry need for a brand promotion program; and,

(iii) There is no MPP participant interested in or capable of undertaking the brand promotion.

(c) *Special application procedures for U.S. commercial entities.* Any U.S. commercial entity can initially apply for CCC resources to establish an EIP/MPP for an agricultural commodity or product. Once approved, such allocation will be announced to provide all U.S. commercial entities an equitable opportunity to participate in the EIP/MPP. Interested U.S. commercial entities (including the initial applicant firm) must separately apply for participation in the program. Applications are submitted to the Division Director. These provisions are in addition to requirements specified in § 1485.12(b).

(d) *Eligible expenses and reimbursement procedures.* Eligible expenditures and reimbursement procedures are those found in § 1485.17 and as described and budgeted in a CCC approved activity plan.

§ 1485.14 Special requirements of the Market Promotion Program.

(a) *General.* (1) The provisions of this section are in addition to those specified for the MPP in § 1485.12.

(2) A MPP participant must be a non-profit agricultural trade organization, an agricultural cooperative, State agency, or a State group, and does not stand to profit directly from specific sales of the agricultural commodity or product for which a MPP allocation is requested. Agreements with U.S. commercial entities will be made under the EIP/MPP.

(3) It is the policy of CCC to ensure that benefits generated by agreements for the development of foreign markets are as broadly distributed throughout the relevant agricultural sector as possible and, in particular, that no commercial entity gains an unfair advantage or benefit from activities conducted under the agreement, whether funded with CCC resources or industry contributions.

(4) When requested by CCC, a MPP participant entering into a program agreement will furnish to CCC for approval its criteria for selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to such agreements, such as brand promotions, trade teams, sales teams, and trade fairs. It must also submit its criteria for the selection of U.S. commercial entities to participate in brand promotions. Such criteria must ensure participation on an equitable basis by a broad cross section of the U.S. industry. If CCC requests submission of these criteria, the MPP participant shall not make any selections using criteria disapproved by CCC.

(b) *Dissemination of information.* A MPP participant must provide on a timely basis, upon request of any U.S. entity, information developed and produced with its contributions or CCC resources under the terms of their agreement with CCC. Any fee charged in connection with the provision of this information shall not exceed the expenses incurred in assembling,

duplicating and distributing the materials.

(c) *Export sales limitations.* (1) MPP participants and their affiliates shall not during the term of an agreement make export sales of agricultural commodities and products of the kind promoted with CCC resources under the terms of the agreement.

(2) MPP participants and their affiliates shall not assess fees for services provided to exporters in facilitating an export sale if the sale was promoted using CCC resources. This applies to activities such as discussions with potential buyers or solicitation of sales, including activities by sales teams and at trade fairs rather than those of a more general promotional nature. This paragraph does not apply to checkoffs or membership fees based on sales when such assessments are a condition of membership in the participating organization.

(3) Any entity involved in approved program activities, whether or not a program participant, shall not use the activities to promote its private self interest or conduct private business, except as a member of a sales team or as part of a CCC approved brand promotion.

(d) *MPP participant contributions.* The MPP participant's contribution requirement will be specified in the letter approving the annual activity plan.

(1) If the MPP participant has reason to believe that its total contribution will be less than the amount or percentage specified in the approval letter, it must do one of the following:

(i) Reduce its expenditures of CCC resources such that its contributions as a percent of CCC resources expended is maintained; or,

(ii) Request approval of a reduction in the level or rate of contribution by submitting an APAR to CCC. In any event, a participant contribution rate below five percent of CCC resources expended will not be approved. CCC has determined that rates of contribution less than 5 percent are insufficient to effectively administer a program.

(2) Notwithstanding the foregoing, CCC may demand repayment in U.S. dollars of the amounts of CCC resources provided to the participant necessary to raise the percentage rate of contribution by the participant to the level specified in the activity plan approval letter, or take such other action in accordance with the agreement, including termination of the agreement, as appropriate.

(3) Except for State groups, the MPP participant's annual contribution must be sufficient to provide adequate U.S. based administrative support to conduct approved activities.

(4) To be eligible as a participant's contribution, an expense must be directly incurred by the MPP participant in planned support of an approved activity and not be reimbursed by any other entity.

(5) The approval letter will specify whether CCC approval of an activity is contingent upon a prescribed level and source of U.S. industry and foreign third party contribution.

(i) When the MPP participant expects that such prescribed contribution for that activity will fall 20 percent or more below the level specified in the approval letter, it must submit an APAR to obtain CCC approval of the reduced contribution level.

(ii) U.S. industry and foreign third party expenses are eligible as contributions only if such expenses are incurred before the end of the approved activity plan year pursuant to a signed written agreement entered into between the MPP participant and the contributing entity and are not reimbursed by any other entity. Such written agreement must pre-date the date on which the expense was incurred.

(6) Eligible contributions must be documented by evidence of actual expenditures by U.S. MPP participant personnel, industry representatives, consultants, or members of trade teams, incurred in the course of conducting approved MPP activities.

(7) The following are ineligible as contributions:

(i) Expenses for membership in clubs and organizations not specifically approved in the activity plan;

(ii) Value of time and other expenses of those who are the target of the approved promotion activities;

(iii) Any expenditures on brand promotion;

(iv) Any arrangement which has the effect of reducing the purchase price of the commodity or product; and,

(v) Expenses for handling, stocking, or shelving the commodity or product being promoted.

(e) *Special provisions for brand promotions by MPP participants.*—(1) *General.* This subsection applies to activities for the promotion of brand products conducted by U.S. and foreign commercial entities (hereafter "brand participants") through a MPP participant. It does not apply to EIP/MPP agreements.

(2) *Application procedure and content.* (i) These application provisions are in addition to those specified in § 1485.12(b)(2).

(ii) Funds for such activities can be requested by a non-profit organization, State group, cooperative, or State agency as part of their regular process of applying for a MPP agreement. Any commercial entity applying for CCC resources through one of these applicants must submit to the applicant for inclusion in the MPP activity plan the information required by § 1485.12(b)(2).

(iii) Plans and budgets for such activities must be described in the strategic plan section of the application for CCC resources.

(iv) The applicant must describe how the program will be made available to U.S. and/or foreign commercial entities and any differences between how U.S. and foreign commercial entities will operate the program. It must identify the method to be used for announcing the availability of the program, the information solicited from brand participants and the provisions for evaluating brand promotion.

(3) *Distribution of CCC resources for MPP participant brand promotion.*(i) The MPP participant's criteria for distributing CCC resources among brand participants must be objective and reasonably related to its worldwide promotional program goals. The distribution procedures and criteria shall be included in the strategic plan and in the announcement of the program's availability to the U.S. commercial entities.

(ii) The MPP participant may not limit participation to commercial entities which are members of its organization. The program must be made available throughout the participant's industry or, in the case of State groups, throughout the corresponding region. The MPP participant must document the methods by which it publicizes program availability.

(4) *Agreements between MPP participants and brand participants.* Upon CCC approval of the activity, the MPP participant must enter into an agreement with each approved brand participant which:

(i) Identifies the brand promotion time period. All agreements between the MPP and brand participants, and all brand promotion expenditures, must fall within the MPP participant's approved activity plan period. For example, if the MPP participant's plan period is the Federal Fiscal Year, an agreement signed on October 1 could run 12 months through the following September 30, while an agreement signed on January 1 could run for only nine months through the following September 30;

(ii) Makes no reference to extensions or renewals;

(iii) Limits eligible reimbursable expenditures for each approved market to those approved in the activity plan;

(iv) Describes documentation requirements, the percentage of promotion expenses that will be reimbursed, and reimbursement procedures;

(v) Includes a written certification that the brand participant either owns the brand of the product it will promote or has a sole agency agreement with the owner of the brand in each of the markets in which CCC resources will be used; and,

(vi) Includes a requirement that all product labels, promotional material and advertising identify the origin of the agricultural commodity or product as "U.S.", "U.S.A.", the State of origin or other U.S. regional designation approved by CCC.

(5) *Redistribution of brand promotion funds.* The MPP participant's redistribution of previously distributed but unexpended brand promotion funds must be in accord with the foregoing procedure so as to ensure that all U.S. commercial entities have an equal opportunity to participate on the same terms and conditions. Such redistribution requires prior CCC approval.

(6) *MPP brand promotion program operations.* (i) Generally, CCC resources may not be used to reimburse more than 50 percent of a MPP brand participant's eligible direct promotional expenses approved in the activity plan, with reimbursement at lesser percentages determined in the same way as for EIP/MPP participants, as specified in § 1485.13(b)(2) above. For MPP brand participants, exemptions from this 50 percent reimbursement limitation for brand promotion are the same as those specified for EIP/MPP participants in § 1485.13(b)(4) and § 1485.13(b)(5) above.

(ii) Direct promotional expenses which can be reimbursed from CCC resources are limited to:

(A) Production and placement of media and direct mail advertising for retail and trade in print and electronic media, billboards, and posters;

(B) Booth construction, freight, and participation fees for trade-only exhibits and shows;

(C) In-store and food service promotions, product demonstrations to the trade and to consumers, employment of part time contractors to help in implementing specific promotional activities at point of sale (POS) or display sites, production and distribution of promotional POS materials, and expenditures on distribution of promotional samples (excluding expenses to acquire the samples);

(D) Production and distribution of promotional information to the media, trade and consumers; and,

(E) Trade seminars designed to inform industry representatives of specific attributes of U.S. commodities and products. This include rental, translation and duplication of seminar materials. It does not include personal services, consultant fees, and related travel expenses.

(iii) The following expenses will not be reimbursed with CCC resources:

(A) Salaries, living expenses, office expenses, allowances and related expenses;

(B) Travel and per diem;

(C) Expenses of product samples;

(D) Sales expenses, including slotting fees;

(E) Expenses for design and production of packaging and labeling;

(F) Giveaways, awards, prizes;

(G) Redemption value of coupon and price off deals;

(H) Sales and trade related expenses such as meals, receptions, refreshments, entertainment and gifts;

(I) Capital expenditures, such as permanent displays;

(J) Market research;

(K) Product development expenses; and

(L) Consultant fees.

(7) *Foreign third party expenses.* CCC resources can be used to reimburse brand promotion expenses incurred by a foreign third party provided the expenses are incurred pursuant to a signed agreement between it and the brand participant and are not reimbursed by any other entity. Expenses incurred by the foreign third party must be separately identified in claims submitted by the MPP participant. The MPP participant must assure that such expenses are verifiable and reasonable and, to the extent expenses are reimbursed with MPP resources, the reimbursement must be passed through to the foreign third party.

§ 1485.15 Criteria for allocation of CCC resources.

(a) *General.* (1) Allocations of CCC resources will only be made to applicants whom CCC determines can effectively carry out the purposes of the program and who represent agricultural commodities and products of which the U.S. origin content by weight is at least 50 percent, exclusive of added water.

(2) Priority is given to participants who will promote commodities and products affected by a documented unfair trade practice, as defined in § 1485.11.

(b) *Specific criteria.* CCC takes into account the following in its consideration of MPP and EIP/MPP applications:

(1) The extent to which the prospective participant represents production of the agricultural commodity, with first priority given to applicants with the broadest-based producer membership;

(2) The applicant's ability to provide with its own resources a U.S. based staff capable of conducting overseas promotion projects, its willingness to otherwise contribute resources to the project, and the scope and complexity of proposed activities in relation to the applicant's prior export experience and U.S. based staff resources;

(3) CCC's determination of the adequacy of the applicant's strategic plan in terms of its description of market conditions and identification of constraints, the likelihood of overcoming the constraints through use of CCC resources, and the estimated change in exports and/or market share expected as a result of overcoming the constraints;

(4) For brand promotions, a detailed explanation of the prospects of success of the proposed activities in terms of increasing exports of the U.S. agricultural commodity or product; and,

(5) The adequacy of the applicant's provisions for monitoring and evaluating the activities proposed in the strategic plan.

(c) *CCC notification.* CCC will notify all applicants in writing of the final disposition of their applications and the award of MPP allocations will be announced in a press release.

§ 1485.16 Activity plans.

(a) *General.* (1) A participant must submit an activity plan on an annual basis to CCC containing the information required by these regulations for each foreign market in which activities will be conducted. Activities specified in an activity plan must be designed to move towards the objectives specified in the strategic plan.

(2) The plan must identify the constraints to expanding or maintaining U.S. exports of the relevant agricultural commodities or products to each market addressed by an activity. It must describe how the proposed activities relate to evaluations of prior year programs. The constraint narrative must also include three to five year trade oriented goals, such as market share and export levels, current benchmarks for the activities in each market, and

methodology for measuring progress toward achieving program goals.

(3) The plan must detail proposed activities and expenditures, separately identify expenditures to be reimbursed with CCC resources and, in MPP participant plans, the resources to be contributed by the participant, the U.S. industry, Federal or State entities, and foreign third parties. In the case of an EIP/MPP plan, only eligible reimbursable expenses should be included.

(4) Each activity in the activity plan must have specific goals and benchmarks against which the activity's success will be measured and the methodology for measurement.

(5) Additional requirements related to brand promotion appear in § 1485.13 and § 1485.14.

(6) Additional requirements related to overseas offices are contained in § 1485.20.

(7) Any expense incurred for an activity carried out prior to CCC's approval of the corresponding activity plan may not be reimbursed with CCC resources or claimed as a contribution, except that for the 1991 activity plan year, CCC may reimburse such prior expenses under an EIP/MPP agreement if made after CCC has allocated resources to carry out an EIP/MPP agreement for the specific commodity, or under an MPP agreement if made after CCC has allocated resources to that particular participant.

(8) Any expense other than in accordance with the activity plan may not be reimbursed with CCC resources or claimed as a contribution.

(b) *Contents of activity plan.* An activity plan must set forth the information specified in § 1485.16(a) utilizing numeric or alphabetic codes which are available from the Division Director. CCC will only approve an activity plan which provides such information. Suggested formats for activity plans are available from the Division Director.

(c) *Submission of activity plan.* The Participant shall submit three copies of the activity plan to the appropriate Division Director by the deadline established by CCC and at the same time a copy of the relevant sections to the Attache/Counselor responsible for each country in which an activity is proposed.

(d) *Approval of activity plans.* CCC approval of an activity plan will be in writing and will specify which of the proposed activities have been approved, which have been disapproved, and any limitations or conditions that apply to the operation of the proposed program.

(e) *Changes in activity plans.* (1) After CCC has approved an activity plan, the participant can request changes in the plan by submitting an activity plan amendment request (APAR). An APAR must be approved by CCC before any expenses authorized by the APAR are incurred.

(2) The APAR must be submitted to the appropriate Division Director with a copy to the Attache/Counselor responsible for each country in which a proposed activity or budget change will occur. An APAR must include the information specified in § 1485.16(a) utilizing numeric or alphabetic codes which are available from the Division Director. A suggested format for an APAR is available from the Division Director.

§ 1485.17 Reimbursement with CCC resources.

(a) *General.* To be eligible for reimbursement from CCC resources, an expense must have been incurred in compliance with the provisions of these regulations and with the laws and regulations of the country in which the activity was carried out. The participant is responsible for examining each reimbursement claim sent to CCC and instituting controls and safeguards to ensure that such claims are for proper and reasonable charges against CCC resources as authorized in the program agreement, activity plan and plan amendments, and that transactions comply with regulations.

(b) *Authorized expenses.* CCC resources may only be used to reimburse expenses of participants for activities detailed and budgeted for in the participant's approved activity plan and any associated APAR's.

(c) *Special reimbursement provisions on demonstrations or training activities of MPP participants.* (1) This subsection applies to demonstration and training activities involving the transfer of non-expendable property. (See § 1485.19(d)). Such activities include, but are not limited to, supplying or constructing equipment, processing facilities, training centers, or research laboratories and/or providing technical expertise connected therewith.

(2) CCC may approve no more than one such demonstration or training activity under each MPP agreement for each market when CCC determines the activity to be the most cost effective and practicable method of overcoming a market constraint caused by a lack of technical knowledge or expertise in the processing or utilization of the commodity being promoted. Such an activity is solely for the purpose of transferring technical knowledge and expertise.

(3) The activity must be undertaken pursuant to a written agreement between the MPP participant and a foreign third party that provides for the transfer of title to any non-expendable property involved in the activity to the foreign third party and permits the MPP participant to use the non-expendable property for a period specified in the agreement for the purpose of removing the constraint.

(4) CCC will not reimburse expenditures for land and livestock.

(d) *Unauthorized expenses.* The following are not reimbursable with CCC resources:

(1) Payment for salaries of personnel and for goods and services provided directly by third party participants;

(2) The expense of membership in clubs and professional organizations;

(3) Personal insurance for privately owned articles;

(4) Payment of indemnity and fidelity bond expenses;

(5) Contest prizes, awards, trophies;

(6) Credit card fees;

(7) Fees for participating in U.S. Government sponsored activities, other than trade fairs and exhibits;

(8) Business cards;

(9) Purchasing and mailing of seasonal and holiday greeting cards;

(10) Office parking fees;

(11) Token gift items;

(12) Refreshments and related equipment for office staff;

(13) Subscriptions to and advertisements in participant published periodicals, or subscriptions to other publications unless used by overseas staff in support of authorized MPP activities or as a source of current information on market and economic conditions;

(14) Labeling, packaging and associated design expenses;

(15) Promoted commodities or product samples used in demonstrations, feeding trials, and other MPP generic activities, other than transportation or preparation expenses for a commodity or product distributed gratis to a foreign target audience;

(16) Slotting fees;

(17) New product development;

(18) Except for State groups, any domestic administrative support expenses;

(19) Travel in the continental U.S., Hawaii and Alaska, unless in transit to or from a foreign destination or otherwise specifically provided for in the activity plan;

(20) Payment of employee's or contractor's share of personal taxes,

except as legally required under local jurisdiction;

(21) Except for State groups, expenses associated with functions in the United States, such as trade shows, seminars, entertainment, and sales and trade related expenses;

(22) Any arrangement which has the effect of reducing the purchase price of the commodity or product; and,

(23) See § 1485.14(e)(6)(iii) for a list of additional items that are not reimbursable under MPP agreements involving brand promotions.

(e) *Reimbursement claims.* Any reimbursement claim submitted, other than a final claim submitted for an activity year, must total no less than $10,000. The participant's U.S. Office shall request reimbursement by submitting a claim to the Fiscal Control Staff, FAS, USDA, utilizing numeric or alphabetic codes which are available from the Division Director. A suggested format for reimbursement claims is available from the Division Director.

(f) *Compliance report findings.* If any amounts shown on the claim are reimbursements to CCC pursuant to Compliance Report findings, these should be noted in the claim and the Report which made the findings must be cited.

(g) *Accuracy.* The participant is liable for the accuracy and propriety of all claims and must reimburse CCC in U.S. dollars for any amount subsequently disallowed.

(h) *Charges to MPP accounts.* Expenses are charged to the oldest unexpended MPP account in the program agreement without regard to the activity plan in which the expenses were authorized.

(i) *Reimbursement value.* When reimbursement is made with CCC commodity certificates rather than in U.S. dollars, the U.S. dollar value shown on the face of the CCC commodity certificate determines the reimbursement value to the participant.

(j) *CCC reports on account balances.* CCC periodically distributes reports to the participant detailing the MPP account balance for the corresponding agreement and activity plan. Participants must report to the Division Director any discrepancies between such reported balances and those contained in their records.

(k) *Limitations and procedural requirements of reimbursement claims.* (1) Reimbursement claims are limited to incurred expenses for approved activities and may not be made for refundable deposits or advances made to contractors or travelers until the service or materials have been received or the travel completed and the advance settled.

(2) Claims must not include previously billed amounts.

(3) Claims must be categorized and coded with supporting documentation.

(4) When requested, the participant must forward to CCC originals or copies of documents supporting reimbursement claims.

(5) If an overpayment is made by CCC for whatever reason, the amount must be returned by the participant to CCC.

(l) *Timing of submission of reimbursement claims.* (1) Participants must submit claims for reimbursement to CCC within 180 days after the end of the activity plan year.

(2) Activity expenses incurred prior to CCC's approval of the activity will not be eligible for reimbursement or consideration as an eligible contribution.

(3) Activity expenses incurred up to 30 days beyond the end of an activity plan year may be charged back to the budget for that activity plan year.

(4) Agreements supporting reimbursable expenses must be in writing and must detail the responsibilities and obligations of each signatory.

(m) *Responsibility of participants.* The participant is solely responsible for the legal sufficiency of its contracts and other obligations and assumes financial liability for any expenses, claims, suits, challenges, or other disputes resulting therefrom. Participant contracts and other obligations shall make no reference to CCC or to any other agency of the U.S. Government, its personnel or programs.

§ 1485.18 Advance Requests.

(a) *General.* Advances are not authorized under EIP/MPP agreements or MPP brand promotions.

(b) *Advance procedures.* (1) The MPP participant can request in writing to CCC an advance payment to be issued once or in increments throughout the activity plan year. Such advance shall not exceed 40 percent of the annual budget (excluding branded promotion) approved by CCC in the activity plan. CCC may require the participant to submit security in a form and amount acceptable to CCC to protect CCC's financial interests. The expense of such security is not reimbursable by CCC.

(2) In reimbursing MPP expenses, CCC first offsets claims for an activity plan year against MPP participant advances outstanding on the date of receipt of the claim in that year. CCC will reimburse beyond this amount only at such time that the advance is fully expended.

(3) If the MPP participant does not fully expend the advance on approved activities within 90 days of its issuance, the participant must return to CCC the unexpended amount plus a pro rata share of proceeds generated by the advance, such as premiums generated by certificate sales, and interest earned on certificate proceeds and CCC funds.

(c) *Prior year advances.* No advance is made in an activity plan year so long as an advance is outstanding for the prior plan year. Prior year advances are accounted for by:

(1) Submitting claims of equivalent dollar value for activities authorized in the activity plan for the year in which the advance was made; or,

(2) Refunding to CCC the balance of the advance plus a pro-rata share of all proceeds generated by the advance.

(d) *Refunds due to CCC.* Refund the amounts due to CCC by mailing a check payable to the Commodity Credit Corporation to: Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1000.

§ 1485.19 Overseas Administrative Expenses and Related Matters.

(a) *General.* This section sets forth the procedures, documentation requirements, and approval criteria for reimbursable overseas administrative expenses. Such expenses are those associated with a MPP participant's overseas office and include: Salaries, rent, utilities, office supplies, clerical support, travel deemed by CCC to be for administrative support purposes, and legal and accounting services. Such expenses are not reimbursable under an EIP/MPP agreement.

(b) *MPP participant overseas administrative expenses.* Any overseas office established by a MPP participant must be provided and budgeted for in the activity plan. The extent to which CCC resources may be used to reimburse certain personnel expenses of operating such an office is specified in § 1485.20. An activity plan proposing to establish or maintain an overseas office must contain the following information:

(1) A statement indicating why and how on-site representation will more effectively and economically accomplish program objectives than would travel from the United States or from another foreign office of the MPP participant;

(2) An itemized estimate of expenditures for establishing and maintaining the office, and, for each item, the share to be reimbursed with

CCC resources and the share to be contributed by the participant; and,

(3) Personnel requirements, including the job title, function, position description, and grade range for each staff position.

(c) *Real property leases.* (1) All leases supporting claims for reimbursement must be in writing.

(2) CCC will reimburse only the annual rent and operating expenses of the office as budgeted in the current approved activity plan. The MPP participant is liable for any unapproved forward year expense obligations.

(d) *Nonexpendable project property.* (1) Nonexpendable property includes: Office or demonstration furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, decorations, computer software and articles of a similar nature that have an expected service life of at least one year and retain their identity when put into use. If approved in the activity plan, CCC resources may be used to purchase or lease nonexpendable property needed to conduct MPP activities or to repair such property. Unless otherwise approved by CCC, a request for CCC resources to purchase or repair such property will be budgeted as an administrative activity in the activity plan. Special limitations apply for certain demonstration or training equipment, as specified in § 1485.17(c).

(2) Title to nonexpendable property purchased with CCC resources passes to the MPP participant at the time of purchase.

(3) Upon termination of MPP activities, or closing of an office having jurisdiction over the activity in which the property was used, title to the property acquired wholly or partly with CCC resources shall pass to CCC unless otherwise approved by CCC.

(4) Any purchase of nonexpendable property must be for the specific budgeted purpose found in the approved activity plan. Such property with a value of $100 or more must be included in the office's inventory. The inventory must list and number each item purchased with CCC resources and include for each item the following: Date of purchase or acquisition; cost of purchase; replacement value; serial number; make; model; electrical requirements.

(5) The MPP participant is responsible for insuring all nonexpendable property purchased with CCC resources and for safeguarding against its theft, damage and unauthorized use. CCC resources may be used to insure such property.

(6) The MPP participant must promptly report any loss, theft, or damage to nonexpendable property purchased with CCC resources to the insurance company in accord with the corresponding insurance policy.

(7) CCC resources may be used to lease nonexpendable property when such lease is in writing and does not extend beyond the current activity plan year.

(8) CCC resources may not be used to purchase, lease (except for use in authorized travel status), or repair motor vehicles.

(9) Property purchased with CCC resources that is unusable, unserviceable, or no longer needed for project purposes is to be disposed of in one of the following ways, and the MPP participant must document the reasons for the disposal method:

(i) Exchange or sale: The MPP participant must apply any exchange allowance, insurance proceeds or sales proceeds toward the purchase of other property needed in the project or treat it in accordance with the provisions of § 1485.26;

(ii) Transfer of property for program purposes: The MPP participant may transfer the property to other MPP participants and activities, or, with CCC approval, to a foreign third party. Conditions and limitations on the use of property transferred to a foreign third party for program purposes must be included in the document transferring ownership and approved by CCC; or,

(iii) Upon Attache/Counselor approval: Unneeded property may be donated to a local charity, disposed of as unusable, or physically transferred to the Attache/Counselor, along with any documents of title and a complete inventory of the transferred property.

§ 1485.20 Compensation levels for foreign national and U.S. citizen employees and consultants.

(a) *General.* This section prescribes limitations on the use of CCC resources to reimburse expenditures on employees and consultants under a MPP agreement. Such expenses are not reimbursable under an EIP/MPP agreement. A MPP participant may compensate employees and staff in excess of the limits detailed in this section. Such excess amounts are not reimbursable but can be claimed as eligible contributions if they meet the requirements of § 1485.14(d).

(b) *Salary and allowance levels for a U.S. citizen employee in a foreign office.* When approved as an administrative activity in the activity plan, CCC resources may be used to cover basic salary and allowance expenses for a U.S. citizen employee in an approved foreign office. Use of CCC resources for these purposes is limited to no more than 125 percent of the General Schedule Grade 14 (GS–14) Step 5 salary, or what is budgeted in a CCC approved activity plan, whichever is less. Salary and allowance expenses must be separately budgeted in the activity plan and individually documented with receipts. Expenses on educational travel of dependent children, rest and recuperation travel, home leave travel, emergency visitation travel, evacuation payments (safe haven), shipment and storage of household goods and motor vehicles are not considered allowances, and may be separately reimbursed with CCC resources if provided for in an approved activity plan or otherwise approved by CCC. Such expenses will be reimbursed at rates and frequency of those applicable to overseas FAS personnel.

(c) *Salary levels for a foreign national employee in a foreign office.* (1) When approved as an administrative activity, CCC resources may be used to pay the salary expenses and/or hiring of a non-U.S. citizen staff employee. Use of CCC resources for these purposes is limited to no more than the rates prescribed for equivalent positions in the local U.S. Embassy Foreign Service National (FSN) Salary Plan.

(2) Use of CCC resources to reimburse salary expenses of a foreign national employee in a foreign office shall not exceed the maximum prescribed for the top grade and step in the local U.S. Embassy FSN Salary Plan except in the following cases:

(i) A country director for whom CCC determines the top grade and step of the local FSN Salary Plan does not adequately compensate the employee for his/her level of responsibility and expertise. In such cases, the MPP participant can create a "Supergrade I", equivalent to a grade increase over the existing top grade of the FSN Salary Plan. The supergrade and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN Salary Plan with that percentage applied to each of the steps in the top grade; and,

(ii) A regional director with responsibility for activities and/or offices in more than one country and otherwise fitting the above description of a country director. For a regional director, the MPP participant can create a "Supergrade II", calculated relative to a "Supergrade I" in the same way the latter is calculated relative to the highest grade in the FSN Salary Plan.

(d) *Fees paid to consultants.* A consultant, rather than being an employee of the participant

organization, is contracted to conduct partially or entirely an activity, or group of activities, specified in the approved activity plan. The consultant's fees are budgeted as part of that activity with the expectation that such fees would be reduced or eliminated were the activity reduced or eliminated. Use of CCC resources to reimburse such fees is limited to not more than the gross daily rate of a GS–15, Step 10 for U.S. Government employees in effect on the date the fee is earned.

(e) *Retroactive pay adjustments for employees.* If CCC resources are available under the MPP agreement, CCC will approve retroactive salary adjustments to conform with a change in FSN Salary Plans, effective as of the date of such change. To request approval for such adjustments, the MPP participant must submit an APAR to the Division Director and appropriate Attache/Counselor as soon as the change takes effect. Lump sum payments for retroactive pay increases are charged to the budget for the activity plan year in which the salary increase occurred.

§ 1485.21 Employment practices for overseas employees.

(a) *General.* This section applies to all employment by MPP participants of personnel whose salaries or fees are paid in any part with CCC resources. Such personnel are not employees of CCC. The MPP participant is solely responsible for ensuring that all employment terms, conditions, and related documents conform to local law and custom, and is fully liable for any expenses, fines, settlements or claims resulting from suits, challenges or disputes emanating from such employment terms, conditions, and related documents.

(b) *Documentation requirements.* The MPP participants must retain for each employee all employment related documents such as the employment application, contracts, position descriptions, leave records and salary changes.

(c) *Staffing patterns, salary levels and compensation plans.* The staffing pattern and related personnel expenses must conform to those specified in the administrative activity for which the expenses are budgeted in the activity plan. An APAR is required to hire or promote an employee for a position other than that described in the staffing pattern of the activity plan.

(d) *Recruitment and employment of personnel.* (1) Conditions of employment shall conform with the laws governing non-government employment in the host country. CCC resources may be used to pay employment agency fees but not travel expenses.

(2) A MPP participant must hire under written contract.

(3) The MPP participant must report any employment related improper or irregular actions having a bearing on the propriety of any claim for CCC resources to the Attache/Counselor and its U.S. Office must report such actions to the Division Director.

(4) After consulting with the local Attache/Counselor, CCC resources can be used to cover expenses for legal advice on labor laws in the host country.

(5) Salaries must be paid in terms of local currency for a foreign national and in terms of U.S. dollars for a U.S. citizen assigned abroad.

(6) The MPP participant is solely liable for any forward year financial obligations, such as severance pay, attributable to employment of foreign nationals.

(e) *Office management.* (1) The MPP participant must comply with local law pertaining to payment of health and accident insurance, and other benefits for foreign national employees required to be paid by employers for non-government employees in comparable positions. Such payments may be reimbursed with CCC resources.

(2) Subject to local law, the MPP participant must conform office hours, holidays, and the work week to those generally observed by U.S. commercial entities in the local business community.

(3) The MPP participant must maintain an auditable system of leave records. Claims for accrued annual leave will be reimbursed at such time the employment is being terminated or when required by local law.

(4) CCC resources may be used to reimburse overtime expenses for foreign national clerical staff if the authorization for overtime is documented and indicates that the workload requires such overtime.

(5) Salary advances shall not be reimbursed with CCC resources.

(f) *Insurance.* CCC resources may be used to reimburse premium expenditures for the following types of insurance:

(1) Insurance on nonexpendable property purchased with CCC resources and owned by the MPP participant; and,

(2) Accident liability insurance for: Premises leased with CCC resources, facilities used jointly with third party participants for MPP activities; employers who have hired employees with CCC resources in countries where they are held liable under local law for the expenses resulting from accidents to such employees; and, travel for non-MPP participant personnel that is provided for in the activity plan and paid for with CCC resources.

§ 1485.22 Travel expenses.

(a) *General.* CCC resources may be used to reimburse overseas travel expenses when approved in a MPP participant activity plan. Such expenses are not reimbursable under an EIP/MPP agreement. To be eligible for reimbursement with CCC resources, travel must conform to U.S. Federal Travel Regulations (41 CFR 301 et seq.) and air travel must conform to the requirements of the "Fly America Act." Reimbursement with CCC resources for air travel is limited to full fare economy and can also cover expenses of obtaining passports, visas, and inoculations.

(b) *Notification of attache/counselor.* Unless otherwise instructed, the MPP participant must notify the Attache/Counselor in the destination countries in writing in advance of any proposed travel. Failure to do so will disqualify reimbursement of the corresponding travel expenses, unless determined by the Assistant Administrator, Commodity and Marketing Programs, FAS, that it was impracticable to provide such notification.

(c) *Living expenses.* Reimbursement for living expenses while in travel status must be computed on the same basis as provided by the U.S. Federal Travel Regulations, as amended, in effect at the time the expenses were incurred.

(d) *Automobile mileage.* Reimbursement for authorized use of a privately owned automobile for project business will be at a fixed rate per mile, as determined by the local U.S. Embassy.

§ 1485.23 Reports.

(a) *General.* Each MPP participant must submit the reports described in this section to the appropriate Division Director. All reports must be in English and include the MPP agreement number, the countries covered, date of the report and period covered, signature of the reporting employee or officer, and a cover letter identifying the report. CCC may require the submission of additional reports.

(b) *End-of-year MPP participant contribution report.* Within 180 days after the end of the activity plan year, the MPP participant must submit to the Division Director two copies of a report which separately identifies by activity in U.S. dollar equivalent the contributions made by the MPP participant, the U.S. industry, and the foreign third party in the just completed activity plan year, utilizing numeric or

alphabetic codes available from the Division Director. A suggested format of a contribution report is available from the Division Director.

(c) *Trip reports.* Trip reports are required when CCC resources are used to reimburse travel expenses (other than local travel) or per diem. Within 45 days after completion of the travel, a copy of the trip report must be submitted to the appropriate Division Director and to the Attache/Counselor in each country visited. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations or specific accomplishments.

(d) *Research reports.* Activities designated as research in the activity plan require a written report of findings which conform with the information requirements specified in the activity approved by CCC. Research paid for in any part with CCC resources is the property of the U.S. Government and may be made available to any U.S. entity. A copy of the research reports must be provided to the Division Director and to each Attache/Counselor responsible for the markets covered in the report.

§ 1485.24 Evaluation.

(a) *Policy.* CCC requires evaluation of participant program activities to determine whether such activities should be continued or changed, and for planning future market development activities. The participant has primary responsibility for providing information required for Status Reviews, and for conducting or arranging for Activity Evaluations, as approved in the activity plan and described below.

(b) *Types of evaluation*—(1) *Status review.* A documented periodic review of MPP activities to assist the participant and CCC in determining aspects of program design and administration which require modification to improve cost effectiveness or program impact.

(2) *Activity evaluation by MPP participants.* A review of an activity or group of activities to determine whether the activity or activities are meeting or have met goals specified in the activity plan. The review can occur after the activity (activities) have been completed or at a specific stage in implementing the activity (activities) prior to completion. Expenses of such evaluations are budgeted as an "Evaluation" activity in the activity plan. Should the MPP participant propose that a particular activity not be subject to evaluation, the activity plan must explain why not. CCC activity plan approval is contingent upon MPP participant agreement to the scope and scheduling of evaluations specified in the activity plan approval letter.

(c) *Outside evaluations by MPP participants.*—(1) *General.* If a MPP participant intends to have an outside party conduct any aspect of evaluation, general selection criteria (e.g., background and qualifications of the outside party) and planned expenses must be described in the activity plan narrative of the activity that will be evaluated. CCC reserves the right to have direct input and control over design, scope and methodology of any such evaluation, including direct contact with and provision of guidance to the outside evaluator.

(2) *Contents of outside evaluations by MPP participants.* The evaluation shall contain an executive summary which:

(i) Identifies the party conducting the evaluation and the corresponding activity or activities (including the activity plan and activity code); and describes each activity and provides each activity's timing, target audience, budget, MPP expenditures and contributions; includes a concise statement of the contraint(s) specified in the activity plan which the activity was designed to alleviate, as well as the goals/benchmarks identified in the plan; describes the evaluation methodology; details the findings with respect to the goals and benchmarks of the plan, and the strengths and weaknesses in administration of the activity; identifies any extenuating factors influencing the outcome of the evaluation or the conduct of the activity, including the reasons for and the impact of any reduction in budgeted contribution levels; and, gives recommendations for ongoing programs;

(ii) Contains a cover letter prepared by the MPP participant as an attachment to the executive summary which details the participant's assessment, each of the evaluation's findings and recommendations, its plans for future programs, and planned changes in programs in response to evaluation results.

(d) *In-house participant evaluations.* If CCC's activity plan approval letter calls for an activity evaluation by the participant or its agent, contractor, or other representative, then the participant must submit a report covering the same information required in the Executive Summary of an outside evaluation, with a recommendations section providing the participant's own views about what the evaluation suggests for ongoing or future program planning and administration.

§ 1485.25 Financial management, accounting and records.

(a) *General.* This section covers financial administration of MPP and EIP/MPP activities, including accounting procedures for expenditures and contributions made under program agreements in conformity with approved annual activity plans. Unless otherwise specified, all instructions and procedures in this section are the responsibility of the participant's U.S. Office. Each is responsible for instituting a financial management and accounting system to track CCC resources and/or MPP participant contributions. The system must ensure accurate, current and complete documentation of all transactions for each activity approved in an annual activity plan and its amendments, and ensure that CCC resources are used only for approved purposes.

(b) *Authorized signatures.* The participant's Chief Executive Officer (CEO) of its U.S. Office, or a signatory designated in writing by the CEO, will sign the program agreement on behalf of the participant as well as a signature card designating which participant officials are authorized to sign program agreements, reimbursement claims and advance requests. Two of the signatures on the signature card are required on every advance request or reimbursement claim. The participant is responsible for notifying the Director, Marketing Operations Staff, FAS, USDA, immediately of any changes in signatories and for updating the signature card accordingly.

(c) *MPP and EIP/MPP Program records.* (1) The MPP or EIP/MPP participant must maintain appropriate records and document transactions relating to program activities for five calendar years following the year in which a transaction occurred, as evidenced by the records and documents. All records and accounts of program activities, contributions and expenses shall be available for inspection and/or audit by U.S. Government authorities for such period.

(2) The participant shall require in agreements with third parties information supporting claimed contributions or reimbursements, and provisions which make records and accounts available to the participant, or its representative, for inspection and audit.

(3) The participant must maintain records by activity plan code, country activity number, and cost code approved by CCC in the activity plan to which the expense should be charged, for each expense reimbursed with CCC resources

or claimed as a contribution. Codes can be obtained from the Division Director. The records must include:

(i) Receipts for generic promotion for each expenditure of CCC resources in excess of $25.00, all receipts for branded promotion, and all receipts for sales and trade related expenses (actual vendor invoices or restaurant checks, rather than credit card receipts);

(ii) The exchange rate used to calculate the dollar equivalent of expenses incurred in foreign currency;

(iii) The unexpended balance of each budgeted amount;

(iv) Copies of reimbursement claims to CCC against CCC resources;

(v) An itemized list of claims charged to each of the participant's CCC resources accounts; and,

(vi) Documentation supporting each transaction, including: canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations and travel vouchers. Documentation in support of an EIP/MPP participant claim for reimbursement must identify each eligible direct promotional expense paid by the EIP/MPP participant or foreign third party. Documentation of each financial transaction must contain: The annual activity plan code; the activity code(s); cost code(s); country code(s); English translation of the expense; and cross references for all accounting records and supporting documentation. Codes can be obtained from the Division Director.

(4) Documentation for contributions claimed by MPP participants must include: The dates, purpose and location of the activity to which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. MPP participants must retain and make available for audit the following documentation related to claimed contributions:

(i) The signed agreement between the MPP participant and the individual or group making the contribution; and,

(ii) If available, copies of invoices and receipts for expenses of U.S. industry groups, individuals and foreign third parties which were not reimbursed by the MPP participant; or,

(iii) An itemized statement from the contributor on the expenses it incurred in the joint activity.

(d) *Proceeds.* Participation fees, sales or other proceeds generated by a participant activity wholly or partially reimbursed with CCC resources, must either be used to offset the expense of that activity or returned to CCC. Proceeds may not be transferred to another activity or otherwise absorbed into the participant's budget; however, this prohibition does not apply to premiums, interest or other income generated by liquidation of CCC commodity certificates or administrative fees charged to U.S. commercial entities involved in brand promotion activities when such revenue is used to offset expenses incurred by the participant in administering the brand promotion and are approved by CCC in the activity plan.

(e) *Audit procedures.* The participant must establish internal controls to attend to adverse findings and recommendations emanating from reports by internal, independent, and U.S. Government auditors and examiners. Any periodic audit reports by independent public accountants must be provided upon request to the FAS Compliance Review Staff.

§ 1485.26 Expired or terminated CCC resources.

(a) *General.* Balances of program resources provided for in the MPP or EIP/MPP agreement, but not obligated by the participant before the expiration date of the agreement, shall revert to CCC.

(b) *Procedure.* Within 6 months of a MPP or EIP/MPP agreement expiration, the participant must submit to CCC a final reimbursement claim certifying that no further claims for reimbursement will be made against such agreement. It must include the end-of-year report required in § 1485.23 and any other reports and evaluations required under this regulation.

§ 1485.27 Compliance review.

(a) *Accessibility of records.* All MPP and EIP/MPP participant records pertaining to program agreements, activity plans, reimbursement claims and contributions shall be available upon request to CCC, the FAS Compliance Review Staff, the USDA Office of the Inspector General, and the General Accounting Office, for purposes of making audits, examinations, excerpts and transcripts.

(b) *Reimbursement to CCC pursuant to compliance report findings.* (1) If CCC has reimbursed a participant or offset any advance payments with claims submitted by a participant which are later determined to be unauthorized, the participant must reimburse CCC as follows:

(i) By including in the next reimbursement claim a repayment to CCC in the form of a negative amount against the codes to which the expense was originally charged (codes can be obtained from the Division Director); or,

(ii) By issuing a check for the amount due payable to the Commodity Credit Corporation. Include a report showing reimbursements to CCC as negative amounts against the codes to which the expenses were originally charged. The report is limited to the items covered by the check. Mail the check and expense claims to: Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250–1000;

(2) In either of the preceding forms of reimbursement, include notation that the amount reimbursed is pursuant to a specific CRS report.

§ 1485.28 CCC recourse in the event of noncompliance with regulations.

(a) *General.* CCC may periodically require participants to certify compliance with the requirements of this regulation.

(b) *Procedure.* In the event of a participant's noncompliance with this Subpart, CCC may disallow a claim submitted under an agreement. This pertains to activities approved by CCC after August 16, 1991. CCC may also terminate an agreement, or use any other measure at CCC's disposal.

§ 1485.29 Applicability.

The regulations in this subpart are applicable with respect to activities, including revisions to existing activities, that are approved on or after October 1, 1991.

Signed at Washington, DC., on May 15, 1991.

Duane Acker,

Vice President, Commodity Credit Corporation and Administrator, Foreign Agricultural Services.

[FR Doc. 91–19390 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 31, 34, 39, 40, and 70

RIN 3150–AC91

Notifications of Incidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise material licensee reporting requirements for byproduct, source, and special nuclear material regarding the incidents related to radiation safety. This action is

necessary to ensure that significant occurrences at material licensee facilities are promptly reported to NRC so that the Commission can evaluate whether the licensee has taken appropriate action to protect the public health and safety and whether prompt NRC action is necessary to address generic safety concerns.

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3795.

SUPPLEMENTARY INFORMATION:

Background

Current regulations require that NRC licensees promptly report certain events involving byproduct, source, or special nuclear material that cause or threaten to cause exposure to specific levels of radiation, the release of radioactive material in specific concentrations, the loss of use of facilities for a specific duration, or damage to property in excess of a specific dollar amount. The events are to be reported either immediately or within 24 hours, depending on the nature and severity of the event as defined in § 20.403. NRC has become concerned that certain provisions of § 20.403 need to be revised because licensees have not been reporting certain significant events. Licensees who failed to report these events were cited for violation of the Commission's regulations.

On May 14, 1990 (55 FR 19890), the NRC published a notice of proposed rulemaking that would delete reporting requirements based on the loss of use of facilities for a specific duration and damage in excess of a specified dollar amount. The deleted requirements would be replaced with reporting requirements that are related more closely to health and safety issues. The proposed requirements covered the following areas: Inability to control licensed material; unplanned contamination events, failure of safety equipment, personal injury events, and fires and explosions. The comment period expired July 30, 1990. Public comments were received on the proposed rule and are available for public inspection and copying for a fee at the Commission's Public Document Room located at 2120 L Street NW (Lower Level), Washington, DC.

Comments on the proposed rule came from a variety of sources. These included universities, hospitals, other government agencies, material licensees, nuclear utilities and individual citizens. Many of the letters received contained similar comments. These comments are grouped together and addressed as a single issue. The NRC has identified and responded to 66 separate issues that include all of the significant points raised by the commenters.

The comments received on the proposed rule have been divided into two groups. Those comments that are not applicable to a specific section of the proposed rule are grouped into a "General Comments" area. Those that are applicable to a certain portion of the rule are grouped into a "Specific Comments" section. The comments and their resolution are discussed below.

Summary and Analysis of Public Comments

A. General Comments

1. Comment: The rule contains reporting requirements for extremely common events. It will lead to confusion and excessive reporting. The rule needs to be altered to exclude insignificant radiation events or significant events with insignificant radiation exposure. Licensees need clear definitions that specify severity levels requiring notification like those currently set out in 10 CFR 20.403 (a)(1), (a)(2), (b)(1), and (b)(2).

Response: The NRC agrees that there is a need to make the criteria in the rule more specific. The final rule has been revised in response to this comment.

2. Comment: Modify the criteria in § 20.403 to add specific notification criteria for fires, explosions, and off site medical treatment provided that these can be clearly separated from the insignificant events. Do not modify parts 30, 40, and 70.

Response: In developing the revised criteria for the proposed rule the NRC considered the possibility of revising part 20 rather than establishing criteria in parts 30, 40, and 70. To make these changes, however, would conflict with well established reporting requirements in part 50 and would require the revision of those requirements. Placing the reporting requirements in parts 30, 40, and 70 will provide greater assurance that persons licensed under those parts will be aware of their reporting responsibilities.

3. Comment: The justification for the rule is weak; writing new rules does not mean people will comply with them. The proposed rule provides no accurance of better reporting by licensees.

Response: The NRC agrees that writing new rules in itself provides no assurance that licensees will comply with them. NRC developed the proposed criteria to reduce confusion and disagreements over what types of events should be promptly reported to the NRC. By establishing criteria which more clearly define significant events that need to be reported, licensees are on notice as to those events for which reports are required. One purpose of this rulemaking is to assure that all significant events are reported, and that the NRC and industry have knowledge of and feedback from operating experience.

4. Comment: The rule is prescriptive and eliminates the need for licensee judgment.

Response: The NRC does not feel that the revised rule is overly prescriptive. The rule provides criteria and clarification as to what events need to be reported (as discussed in comment 3 above). It is recognized that the reporting of some events will involve judgment on the part of the licensee. However, the rule must contain sufficiently defined criteria to minimize disagreements and confusion over what events are reportable.

5. Comment: The NRC should establish activity thresholds for each radionuclide that would require NRC notification, such as part 20, appendix C. Also, significant occurrences should be defined in terms of dose equivalents or concentration limits. Severity should be related to the overexposure situations.

Response: In developing the proposed rule the NRC considered the idea of providing specific activity thresholds. However, the NRC felt that these thresholds would be cumbersome and difficult to develop and use. Many licensed operations use mixtures of isotopes in different chemical forms that pose various safety hazards. The NRC believes that the safety hazards posed by contamination incidents are best evaluated on a case-by-case basis, rather than using a generic set of contamination thresholds. However, the NRC agrees that a set of activity thresholds would be appropriate for determining what fires and explosions are reportable. The final rule has been revised to require NRC notification only for fires and explosions involving licensed material in quantities greater than the quantities specified in appendix C of part 20.

6. Comment: The deletion of paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) of 10 CFR 20.403 is appropriate.

Response: Most commenters either agreed or voiced no disagreement that these criteria did not necessarily define events affecting public health and safety and that it was appropriate to delete them.

7. Comment: The NRC should place specific reporting requirements in

individual licenses. Those with emergency plans already have sufficient reporting requirements.

Response: Generic reporting requirements are best implemented by formal rulemaking procedures, including notice and comment. Placing the same reporting requirements in each individual license is not efficient. Moreover, public notice and comment allows for comments that question the need for or efficiency of the reporting requirements, and allows the NRC to consider and respond to such comments. Placing the requirements in each individual license would not allow for such a healthy dialogue.

8. Comment: The proposed amendments should be rewritten and reissued for a new comment period. They are counterproductive to strong licensee programs.

Response: The NRC believes that changes made to the proposed rule in response to the comments are of a nature that they do not necessitate the reissuance of another proposed rule and a new comment period.

9. Comment: The NRC did not consider other alternatives to rulemaking—such as issuing notices to licensees, developing/amending regulatory guides, issuing license conditions, etc.

Response: The NRC did consider alternatives such as those mentioned by the commenters. These were discussed in the draft regulatory analysis prepared for the proposed rulemaking. The NRC believed that certain sub-sections in 10 CFR 20.403 needed to be replaced with better reporting criteria. As indicated in the regulatory analysis, rulemaking action is considered the best procedure for accomplishing this task.

10. Comment: A parallel to power reactor licensees is not proper. Most material licensees have neither the radioactive material inventory nor the stored energy to cause a release like power reactor licensees.

Response: The NRC did not intend to draw a parallel to power reactor licensees when part 50 regulations were cited in the discussion. The NRC was merely pointing out where similar reporting requirements already existed in part 50 in order to illustrate why part 50 was not included in the rulemaking. We agree that material licensees do not have the inventory or the stored energy to cause a release similar to that which could be caused by a nuclear reactor incident. Although the hazard is less from material licensees, a potential hazard nevertheless exists.

11. Comment: In the case of nuclear medicine/nuclear pharmacy, it is difficult to identify any events that would be significant enough to public health and safety to notify the NRC immediately.

Response: The NRC is very interested in incidents at medical facilities because of the proximity of the general public to areas where licensed material is used and stored. Fires, spills, or other incidents involving significant quantities of radiopharmaceuticals (e.g., therapy doses) or involving sealed sources with significant radiation levels pose potential health and safety hazards that warrant prompt notification of the NRC.

12. Comment: The revised rule should be reviewed by the NRC's Advisory Committee on Medical Uses of Isotopes.

Response: The Advisory Committee on Medical Uses of Isotopes (ACMUI) is normally requested to review rules that specifically address medical applications, especially rulemakings involving part 35. An ACMUI review has not been requested for this rule because the notification requirements are generic and go beyond medical uses of isotopes.

13. Comment: Further clarification needs to be provided regarding notification requirements for commercial nuclear power reactors. Companies holding construction permit or operating license should be explicitly exempted for activities occurring within the protected area.

Response: The NRC does not intend for the new criteria to apply to commercial nuclear power plants. In the discussion as well as in the rule (§§ 30.50(c)(3), 40.60(c)(3), and 70.50 (c)(3)), the NRC specifically states that the provisions do not apply to licensees subject to the notification requirements in 10 CFR 50.72. If a nuclear power plant has only a part 50 license, notification is required only under the provisions of 10 CFR 50.72. Although the part 50 license for a nuclear power plant contains provisions for receipt, possession, and use of byproduct, source, and special nuclear material pursuant to 10 CFR parts 30, 40, and 70, the part 50 provisions do not require reports under this rule. If a nuclear power plant has a separate byproduct, source, or special nuclear materials license, notification is required under the new notification requirements in parts 30, 40, or 70; however, these requirements apply only to the activities licensed under the separate materials license and not to any other activities.

14. Comment: The NRC should provide clear guidance on its interpretation of the rule by circulating early event reports with comments on the appropriateness of the report and by providing examples of failures to report.

Response: The NRC agrees and intends to issue information notices and other guidance as appropriate to licensees as implementation issues are identified and experience is gained with the rule.

15. Comment: The NRC should more clearly define the notification requirements concerning the loss of packages of radioactive material.

Response: This rulemaking effort involves the notification requirements in 10 CFR 20.403. The loss of packages of radioactive material is covered by 10 CFR 20.402. Notification requirements for the loss and theft of licensed material have been revised by the major revision to part 20 which was published in the Federal Register on May 21, 1991 (56 FR 23360). The major revision specifies what quantities of licensed material require immediate and 30 day notifications when packages are lost.

16. Comment: The burden is estimated to be about 3 days for each notification required for large companies.

Response: The public reporting burden in the proposed rule was estimated at about 4 hours per response. This is an average considering both small and large licensees. We agree that a very large organization with several management levels could take a few days to complete and process such a report.

17. Comment: The subject rule and statements of consideration should make it clear that the rule would apply to uranium enrichment plants whether licensed under parts 50 or 70. Further, 10 CFR 50.72 and 50.73 should not apply to such facilities.

Response: The question of whether or not enrichment plants should fall under parts 50 or 70 is not within the scope of this rule. Currently there are no licensed enrichment plants. The question of which regulations should govern these plants is being dealt with as a separate issue. Under recent legislation (H.R. 4808), commercial uranium enrichment plants would be licensed under parts 40 and 70, rather than part 50.

18. Comment: Immediate and 24 hour notifications should be limited to potentially serious events where it is necessary for NRC to intervene to mitigate the effects.

Response: Under the final rule, the timing of the reporting is related to the severity of the event. The licensee is responsible for the safety of the facility and for assuring proper and prompt action to protect public health and safety. The NRC monitors the licensee's actions, and makes recommendations when appropriate. The NRC also has communication channels to Federal, State and local organizations, and if necessary, can make recommendations

regarding appropriate action to protect public health and safety or the environment. In all cases the NRC must be aware of significant events to ensure that appropriate and timely actions are taken.

19. Comment: We do not agree that the categorical exclusions have been met. The proposed regulation as written has a significant environmental impact and cannot be considered to be of a minor nature.

Response: The NRC does not agree that the proposed changes to the notification requirements have any significant environmental impact requiring an environmental review pursuant to part 51. The NRC maintains that while the final rule revises some of the existing requirements, it does not change the NRC's policy that licensees should promptly report significant events. In addition, § 51.22(c)(3) lists amendments to reporting requirements in parts 30, 40, and 70 as categorical exclusions not requiring an environmental review.

20. Comment: The NRC is trying to cover too many different types of licensees with one set of criteria. It would be better to establish separate criteria for each type of licensee (radiography licensees 10 CFR part 34, medical licensees 10 CFR part 35, etc.).

Response: The NRC believes that the proposed notification requirements describe significant events that should be reported by all byproduct, source, and special nuclear material licensees. The NRC does not agree that developing more specialized requirements and amending more parts of the regulations are necessary to meet the objectives of the rulemaking.

21. Comment: The frequent use of the word "any" is not consistent with the stated intent of "significant occurrences."

Response: The text of each notification requirement defines the event to be reported. The word "any" has been deleted from the final rule because it is not necessary to define the event to be reported.

22. Comment: The proposed rule should make it clear that it applies to independent spent fuel storage facilities.

Response: The NRC will consider the application of these reporting requirements to independent spent fuel storage facilities and, if appropriate, will initiate a separate rulemaking effort to amend part 72 in order to allow public comment on that action.

23. Comment: The licensee should not be required to report events that are concluded before any meaningful communication with and participation by the NRC is possible.

Response: The fact that the licensee has completed all necessary actions before the NRC is notified is no reason not to file a report. There may still be some action that the NRC may have to take depending on the nature of the incident. For example, the incident may have generic safety implications not previously recognized and further NRC action, that may range from notifying other licensees to developing a rule, may be appropriate.

24. Comment: The NRC should provide further explanation and possibly examples of what "securing the material and assessing releases" means.

Response: Although the final rule has been reworded, actions necessary to avoid overexposures and releases will usually include securing the material and assessing releases. Securing material includes actions necessary to prevent unauthorized movement of licensed material or unsafe conditions resulting from licensed material. This includes shielding exposed radiation sources, returning licensed material to storage containers, stopping a spill or the spreading of a spill, etc. Assessing releases includes efforts necessary to determine how licensed material has escaped from the licensee's control and where the released material has gone. Assessment actions may include radiation surveys, contamination surveys, and analysis of air, water, and soil samples.

B. Specific Comments

(a) Immediate Notification

1. Comment: The NRC and Agreement States should be notified within one hour for incidents with substantial potential for injury to off site people. The commenter suggests 5 rem for one hour notification.

Response: A requirement for an additional notification is not needed. The Commission's regulations already require emergency response plans (including special notification requirements to states and other authorities) that apply to those licensees who have quantities of licensed material sufficient to result in significant doses to the public in the event of an accident (i.e. §§ 30.32(i), 40.31(j), and 70.22(i)). Those plans include criteria for taking action so that injury or harm to those off site can be minimized.

2. Comment: The time requirement for notification of the NRC may be severe and unrealistic in some cases.

Response: The NRC does not agree that the time requirements are severe and unrealistic. Licensees should be able to perform an initial evaluation of an event and notify the NRC within the 4 or 24 hour time limits. If the event does not clearly fall outside the reporting requirements, the licensee should act conservatively and report the event.

3. Comment: We question the need to immediately report events regardless of quantity and type of licensed material involved.

Response: The rule has been revised so that immediate reporting is not required in all cases. Events involving very small quantities of material, such that exposures in excess of regulatory limits are not possible, would not be reportable.

4. Comment: Do toxic gas releases that include gas releases (such as UF 6, NO_x, HF, etc.) that periodically occur but are contained and controlled by operating procedures need to be reported?

Response: Toxic gas releases would not require an immediate report provided they did not prevent the licensee from taking immediate protective actions necessary to avoid exposures and releases exceeding regulatory limits. However, even if no immediate protective actions were prevented, a report may be required if the toxic gases are also radioactive and the releases exceed the limits specified in § 20.403(a)(2) or § 20.403(b)(2) or in the revised § 20.2202(a)(2) or § 20.2202(b)(2).

(b) Twenty-four Hour Notification

5. Comment: Licensees should not be penalized for failing to report within 24 hours, if a reasonable estimate projects that access would not be lost for more than 24 hours.

Response: If an event does not clearly meet the reporting criteria, but the licensee can not conclusively rule out the need to report the event, the licensee should act conservatively and notify the NRC within 24 hours. If the licensee later determines that an event was not reportable, a 30-day written report would not be required.

6. Comment: The phrase "threatens to prevent" is so vague that many everyday events may qualify for reporting.

Response: The NRC agrees with the commenter that it is difficult to provide a clear, generic definition for the phrase. As a result, the phrase has been deleted from the final rule.

(b)(1) Contamination Events

7. Comment: Minor contamination (such as a contaminated collimator or a spill of short-lived radionuclides) is common in research and medical settings. Access is restricted in the interest of ALARA and efficiency and to

minimize dose. Spills of this nature should not have to be reported. The requirement appears excessive and not related to any potential hazard to the public or the environment.

Response: The NRC agrees that restricting access to allow short-lived isotopes to decay should not be a reportable event. The regulation has been revised to require no report if an area is restricted to allow isotopes with a half-life of less than 24 hours to decay.

8. Comment: How do you determine when an area is "cleaned up?" Is the definition of an "area" limited to any minimum size?

Response: This rule does not attempt to define criteria for releasing areas from radiological controls. No report would be required if the unplanned contamination can be reduced within 24 hours to levels where contamination controls for entry into the area are no more stringent that the controls in effect prior to the contamination accident. The definition of an "area" is not limited to any minimum size. In general, any space normally accessible to workers or the general public qualifies as an area.

9. Comment: What does a "contamination event that restricts access" mean?

Response: Contamination events that restrict access are (1) spills or other types of accidents involving radioactive material that result in elevated levels of radiation from spreadable contamination, and (2) occur in areas that must be restricted by imposing additional controls to prevent individuals from spreading the contamination to themselves or to areas outside the contaminated area. Restricting access also includes additional controls to minimize exposure to radiation levels elevated by the contamination.

10. Comment: The contamination area is unduly restrictive. It makes no distinction about the source of contamination or efforts to remove it. For hospitals, either restrict the definition of a contamination event, exclude contamination from contaminated patients, or exclude temporal extensions of restricted areas beyond what would normally be necessary allowing a more deliberate pace of decontamination.

Response: The reporting requirement has been clarified to indicate that the contamination must be unplanned, however, the NRC does not agree that the term "area" is too restrictive.

11. Comment: The proposed regulation places an unnecessary burden on the licensee with restricted areas. Low action levels for contamination/whole body exposures are low because clean-up efforts can be supplemented with radioactive decay. Hence individual and collective radiation exposures may increase.

Response: The reporting requirements do not relieve licensees from their responsibility to maintain radiation exposures as low as reasonably achievable. The NRC agrees that waiting longer than 24 hours for isotopes to decay is acceptable if a significant reduction in activity will result. The final rule has been revised to not require a report if the licensee is waiting to allow isotopes with half-lives less than 24 hours to decay. However, the benefit of waiting for several days or weeks for isotopes with longer half-lives to decay is questionable. In these cases, a 24-hour report is warranted.

12. Comment: The requirement to notify the NRC within 24 hours needs to be more quantitative. Specific levels of contamination should be stated.

Response: The hazards posed by radioactive contamination vary depending on the activity of the contamination, the chemical and physical form, the normal conditions of the contaminated area, and other factors. Thus, specific contamination levels are only one measure of significance. However, the NRC agrees that if the amount of licensed material involved is not likely to result in exceeding regulatory limits, no report should be required. The final rule has been changed to require a report if the amount of licensed material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material.

13. Comment: Sentence 2 of paragraph 1 in the discussion under Contamination Events states that the "requirement is intended to cover events that cause accidental contamination in excess of the radiological conditions normally present." This standard is markedly more restrictive than the proposed standard and is inappropriate.

Response: The NRC agrees with the comment. The sentence is misleading and has been deleted from the discussion.

14. Comment: The rule should allow for planned activities such as maintenance or decommissioning that would result in restricting access.

Response: The NRC agrees. This criterion has been revised to clarify that it applies to unplanned contamination only.

15. Comment: It is not clear from the rule that restriction of access includes changing protocols such as adopting extra protective clothing. The NRC needs to provide more guidance.

Response: Requiring additional protective clothing or otherwise increasing radiological controls as a result of a contamination accident is significant. The final rule has been clarified to indicate that imposing additional radiological controls is considered to be a form of restricting access.

16. Comment: Licensees should be allowed to postpone cleanup of contaminated areas for longer than 24 hours provided access is restricted, employees do not receive exposures in excess of the regulatory limits, and no releases are being made to unrestricted areas or the environment.

Response: Licensees have been and still are allowed to postpone cleanup of contaminated areas for longer than 24 hours if the contamination is controlled and any delay in removing the contamination is justified. This rule would only require licensees to inform the NRC of the contamination accident.

17. Comment: Change the time for loss of access from more than 24 hours to more than one working day.

Response: The NRC disagrees. A definitive time period is necessary. This time period should be the same for every day of the week regardless of the length of the work week.

(b)(2) Safety Equipment Related Events.

18. Comment: Guidance is needed concerning reports to be made by licensees when a radiographer's pocket dosimeter is discharged beyond its range.

Response: A 24-hour report would not be required by this rule solely because a pocket dosimeter is discharged beyond its range. However, the discharge of a radiographer's pocket dosimeter may be associated with an event that requires a report pursuant to 10 CFR 20.403 (a)(1) or (b)(1) or the revised 10 CFR 20.2202 (a)(1) or (b)(1). A pocket dosimeter does not prevent overexposure to radiation. It only indicates what dose has already been received. In fact, a discharged pocket dosimeter would tend to minimize radiation exposure because a worker normally leaves an area immediately upon discovering that his or her pocket dosimeter is offscale.

19. Comment: The wording in the proposed rule for safety equipment related events is not clear. Use the last paragraph on page 19891 (column 3) of the Federal Register Notice (May 14, 1990; 56 FR 19890).

Response: The reporting requirement has been rewritten in a format similar to the discussion in the proposed rule.

20. Comments: Events should not be reported unless they result in exceeding

some existing limits. Either specify some limits or drop the requirement.

Response: The NRC agrees. The reporting requirement has been revised to indicate that, in order for a safety equipment related event to be reported, the equipment must also be necessary to prevent releases in excess of regulatory limits.

21. Comments: Delete the word "needed" at the end of the first sentence of § 30.50(b)(2) and replace it with the phrase "required to be available and operable."

Response: The criteria have been reworded in the final rule.

22. Comment: As currently written, this section (Safety Equipment Related Events) could result in large numbers of reports on the malfunction of such equipment as portable survey instruments, respirators, fire extinguishers, or even flashlights.

Response: The reporting requirement has been reworded to clarify what equipment malfunctions are reportable. Equipment that is covered by the rule must be necessary for one of the safety functions specified. In other words, it must be needed to (1) prevent releases exceeding regulatory limits, (2) prevent exposures to radiation and radioactive materials exceeding regulatory limits, or (3) mitigate the consequences of accidents that could result in major property damage, widespread contamination outside of controlled areas, fatalities, or serious injuries requiring medical treatment.

23. Comment: Determinations by licensees about whether equipment failures are reportable should be limited to realistic scenarios in order to avoid a significant number of unnecessary reports.

Response: The NRC agrees. Licensees should be realistic when they evaluate whether the function, or the availability of the function of safety equipment, was required when it failed.

24. Comment: The third example on page 19892 (May 14, 1990; 55 FR 19890), concerning radiography equipment conflicts with the notification requirements in § 34.30.

Response: The NRC does not agree that there is a conflict with § 34.30. The proposed rule would require a 24-hour telephone notification in addition to the 30-day written report required by § 34.30. The final rule has been clarified to indicate that a written report submitted pursuant to other regulations may be used to satisfy this rule if the report contains all of the required information and appropriate distribution is made.

25. Comment: Strict interpretation of the rule indicates that every stuck shutter requires a 24-hour report. We fail to see the need to report if the exposure limits are not exceeded.

Response: If there are problems with the design or use of a device containing a source that could cause an overexposure and the problems prevent reshielding of exposed radiation sources, the NRC may need to take prompt action to warn other device users and ensure that the manufacturer is taking appropriate corrective action. The NRC must be aware of safety equipment failures in order to ensure that preventative measures are taken before more serious incidents occur.

26. Comment: Specify what is meant by the word "needed" and what severity of potential event does the equipment protect against?

Response: The final rule states that only equipment required by regulation or licensed condition is covered by the requirement. Safety equipment is needed when a radiation hazard is present and an incident requiring the use of the safety equipment is possible. A 24-hour report is only required by the rule if the safety equipment malfunctions when a radiation hazard exists. The final rule has been reworded to clarify the types of event that safety equipment must protect against.

27. Comment: What is meant by "uncontrolled releases of radioactive material?"

Response: The NRC's intent with the use of the term "uncontrolled releases of radioactive material" was to refer to unplanned releases exceeding regulatory limits. This has been clarified in the final rule.

28. Comment: What is meant by the words "prevent overexposures to radiation, and to mitigate the consequences of an accident?"

Response: To prevent overexposures means to prevent exposures exceeding regulatory limits for workers and the public. The rule has been revised to clarify this point. To mitigate the consequences of an accident means to minimize serious injuries and severe damage after an accident occurs.

29. Comment: The use of the word "automatically" is confusing and should be deleted. Change the last sentence to read "if redundant equipment which performs the required function is operative."

Response: The NRC agrees that the word "automatically" is confusing. The term "redundant" is used to describe independent trains of equipment which perform the same function with the same level of effectiveness and reliability. A manually operated backup to an automatically initiated safety system would not be considered redundant.

30. Comment: Equipment failures reported under § 34.30 should be exempt from this requirement because most incidents regarding radiography equipment failure are detected and resolved by the licensee usually within 24 hours.

Response: The NRC disagrees. The NRC must determine if there are generic design defects that require prompt warnings and corrective actions by the equipment manufacturer.

(b)(3) Personal Injury Events

31. Comment: The degree of personal injury has no bearing on the potential of the radiation hazard and may result in reporting many incidents of no significance to the NRC. A laceration to a lab worker's hand may require sutures where the radiation component may be insignificant. The proposed rule would require the reporting of an event even if the medical treatment was not related to the contamination issue.

Response: The NRC is concerned about the spread of contamination at the medical facility and the possible exposure of the general public to radiation and radioactive contamination. In addition, there is always the possibility that radiation may complicate the treatment of an injury.

32. Comment: Notification should only be required if contamination of the individual or treating medical facility exceeds NRC regulatory limits, license limits, or NRC unrestricted release limits. What is a radioactively contaminated individual?

Response: A radioactively contaminated individual is a person who has removable surface contamination on their clothing or on accessible portions of their body that can be detected by standard methods and can be spread to other individuals. No threshold or contamination level related to regulatory limits has been provided because NRC is concerned about any contamination that is introduced into an emergency room or any other medical facility by an injured person.

33. Comment: Change the word "rendered" in the last sentence to the word "required."

Response: Although the statement has been deleted from the rule, NRC is concerned about what was actually done to the contaminated individual. The fact that the treatment may not have been required does not eliminate the radiation hazard.

34. Comment: The proposed rule required no report for the treatment of a

superficial injury at a licensee-maintained medical facility but required a report for treatment of the same injury elsewhere. Why?

Response: Although many licensee facilities have provisions for controlling the spread of contamination, the potential for spreading contamination is sufficient to cause the NRC to reconsider its position and to decide not to exclude licensee-maintained medical facilities treating superficial wounds from this reporting requirement. An individual with a superficial injury could still spread significant amounts of contamination around the medical facility. In addition, very few reports are expected even if superficial injuries are included. The rule has been appropriately revised.

35. Comment: We have incorporated and maintained appropriate emergency plans, personnel training, and decontamination facilities at a local hospital to specifically cope with medical treatment. Would this be considered a licensee maintained facility?

Response: The NRC has decided to require reports of any injured person introducing spreadable contamination into a medical facility regardless of who maintains the facility. The NRC must be aware of these incidents in order to ensure that appropriate radiological controls are used and to ensure that any radiological consequences caused by the contamination are properly addressed. Since the exception for a licensee maintained facility has been removed from the rule, the above question, regarding interpretation of the rule, is moot.

(b)(4) Fires and Explosions

36. Comment: The most common type of explosions in medical biomedical research, and radiopharmaceutical operations involve screwcap vials or stoppered test tubes containing tissue samples with only traces of radionuclides. Do these types of explosions have to be reported?

Response: When the proposed rule was drafted, NRC did not intend to include explosions of small vials and stoppered test tubes. NRC agrees that fires and explosions involving trace quantities of licensed material should not be reportable. The notification requirement has been revised to only require a report if an explosion or fire involves licensed material in quantities greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20.

37. Comment: In the case of fires, the hazard of the fire may greatly outweigh the hazards of the release. There should be quantitative threshold limits for licensees.

Response: The NRC agrees that the fire usually poses the greatest hazard. However, if a significant amount of licensed material is involved, the NRC needs to ensure that appropriate controls are used during firefighting and cleanup operations. The notification requirement has been revised to establish a reporting threshold of five times the lowest annual limit on intake because the NRC believes it is unlikely that an individual would inhale or ingest more than 20 percent of the material dispersed.

38. Comment: A report should not be required if there is only superficial damage to licensed materials.

Response: The NRC agrees and the reporting requirement has been revised to require no report if the damage to the licensed material or its container does not affect the integrity of the licensed material or its container.

39. Comment: Retain a significant dollar figure in the range of $10,000 for property damage.

Response: The NRC disagrees. A dollar figure for property damage, regardless of amount, is not necessarily indicative of the hazard of the public health and safety. Therefore, the dollar figure has been removed from the regulations.

(c) Written Reports

40. Comment: Licensee duplication of written reports prepared by NRC inspectors does not appear to be justified.

Response: The NRC believes that separate reports serve a useful function. The licensee is directly responsible for the safety operations of the facility and is most knowledgeable about the event, its causes, consequences and appropriate corrective actions. The licensee reports contain useful information on the event and its implications. NRC inspections focus on selected events, and on the status and completeness of corrective action. Thus, NRC reports generally have a different objective than licensee event reports.

41. Comment: Personnel radiation exposure data may at times be difficult to obtain.

Response: The NRC recognizes that there may be times when it is difficult to obtain radiation exposure data. Only data that is available to the licensee is required to be reported.

(d) Criticality Safety in § 70.50(a)(2)

42. Comment: The following nuclear criticality safety events should be included in the rule as reportable events: (1) Unintended accumulation of special nuclear material in an unfavorable geometry, and (2) failure of a special nuclear material concentration monitoring instrument or a failure of a moisture detection instrument.

Response: The NRC agrees that some criticality safety events can be significant. In light of recent events at some facilities and NRC experience, the NRC believes that there may be sufficient justification to warrant incorporating into the regulations reporting requirements for certain types of events related to the criticality of fissile material. The NRC intends to study this issue further and will consider the future promulgation of additional requirements related to criticality safety. No additional requirements were added for monitoring equipment because the rule already requires reports of equipment failures under § 70.50(b)(2).

Discussion

The NRC is amending the reporting requirements in § 20.403 and in the new § 20.2202 which was published in the Federal Register on May 21, 1991 (56 FR 23360). The amendments will ensure that events having significant implications for public health and safety are reported. The rule is a matter of compatibility for Agreement States. The Agreement States participated in the development of this rule and their comments were incorporated as appropriate.

Paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) of § 20.403 and § 20.2202 dealing with loss of operation and cost of damage are being deleted because the NRC believes these criteria do not adequately define events with significant implications for public health and safety. For example, the periodic loss of operation of a facility may not be related to any potential hazard to the public or the environment. The same is true for the cost of repairing damage, which may be high for reasons unrelated to any potential hazard from licensed material. New criteria for the reporting of significant events at material licensee facilities are added in parts 30, 40, and 70. The NRC believes the new criteria will more accurately define potentially significant events affecting the health and safety of the public and the environment that must be reported to the NRC. The final rule also contains administrative changes to requirements for general licenses (10 CFR 31.2). These changes specify that general licensees who were previously required to report incidents pursuant to the deleted requirements, must continue to report

incidents pursuant to th · new reporting requirements.

Revisions to part 50 are not needed because similar reporting requirements are already addressed in § 50.72. Part 50 licensees subject to the requirements in § 50.72 are specifically exempted from this rule to avoid conflicting regulations. However, certain part 50 licensees (e.g., research and test reactors) are not subject to the reporting requirements in § 50.72 and if they possess material licensed under parts 30, 40, or 70, they will be subject to the new reporting requirements.

The intent of these amendments is to require prompt reports (either immediately or within 24 hours) to the NRC of safety related events that may require prompt action to protect the health and safety of the public and the environment. The NRC will evaluate the hazard and the corrective actions taken by the licensee and may dispatch NRC staff to the site of the event, activate the NRC incident response center, or issue warnings of generic hazards to other licensees. The final amendments for parts 30, 40, and 70 are almost identical. Therefore, the discussion that follows is organized by the type of requirement rather than by the sections in the regulations where the requirement is found.

Immediate Notification

A period of 4 hours will be the maximum time allowed for "immediate notification" by material licensees. It is intended that licensees will notify the NRC of incidents as soon as possible, but in no case later than 4 hours after discovery of a reportable incident. Four hours was used because many smaller material licensees do not have the capability to quickly assess and respond to events that reactor licensees possess and because the degree of hazard posed by nonreactor events is typically much smaller than the hazard posed by reactor events.

Control of Licensed Material

The final rule requires licensees to notify the NRC as soon as possible but not later than 4 hours after the discovery of any event involving licensed material that prevents immediate protective actions necessary to avoid either exposures to or releases of radioactive materials that could exceed regulatory limits. The requirement in the proposed rule was changed to define immediate actions in terms of exposures and releases rather than actions necessary to maintain and verify control of licensed material. This was done to clarify what types of actions warrant an immediate report to the NRC.

The NRC expects licensees to report as soon as possible any event where personnel normally able to take an immediate protective action are somehow prevented from taking the action. An immediate protective action is an initial action taken after a hazardous situation is identified to minimize exposures to radiation or radioactive materials, or to minimize releases of radioactive materials. Immediate actions would normally be taken within 15 minutes of identifying the hazard. The NRC does not expect immediate reports of normal delays associated with sounding alarms and responding to the site of the emergency. However, if alarms cannot be sounded or personnel cannot respond, an immediate report (within 4 hours) would be required. A normal delay in responding to an event such as the time to drive to the site or the time to call the fire department would not be reportable. However, once the responders are available and able to do the job, any additional delay would be reportable.

Examples of cases where an immediate report would be required include: A toxic gas leak near a radiography operation that prevents the radiographer from immediately reshielding the source to reduce a high radiation field around the leak; a fire that prevents workers from immediately securing a ventilation system to stop a release of airborne radioactive material exceeding regulatory limits; and a collapsed ceiling from an explosion that prevents workers from immediately closing a valve to stop a release of radioactive material exceeding regulatory limits.

Sections 20.403 and 20.2202 of 10 CFR part 20, still require reports of exposures and releases exceeding specified limits. This new requirement addresses emergency situations where immediate actions normally possible to control radiation or radioactive material are prevented even if the limits in part 20 are not exceeded. This information is needed to assure the Commission that adequate substitute actions are taken.

Because it is difficult to establish a clear, generic definition of a "threat," the final rule has been revised to delete the requirement to report events that threaten to prevent immediate protective actions. The NRC agreed with several commenters that where such reporting is warranted, it would be better to impose specific reporting requirements for threatening events such as the bulging of a filled uranium hexafluoride container through license conditions or other methods where clear definitions of specific threats can be provided.

Contamination Events

The final rule requires licensees to notify the NRC within 24 hours of discovering any unplanned contamination event that requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or prohibiting entry into the area. If a licensee discovers that an area has unexpectedly been contaminated with licensed material, the Commission expects the licensee to impose appropriate controls to keep exposures and releases as low as reasonably achievable (ALARA) until the area can be decontaminated. If controls beyond those that were required before the contamination event occurred are necessary for more than 24 hours, the Commission expects the licensee to report the event.

In response to numerous comments that a 24-hour report is not necessary for small quantities of material or material with a short half-life, the final rule has been revised/modified to exempt certain contamination events from the new reporting requirement. A report is only required if the access to the contaminated area is restricted for more than 24 hours, and the quantity of material involved is greater than five times the lowest annual limit on intake in appendix B of §§ 20.1001–20.2401 of the revised part 20 issued May 21, 1991 (56 FR 23360) for the material, and the reason for the restriction is other than to allow isotopes with a half-life less than 24 hours to decay. The activity threshold of five times the annual limit on intake was chosen because the NRC believes it is unlikely that any individual exposed to contamination would inhale or ingest more the 20 percent of the material dispersed. The half-life threshold of 24 hours was chosen because a significant amount of decay would occur each day and it is unlikely that the area would need to be restricted for more than 1 week.

Reports of unplanned contamination events that exceed the activity, half-life and access restriction thresholds are necessary to assure the Commission that contaminated areas are being decontaminated in a safe and timely manner. In addition, prompt action may be necessary to correct conditions that may lead to additional contamination problems. Examples of reportable events include: A spill of licensed material in the form of a fine powder that requires workers to use additional respiratory protection for more than 24 hours; a leaking shipping container that

requires a normally unrestricted shipping facility to be locked up for more than 24 hours; and contamination from a leaking sealed source that requires workers in the area to wear additional protective clothing for more than 24 hours. However, if a spill involved a short-lived isotope such as technetium-99m (6 hour half-life) and entry into the area was prohibited for two days to allow the material to decay, no report would be required. In addition, if the leaking source discussed above contained only 100 microcuries of Y-class cobalt-60 (appendix B of §§ 20.1001–20.2401 of the revised part 20 issued May 21, 1991 (56 FR 23360)), no report would be required because five times the lowest annual limit on intake of Y-class cobalt-60 is 150 microcuries. If the licensee knows that the chemical form of cobalt-60 meets the definition of W-class material, then the higher annual limit on intake for W-class cobalt-60 may be used to determine the reporting threshold.

Safety Equipment Failure

The final rule requires licensees to report within 24 hours of discovering any event in which equipment is disabled or fails to function as designed if: (1) The equipment is required by regulation or license condition to prevent releases or exposures exceeding regulatory limits, or to mitigate the consequences of an accident, and (2) the equipment is required to be available and operable when it is disabled or fails, and (3) no redundant equipment is available and operable to perform the required safety function when the failure occurs. This reporting requirement includes equipment failure, equipment damage, and procedural errors which cause equipment to fail or be disabled.

The final requirement has been rewritten and clarified in several ways. Only equipment that is required by regulation or license condition is covered by the rule. Furthermore, the equipment must be required to prevent releases or exposures exceeding regulatory limits. The accident consequences to be mitigated by the equipment include major property damage, widespread contamination of uncontrolled areas, or fatalities or serious injuries requiring medical treatment. The following are examples of reportable events:

1. Failure of an interlock system required by regulation or license condition that allows a door to an area to be opened when high radiation levels exist in the area.

2. Damage to a filtered ventilation system required by regulation or license condition that permits effluent air to bypass filters during operations. This bypass could result in either releases exceeding regulatory limits or exposing personnel to levels of airborne radioactive material exceeding regulatory limits.

3. Failure of equipment or shielding materials required by regulation or license condition to shield radiation sources.

4. Failure of monitoring equipment required by regulation or license condition to verify that safe criticality conditions exist while special nuclear material is being handled.

5. Loss of water pressure which disables a sprinkler system during a period when the availability of the system is required by regulation or license condition.

This information is necessary to assure the Commission that when the function of required safety equipment has been lost, the licensee has taken appropriate action to compensate for the lost safety function or to eliminate the hazard requiring the safety function. This information is also necessary to identify significant safety equipment failures that may require prompt action to prevent similar problems at other licensed facilities.

Personal Injury Events

The final rule requires licensees to report within 24 hours of discovering any event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body. This information is necessary to assure the Commission that appropriate actions have been taken both to control the spread of contamination and to perform any necessary decontamination. Prompt action may also be required to investigate the cause of the injury and to prevent additional contamination problems.

This requirement has been rewritten to clarify that only spreadable contamination is covered by the rule and that planned medical treatments known to cause spreadable contamination are not covered by the rule. The exemption for first aid at a licensee maintained medical facility for a superficial injury was deleted because the NRC agreed with commenters that a significant contamination event could still occur even if the injury was only superficial and the medical facility was licensed to handle radioactive material. The NRC does not expect that deleting this exemption will result in numerous reports of insignificant events, because no report would be required if any spreadable contamination was removed before first aid was rendered.

Fires and Explosions

The final rule requires licensees to report within 24 hours of discovering any unplanned fire or explosion damaging licensed material, or any device, container, or equipment containing licensed material in quantities greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of part 20 for the material. This information is necessary to assure the Commission that appropriate actions have been taken to detect and control any releases that may have occurred. Prompt action may be required to verify survey results and establish radiological controls for recovery efforts. This requirement was revised to specify unplanned fires and explosions so as to clarify that planned applications of licensed material in fires and explosions by the military or other licensees are not covered by this rule. In response to several requests by commenters, an activity threshold of five times the lowest annual intake limit was added to define what quantities of licensed material are considered significant. This threshold is identical to the threshold for reporting contamination events and is chosen for the same reason. The requirement was also modified because the NRC agreed with one commenter that a 24-hour report should not be required if there is no damage that affects the integrity of the licensed material or its container.

In the event of a fire or explosion, an immediate report would be required if licensee personnel or firefighters were prevented by radiation hazards or other conditions from performing immediate protective actions that they would normally be able to perform (see discussion above on Control of Licensed Material). However, if no immediate protective actions were prevented, but the licensed material or its container sustained damage that affected the integrity of the licensed material or its container, a 24-hour report would be required. If within 24 hours of discovering the fire or explosion, the licensee has not verified whether any reportable damage occurred. the licensee must act conservatively and report the event.

Written Report

The requirement for a written report in the final rule is identical to the proposed rule except for a minor clarification that a report prepared pursuant to other regulations may be submitted to fulfill this requirement if

the substituted report contains all of the necessary information and the appropriate distribution is made.

Administrative Amendments Concerning Information Collection

References to obsolete NRC Form 2 in §§ 40.8(c)(1), 40.43(a), and 40.44 have been deleted in this final rule and replaced with the references to NRC Form 313.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0009, 3150–0014, 3150–0017, and 3150–0020.

Public reporting burden for this collection of information is estimated to average 4 hours per response, 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0009, 3150–0014, 3150–0017, and 3150–0020), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission prepared a regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requested public comments on the draft regulatory analysis, but no comments were received. No changes to the draft regulatory analysis were considered necessary. Therefore, the draft regulatory analysis is adopted as the final regulatory analysis without change. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule effects approximately 9,100 licensees monitored by NRC under 10 CFR parts 20, 30, 40, and 70. The licenses are issued to academic institutions, medical institutions, and industrial entities. The final rule is being issued in order to reduce misunderstandings by material licensees and to more clearly define the types of events that must be reported to the NRC. No report would be required of licensees unless there is an incident involving licensed material that meets the requirements specified in the amendments. Since the revised reporting requirements are not expected to generate a significant number of additional reports, the impact on licensees should be minimal.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and therefore a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits on licensees as defined in § 50.109(a)(1).

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials-transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalty, Hazardous materials-transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 20, 30, 31, 34, 39, 40, and 70.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103 (a), (b) and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), and 20.409 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 20.403 [Amended]

2. In § 20.403, the semicolon and the word "or" following paragraph (a)(2) are removed and a period is inserted, and the semicolon and the word "or" following paragraph (b)(2) are removed and a period is inserted, and paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) are removed.

§ 20.2202 [Amended]

3. In § 20.2202, the semicolon and the word "or" following paragraph (a)(2) are removed and a period is inserted, and the semicolon and the word "or" following paragraph (b)(2) are removed and a period is inserted, and paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) are removed.

PART 30—RULE OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

4. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34 (b), (c) and (f), and 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.9, 30.36, 30.50, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 30.8, paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.15, 30.19, 30.20, 30.32, 30.34, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, and 30.56.

* * * * *

6. A new § 30.50 under Records, Inspections, Tests, and Reports is added to read as follows:

§ 30.50 Reporting requirements.

(a) *Immediate report.* Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) *Twenty-four hour report.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the licensed material or its container.

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.[1] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(v) Any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC Regional office listed in appendix D of 10 CFR part 20. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The isotopes, quantities, and chemical and physical form of the licensed material involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(3) The provisions of § 30.50 do not apply to licensees subject to the notification requirements in § 50.72. They do apply to those part 50 licensees possessing material licensed under part 30, who are not subject to the notification requirements in § 50.72.

[1] The commercial telephone number for the NRC Operations Center is (301) 951–0550.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

7. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 is also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

For purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5(c) (1)–(3) and (5)–(9), 31.8(c), 31.10(b), and 31.11 (b), (c), and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 31.5(c) (4), (5), and (8), and 31.11 (b) and (e) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 31.2 [Amended]

8. In § 31.2, paragraph (a) is amended by adding an "s" to the word "provision" and changing "30.51" to read "30.50."

§ 31.8 [Amended]

9. In § 31.8, paragraph (c) is amended by changing "30.51" to read "30.50."

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

10. The authority citation for part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended, (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246, (42 U.S.C. 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 34.20(a)–(c), 34.21 (a) and (b), §§ 34.22, 34.23, 34.24, 34.25 (a), (b), and (d), 34.28, 34.29, 34.31 (a) and (b),

34.32, 34.33 (a), (c), (d), and (f), 34.41, 34.42, 34.43 (a), (b), and (c), and 34.44 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 34.11(d), 34.25 (c) and (d), 34.26, 34.27, 34.28(b), 34.29(c), 34.30, 34.31(c), 34.33 (b) and (e), and 34.43(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 34.30 [Amended]

11. In § 34.30, paragraph (a) is amended by adding "in § 30.50 and" between "specified" and "under."

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

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

Authority: Secs. 53, 57, 62, 83, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 39.15, 39.31–39.51, 39.61–39.77 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 39.15, 39.33–39.43, 39.61–39.67, 39.73–39.77 are issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

§ 39.77 [Amended]

13. In § 39.77, paragraph (b) is amended by removing the word "and" between "20.403," and "20.405," and adding "and 30.50" between "20.405" and "of."

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

14. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 963, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 375, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35 (a)–(d), and (f) 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.5, 40.9, 40.25 (c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.60, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 40.8 [Amended]

15. In § 40.8, paragraph (b) is amended by adding "40.43, 40.44, and 40.60," between "40.42," and "40.61," and paragraph (c)(1) is amended by replacing "Form NRC–2" with "NRC Form 313" and replacing "0019" with "0120."

§ 40.26 [Amended]

16. In § 40.26, paragraph (c)(1) is amended by removing "40.2" and adding "40.60" between "40.46" and "40.61."

§ 40.43 [Amended]

17. In § 40.43, paragraph (a) is amended by replacing "Form NRC–2" with "NRC Form 313."

§ 40.44 [Amended]

18. Section 40.44 is amended by replacing "Form NRC–2" with "NRC Form 313."

19. A new § 40.60 under Records, Reports, and Inspections is added to read as follows:

§ 40.60 Reporting requirements.

(a) *Immediate report.* Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) *Twenty-four hour report.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the licensed material or its container.

(c) *Preparation and submission of reports.* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.[1] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(v) Any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC regional office listed in appendix D

[1] The commercial telephone number for the NRC Operations Center is (301) 951–0550.

of 10 CFR part 20. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The isotopes, quantities, and chemical and physical form of the licensed material involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(3) The provisions of § 40.60 do not apply to licensees subject to the notification requirements in § 50.72. They do apply to those part 50 licensees possessing material licensed under part 40 who are not subject to the notification requirements in § 50.72.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

20. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.50, 70.52, 70.53, 70.54, 70.55, 70.56 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 70.8 [Amended]

21. In § 70.8, paragraph (b) is amended by adding "70.50," between "70.39," and "70.51."

§ 70.19 [Amended]

22. In § 70.19, the introductory text paragraph (c) is amended by adding "70.50," between "§§ 70.32," and "70.51."

23. A new § 70.50 under Special Nuclear Material Control, Records, Reports and Inspections is added to read as follows:

§ 70.50 Reporting requirements.

(a) *Immediate report.* Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) *Twenty-four hour report.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or licensee condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001–20.2401 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the licensed material or its container.

(c) *Preparation and submission of reports.* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.[1] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(v) Any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section shall prepare written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC regional office listed in appendix D of 10 CFR part 20. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) The isotopes, quantities and chemical and physical form of the licensed material involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

[1] The commercial telephone number for the NRC Operations Center is (301) 951–0550.

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(3) The provisions of § 70.50 do not apply to licensees subject to the notification requirements in § 50.72. They do apply to those part 50 licensees possessing material licensed under part 70 who are not subject to the notification requirements in § 50.72.

Dated at Rockville, MD, this 5th day of August 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-19588 Filed 8-15-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 39

[Docket No. 91-NM-68-AD; Amdt. 39-8001; AD 91-17-03]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which requires a one-time high frequency eddy current inspection to detect cracks in the actuating ram attachment lug, and replacement of the main landing gear (MLG) drag strut attachment fittings, if necessary. This amendment is prompted by recent reports of broken attachment lugs on the MLG drag strut actuating rams. This condition, if not corrected, could result in collapse of the MLG.

DATES: Effective September 20, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-27 series airplanes, which requires a one-time high frequency eddy current inspection to detect cracks in the actuating ram attachment lug, and replacement of the main landing gear (MLG) drag strut attachment fittings, if necessary, was published in the Federal Register on April 23, 1991 (56 FR 18551).

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

The commenter requested that the FAA clarify its intent regarding the compliance time cited in paragraph A. of the Notice, specifically whether the intention was for operators to comply within 500 landings from the effective date of the AD, or within 500 landings from the airplane's first landing. The final rule has been revised to specify that compliance is required within 500 landings after the effective date of the AD.

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

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,400.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-17-03. Fokker: Amendment 39-8001. Docket No. 91-NM-68-AD.

Applicability: Model F-27 series airplanes; serial numbers 10102, 10105 through 10684, 10686, 10687, and 10689 through 10692; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG), accomplish the following:

A. Within 180 days after the effective date of this AD, or prior to the accumulation of 500 landings after the effective date of this AD, whichever occurs first, perform a high frequency eddy current inspection of both sides of the actuating ram attachment lug in accordance with part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/54-47, dated November 30, 1990.

B. If cracks are found, prior to further flight, replace the MLG drag strut attachment fitting in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/54-47, dated November 30, 1990.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. The inspection and replacement requirements shall be done in accordance with Fokker Service Bulletin F27/54-47, dated November 30, 1990. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the **Federal Register**, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8001, AD 91-17-03) becomes effective September 20, 1991.

Issued in Renton, Washington, on August 1, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19578 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-135-AD; Amdt. 39-8004; AD 91-18-01]

Airworthiness Directives; Airbus Industrie Model A300 B2-1C, B2K-3C, and B2-203 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2-1C, B2K-3C, and B2-203 series airplanes, which requires repetitive high frequency eddy current inspections to detect cracks in the vertical web of the wing front spar between ribs 10 and 11, and repair, if necessary. This amendment is prompted by recent reports of cracks, resulting from fatigue, which were found in this area of the airplane during recent inspections. This condition, if not corrected, could result in reduced structural integrity of the wings.

DATES: Effective September 3, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC) which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 B2-1C, B2K-3C, and B2-203 series airplanes. There have been recent reports of cracks, resulting from fatigue, which were found in the vertical web of the front spar between ribs 10 and 11 on two airplanes that had been inspected previously in accordance with Airbus Industrie Service Bulletin 57-151 with no crack indication. A laboratory examination of the cracks revealed they were diametrically opposed, emanating from the outboard taperlok hole. One crack propagated aft to the free edge of the spar boom, and the other propagated forward and up the spar vertical face. However, neither crack could be fully analyzed due to crack surface damage. Further results of the examination revealed that the non-destructive testing (NDT) procedure performed in accordance with Airbus Industrie Service Bulletin 57-151 failed to detect the crack running forward, and that the reliability of the NDT procedure described in this service bulletin to detect such cracks is low. This condition, if not corrected, could result in reduced structural integrity of the wings.

Airbus Industrie has issued All-Operators Telex (AOT) 57-03, Issue 2, dated June 13, 1991, and AOT 57-04, dated June 21, 1991, which describe procedures to perform repetitive high frequency eddy current inspections to detect cracks in the vertical web of the wing front spar between ribs 10 and 11, and repair, if necessary. The French (DGAC) has classified these AOT's as mandatory, and has issued French Airworthiness Directive 87-065-079(B)R4 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive high frequency eddy current inspections to detect cracks in the vertical web of the wing front spar between ribs 10 and 11, and repair, if necessary, in accordance with the AOT's previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-18-01. **Airbus Industrie:** Amendment 39-8004. Docket No. 91-NM-135-AD.

Applicability: Model A300 B2-1C, B2K-3C, and B2-203 series airplanes, on which Modification Number 7811H1110 (described in Airbus Industrie Service Bulletin A300-57-165, dated May 21, 1990) has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 11,000 landings, or within the next 25 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current inspection of the vertical web of the front spar of both wings between ribs 10 and 11 to detect cracks, in accordance with Airbus Industrie All-Operators Telex (AOT) 57-03, Issue 2, dated June 13, 1991. Repeat this inspection at intervals not to exceed 25 landings thereafter, in accordance with AOT 57-04, dated June 21, 1991.

(b) If cracks are found as a result of the initial or repetitive inspections, repair prior to further flight, in accordance with Airbus Industrie All-Operators Telex 57-03, Issue 2, dated June 13, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection and repair requirements shall be done in accordance with Airbus Industrie All-Operators Telex (AOT) 57-03, Issue 2, dated June 13, 1991, and AOT 57-04, dated June 21, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8004, AD 91-18-01) becomes effective September 3, 1991.

Issued in Renton, Washington, on August 5, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19664 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-73-AD; Amdt. 39-8007; AD 91-18-04]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires the inspection of the fuselage lower frames at body stations 2200 and 2220 and the adjacent structure for cracking, and repair, if necessary. This amendment is prompted by a recent report of cracks in the fuselage lower frames at body station 2200 and 2220. This condition, if not corrected, could lead to sudden decompression of the airplane.

DATES: Effective September 20, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing 747 series airplanes, which requires the inspection of the fuselage lower frames at body stations 2200 and 2220 and the adjacent structure for cracking, and repair, if necessary, was published in the **Federal Register** on April 23, 1991 (56 FR 18546).

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

Two commenters, the manufacturer and the Air Transport Association (ATA) of America, supported the adoption of the proposed rule.

One commenter, a foreign operator of Boeing Model 747 airplanes, requested that proposed paragraph A. be revised to reflect a 1.2 adjustment factor for Model 747SR series airplanes, based on a continued mixed operation at lower cabin pressure. The FAA does not concur that such a revision is appropriate, since the 1.2 adjustment factor applies only to this single operator. Since the Model 747SR series airplanes are now being operated by more than one operator, the FAA must review the applicability of the 1.2 adjustment factor to each individual operator's maintenance program on a case-by-case basis. However, the commenter may apply for such an adjustment under the alternative method of compliance provision of the final rule.

This same commenter also requested that the proposed compliance threshold of the rule be revised to exclude flights where the pressurization was less than 1.5 or 2.0 psi. The FAA does not concur. While a few operators do extensive flight training with pressurization less than 2.0 psi, the FAA considers it more appropriate to address these unique operations through the alternative method of compliance process, defined in paragraph D. of the final rule, rather than to further complicate the rule by adding several paragraphs that may be unique only to an individual operator.

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

There are approximately 713 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-18-04. Boeing: Amendment 39-8007. Docket No. 91-NM-73-AD.

Applicability: Model 747 series airplanes, listed in Boeing Service Bulletin 747-53-2302, dated December 13, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent sudden decompression of the airplane, accomplish the following:

A. Accomplish a detailed visual inspection of the fuselage frames at body station (BS) 2200 and BS 2220, in accordance with Boeing Service Bulletin 747-53-2302, dated December 13, 1990, for evidence of cracking at the latest of the following times, as applicable. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles.

1. Prior to the accumulation of 10,000 total airplane flight cycles; or

2. Prior to the accumulation of 10,000 flight cycles since frame replacement in accordance with Boeing Service Bulletin 747-53-2302, dated December 13, 1990; or

3. Within 1,000 flight cycles after the effective date of this AD.

B. If cracking is found as a result of the inspections required by paragraph A. of this AD, prior to further flight, perform a close visual inspection of the adjacent frames, stringers, skin, skin lap joints, and skin adjacent to the outflow valve, in accordance with Boeing Service Bulletin 747-53-2302, dated December 13, 1990, and continue to reinspect in accordance with paragraph A. of this AD.

C. If cracks are found as a result of the inspections required by paragraph A. or B. of this Ad, prior to further flight, repair in accordance with Boeing Service Bulletin 747-53-2302, dated December 13, 1990, and continue to reinspect in accordance with paragraph A. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. The inspections shall be done in accordance with Boeing Service Bulletin 747-53-2302, dated December 13, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8007, AD 91-18-04) becomes effective September 20, 1991.

Issued in Renton, Washington, on August 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19666 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-61-AD; Amdt. 39-8008; AD 91-18-05]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires rerouting and adding shielded wiring associated with the differential protection current transformers in the P6 panel. This amendment is prompted by the results of a Model 747-400 electrical system safety assessment, which demonstrated that the potential exists for a single event causing the loss of all normal sources of airplane electrical power. This condition, if not corrected, could result in the loss of all normal sources of electrical power to the airplane essential busses, limiting power availability to that provided by the standby system.

DATES: Effective September 20, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747-400 series airplanes, which requires operators to correct the inadequate wire separation of the alternating current (AC) differential protection current transformer circuits associated with AC channels 1, 2, and 3 within the P6 panel in accordance with Boeing Service Bulletin 747-24-2154, dated February 7, 1991, was published in the Federal Register on May 7, 1991 (56 FR 21101).

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

No commenter expressed any technical objection to the adoption of the rule. However, two commenters requested that the proposed compliance period of 180 days be extended to 12 or 15 months so that the modification could

be performed during other scheduled maintenance. These commenters stated that to perform this modification, all electrical power must be removed from the airplane; thus, no other check or maintenance tasks requiring airplane electrical power could be performed at the same time. In effect, the airplane would have to be dedicated to the required modification for an eight-hour period. One commenter stated that, since this AD is based upon a safety assessment and not an actual occurrence, an increase in the proposed compliance time to 15 months would not compromise safety; and since the airplanes affected by this proposed rule are relatively new and most have been only recently delivered, chafing of the affected wire bundles during that time period seems unlikely. The FAA does not concur with the requested extension of the proposed compliance time. The proposed compliance time of 180 days is reasonable and warranted, given the seriousness of the problem that prompted the AD, the probability of occurrence, parts availability, and the number of manhours required to accomplish the required actions.

One commenter supported the proposed AD, but recommended that the proposed compliance time be reduced to 60 or 90 days. This request was based on the commenter's stated opinion of the dire consequences of losing all electrical power on a long overwater flight, compared to the relatively easy fix. The FAA does not concur with the requested reduction of the proposed compliance time for the same reasons stated in response to the previous commenter.

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

There are approximately 107 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of required parts per airplane is estimated to be $20. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,280.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91–18–05. **Boeing:** Amendment 39–8008. Docket No. 91–NM–61–AD.

Applicability: Model 747–400 series airplanes, listed in Boeing Service Bulletin 747–24–2154, dated February 7, 1991, certificated in any category.

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

To prevent the loss of essential airplane electrical busses, accomplish the following:

A. Reroute and add protective sleeving to provide adequate separation between wiring associated with the differential protection current transformers for AC channels 1, 2, and 3, located in the P6 panel, in accordance with Boeing Service Bulletin 747–24–2154, dated February 7, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The modification requirements shall be done in accordance with Boeing Service Bulletin 747–24–2154 dated February 7, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, D.C.

This amendment (39–8008, AD 91–18–05) becomes effective September 20, 1991.

Issued in Renton, Washington, on August 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–19667 Filed 8–15–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–81–AD; Amdt. 39–8009; AD 91–18–06]

Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, which requires repetitive non-destructive testing (NDT) inspections to detect cracks on wing flap guide rails, and to detect corrosion on wing flap guide rails and flap end ribs, and repair, if necessary. This amendment is prompted by reports of cracking on an inboard flap guide rail, and of corrosion at the abutment face of a guide rail and a flap end rib. This condition, if not corrected, could result in reduced structural integrity of the landing flaps.

DATES: September 23, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, which requires repetitive non-destructive testing (NDT) inspections to detect cracks on wing flap guide rails, and to detect corrosion on wing flap guide rails and flap end ribs, and repair, if necessary, was published in the Federal Register on May 15, 1991 (56 FR 22366).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD of U.S. operators is estimated to be $12,760.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-18-06. **British Aerospace:** Amendment 39-8009. Docket No. 91-NM-81-AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the landing flaps, accomplish the following:

(a) Within 180 days after the effective date of this AD, or prior to the accumulation of 500 landings after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 360 days, perform non-destructive testing (NDT) inspections to detect cracks in the wing flap guide rails, and to detect corrosion at the abutment face of flap guide rails and flap end ribs on all landing flaps on the left and right wings, in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 301, Issue 2, dated November 2, 1989, or PTL No. 170, Issue 2, dated November 2, 1989, as applicable.

(b) If cracks are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) If corrosion is found, prior to further flight, remove the guide rail from the landing flap end rib for visual confirmation, rectification rework, and reprotection of both the guide rail and flap end rib abutment surfaces in accordance with paragraph 2.3.1 of British Aerospace Preliminary Technical Leaflet (PTL) No. 301, Issue 2, dated November 2, 1989, or PTL No. 170, Issue 2, dated November 2, 1989, as applicable.

(1) Local corroded areas must be blended out to a maximum depth of 0.06 inch. The blended areas should extend beyond the corroded area by a minimum of 0.2 inch where the depth of corrosion is less than 0.03 inch, and a minimum of 0.3 inch where the depth of corrosion is greater than 0.03 inch, but must not exceed 70 percent of the local abutment face width.

(2) Following blending, perform a dye penetrant inspection of the abutment surfaces to ensure that all traces of corrosion have been removed.

(3) Following repair, and prior to reinstallation of the guide rail, apply protective treatment in accordance with paragraph 2.5 of the appropriate PTL.

(4) If corrosion found is in excess of the limitations specified in the appropriate PTL, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(f) The inspection and repair requirements shall be done in accordance with British Aerospace Preliminary Technical Leaflet (PTL) No. 301, Issue 2, dated November 2, 1989, or PTL No. 170, Issue 2, dated November 2, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8009, AD 91-18-06) becomes effective September 20, 1991.

Issued in Renton, Washington, on August 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19665 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 18, 125, 171, and 172

[T.D. 91-71]

RIN 1515-AA91

Delegation of Authority To Decide Penalties and Liquidated Damages Cases

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by increasing the authority of Customs field officers to act on certain supplemental petitions for relief in administrative cases involving penalties and forfeitures, or claims for liquidated damages, incurred for violations of the customs or navigation laws and regulations. The document also delegates additional authority to Customs field officers regarding petitions on penalties and forfeitures incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). This delegation of increased authority to district directors will result in more expeditious processing of less complex cases, thereby benefiting the importing and traveling public. The authority to act beyond the increased limits of authority delegated to field officers shall be retained by the Commissioner of Customs, insofar as it has been delegated by the Secretary of the Treasury.

EFFECTIVE DATE: September 16, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Penalties Branch (202) 566-8317.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), the Secretary of the Treasury is empowered to mitigate or remit fines, penalties, or forfeitures that are incurred under the Customs or navigation laws. Section 623(c), Tariff Act of 1930 (19 U.S.C. 1623(c)) authorizes the Secretary to cancel any charge made against a bond for breach of any condition of the bond upon payment of a lesser amount of penalty or upon such other terms and conditions as the Secretary may deem advisable. With certain stated exceptions, by paragraph 1(h) of Treasury Department Order No. 165, Revised (T.D. 53654), the Secretary delegated authority to the Commissioner of Customs to act on all cases where the claim for liquidated damages, fine or penalty (including the forfeiture) is not in excess of $100,000. This order granted full mitigation authority to the Commissioner for specifically listed violations, including all liquidated damages claims.

Customs continually monitors its efforts to efficiently and expeditiously process penalties, seizures and liquidated damages cases. Delegation of certain responsibilities to the field and lessening the case load at Customs Headquarters has proven successful as a means of expediting the processing of cases. Accordingly, a document was published in the **Federal Register** (55 FR 32265) on August 8, 1990, proposing to delegate to Customs field offices increased authority over penalty and liquidated damages cases.

Nine comments were received from the public in response to the proposed delegations. No comments were received regarding the proposal to amend certain sections of part 10, part 18, and part 125, Customs Regulations (19 CFR parts 10, 18 and 125) to conform them to previous delegations by increasing the limit of $50,000 or less to $100,000 for certain specific liquidated damages claims that can be decided by the field. Accordingly, these proposed amendments are adopted. A discussion of the comments on the other proposed delegations follows.

Discussion of Proposals and Comments

Proposal: To amend § 171.21, Customs Regulations, to increase the District/Area Director's authority over initial petitions in penalty cases under 19 U.S.C. 1592 from $25,000 to $50,000.

Comments: Three commenters expressly supported this proposed increased delegation of authority to the field and two flatly opposed any increase in delegation to the field in penalty cases under 19 U.S.C. 1592. One commenter supporting this proposal suggested the proposal did not go far enough, and as an alternative, recommended that the field have full authority in all cases involving negligence and gross negligence violations, with the right of appeal to Headquarters for further mitigation; Headquarters would only retain jurisdiction over initial petitions involving fraud violations.

Commenters opposed to this proposal asserted that this increased delegation to the field in § 1592 penalty cases would jeopardize a petitioner's right to a fair hearing because the district and area directors already have full authority over all § 1592 cases at the penalty assessment stage. The result of such an increased delegation, according to these commenters, would be no independent review of the petitions. Finally, these commenters stated that the difficult legal and factual issues usually involved in § 1592 penalty cases justified retaining the current levels of petition review by Customs Headquarters.

Response: Customs does not agree with the comment that the delegation to the districts should be based upon the degree of culpability involved in the violation. It is in the best interest of both the Government and the petitioner that Headquarters review of § 1592 penalty petitions be based upon the amount of the penalty assessed as opposed to the degree of culpability alleged. Extremely complex issues may exist in § 1592 penalty cases involving only ordinary negligence. Many times the most complex issues in a case involve questions of fact which affect the determination of the alleged material falsity or omission. Examples of such issues are whether rebates were paid in connection with the import transaction or what was the purchase price for the entered merchandise. Further, many gross negligence and negligence penalty cases under § 1592 will involve claims for substantial sums of money.

We also do not agree with the comment that an increase in the district jurisdiction from $25,000 to $50,000 in initial petitions in 1592 penalty cases will be detrimental to the petitioner's right to a fair hearing. All claims under § 1592 are subject to *de novo* judicial review. The number of penalty claims that have been referred for judicial enforcement is not significantly higher for claims which are now heard at the district and area level, which would seem to have been the result if the district and area offices consistently failed to provide fair hearings. We believe the record shows that the district and area offices provide fair hearings, and have confidence that, as a result of the increased training provided to field officers on the elements of § 1592 violations, field officers are fully able and willing to accord fair and impartial review of the substantive claims made in petitions for relief in penalties assessed at the amounts of $50,000 or less.

Conclusion: It remains our opinion that § 1592 penalty claims assessed at the amount of $50,000 or less usually will involve less complex issues of law and fact and a minimal degree of culpability so as to not warrant Headquarters review of the initial petitions. The district/area director's authority over initial petitions in penalty cases under 19 U.S.C. 1592 shall be increased from $25,000 to $50,000.

Proposal: To amend § 171.33(b), Customs Regulations, to provide for an increase in district/regional authority over supplemental petitions in all

penalty and forfeiture cases, except 1592 cases, from $25,000 to $100,000.

Comments: This proposal was opposed strongly by four commenters, but was supported by two commenters. One commenter suggested that this provision should require that all documents included in the case file be forwarded to the regional office in connection with supplemental petitions appealing decisions by the district/area directors and that all second supplemental petitions be sent to Customs Headquarters since at that stage the petitioner would have paid the penalty and there would exist no possibility for a review by the courts.

Commenters opposed to this proposal argued that when the delegation of authority over initial petitions was increased from $25,000 to $100,000 for all cases except section 1592 cases, Customs made a commitment to the importing community to retain jurisdiction over supplemental petitions in cases exceeding $25,000. These commenters stated that such commitment ensured importers that, along with the increased delegation to the field over initial petitions, supplemental petitions would receive the careful review and analysis of Headquarters attorneys in the Office of Regulations and Rulings.

Other commenters cited the same concern for receiving *de novo* review of claims made in the supplemental petition, which they believed was only assured if such review were conducted at the Headquarters level.

One commenter was concerned that the proposed increase in delegation of authority only extended to district/area directors.

Response: Primarily, it should be noted that we do not find practical the suggestion that this provision should require that "all documents" in the case file, instead of all "pertinent documents" be forwarded to the region for review of supplemental petitions. We note, however, that the term "pertinent" in § 171.33 encompasses all aspects of the petition filed in the proceeding. We will not address the suggestion regarding second supplemental petitions as it is beyond the scope of this proposal.

Customs does not agree with the comment that it committed to retain jurisdiction over supplemental petitions in cases exceeding $25,000 when the authority over initial petitions in such claims were delegated under T.D. 85–25. We have reviewed T.D. 85–25 and see no evidence of such a commitment. Customs did state in T.D. 85–25, in response to comments expressed in opposition to Headquarters retaining jurisdiction over supplemental petitions in cases in which the district had jurisdiction over initial petitions, that Headquarters was retaining supplemental petition review authority in fines, penalty, or forfeiture cases in which the liability was between $25,000 and $100,000 because it was essential to Headquarters functional responsibility for monitoring and oversight of Customs field operations in the fines, penalties and forfeiture program. Customs did not mean by this statement that Headquarters was committed to retaining jurisdiction over supplemental petitions forever. It meant only that Customs believed that it was essential for Headquarters to maintain its functional responsibility at that time by retaining jurisdiction over supplemental petitions; if Headquarters could meet its functional responsibility by other means, the review authority for supplemental petitions would not have to be retained by Headquarters.

As we stated in the document proposing this amendment, Headquarters jurisdiction over supplemental petitions is no longer needed to fulfill Headquarters functional responsibility for the Fines, Penalties and Forfeitures (FPF) program since this can be accomplished through the FPF module that has been implemented within the Automated Commercial System (ACS), as well as through TECS II. In addition, field operations now effectively are being monitored through the FPF Branch created for this purpose at Customs Headquarters. Further, the more formalized training courses that have been developed for employees within the FPF Offices on the criteria and proper procedures for both initiating and deciding penalties and forfeiture cases in accordance with Headquarters guidelines coupled with Headquarters observance of the districts' success in exercising the additional authority granted to them over initial petitions within the range of $25,000 and $100,000 during the last five years serve to support the conclusion that the districts and regions can handle increased authority over supplemental petitions.

It should be noted that the proposal does not prevent Headquarters from still reviewing cases that involve unique or precedential issues on a case-by-case basis. For example, when the Iranian embargo was first issued, due to the sensitivity of the policy and issues involved, all petitions in these cases were directed to be sent to Headquarters for review. Also, in connection with export control cases, it is now noted expressly in the new FPF Handbook that even if the petition is within the district's monetary jurisdiction, review by Headquarters may be obtained where there is a legal or policy issue that requires such level of review.

The commenter who was concerned that the proposed increase in delegation of authority would extend only to district/area directors misinterpreted the proposal. Review by the regional commissioner of a supplemental petition appealing the decision of the area/district director still would be a matter of right under 19 CFR 171.33(b) under the proposal if there has been a specific request for such review or if the district believes no further relief is warranted.

Conclusion: In accordance with the foregoing, the proposed amendment to § 171.33(b)(1) to provide for increased authority over supplemental petitions in all penalty and forfeiture cases, except section 1592 cases, from $25,000 to $100,000 is adopted.

Proposal: To amend § 171.33(b) to increase district/regional authority over supplemental petitions in section 1592 penalty cases from $25,000 to $50,000.

Comments: Only one of five commenters expressing an opinion on this proposal supported it. Basically, those who were opposed to this proposal were the same commenters opposed to granting district/area offices the authority over initial petitions in section 1592 cases in amounts between $25,000 and $50,000. The same reasons were set forth for their opposition to both proposals.

Response: While we did not find the comments in opposition to the proposal to grant additional authority over initial petitions in § 1592 cases persuasive for the reasons discussed above, those same comments are worthy of consideration in connection with the proposal to delegate additional authority over supplemental petitions for the same category of § 1592 penalty cases.

After further consideration of this matter, Customs believes that during the initial period in which the district will be exercising its new authority over initial petitions in § 1592 penalty cases involving amounts between $25,000 and $50,000, Customs Headquarters should retain jurisdiction over supplemental petitions within this range. In this way, Customs Headquarters can monitor the propriety of the § 1592 penalty cases that are developed and decided by the field within this range. Unlike the usual circumstances in penalty/forfeiture actions under statutes other than 1592, the pertinent issues involved in the alleged § 1592 violation may not be readily apparent through the use of either TECS II or the FPF module in ACS. In addition, many elements of the § 1592 violation involve subjective

analyses which can only be monitored through a review of the complete case file. Later, however, after Headquarters has had a sufficient period of time to monitor the initial decisions by the districts on petitions in § 1592 penalty cases within the range of $25,000 and $50,000, Customs may find, as we do currently for supplemental petitions in non-section § 1592 penalty cases, that Headquarters jurisdiction over supplemental petitions in these cases no longer is needed to ensure proper review of these petitions by field offices.

Conclusion: In accordance with the above discussion, Customs shall not proceed with the proposed amendment to provide an increase in authority over supplemental petitions in § 1592 penalty cases. For penalty cases incurred under § 1592, the monetary authority of field officers to make decisions on supplemental petitions for relief remains at amounts of $25,000 or less.

Proposal: To amend § 172.33, Customs Regulations, to increase district/regional authority over supplemental petitions in liquidated damages cases from $50,000 to $100,000.

Comments: Only one of five commenters supported this proposal. The opposing commenters expressed the same reasons that were expressed for opposing the two prior discussed proposed amendments. In addition, it was suggested that parties against whom liquidated damages claims were assessed would feel pressured into accepting decisions on their initial petitions since they would have no means to appeal the amount of such decisions.

Response: Customs Headquarters need not retain jurisdiction over supplemental petitions in liquidated damages cases within the ranges of $50,000 to $100,000 in order for a petitioner to exercise the right to appeal an initial decision. Under the proposed amendment, any initial decision decided by the district director may still be appealed, via a supplemental petition decided by the Regional Commissioner if "there has been a specific request by the petitioner for review by the regional commissioner; or the district director believes no additional relief is warranted."

In addition, the guidelines for cancellation of liquidated damages claims direct Headquarters review in cases where significant deviation from the provisions thereof is deemed warranted. Thus, it is believed that the additional delegation of authority over supplemental petitions in liquidated damages cases will not result in any diminution in the fairness to be accorded during the process for reviewing the supplemental petitions in these cases.

Conclusion: In accordance with the foregoing, the proposed amendment to § 172.33 to provide for an increase in district/regional authority over supplemental petitions in liquidated damages cases from $50,000 to $100,000 is adopted.

Proposal: To amend § 172.22, Customs Regulations, to provide the district director with authority to process all petitions in liquidated damages cases brought pursuant to § 18.8, Customs Regulations, for cases arising under § 18.2(c)(2), Customs Regulations, for merchandise traveling under bond.

Comments: Six out of the seven commenters expressing an opinion on this proposed amendment supported the delegation of authority to the field in § 18.8 liquidated damages cases. The commenter expressly opposed to the increased delegation noted his belief that delegation of total authority to the field in these cases will lead to inequitable treatment among field offices. He cited, as an example, a case in which the district failed to issue a claim until 15 months after the claims for liquidated damages on account of late filings had arisen.

Response: We do not agree with the commenter. The proposed amendment of § 172.22 relates only to the district's authority to cancel claims for liquidated damages when such claims have been assessed for violations of § 18.8(b), Customs Regulations. The specific problem cited by the commenter as an example of the disparity in treatment that would result from this amendment, while unfortunate, related to the issuance of the claims for liquidated damages, as opposed to the cancellation of such claims pursuant to Headquarters guidelines.

We believe that this proposed delegation will not lead to inequitable treatment among field offices. The delegation would not affect the guidelines for cancellation of claims for liquidated damages, and the guidelines maintain integrity by permitting Headquarters review in cases where significant deviation therefrom is deemed warranted.

Conclusion: The proposed amendment to § 172.22, Customs Regulations, to provide the districts with authority to process all petitions in § 18.8 liquidated damages cases assessed for § 18.2 violations is adopted.

Proposal: To amend § 171.21, Customs Regulations, to provide district/area directors with authority over initial petitions in penalty cases under 19 U.S.C. 1641 when the total amount of penalties does not exceed $10,000.

Comments: Two commenters approved of this proposal and one expressly opposed any delegation to the field in cases involving broker penalties under section 1641. One commenter suggested that the field offices have jurisdiction over initial petitions in all cases involving only gross negligence or negligence. The commenter opposed to this proposed delegation cited the belief that any delegation to the field will result in multiple assessments which, in turn, might result in a suspension or cancellation action against a licensed broker. In addition, this commenter argued that because the monetary amount did not represent the measurement of complexity of a case, expeditious case processing would not necessarily result if the proposed delegation were adopted.

Response: Regarding the suggestion that the field have jurisdiction over initial petitions in all cases involving only gross negligence or negligence, we note that the assessment of penalties against brokers under 19 U.S.C. 1641, unlike under 19 U.S.C. 1592, is not made on the basis of an alleged culpability of either fraud, gross negligence or negligence. Rather, the culpability of the broker is generally considered at the mitigation stage of these proceedings, i.e., after a petition for relief has been filed. Thus, under this suggestion, the districts would have jurisdiction over all petitions involving penalties assessed against a broker pursuant to section 1641. As Customs does not wish to make this broad a delegation, this suggestion is not adopted.

The proposed amendment to § 171.21, Customs Regulations, in connection with penalties assessed under 19 U.S.C. 1641 is necessary to prevent all broker penalty cases from falling within the current delegation of field jurisdiction over initial petitions in penalty and forfeiture cases. Under the current regulations, the district and area directors have jurisdiction over initial petitions for all penalties and forfeitures not exceeding $100,000 except those arising under section 1592.

The comment that the proposed delegation might have the ripple effect of triggering suspensions or cancellation actions under the regulations is essentially inaccurate inasmuch as there is no requirement under either the Customs Regulations or the Guidelines for Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1641 (19 CFR part 171, appendix C) for such action against licensed brokers after three section 1641 violations.

Moreover, notwithstanding the fact that small dollar amount penalties also

might involve complex issues, it would be impractical for Customs Headquarters to review all broker penalties that are assessed nationwide. This would be the consequence of the failure to delegate any authority to the field over petitions in section 1641 penalty cases.

It also should be noted that Headquarters already reviews significant cases under section 1641 before the issuance of the pre-penalty notice or penalty notice and before decisions on the petitions. In any event, we believe that the Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1641, issued by Headquarters and set forth in 19 CFR part 171, appendix C, provide an adequate framework under which field officers can operate fairly and efficiently in deciding on petitions filed in connection with these penalties assessed at $10,000 or less.

Conclusion: In accordance with the foregoing, the proposed amendment to § 171.21, Customs Regulations, concerning the delegation of authority over petitions in penalty cases under 19 U.S.C. 1641 is adopted.

Determination

After careful consideration of all the comments received and further review of the matter, it has been determined, in accordance with the above discussion, that all the amendments proposed in the document published in the **Federal Register** (55 FR 32265) on August 8, 1990, except the proposal to amend § 171.33(b) to provide for an increase in field authority over supplemental petitions in section 1592 penalty cases, are adopted.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection; Imports.

19 CFR Part 18

Customs duties and inspection; Bonded shipments.

19 CFR Part 125

Customs Duties and inspection; Delivery and receipt.

19 CFR Part 171

Customs duties and inspection; Administrative practice and procedures; Penalties; Seizures and forfeitures.

19 CFR Part 172

Customs duties and inspection; Administrative practice and procedures; Liquidated damages.

Amendments to the Regulations

Parts 10, 18, 125, 171 and 172, Customs Regulations (19 CFR parts 10, 18, 125, 171 and 172) are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

§ 10.39 [Amended]

2. In § 10.39(e), remove the wordd "regulation" in the first sentence and add, in its place, the word "paragraph", and in the second sentence remove the amount "$50,000" and add, in its place, "$100,000".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority for part 18 and relevant specific authority continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624;

* * *

Section 18.8 also issued under 19 U.S.C. 1623;

* * * * *

§ 18.8 [Amended]

2. In § 18.8(d), remove the amount "$50,000" and add, in its place "$100,000".

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. All authority citations set forth at the end of the individual sections of part 125 are removed and the authority citation at the beginning of part 125 is revised to read as follows:

Authority: 19 U.S.C. 66, 1565, and 1624.

Section 125.31, also issued under 5 U.S.C. 301; 19 U.S.C. 1311, 1312, 1484, 1555, 1556, 1557, 1623, and 1646a.

Section 125.32 also issued under 5 U.S.C. 301; 19 U.S.C. 1484.

Section 125.33 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1623, and 1646a.

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

§ 125.42 [Amended]

2. In § 125.42, remove the amount "$50,000" and add, in its place, "$100,000".

PART 171—FINES, PENALTIES AND FORFEITURES

1. The general authority citation for part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

* * *

2. Section 171.21 is revised to read as follows:

§ 171.21 Petitions acted on by district director.

The district director may mitigate or remit finds, penalties, and forfeitures incurred under any law administered by Customs with the exception of penalties or forfeitures incurred under the provisions of sections 592 and 641(b)(6) or (d)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1592 and 1641(b)(6) or (d)(1)), on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the total amount of the fines and penalties incurred with respect to any one offense, together with the total value of any merchandise or other article subject to forfeiture or to a claim for forfeiture value, does not exceed $100,000. The district director may mitigate or remit fines, penalties, or forfeitures incurred under 19 U.S.C. 1592 when the total amount of those fines, penalties or forfeitures does not exceed $50,000. The district director may mitigate penalties incurred under 19 U.S.C. 1641(b)(6), 1641(d)(1), and assessed under section 1641(d)(2)(A) when the total amount of the penalties does not exceed $10,000.

3. In § 171.33, paragraph (b)(1) and the heading of paragraph (d) are revised to read as follows:

§ 171.33 Supplemental petitions for relief.

* * * * *

(b) *Consideration.*—(1) *Decisions of the district director.* Except in cases when liability is incurred under the provisions of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) in an amount that exceeds $25,000, where a supplemental petition requests further relief from a decision of the district director, the district directory may grant additional relief, if he believes it is warranted, in cases in which he has the authority to grant relief in accordance with the provisions of §§ 171.21 and 171.22. In the district believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, or if there has been a specific request by the petitioner for review by a higher level official, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies or if the liability was incurred under 19 U.S.C. 1592, for an amount that exceeded $25,000, to the Commissioner of Customs.

* * * * *

(d) *Appeals of the Secretary of the Treasury.* * * *

PART 172—LIQUIDATED DAMAGES

1. The authority citation for part 172 continues to read as follows:

Authority: 19 U.S.C 66, 1623, 1634.

2. Section 172.22 is revised by adding paragraph (e) to read as follows:

§ 172.22 Special cases acted on by district director of Customs.

* * * * *

(e) *Failure to timely deliver merchandise traveling in—bond.* (1) If merchandise traveling under bond is not delivered to the port of destination or exportation within time limits established by §§ 18.2(c)(2), 122.119(b) or 122.120(c) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding other delegation of authority, the demand shall be cancelled by the district director in accordance with guidelines issued by the Commissioner of Customs.

(2) If the in-bond manifest is not delivered to the district director as required by §§ 18.2(d) or 18.7(a) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding any other delegation of authority, the demand shall be cancelled by the district director in accordance with guidelines issued by the Commissioner of Customs.

3. Section 172. 33(b)(1) is revised to read as follows:

§ 172.33 Supplemental petitions for relief.

* * * * *

(b) *Consideration.*—(1) *Decisions of the district director.* Where a supplemental petition requests further relief from a decision of the district director, he may grant additional relief, if he believes it is warranted, in cases in which he has the authority to grant relief in accordance with the provisions of § 172.21. Supplemental petitions for further relief in cases initially decided by the district director in accordance with the provisions of § 172.21, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if:

(i) There has been a specific request by the petitioner for review by the regional commissioner; or

(ii) The district director believes no additional relief is warranted.

* * * * *

Dated: July 19, 1991.

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91 19609 Filed 8–15–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960—None Assigned

Determining Disability and Blindness; Extension of Expiration Date for Adult Mental Disorders Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The mental disorders listing in 12.00 of part A of the Listing of Impairments in appendix 1 of subpart P of part 404 will expire on August 27, 1991. These amendments extend the expiration date of the mental disorders listings though August 27, 1992. We have made no revisions in the medical criteria in these mental disorders listings; they remain the same as they now appear in the Code of Federal Regulations. Thus, under these amendments the Social Security Administration will continue to use the medical criteria in these listings for up to one additional year.

EFFECTIVE DATE: This rule is effective August 16, 1991.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1759.

SUPPLEMENTARY INFORMATION: Final regulations issued on August 28, 1985 (50 FR 35038), containing the adult mental disorders listings, included a 3-year sunset provision which provided that the listings would expire on August 27, 1988, unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. The reason we gave for having a sunset provision was as follows: "The dynamic nature of the diagnosis, evaluation and treatment of the mental disease process requires that the rules in this area be periodically revised and updated. We intend to carefully monitor these regulations over a 3-year period to ensure that they fulfill congressional intent by providing for ongoing evaluation of the medical evaluation criteria. Therefore, 3 years after publication of final rules, these regulations will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period."

On August 9, 1988, the Secretary extended the expiration date of these rules to August 27, 1990 (53 FR 29878). The extension was needed to provide additional time for us to determine what revisions to the listings might be necessary.

On October 13, 1988, we announced (53 FR 40135) a public meeting to obtain comments on whether we should revise the listings and related regulations and, if so, the specific nature of the revisions. The meeting was held in Baltimore on November 9–10, 1988. We have considered the testimony provided at the meeting and written comments received in response to the meeting announcement along with information from our evaluation activities to determine the need for and nature of these revisions.

We were unable to complete our evaluation in time to have final regulations published before August 27, 1990, the expiration date in effect. Therefore, on August 28, 1990, the Secretary again extended the expiration date of these rules to August 27, 1991 (55 FR 35286). At that time we believed that

the additional one-year extension would provide us with sufficient time to complete our review and to have final rules published. However, in order to ensure sufficient time for review of proposed revisions to our current rules and to consider any public comments we may receive on a notice of proposed rulemaking that would propose updating the medical criteria in these listings, we are again extending the expiration date of the current listings. Specifically, we are extending the current listings through August 27, 1992. This additional time will enable us to complete our review and to publish final rules that will provide medical criteria for the mental disorders listings applicable to adults.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on these regulations since opportunity for public comment is unnecessary. Prior notice and comment are unnecessary because these regulations involve only the extension of the expiration date of the adult mental disorders listings, and make no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current listings in this final rule, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act.

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.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because such impact is not experienced with current use of these regulations.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security Disability Insurance; 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404:

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

Dated: July 12, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: August 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

For the reasons set out in the preamble, part 404, subpart P, chapter III of title 20 Code of Federal Regulations is amended as set forth below.

20 CFR part 404, subpart P is amended as follows:

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

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

2. Appendix 1 to subpart P is amended by revising the last sentence of the sixth paragraph of the introductory text to read as follows: The mental disorders listings in part A will no longer be effective on August 28, 1992, unless extended by the Secretary or revised and promulgated again.

3. Listings 12.00 Mental Disorders of appendix 1 to subpart P, part A is amended by revising the first paragraph to read as follows: The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1992, unless extended by the Secretary or revised and promulgated again.

[FR Doc. 91–19518 Filed 8–15–91; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF THE TREASURY

31 CFR Part 17

Enforcement of Nondiscrimination on the Basis of Handicap in Treasury Programs

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department of the Treasury. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECTIVE DATE: October 15, 1991.

ADDRESSES: Copies of this notice will be made available on tape for persons with impaired vision who request them. They may be obtained at the Office of Equal Opportunity Program, Department of the Treasury, 1500 Pennsylvania Ave., NW., room 5102, Treasury Annex, Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Charlene J. Robinson, Director, Human Resources Directorate, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, DC 20220, (202) 566–5256. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This regulation was published in draft in the **Federal Register** on June 6, 1989. As a result of the publication, two public comments were received. This final rule is based on comments received on the proposed rule. Treasury amends the proposed rule to make clarifications and other editorial changes.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of the Treasury. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (sec. 119, Pub. L. 95–602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by an Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794) (1978 amendment italicized)

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas), *id.* at 38,552 (remarks of Rep. Sarisin).

There are, however, some language difference between this rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (DC Cir. 1981) (*APTA*); see also *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable modifications," *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable adjustments* in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*. Therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence, the agency believes that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It has been determined that this regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127 and, therefore, a regulatory impact analysis has not been prepared.

It is further certified that the regulation does not have a significant economic impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 17.101 Purpose

Section 17.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 17.102 Application

The regulation applies to all programs or activities conducted by the agency but does not include programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

One respondent commented that the term *United States* should be defined. The agency is of the view that all questions concerning jurisdiction are appropriately handled on a case-by-case basis.

Section 17.103 Definitions

Agency. For purposes of this part, *agency* means the Department of the Treasury.

Assistant Attorney General. Assistant Attorney General refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids. Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by section 17.160(a)(1), they may also be necessary to meet other requirements of the regulation.

One respondent recommended expanding the definition of *auxiliary aids* to include "aids for people with physical impairments" and "attendant services." Under the current language,

the definition of *auxiliary aids* provides for "means and services." Therefore, the definition is broad enough to include providing attendant services when such services are appropriate (i.e., when they are directly related to federally conducted programs and activities). Moreover, the items listed at § 17.103(c) are intended as examples and are not to be treated as an exhaustive list.

Complete complaint. Complete complaint is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 100-day period for the agency's investigation (see § 17.170(g)) begins when the agency receives a complete complaint.

Facility. The definition of *facility* is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term *facility*, as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term *facility* is used in §§ 17.149, 17.150 and 17.170(f).

Individual with handicaps. The definition of *individual with handicaps* is substantially similar to the definition of *handicapped person* appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term *handicapped individual* to *individual with handicaps*, the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

Qualified individual with handicaps. The definition of *qualified individual with handicaps* is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in the nature of the program. This definition reflects the decision of the Supreme Court in *Southeastern Community College* versus *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing professional in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

Treasury has incorporated the Court's language in the definition of *qualified individual with handicaps* in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate accommodation, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the accommodations do not fundamentally alter the nature of the program.

One respondent expressed concern over the department's reliance on *Southeastern Community College* versus *Davis*, 442 U.S. 397 (1979) for definitions of *qualified handicapped individual* and *fundamental alteration* of program purposes. The language of the rule is consistent with the Supreme Court's interpretation and, therefore, the agency believes reliance on *Davis* is justified. The agency declines to make any change in the definitions.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 17.150(a) and 17.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of *qualified handicapped person* with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity. Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by 17.140. Nothing in this part changes existing regulations applicable to employment.

Section 504. This definition makes clear that, as used in this regulation, *section 504* applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 17.110 Self-Evaluation

The agency shall conduct a self-evaluation of its compliance with section 504 within two years of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination

regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

One respondent recommended modifying the self-evaluation procedure to provide for greater participation of interested persons and for greater assurances that necessary modifications be made. The agency agrees and has revised § 17.110 by deleting the reference to comments, as this is only one of the available forms of participation. This respondent suggested indefinite retention of self-evaluation reports. However, the agency notes that the three-year retention period is consistent with general government document retention policies and that the rule provides for a minimum, rather than a maximum, period for retention.

Section 17.111 Notice

Section 17.111 requires the agency to make available sufficient information to interested persons including employees, applicants, participants, and beneficiaries of Treasury programs and activities to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information may include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

One respondent expressed concern that recruitment programs and prospective employees were not adequately covered by the Notice section. The agency believes that the provision as written encompasses the distribution of material pertaining to these classifications.

Section 17.130 General Prohibitions Against Discrimination

Section 17.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 17.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 17.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

The agency has adopted the recommendation of one commentator that the word "solely" be deleted from this section.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce. It may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facility in which the program is conducted is inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that opportunity afforded to others. The later sections on program accessibility (§§ 17.149–17.151) and communications (§ 17.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs or activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) provides that different or separate aids, benefits or services to qualified handicapped persons is not justified unless such action is necessary to provide individuals with handicaps with aids, benefits or services as effective as those provided others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(3) provides that a qualified individual with handicaps may still choose to participate in the program that is not designed to accommodate individuals with handicaps. It is not appropriate to assume that all individuals with handicaps should participate in a special "handicapped" program even if the program is designed to meet the particular needs of some individuals with handicaps. This is intended to ensure that individuals with handicaps are not unnecessarily segregated from nonhandicapped people or subjected to arbitrary or stereotypical limitations on their participation in federally conducted programs.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from otherwise limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(2) is taken from the Department of Health, Education, and Welfare's (now Health and Human Services) original regulation implementing section 504 for programs and activities to which it provides Federal financial assistance (45 CFR 84.4(b)(2)). It clarifies that the agency is required to provide equal opportunities to individuals with handicaps, but is not required to guarantee equality of results.

Paragraph (b)(4) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(5) specifically applies the prohibition enunciated in § 17.130(b)(4) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by

the agency. Paragraph (b)(5) does not apply to construction of additional buildings at an existing site. Paragraph (b)(6) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(7) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certifications. A person is a qualified individual with handicaps with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 17.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(7) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive Order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d) provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 17.140 Employment

Section 17.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 301–04 (5th Cir. 1981). *Contra McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504, *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, section 17.140 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. In addition to this section, § 17.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal law prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206).

Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 17.149 Program Accessibility: Discrimination Prohibited

Section 17.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 17.150 and 17.151.

Section 17.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 17.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 17.150(a)(1)). However, § 17.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 17.150(a)(2)).

Paragraph (a)(2) generally codifies case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 17.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 422 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, *e.g.*, *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (DC Cir. 1981).

Paragraph (a)(2) and § 17.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985).

Alexander involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at

least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and earlier, lower court decisions that there are situations when accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 17.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered.

The burden of proving that compliance with § 17.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 17.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features such as removal of or alterations to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 17.151 Program Accessibility: New Construction and Alterations

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 17.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 through 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act.

Further, adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 17.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 17.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

One respondent recommended revising the regulations to include the requirements of the Architectural Barriers Act and to make it clear in these regulations that buildings leased after the effective date of the regulations would be required to be accessible at the time they are leased, relying on *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985).

In *Rose*, the Ninth Circuit held that the Architectural Barriers Act requires that buildings leased by the Federal Government be accessible to the physically handicapped at the time of lease; it did not address, however, the question of whether accessibility at the time of lease was likewise required by section 504. Rather, in declining to rule on this issue, the court, in effect, distinguished between the purpose of the Architectural Barriers Act—" 'to insure that all public buildings * * * will be accessible to and usable by the physically handicapped,' " *Rose*, 774 F.2d at 1358 (citation omitted)—and that of section 504—to "require access for handicapped persons to employment and federal programs." *Id.* at 1363. While the court acknowledged that the same structural modifications mandated by the Architectural Barriers Act might

be necessary under the Rehabilitation Act, it also noted that such modifications would not be necessary "if alternate arrangements satisfying the Rehabilitation Act were made." *Id.* In light of this decision and in the absence of case law dictating otherwise, the Department declines to incorporate the requirements of the Architectural Barriers Act in regulations implementing section 504 with respect to existing buildings.

Section 17.160 Communications

Section 17.160 requires that the agency take appropriate steps to effectively communicate with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 17.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 17.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 17.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see *supra* preamble discussion of § 17.150(a)(3)). Unless not required by § 17.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 17.150(a), "Program accessibility: Existing facilities" regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 17.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of: (1) The communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall effectively communicate with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids shall be used where necessary for effective communication. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter.

The agency will not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 17.160(a)(1)(ii)). For example, the agency is not required to provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information, as appropriate, to individuals with handicaps concerning accessible services, activities, and facilities.

Paragraph (c) requires the agency to post signs at inaccessible facilities that direct users to locations with information about accessible facilities.

One respondent suggested that the agency define the terms *undue burden, reasonable accommodation,* and *fundamental alteration.* The showing of a *reasonable accommodation, fundamental alteration* or an *undue burden* is likely to vary with individual circumstances and thus should be handled on a case-by-case basis. As a general matter, the fact that the regulations set forth the manner in which fundamental alteration or undue burden is to be applied tends to define, as well as limit, the application of this language. According to the regulations: (1) The agency bears the burden of showing undue burden or fundamental alteration; (2) in determining whether a burden exists or an alteration is required, the agency must consider all agency resources available for a particular program; (3) the decision that a burden or alteration results must be made by the agency head (or designee) and accompanied by a written statement of the reasons for reaching this conclusion; and (4) even where an agency has determined that a burden or alteration results, the agency must take actions, short of reaching this limit, to ensure that individuals with handicaps receive the benefits of the program. Therefore, the agency does not believe a precise definition of these terms is necessary.

The respondent suggested revising this provision to require that all agency resources (as opposed to those of a particular program) be considered in determining "undue burden." Because most agency funding is earmarked for particular programs, it is not available for use elsewhere. Thus, consideration of all agency funds in assessing undue burden is inappropriate.

Section 17.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) vests responsibility for the implementation and operation of this section in the office of the Deputy Assistant Secretary for Departmental Finance and Management.

Paragraph (d)(1) is adapted from the compliance procedures of the Department of Justice's regulation implementing section 504 for its federally conducted programs and activities (28 CFR 39.170(d)(1)(i). It provides that complaints may be filed by a person who alleges that he or she has been subjected to discrimination prohibited by this part or that he or she is a member of a class of persons subjected to discrimination, or by an authorized representative of such a person. This paragraph prevents third parties from filing generalized complaints where there has been no harm to a particular individual or individuals.

The agency is required to accept and investigate all complete complaints (§ 17.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to an appropriate entity of the Federal Government (§ 17.170(e)).

One respondent recommended revising the language of § 17.170(e) to require the agency to "actually refer" complaints over which it has no

jurisdiction to the appropriate agency. The agency declines to adopt the recommendation. The reference to "reasonable efforts" is not intended to minimize the agency's obligation in this regard.

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 17.170(g)). One appeal within the agency is provided (§ 17.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance. The Director, Human Resources Directorate, or his or her designee, will accept and process any appeal from an initial determination.

One respondent recommended including a provision requiring agency employees to cooperate in the investigation and resolution of complaints. Section 17.170(g) has been changed to incorporate the suggested change.

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. Under this paragraph the agency may have any required investigation performed by a nongovernment investigator under contract with the agency. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

One respondent recommended expanding the compliance procedures to include: (1) A provision for obtaining the expertise of the Architectural and Transportation Barriers Compliance Board (ATBCB) to help resolve deficiencies in construction or location of facilities; (2) a provision to ensure that all other regulations, forms and directives issued by the Department are superseded by the requirements of these regulations; (3) and provisions for a federal agency to award attorneys fees in administrative proceedings and compensation to the prevailing party. The proposed regulations provide for notice to the ATBCB and additional provisions are unnecessary here as is a statement indicating that all other regulations are superseded. General provisions for compensation and attorneys fees by federal agencies in administrative proceedings are not provided by section 504 and are beyond the scope of these regulations.

List of Subjects in 31 CFR Part 17

Blind, Buildings, Civil Rights, Employment, Equal Employment Opportunity, Federal buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the Preamble, subtitle A of title 31, part 17 of the Code of Federal Regulations is amended as follows:

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

Part 17 is added to read as follows:

PART 17—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF THE TREASURY

Sec.

Authority: 29 U.S.C. 794.

§ 17.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 ("section 504") to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 17.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 17.103 Definitions.

For purposes of this part, the term—

(a) *Agency* means the Department of the Treasury.

(b) *Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(c) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, notetakers, written materials and other similar services and devices.

(d) *Complete complaint* means a written statement that contains the complainant's name and address, and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes of individuals with handicaps shall also identify (where possible) the alleged victims of discrimination.

(e) *Facility* means all or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock, or other conveyance, or other real or personal property.

(f) *Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase: (1) *Physical or mental impairment* includes: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs, cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder such as mental retardation, organic brain syndrome,

emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more of the individual's major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

(g) *Qualified individual with handicaps* means—(1) With respect to an agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in the nature of the program; and

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) For purposes of employment, "qualified handicapped person" is defined in 29 CFR 1613.702(f), which is made applicable to this part by § 17.140.

(h) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 17.104–17.109 [Reserved]

§ 17.110 Self-evaluation.

(a) The agency shall, by two years after the effective date of this part, evaluate its current policies and practices, and the effects thereof, to determine if they meet the requirements of this part. To the extent modification of any such policy and practice is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process.

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made; and

(3) A list of participants in the self-evaluation process.

§ 17.111 Notice.

The agency shall make available to all Treasury employees, and to all interested persons, as appropriate, information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such a manner as is necessary to apprise them of the protections against discrimination assured them by section 504 and this part.

§§ 17.112–17.129 [Reserved]

§ 17.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps in the United States, shall, by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and for nonhandicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the agency is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individuals with handicaps or for any class of individuals with handicaps, the agency must permit any qualified individual with handicaps who wishes to participate in the program that is not separate or different to do so.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination

under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 17.131–17.139 [Reserved]

§ 17.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment of federally conducted programs or activities.

§§ 17.141–17.148 [Reserved]

§ 17.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 17.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 17.150 Program accessibility; Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not require the agency—

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with handicaps where other methods are effective in achieving compliance with this section; or

(2) To take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with the § 17.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both telephonic and written). A copy of the transition plan shall be made available for public inspection. The plan shall at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the physical accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 17.151 Program Accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 through 101–19.607 apply to buildings covered by this section.

§§ 17.152–17.159 [Reserved]

§ 17.160 Communications.

(a) The agency shall take appropriate steps to effectively communicate with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the agency communicates with applicants and beneficiaries by telephone, the agency shall use telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems to communicate with persons with impaired hearing.

(b) The agency shall make available to interested persons, including persons with impaired vision or hearing, information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall post notices at a primary entrance to each of its inaccessible facilities, directing users to an accessible facility, or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 17.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maxium extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 17.161–17.169 [Reserved]

§ 17.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) All other complaints alleging violations of section 504 may be sent to the Director, Office of Equal Opportunity Program, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Deputy Assistant Secretary for Departmental Finance and Management shall be responsible for coordinating implementation of this section.

(d)(1) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint.

(2) The agency shall accept and investigate all complete complaints over which it has jurisdiction.

(3) All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receive a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g)(1) Within 180 days of the receipt of a complete complaint over which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(2) Agency employees are required to cooperate in the investigation and attempted resolution of complaints. Employees who are required to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement shall describe the subject matter of the complaint and any corrective action to which the parties have agreed.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 60 days of receipt from the agency of the letter required by § 17.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director, Human Resources Directorate, or his or her designee, who will issue the final agency decision which may include appropriate corrective action to be taken by the agency.

(j) The agency shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the agency determines that it needs additional information from the complainant, it shall have 30 days from the date it received the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended for an individual case when the Assistant Secretary for Departmental Finance and Management determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with a nongovernment investigator to perform the investigation, but the authority for making the final

determination may not be delegated to another agency.

§§ 17.171–17.999 [Reserved]

[FR Doc. 91–19528 Filed 8–15–91; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he/she finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 Federal Register (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119.)

These regulations are adopted under the authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 210, 1812).

§ 36.4212 [Amended]

2. In § 36.4212, remove the date "June 17, 1991", wherever it appears, and add, in its place, the date "August 12, 1991".

3. In § 36.4212, paragraph (a)(1), remove the number "12", wherever it appears, and add, in its place, the number "11½"; in paragraphs (a)(2) and (a)(3), remove the number "11½", wherever it appears, and add, in its place, the number "11".

4. The authority citation for §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat 1114 (38 U.S.C. 210).

§ 36.4311 [Amended]

5. In § 36.4311, remove the date "June 17, 1991", wherever it appears, and add, in its place, the date "August 12, 1991".

6. In § 36.4311, paragraph (a), remove the number "9½", wherever it appears, and add, in its place, the number "9"; in paragraph (b), remove the number "9¾", wherever it appears, and add, in its place, the number "9¼"; in paragraph (c), remove the number "11", wherever it appears, and add, in its place, the number "10½".

7. The authority citation for §§ 36.4500 through 36.4600 continues to read as follows:

Authority: Sections 36.4500 to 36.4600 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4503 [Amended]

8. In § 36.4503, paragraph (a), remove the numbers "9½" and "11", wherever they appear, and add in their place, the numbers "9" and "10½", respectively.

Approved: August 9, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-19560 Filed 8-15-91; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-35; FCC 91-214]

Operator Service Access and Pay Telephone Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a combined Report and Order and Further Notice of Proposed Rule Making to address issues regarding operator service access and pay telephone compensation. The Report and Order, summarized here, amends part 64 of the Commission's rules by adopting provisions that require the unblocking of equal access ("10XXX") codes by payphone providers within six months and, at other aggregator locations, in phases over an approximately six-year transition period. The Report and Order also requires the establishment of 800 or 950 access numbers by all operator service providers ("OSPs") within six months. In addition, the Commission has determined that owners of competitive public payphones, as defined, should be compensated for access code calls. In the Further Notice, which is summarized separately, the Commission seeks comment on additional issues concerning payphone compensation. These decisions satisfy the requirements of the Telephone Operator Consumer Services Improvement Act of 1990 and will encourage the development of an operator services marketplace in which consumers have ready access to their preferred OSPs and in which the provision of payphone service is supported by all entities that benefit from such service.

EFFECTIVE DATE: September 16, 1991.

FOR FURTHER INFORMATION CONTACT: Kurt A. Schroeder, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 91-35 (FCC 91-214), adopted July 11, 1991, and released August 9, 1991. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Report and Order

I. Background

1. On July 11, 1991, the Commission adopted a combined Report and Order and Further Notice of Proposed Rule Making in CC Docket No. 91-35 (released August 9, 1991, FCC 91-214) in order to establish policies and rules concerning operator service access and pay telephone compensation, as required by the Telephone Operator Consumer Services Improvement Act of 1990, Public Law No. 101-435, 104 Stat. 986 (1990) (to be codified at 47 U.S.C. 226) ("Operator Services Act" or "Act"). Section 226(e) of the Act specifically requires the Commission to conduct a separate rule making proceeding to address operator service access and payphone compensation issues:

(e) Separate Rulemaking on Access and Compensation.—

(1) Access.—The Commission, within 9 months after the date of enactment of this section, shall require—

(A) that each aggregator ensure within a reasonable time that each of its telephones presubscribed to a provider of operator services allows the consumer to obtain access to the provider of operator services desired by the consumer through the use of an equal access code; or

(B) that all providers of operator services, within a reasonable time, make available to their customers a "950" or "800" access code number for use in making operator services calls from anywhere in the United States; or

(C) that the requirements described under both subparagraphs (A) and (B) apply.

(2) Compensation.—The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones. Within 9 months after the date of enactment of this section, the Commission shall reach a final decision on whether to prescribe such compensation.

Because of these statutory requirements, the Commission concluded in CC Docket No. 90-313,[1] the earlier proceeding on operator service issues that was pending before enactment of the statute, that a separate proceeding would have to be initiated to address the access and compensation issues specified by the Act. On March 11, 1991, the Commission released a Notice of Proposed Rule Making that initiated the separate proceeding, CC Docket No. 91-35, and that sought comment on proposed rules and regulatory options concerning access and compensation.[2]

II. Discussion

A. Operator Service Access

2. As noted above, the Operator Services Act directs the Commission to require within a reasonable time: (a) The unblocking of 10XXX access at all aggregator locations; or (b) all operator service providers ("OSPs") to establish an 800 or 950 access number; or (c) both (a) and (b).

1. 10XXX unblocking versus the establishment of 800 or 950 access

3. Several commenters gave broad support to the Commission's tentative conclusion in the *NPRM* that universal establishment of 10XXX access should be a long-term goal. They content primarily that consumers would be better able to choose freely among OSPs if the use of all established access methods were ensured. A number of other commenters, however, opposed most proposals that 10XXX access be required, generally citing the inability of aggregators to prevent toll fraud associated with 10XXX access. These latter commenters generally favored requiring all OSPs to establish 800 or 950 access numbers. Having examined the general arguments regarding the utility and necessity of the 10XXX access method, the Commission finds that 10XXX access must be allowed at aggregator locations within the time periods outlined below. The overriding consideration throughout the proceedings on operator services has been to ensure that consumers have the

[1] Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313: Further Notice of Proposed Rule Making, 6 FCC Rcd 120, 56 FR 402 (1990); see also Notice of Proposed Rule Making, 5 FCC Rcd 4630, 55 FR 29639 (1990); Report and Order, 6 FCC Rcd 2744, 56 FR 18519, 25721 (1991), petitions for reconsideration pending.

[2] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Notice of Proposed Rule Making, 6 FCC Rcd 1448, 55 FR 11136 (1991) (hereinafter *NPRM*). In response to the *NPRM*, over 130 comments and reply comments were filed. In CC Docket No. 90-313, which originally concerned some of the same issues eventually considered in CC Docket No. 91-35, over 450 comments and reply comments were filed during two separate comment periods. Relevant comments from both dockets were considered in the Report and Order and Further Notice of Proposed Rule Making for CC Docket No. 91-35.

opportunity to choose freely among the available interstate operator services. Requiring aggregators to allow 10XXX access will enhance consumer choice because consumers will then be able to use all established access methods to reach their OSPs of choice. The 10XXX access method is an efficient dialing sequence [3] and has met with a high degree of consumer acceptance, judging from the large number of consumer comments on the access issue. The Commission thinks that consumers should be free to choose the 10XXX access method if they wish. Further, information voluntarily supplied to the Commission by OSPs indicates that a number of them other than AT&T also make 10XXX codes available for consumer use.

4. The conclusion that all aggregators should eventually ensure the availability of 10XXX access is consistent with the requirement in section 226(f) of the Act that new aggregator equipment have 10XXX capabilities. Commenters have argued that this statutory requirement is not intended to decide the access issue in this proceeding, and, indeed, the Senate report on the Act confirms that it was not intended to do so.[4] It does not follow, however, as some have argued, that Congress did not intend the 10XXX capabilities of this new equipment to be activated unless the Commission so decides. In discussing the "new equipment" provision, the Senate Report states:

> In the long run, the equal access codes are likely to provide a higher quality of service to the customer than either "800" access or "950" access. It appears to be in the long-term interests of the public, including the manufacturing industry, that new equipment be programmed to recognize the "10XXX" access code. This requirement will help speed the availability of the "10XXX" access code to all consumers.

While the Senate Report then goes on to specify that the statutory provision is "not intended to prejudge the FCC's decision" on the 10XXX unblocking issue, the explicit legislative view is clearly that the 10XXX code is a desirable access method and that consumers should in the future have this method available to them through the new, more sophisticated aggregator equipment. The Commission concludes that during the period of transition to the eventual use of such equipment by all aggregators, 10XXX access should be available to the extent possible. To conclude otherwise would allow aggregators to continue blocking 10XXX access, thereby disrupting the smooth transition to the universal availability and use of 10XXX access intended by Congress and apparently desired by a large number of consumers.

5. The conclusion that 10XXX access should be required for the benefit of consumers does not betoken a lack of concern over toll fraud associated with 10XXX calling. Under the Operator Services Act, the Commission must, in its rule making proceedings, "require such actions . . . as are necessary to ensure that aggregators are not exposed to undue risk of fraud." In response to a request for comments on the extent of the toll fraud problem, commenters submitted extensive documentation showing that fraudulently placed 10XXX calls have resulted in billing to the originating aggregator telephones, and even OSPs have acknowledged the problem. Because of the Commission's concern about implementing universal 10XXX access without exacerbating the already serious toll fraud problem, it is adopting rules that will provide consumers with universal 10XXX access within a reasonable period and will, at the same time, minimize the risk of toll fraud from such access. The phased 10XXX unblocking requirements described below are gauged according to equipment capabilities and modification costs so that most aggregators will have to unblock only when their equipment can, without major modifications, selectively process 10XXX dialing sequences to prevent fraudulent calling. The Commission is convinced that these measures will satisfy the statutory directive that it ensure that aggregators are not exposed to undue risk of fraud.

2. 10XXX unblocking requirements

a. Pay telephones. 6. In the *NPRM*, the Commission proposed that 10XXX access be unblocked at payphones within one year. Commenters have argued that 10XXX access presents toll fraud problems for payphones that can, in some cases, be more severe for payphones than for other aggregators because of the exposed nature of payphone equipment. One commenter claims that equipment modification is not sufficient to provide "safe" 10XXX access and contends that local exchange carrier ("LEC") blocking and screening services are necessary to prevent toll fraud. It has also been argued that the proposed one-year unblocking schedule for payphones is unreasonably discriminatory because there is no reasonable rationale for requiring payphones to unblock 10XXX access in a shorter time than that proposed for other aggregator equipment. Other information in the record, however, indicates that between sixty and eighty percent of the payphones now in use can provide "selective" 10XXX access [5] with either minor or no modifications. According to some comments, the remaining payphones, at most forty percent of those in use, can be modified to provide selective 10XXX access at an average cost of $105.00 per phone.

7. Under the modified Section 64.704(c)(1) as adopted, payphones will be required to allow 10XXX access within six months of the effective date of the new rules. The record persuaded the Commission that many payphones will need, at most, minor modifications to provide selective 10XXX access. The remaining payphones, while perhaps requiring more extensive modifications, can be selectively unblocked without unreasonable costs being incurred. Because of the details in the record regarding payphone modifications, the Commission finds that unblocking within six months, rather than one year, is a reasonable requirement.

8. Further, while the Commission does not discount the possible value of LEC blocking and screening services in assisting in the prevention of toll fraud and encourages their availability and use to the extent they do provide such benefits, the Commission concludes that it would be inappropriate to order all LECs to provide such services. The estimated costs associated with universally implementing such services vary widely. LEC commenters have also indicated that implementation of certain services would take eighteen to twenty-four months, and it would be unreasonable for payphones to continue blocking 10XXX access during that period when the payphones could be unblocked by other means much sooner. Based on the record, there are clearly many uncertainties associated with implementing central office blocking services, and it is not known how many aggregators would subscribe to them if low cost equipment modification might achieve the same end. Under these circumstances, it would be

[3] The 10XXX codes require the dialing of only five digits to reach an OSP, rather the eleven or seven digits required with an 800 or 950 access number. In addition, callers using a 10XXX code can immediately dial in the called number, without waiting for a prompt. With 800 or 950 access, the caller must await a prompt before dialing in the called number.

[4] S. Rep. No. 439, 101st Cong., 2d Sess. (1990) (hereinafter Senate Report).

[5] Equipment with "selective" 10XXX capabilities can block 10XXX dialing sequences that would result in billing to the originating phone without, at the same time, blocking 10XXX sequences that would be billed to the caller or an authorized third party. The "10XXX–1+" sequence is an example of the former, while "10XXX–0+" is an example of the latter.

inappropriate to order LECs to provide these services, although the Commission encourages LECs to offer the services to the extent that aggregators desire them. Payphone owners, as well as other aggregators, are certainly free to subscribe to such services where they are available.[6]

9. Despite arguments to the contrary, the Commission thinks it is reasonable to place payphones in a category separate from other aggregator phones. Unlike other aggregators such as hotels, hospitals, and universities, payphone owners are primarily engaged in the business of providing telephone service. Payphone owners have a natural incentive to upgrade their equipment more frequently in order to remain technologically current and competitive in their industry, and, indeed, the record indicates that the life of payphone equipment is much shorter than that of other aggregator equipment. Hence, it is rational to treat payphone owners differently from other aggregators because of the basic nature of their business and because their equipment is normally replaced much more often than that of other aggregators.

b. *Other aggregator equipment.*

10. In the *NPRM*, the Commission proposed that aggregators using equipment with "selective" 10XXX capabilities be required to unblock 10XXX access immediately. The Commission also proposed a provision requiring all aggregators who install equipment manufactured or imported on or after April 17, 1992, to allow 10XXX access immediately upon installation of such equipment. Parties have argued that certain existing equipment does have selective 10XXX capabilities, while others contend that no such equipment exists. Some commenters have also maintained that Section 226(f) of the Operator Services Act, which requires that new aggregator equipment have 10XXX capabilities, does not require that the capabilities be utilized.

11. In §§ 64.704(c)(2) and 64.704(c)(3), the Commission adopts the proposed rules with minor modifications. The record convinces the Commission that some existing aggregator equipment can currently provide selective 10XXX access. The Commission has already concluded with regard to payphones that blocking 10XXX access when much of the equipment has selective capabilities unreasonably deprives consumers of the use of an efficient access method. The Commission applies the same principle to other aggregator equipment and requires aggregators using non-payphone equipment with selective capabilities to unblock 10XXX access. In order to provide a reasonable amount of time in which to comply, the Commission is allowing aggregators who are now using equipment with selective capabilities six months to unblock. Non-payphone aggregators who install equipment with selective capabilities after the effective date of these rules, however, must utilize those capabilities immediately upon installation, when activation of the capabilities will be relatively simple. The Commission has explained above that the legislative history of the Act clearly shows Congressional intent that the 10XXX capabilities of aggregator equipment should be employed when they become available. Hence, the unblocking requirement will apply to new equipment with selective 10XXX unblocking capabilities whether or not it was manufactured or imported after the statutory deadline for new equipment to have such capabilities. In other words, the key factor in determining whether unblocking must occur immediately upon installation is whether the equipment has selective capabilities, not when it was manufactured or imported.

12. The Commission also proposed in the *NPRM* that all other aggregator equipment not covered by preceding provisions be unblocked within three years and that equipment be modified if necessary. Parties who supported these requirements offered evidence that current technology allows the unblocking of 10XXX access with, at most, minor modifications, at reasonable expense, and without undue risk of fraud. The modifications contemplated by these parties for some equipment primarily involve software installation or reprogramming and the use of toll restrictors, which could be considered an external modification.[7] The costs of most software or toll restrictor modifications are between $200.00 and $3500.00 per aggregator location. Individual toll restrictors are available at a cost of $216.00 for a single-trunk line unit and $300.00 to $350.00 for a four-trunk line unit, with several models available. Installation costs for toll restrictors are generally no more than $200 per unit. Several telephone instruments can be served by a single trunk line.

13. Parties opposing the unblocking proposals contend that no equipment is currently capable of selective unblocking without modification and that software changes would be unable to unblock 10XXX access fully. They argue that because of limited data handling capacity, the software could screen only a limited number of 10XXX codes, thus allowing "safe" 10XXX access to some but not all OSPs. As for modification by the addition of adjunct devices such as toll restrictors, commenters have claimed that such devices are unavailable or untested with most equipment and are "wholly unsatisfactory" because their use would require the disabling of other processing features of the main equipment. Opposing parties have cited cost figures of several thousand dollars per PBX or per aggregator location for certain types of modification. More broadly, it has been alleged that a large amount of aggregator equipment simply could not be modified economically and would have to be replaced altogether. These parties argue that because of the difficulties connected with unblocking, non-payphone aggregators should not be required to unblock 10XXX access prior to the time when they would voluntarily replace their equipment at the end of its useful life. According to the record, the average life of non-payphone aggregator equipment is ten years.

14. The Commission does not view this latter "attrition" approach as sufficient to satisfy the Operator Services Act. Under the Act, the Commission must adopt measures to ensure that consumers have universal access to their preferred OSPs "within a reasonable time." An indefinite deadline based on natural attrition, or even a more concrete deadline based on the average equipment life of ten years, would not ensure access for consumers within a reasonable time.

15. Based on the record in this docket, the Commission instead concludes that much aggregator equipment can provide selective 10XXX access within a reasonable time if modified at a moderate cost. Under § 64.704(c)(4) as adopted, aggregators with equipment that can be modified within a specified

[6] Because central office services, where available, or adjunct devices may make internal equipment modification unnecessary in unblocking 10XXX access, the Commission has decided not to adopt the proposed Section 68.318(e), which would have required modification. Instead, the Commission is simply requiring aggregators to unblock by whatever means they choose.

[7] The software available for use with some aggregator equipment can, it is argued, be programmed to screen a sufficient number of dialed digits to allow an authorized 10XXX dialing sequence, such as 10XXX-0+, while blocking an unauthorized sequence, such as 10XXX-1+. Toll restrictors, which are separate devices that are connected to a PBX or payphone, analyze the digits sent out by the PBX or payphone and allow only calls involving authorized 10XXX dialing sequences to be completed.

cost limit [8] to provide selective 10XXX access must unblock within eighteen months. The record shows that for much non-payphone aggregator equipment, typically serving 120 or fewer telephone instruments, modification for selective 10XXX access can be accomplished for $1500.00 or less through either software modifications or the addition of adjunct devices such as toll restrictors. For example, a 120-line PBX would have 12 outgoing trunk lines and would therefore need three four-line toll restrictors. Each of these units would cost about $300.00, accompanied by a $200.00 installation cost, for a total of $1500.00 for the purchase and installation of the three units. Thus, using toll restrictors, the modification cost for each of the 120 lines connected to telephone instruments would be $12.50 per line. Using the $12.50 per line cost as an approximate bench mark and allowing for the cost of other modification options, the Commission finds that aggregators must unblock 10XXX access if their equipment can be modified for no more than $15.00 per line [9] to selectively process 10XXX dialing sequences.

16. The Commission has chosen eighteen months as an appropriate deadline because the record indicates that many LECs could have blocking and screening services in place by that time, thus allowing aggregators the option of selectively processing 10XXX access by using LEC services instead of by modifying their equipment. As has been explained above, the Commission does not think it appropriate to order all LECs to implement such services, given the uncertainties associated with implementation. But the Commission has encouraged the LECs to offer the services to the extent that aggregators desire them, and, judging from the record, many aggregators may indeed express such a preference. The Commission is aware that this eighteen-month deadline allows non-payphone aggregators more time to unblock than is being afforded payphone owners, even though both types of aggregators may wish to use LEC services or may have to modify their equipment. As has already been noted, however, payphone owners are primarily engaged in a telecommunications business and will have a natural incentive to upgrade their equipment more frequently in order to remain competitive in their industry. Indeed, the record shows that new generations of payphone equipment are introduced every few years. By contrast, non-payphone aggregators, such as hospitals, universities, and hotels, will have little natural incentive to upgrade equipment regularly because their primary concern is not the provision of telephone service. In addition, payphone aggregators will be better able to control the cost of equipment modifications than will non-payphone aggregators. Payphones can be modified individually and the total cost will therefore depend on the number of payphones the aggregator has chosen to deploy. Non-payphone aggregators, however, such as hospitals or hotels using PBXs, will necessarily have to modify an entire system serving many telephone instruments. For the foregoing reasons, the Commission thinks it reasonable to subject non-payphone aggregators to standards different from those applicable to payphone owners.

17. Finally, under § 64.704(c)(5), the Commission is requiring the unblocking of all aggregator equipment that is not covered by other provisions no later than April 17, 1997. Section 168 of the Internal Revenue Code assigns a five-year recovery period under the applicable depreciation systems for aggregator equipment. Hence, much aggregator equipment manufactured or imported before April 17, 1992, the statutory deadline for new equipment to have 10XXX capabilities, will be allowed at least a normal recovery period before equipment modification or replacement is required. The Commission thinks that this unblocking schedule strikes the appropriate balance between the requirement that consumers have universal access within a reasonable time and its view that aggregators should not be burdened unfairly when they unblock 10XXX access.

18. The Commission will expect each aggregator to determine which of the 10XXX unblocking requirements applies to its operations. Aggregators need not report to the Commission after making this determination but must simply unblock 10XXX access by the appropriate deadline. Similarly, the Commission is not imposing any particular unblocking method, such as equipment modification. Instead, aggregators should, by the appropriate deadline, unblock via the method they think best fits their needs. For example, aggregators who can modify their equipment for $15.00 or less per line to provide selective 10XXX access must unblock within eighteen months, but they do not necessarily have to unblock by modifying their equipment. They can, if they wish, unblock by utilizing the available LEC central office services or any other method they might choose. In short, the rules adopted herein impose unblocking deadlines but not unblocking methods.

19. Under § 64.704(c)(6), the Commission has made it clear that its 10XXX unblocking requirements do not extend to those dialing sequences that are designed to result in billing to the originating phone. The Commission does not, however, intend that aggregators be allowed to block all 10XXX dialing sequences that could, theoretically, be used to initiate a call that would be billed back to the originating phone. Such a reading of this provision would make the other provisions pertaining to 10XXX access meaningless, because all 10XXX dialing sequences can, in theory, be used to initiate calls that would be billed back to the originating phone. By § 64.704(c)(4), the Commission only intends that aggregators be allowed to block those 10XXX dialing sequences, such as 10XXX–1+, that always result in billing to the originating telephone.

20. Having required the unblocking of 10XXX access, the Commission must also adopt modifications to § 64.704(b) of the rules to include 10XXX unblocking requirements among those covered by this provision. These modifications are required by section 226(b)(1)(D), (E) of the Operator Services Act, 47 U.S.C. 226(b)(1)(D), (E).

3. The role of 800 and 950 access numbers

21. In the *NPRM*, the Commission also sought comment on requiring OSPs to establish an 800 or 950 access number as an interim access method during the period when universal 10XXX access is not yet available because of equipment or network limitations. Several parties supported this option rather than any 10XXX unblocking requirement because 800 and 950 access numbers apparently do not create the toll fraud risk associated with 10XXX dialing sequences. AT&T, the primary entity that would have to establish 800 or 950 access, contends that a number of factors counsel against requiring such an access method. The costs for AT&T to establish 800 access are allegedly up to $75 million for development and implementation and up to $250 million in annual operating expenses. AT&T also claims that a live operator will be

[8] The Commission emphasizes that these modification costs must be verifiable expenses due to the purchase of software or equipment and the accompanying installation or reprogramming. These costs may not include, for example, in-house costs such as the time a hotel manager spends determining what type of modification is necessary; this decision, while essential, is not part of the actual modification activity.

[9] By "per line," the Commission means each line associated with an individual telephone instrument, not each trunk line.

necessary for all calls initiated via an 800 number, thus resulting in service degradation in the form of increased call handling time. The United States Department of Justice contends that such access should not be required by regulation if market forces do not induce OSPs to provide it. One commenter favoring the establishment of 800 or 950 access argues that AT&T's cost estimates do not account for the additional revenue that 800 calls will produce because aggregators will have no need to block 800 access numbers because of toll fraud risks. This commenter also contends that any operating costs for 800 access will be contingent on the amount of usage and that usage can be encouraged only at locations where 10XXX access is not available.

22. The Commission concludes that the establishment of 800 or 950 access by all OSPs is necessary to provide an access method for consumers at aggregator locations where 10XXX access is temporarily unavailable during the six-year transition to full unblocking adopted herein. Moreover, the use of 10XXX access is not technically possible in non-equal access areas of the country. If the Commission fails to provide a means of access for consumers in either situation, its policies would leave a significant number of consumers without access to all OSPs. This result would clearly be inconsistent with the considerations underlying the Operator Services Act. Further, 800 access is widely used and understood, and AT&T, a primary provider of 800 services, faces no unreasonable barriers to its implementation. Costs of implementation will, as commenters note, be partially offset by revenues from 800 calls that will be directed to AT&T instead of blocked. In addition, operating costs can be minimized by marketing this access method effectively, so as to discourage unnecessary use where 10XXX access is available. OSPs can also recover any increased operating costs through rates or charges gauged to the cost of providing the access. The Commission is requiring the establishment of 800 or 950 access within six months because the record shows that AT&T, the primary subject of this requirement, has indicated that it will be able to implement such access within this time period.

23. Some LECs that provide interstate operator services in limited situations argue that they should not be required to establish 800 or 950 access. The Commission agrees because, as the commenters note, LEC operators are available through "0–" dialing. Another commenter also argues that "store and forward" payphone owners who are considered OSPs should not be required to establish 800 or 950 access because these OSPs provide operator services only at individual payphone locations. The Commission agrees in principle that such OSPs should not have to establish 800 or 950 access. The Commission concludes, however, that it is more prudent to require such OSPs to file waiver requests, so that the Commission may consider the individual circumstances of all "store and forward" OSPs, not simply payphones.

4. Additional issues

24. Parties also filed comments regarding aggregator status, "O–" transfer services, billed party preference, "O+" dialing as being in the "public domain," relief from toll fraud liability, and waivers of any 10XXX unblocking requirements that the Commission might adopt.[10] The Commission has already addressed questions of aggregator status in the Report and Order for CC Docket No. 90–313 and will not revisit that issue here. The Commission thinks that "O–" transfer services may be useful as interim access methods in non-equal access areas, but it does not see such services as providing a broad solution to access problems, nor does the Operator Services Act treat them as an acceptable overall option. As for the comments regarding billed party preference, "O+" dialing, and relief from toll fraud liability, these issues are not properly before the Commission in this proceeding. Regarding waivers, the Commission views the myriad types of aggregator equipment and the variable and numerous aggregator situations as posing significant problems for the formulation of meaningful generalized waiver standards applicable to our 10XXX unblocking requirements. This record does not, and could not, disclose all of the many permutations involving aggregators and their equipment. The Commission therefore sees no course other than to consider waiver requests on a case-by-case basis under the appropriate legal standards.[11]

B. Payphone Compensation

25. Under section 226(e)(2) of the Operator Services Act, the Commission must consider "the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed providers of operator services that are other than the presubscribed provider of operator services for such telephones."[12] Currently, payphone owners may receive revenue from coin payments for local calls, from resold "1+" toll calls, and from commissions paid by the presubscribed OSP. They apparently receive no compensation when a caller initiates a call with an access code. In the *NPRM*, the Commission first asked for comment on whether it should declare that compensation will not be prescribed, an option under the statute. The Commission also sought comment on compensation through pooling mechanisms and through direct, individual billing arrangements between competitive public payphone owners and OSPs to which the access code calls go. Among the other issues raised for comment were the appropriate compensation charge or formula and which payphones would be eligible for compensation.

1. Whether to order compensation

26. The threshold issue for the Commission's consideration is whether to prescribe compensation at all. Some commenters argue that equity requires that payphone owners be compensated for the use of their equipment for access code calls. The commenters cite as reasons the payphone owners' investment in equipment and their operating expenses, and note that access code calls impose an opportunity cost on payphone owners.[13] They also

[10] The Commission also notes that parties have commented in a general way on whether the Commission's rules should preempt state requirements regarding operator service access. The Commission has recently addressed the issue of preemption as it involves the Operator Services Act. See Operator Service Providers of America, Memorandum Opinion and Order, FCC 91–185, para. 14 (released July 11, 1991).

[11] Rules may be waived if there is "good cause" to do so. See 47 CFR 1.3. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see also Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[12] The language of the Act contemplates that prescribed compensation would cover all calls to non-presubscribed OSPs initiated via any access method, including 10XXX, 800, and 950. The clear language also indicates that any call handled by the presubscribed OSP, even if initiated via an access code, would not be compensated under a prescribed system but would be dealt with in the agreement between the payphone owner and the presubscribed OSP.

[13] The alleged "opportunity cost" is the revenue lost when a caller cannot make a presubscribed or other compensated call because another caller is making an uncompensated access code call.

maintain that payphone owners should not be penalized for complying with unblocking requirements and that compensation will provide fairer competitive conditions in the payphone market. Other parties, however, have commented that the record does not support a conclusion that compensation is in the public interest: there is no evidence, for example, that compensation would produce improvements in rates and services or that payphones could not continue to compete without compensation. Several commenters argue that competitive payphone owners already receive sufficient revenue from other sources, such as advance payment for local calls, commissions from presubscribed OPSs, and income from the resale of services.

27. The Commission concludes that considerations of equity require it to prescribe compensation. The Operator Services Act and the Commission's rules require that payphone owners allow consumers to use payphone equipment for access code calls.[14] By providing the equipment through which the consumer initiates calls to the OSP of choice, the payphone owner is benefiting the public but is not guaranteed any revenue for access code calls. In addition, the payphone owner must expend financial resources to maintain the equipment. It is only fair that these costs be shared by consumers who benefit from the ability to make access code calls and by OSPs who derive revenue from the calls. While the Operator Services Act does not allow the Commission to prescribe compensation in the form of advance payment from consumers, a consumer who makes an access code call will, of course, indirectly compensate the payphone owner through rates paid to the OSP who handles the call and who will compensate the payphone owner directly.

2. The compensation mechanism

28. A number of details about the compensation mechanism must be determined: the types of payphones to include in the compensation scheme, the types of calls that are compensable, the mechanism for transferring compensation from the OSP to the payphone owner, and the compensation charge or formula. The legislative history explicitly addresses the question of which payphones to include. In discussing the compensation issue, the Senate Report states that the term "competitive pay telephones" refers to "those payphones not owned or provided by the telephone companies." The Commission sees no persuasive reason to depart from this clear legislative intent.[15]

29. Regarding the types of calls that are compensable, one commenter argues that all 800 calls should be included, including those going directly to a subscriber that is not an OSP. Quoting the Act, this commenter maintains that such calls are " 'routed to providers of operator services that are other than' the presubscribed OSP" and should therefore be compensated. The Commission disagrees. The Senate Report states that the Commission must "consider the need to prescribe compensation for independent payphone owners for calls made using a carrier-specific access code." The Commission does not think that a call placed via an 800 number to a retail outlet, for example, is a call involving a "carrier-specific access code": the 800 number in question is that of the end user and not simply associated with an OSP or carrier, and it is also not an "access code" as defined by the Act and the Commission's rules. In considering the compensation issue, the Commission's goal is to ensure that payphone owners are not unfairly deprived of a revenue-making opportunity when consumers use payphone equipment to exercise their right of choice among OSPs. It is not the Commission's intention to ensure compensation for every conceivable type of call. In addition, this refusal to consider "non-access" 800 calls compensable will prevent the improper use of 800 numbers to increase compensation.

30. As part of the same document, the Commission is also adopting a Further Notice of Proposed Rule Making in order to seek additional comment on certain issues regarding the compensation mechanism and amount. The Further Notice is summarized separately.

[14] The Commission explicitly rejects the argument, however, that compensation is justified because competitive payphone owners can no longer block calls that do not produce revenue. Even before the passage of the Operator Services Act and the adoption of the implementing regulations that prohibited call blocking, such blocking was an unreasonable practice that thwarted consumer choice and thereby hindered the operation of a truly competitive operator services marketplace.

[15] Hence, to the extent that telephone company payphone costs remain part of the rate base, such payphones will not be eligible for participation in the compensation mechanism. In addition, the Commission declines to address the issue of whether aggregators other than competitive public payphone owners should be compensated for access code calls. This issue was not raised by the Operator Services Act or the *NPRM* and is therefore outside the proper scope of this proceeding.

III. Final Regulatory Flexibility Analysis

31. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

32. Need and purpose of this action. This Report and Order adopts regulations to implement the Telephone Operator Consumer Services Improvement Act of 1990, Public Law No. 101–435, 104 Stat. 986 (1990). The adopted rules are intended to protect consumers from unfair and deceptive practices related to their use of operator services to place interstate telephone calls and to ensure that consumers have the opportunity to make informed choices in making such calls.

33. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis. Comments were submitted in response to the Initial Regulatory Flexibility Analysis by the American Hotel and Motel Association. These comments describe the number of lodging properties in the United States and their sizes, rates, and number of employees, and note that the burden of proposed equipment modification requirements would fall most heavily on smaller businesses.

34. Significant alternatives considered and rejected. The initiating documents in this proceeding offered many proposals. The commenters supported the basic thrust of this proceeding, but many suggested alternatives to the Commission's proposals. The Commission considered all of the alternatives presented in the proceeding and considered all of the timely filed comments directed to the various issues that were raised. After carefully weighing all aspects of the issues and comments in this proceeding, the Commission has taken the most reasonable course of action under the mandate of the Operator Services Act.

IV. Conclusion

35. With this Report and Order, the Commission adopts rules that will facilitate consumer choice by requiring the unblocking of 10XXX access over time at aggregator locations and will further ensure consumer access by requiring all operator service providers to establish an 800 or 950 access number within six months. Specifically, aggregators who provide payphones must unblock 10XXX access within six months of the effective date of these rules. Aggregators who use non-payphone equipment that can selectively process 10XXX dialing sequences must unblock within six months or upon installation of such

equipment, whichever is sooner. Aggregators who install equipment manufactured or imported on or after April 17, 1992, must unblock 10XXX access upon installation of such equipment. Those aggregators who can modify their equipment for no more than $15.00 per line to selectively process 10XXX access must unblock within eighteen months. Finally, all other aggregators must unblock 10XXX access no later than April 17, 1997. In addition, the Commission has determined that competitive public payphone owners should be compensated for access code calls.

V. Ordering Clauses

36. Accordingly, *It is ordered,* pursuant to sections 1, 4(i), 4(j), 201–205, and 226, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 226, that part 64 of the Commission's rules, 47 CFR part 64, *is amended* as set forth in Rule Changes below.

37. *It is further ordered* that this Report and Order will be effective thirty (30) days after publication of a summary thereof in the **Federal Register.**

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. § 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077, 47 U.S.C. §§ 201, 218, 226, unless otherwise noted.

2. Section 64.704 is amended by revising paragraph (b) and by adding paragraphs (c) and (d) to read as follows:

§ 64.704 Call blocking prohibited.

(b) Each provider of operator services shall:

(1) Ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of paragraphs (a) and (c) of this section; and

(2) Withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is blocking access to interstate common carriers in violation of paragraphs (a) or (c) of this section.

(c) Each aggregator shall, by the earliest applicable date set forth in this paragraph, ensure that any of its equipment presubscribed to a provider of operator services allows the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(1) Each pay telephone shall, within six (6) months of the effective date of this paragraph, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(2) All equipment that is technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and that is technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes, shall, within six (6) months of the effective date of this paragraph or upon installation, whichever is sooner, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(3) All equipment or software that is manufactured or imported on or after April 17, 1992, and installed by any aggregator shall, immediately upon installation by the aggregator, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(4) All equipment that can be modified at a cost of no more than $15.00 per line to be technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and to be technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes, shall, within eighteen (18) months of the effective date of this paragraph, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(5) All equipment not included in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section shall, no later than April 17, 1997, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(6) This paragraph does not apply to the use of equal access code dialing sequences that result in billing to the originating telephone.

(d) All providers of operator services shall establish an "800" or "950" access code number within six (6) months of the effective date of this paragraph.

[FR Doc. 91–19507 Filed 8–15–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–175; RM–7112; RM–7540]

Radio Broadcasting Services; Goleta and Santa Ynez, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 290A to Santa Ynez, California, as that community's first local aural transmission service, at the request of Robert Kitamura. A mutually-exclusive proposal to allot Channel 290A to Goleta, California, is denied. See 55 FR 12868, April 6, 1990. Coordinates for Channel 290A at Santa Ynez are 34–36–48 and 120–04–48. See Supplementary Information, *infra.* With this action, the proceeding is terminated.

EFFECTIVE DATE: September 26, 1991. The window period for filing applications for Channel 290A at Santa Ynez, California, will open on September 27, 1991, and close October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 634–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–175, adopted July 30, 1991, and released August 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW, Washington, DC 20036.

The Santa Ynez proposal was selected after comparatively evaluating each proposal pursuant to the Commission's allotment priorities, 90 FCC 2d 88 (1982). That analysis revealed that neither proposal would provide any first or second fulltime aural reception service (priorities 1 and 2). The Santa Ynez

proposal would provide a first local aural transmission service (priority 3), whereas the Goleta proposal would provide a second local aural transmission service (priority 4). Therefore, the Santa Ynez proposal was afforded the higher priority, and in accordance with the Commission's allotment priorities, was preferred over the Goleta proposal.

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. 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 290A, Santa Ynez.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-19510 Filed 8-15-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-620; RM-7577]

Radio Broadcasting Services; Decorah, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Viking Broadcasting Company, allots Channel 284A to Decorah, Iowa, as the community's second local and first competitive FM service. See 55 FR 53316, December 28, 1990. Channel 284A can be allotted to Decorah in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.1 miles) southwest to avoid a short-spacing to Station WLXR-FM, Channel 285A, La Crosse, Wisconsin. The coordinates for Channel 284A at Decorah are North Latitude 43-16-16 and West Longitude 91-52-19. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 26, 1991. The window period for filing applications will open on September 27, 1991, and close on October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-620, adopted July 30, 1991, and released August 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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 Iowa, is amended by adding Channel 284A at Decorah.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-19509 Filed 8-15-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[DA 91-946]

Nonsubstantive Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action makes nonsubstantive changes to the amateur service rule that sets forth the authorized frequency bands for various operator license classes. Nonsubstantive changes have also been made to the frequency sharing requirements rule. This action is necessary so that amateur operators will know the usage limitations of certain frequencies in reference to frequency usage by other radio services, both foreign and domestic. This action is also necessary to conform the amateur service rules to the Table of Frequency Allocation in § 2.106 of the Commission's Rules, 47 CFR 2.106. The effect of the rule changes is to make amateur service licensees aware of those radio services that they must not interfere with and those radio services that they must accept interference from.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 29, 1991.

Released: August 12, 1991.

By the Chief, Private Radio Bureau:

1. The line entry for the 1.25 m band in the frequency table in § 97.301(a) of the Commission's Rules, 47 CFR 97.301(a), incorrectly references paragraph (b). In that line entry, under the column headed "Sharing requirements," the reference should be to paragraphs (a) and (e) of § 97.303 of the Commission's Rules, 47 CFR 97.303.

2. The line entry for the 23 cm band in the frequency table in § 97.301(a) of the Commission's Rules, 47 CFR 97.301(a), incorrectly references paragraph (j). In that line entry, under the column headed "Sharing requirements," the reference should be to paragraphs (h) and (i) of § 97.303 of the Commission's Rules, 47 CFR 97.303.

3. The line entry for the 1.2 cm band in the frequency table in § 97.301(a) of the Commission's Rules, 47 CFR 97.301(a), incorrectly references paragraph (i). In that line entry, under the column headed "Sharing requirements," the reference to paragraph (i) should be changed to paragraph (h) of § 97.303 of the Commission's Rules, 47 CFR 97.303.

4. In addition, the text of § 97.301(i) should be amended to include the aeronautical radionavigation service and the radiolocation service in order to conform paragraph (i) to the Table of Frequency Allocations in § 2.106 of the Commission's Rules, 47 CFR 2.106.

5. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

6. Accordingly, part 97 is amended, effective September 30, 1991, as set forth below.

List of Subjects in 47 CFR Part 97

Frequency sharing requirements, Radio.

Federal Communications Commission.
Ralph A. Haller,
Chief, Private Radio Bureau.

Rule Changes

Title 47 of the Code of Federal Regulations, part 97, is amended as follows:

PART 97—[AMENDED]

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

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. In § 97.301(a), the line entries for the 1.25 m, 23 cm, and 1.2 cm bands are revised to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements See § 97.303, Paragraph
VHF	MHz	MHz	MHz	
1.25 m		222–225		(a), (e)
UHF	MHz	MHz	MHz	
23 cm	1240–1300	1240–1300	1240–1300	(h), (i)
SHF	GHz	GHz	GHz	
1.2 cm	24.00–24.25	24.00–24.25	24.00–24.25	(a), (b), (h), (o)

3. Section 97.303(i) is revised to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(i) In the 1240–1260 MHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the radionavigation-satellite service, the aeronautical radionavigation service, or the radiolocation service.

* * * * *

[FR Doc. 91–19511 Filed 8–15–91; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket No. MC–91–8]

RIN 2125–AC71

Safety Fitness Procedures; Safety Ratings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to implement the provisions of the Motor Carrier Safety Act (MCSA) of 1990 which prohibit a motor carrier that receives an "unsatisfactory" safety rating from operating commercial motor vehicles to transport hazardous materials in quantities for which vehicle placarding is required, or more than 15 passengers, including the driver. This prohibition becomes effective after 45 days have elapsed following receipt of an "unsatisfactory" safety rating and remains in effect until the motor carrier is issued a "conditional" or "satisfactory" safety rating by the FHWA. During the 45 day period, the motor carrier should take such action as may be necessary to improve such safety rating to "conditional" or "satisfactory" to avoid the statutory prohibition. The FHWA's interim final rule is necessary to implement the statutory requirement which became effective January 1, 1991. This rule will offer a procedural framework to afford affected motor carriers the opportunity to comply with the FMCSRs and/or Hazardous Materials Regulations (HMRs) and avoid cessation of their hazardous materials or passenger operations. The rule will promote regulatory compliance and enhance highway safety. The FHWA will consider public comments in further developing this final rule.

DATES: This rule is effective August 16, 1991.

Comments must be received on or before November 14, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–91–8, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing data compatible with either WordPerfect or WordStar for IBM systems or Microsoft Word or WordPerfect or WordStar for Apple MacIntosh systems. Commenters should clearly label submitted disk with the software format used (e.g., WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards (202) 366–2981, Mr. William C. Hill, Office of Motor Carrier Field Operations (202) 366–1795, or Mr. Raymond W. Cuprill, Office of Chief Counsel (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

The MCSA of 1990 (section 15 of the Sanitary Food Transportation Act of 1990, Pub. L. 101–500, 104 Stat. 1218; 49 U.S.C. App. § 1814) was signed by the President on November 3, 1990. The MCSA of 1990 amended the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. App. section 1801 *et seq.*) to prohibit motor carriers that receive "unsatisfactory" safety ratings from

operating commercial motor vehicles to transport quantities of hazardous materials for which vehicle placarding is required in accordance with DOT regulations (49 CFR part 172, subpart F), or more than 15 passengers, including the driver. The MCSA of 1990 establishes a period of 45 days during which these motor carriers may take such action as may be necessary to improve such safety rating to "conditional" or "satisfactory." Affected motor carriers may also request the FHWA to review the conditions and other factors which resulted in the "unsatisfactory" safety rating. If a motor carrier makes such a request, the FHWA is required to conduct a review within 30 days after the date of such request. The MCSA of 1990 also prohibits any motor carrier rated "unsatisfactory" to contract or subcontract with any Federal agency for the above described types of transportation.

FHWA Rulemaking Action

Purpose and Scope

This interim final rule implements the above described provisions of the MCSA of 1990 and will enhance motor carrier safety by promoting the compliance of the motor carrier industry with the FMCSRs and/or HMRs. The rule prohibits all motor carriers which receive an "unsatisfactory" safety rating from the FHWA from operating a commercial motor vehicle to transport placardable quantities of hazardous materials or more than 15 passengers, including the driver.

This interim final rule is also being promulgated in anticipation of implementation of the safety permit provisions of the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990 (Pub. L. 101–615, 104 Stat. 3244), which will become effective in November 1992. The HMTUSA of 1990 amended section 106 of the HMTA (49 U.S.C. App. section 1805) to establish registration requirements for shippers and carriers of hazardous materials. In addition, motor carriers will be prohibited from hauling certain hazardous materials unless they obtain and hold a safety permit issued by the DOT. The DOT is to issue the safety permit only upon a finding that the motor carrier is fit, willing and able to: (a) Provide the transportation authorized by the permit; (b) comply with the HMTA and its implementing regulations; and (c) comply with any applicable Federal motor carrier safety laws and regulations, and any applicable Federal minimum financial responsibility laws and regulations. Shippers may offer hazardous materials only to a motor carrier that has a safety permit issued by the DOT.

Several sections in part 385 have been revised to reflect changes resulting from the provisions of the MCSA of 1990. A new § 385.13 is included to address the Act's prohibition against the transportation of hazardous materials and passengers by motor carriers rated "unsatisfactory." The requirement in § 385.13 calling for a certification of corrective actions taken by a motor carrier following a notification of an "unsatisfactory" or "conditional" safety rating, has been eliminated. New § 385.17 establishes procedures applicable to a request for a change in a safety rating.

Request for a Change of a Safety Rating

The FMCSRs currently provide for two types of requests that may affect a rating, one covered by the provisions of 49 CFR 385.15 and the other by § 385.17. Section 385.15 covers those situations where a motor carrier petitions for a review of the assigned rating because of alleged inaccuracies, errors, or other disputed factual or procedural issues. This request must be submitted to the Director, Office of Motor Carrier Field Operations, in Washington, DC, and must include a list of all disputed issues and any information or documents to support the claim. Motor carriers must file the petition with 90 days of the date of notification of the assignment, or change, of a safety rating. However, those motor carriers that transport placardable quantities of hazardous materials or more than 15 passengers, including the driver, and have been assigned an "unsatisfactory" safety rating should submit their petitions within 15 days from the date of notification of the assignment of a safety rating. This quick action will ensure that the FHWA will make its determination within the 45-day period established by the MCSA of 1990.

Any motor carrier receiving a safety rating of "unsatisfactory" will be given the opportunity to take action necessary to upgrade such a rating during the 45-day period established by the MCSA of 1990. During this period, motor carriers may elect to request a change of the safety rating. Motor carriers desiring to request such a change must do so expeditiously in order to avoid the required cessation of hazardous materials and passenger operations, which is effective after the expiration of the 45-day period mentioned above. Motor carriers should note and clearly understand that the mere filing of a petition under § 385.15 or a request for a change of a safety rating under § 385.17 does not stay this 45-day period.

A request for a change of the rating pursuant to § 385.17 involves cases where there are no factual or procedural issues in dispute, and the basis for the request is evidence of corrective actions and overall compliance with the applicable regulations. This request must be submitted in writing and must include a description of corrective actions taken and other documentation that may be relied upon as a basis for improving the assigned safety rating. The motor carrier's request must be sent via "certified mail" to the appropriate Regional Director of the Office of Motor Carriers in the FHWA region for the State in which the motor carrier maintains its principal place of business for safety. Motor carriers are urged to submit their request and supporting documentation at the earliest possible date to ensure that compliance can be achieved within the 45-day period.

The FHWA will make its determination expeditiously because the "unsatisfactory" safety rating may well affect a motor carrier's ability to continue in business. In the event the FHWA is unable to make its determination within the 45-day period, the agency may conditionally suspend any "unsatisfactory" safety rating and rescind any related administrative order for a period of up to 10 additional calendar days.

Prohibition on Transportation and Penalties

After the expiration of the 45-day period following the receipt of the "unsatisfactory" rating notice, and until such time as the motor carrier receives notification of either a "conditional" or "satisfactory" safety rating from the FHWA, the motor carrier shall be prohibited from operating commercial motor vehicles transporting hazardous materials in quantities for which vehicle placarding is required, or more than 15 passengers, including the driver. Motor carriers who operate commercial motor vehicles in violation of this prohibition will be subject to the penalty provisions of 49 U.S.C. App. section 1801 *et seq.* (1980) (1990) and 49 U.S.C. 521—which establish penalties of up to $25,000 per violation and authorize the FHWA to seek equitable relief from a United States District Court.

Additional Effects of an "Unsatisfactory" Safety Rating

The MCSA of 1990 also prohibits Federal agencies from using motor carriers that receive a safety rating of "unsatisfactory" to provide transportation of hazardous materials in quantities for which vehicle placarding

is required, or more than 15 passengers, including the driver. To implement this provision, the final rule contains a new § 385.13(a)(3) which declares any motor carrier rated "unsatisfactory" ineligible to contract or subcontract with any Federal agency for said transportation. The FHWA is coordinating with the U.S. General Services Administration (GSA) to develop and implement procedures for including motor carriers rated "unsatisfactory" in the List of Parties Excluded From Federal Procurement or Nonprocurement Programs that is issued monthly by GSA. The GSA List of Parties incorporates a system of codes which enables Federal agencies to determine the reasons for the exclusion and the treatment applicable to the excluded party.

As stated above, motor carriers that receive an "unsatisfactory" safety rating will be unable to obtain a safety permit authorizing the transportation of hazardous materials that is required by the provisions of the Hazardous Materials Transportation Uniform Safety Act of 1990. These provisions will become effective in November 1992.

Additional Information Regarding the Safety Rating Process

The safety rating process developed by the FHWA's Office of Motor Carriers is used to evaluate safety fitness and assign one of three safety ratings (satisfactory, conditional or unsatisfactory) to motor carriers operating in interstate commerce. This process identifies motor carriers needing improvement in their compliance with the FMCSRs and, if applicable, the HMRs. The FHWA uses the safety rating process to focus its limited resources on examining the operations of these motor carriers to promote compliance with applicable regulations. Motor carriers rated as unsatisfactory, especially those transporting hazardous materials and passengers, customarily receive a higher priority in our compliance and enforcement efforts. The enactment of the MCSA of 1990 has now given additional significance to the "unsatisfactory" safety rating.

Gathering the Information

The rating process used by the FHWA is built upon two operational tools known as the Safety Review (SR) and the Compliance Review (CR). These activities were developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance information.

The SR is an assessment survey conducted by Federal and State safety specialists for "unrated" motor carriers. The SR generally takes 4 to 6 hours depending upon the size of the motor carrier, during which time the safety specialist interviews management officials and inspects samples of the records and files required to be maintained by the FMCSRs and HMRs, if applicable, at a motor carrier's principal place of business. The SR document, which is completed during each safety review, contains 75 questions.

The SR form is designed to guide the safety specialist in assessing the motor carrier's compliance with applicable regulatory requirements and its safety management controls to ensure that compliance with these requirements is maintained. The questions in this document address requirements from each of the parts of the FMCSRs and HMRs, including: (1) General knowledge; (2) minimum levels of financial responsibility, part 387; (3) accident notification and reporting requirements, part 394; (4) driver qualification requirements, part 391; (5) requirements applicable to the driving of motor vehicles, part 392; (6) vehicle inspection, repair and maintenance, part 396; (7) hours of service and records of duty status of drivers, part 395; and (8) requirements applicable to the transportation of hazardous materials, parts 397 and 177.

The FHWA's rating procedure assigns values to these questions in the SR document based upon the level of compliance with regulatory requirements. The questions are answered either "yes" or "no" based on the safety specialist's observation of the motor carrier's operations, records, management controls, the information provided by its representatives, and the reportable/preventable accident information collected. The accident information used by the FHWA in this process consists of the motor carrier's history of accidents for the 365-day period prior to the safety review. The accidents must meet the FHWA's reporting criteria and must be determined to have been preventable (could have been avoided by driver/carrier action).

The CR is a more in-depth examination of a motor carrier's operations and is used (1) to conduct a follow-up investigation on motor carriers rated "unsatisfactory" or "conditional" as the result of a previous SR or CR, (2) to investigate complaints, or (3) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status and vehicle maintenance records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. As with the SR, reportable/preventable accident information is also collected.

Upon completion of the CR, the same 75 questions posed in the SR document are answered by the safety specialist to initiate the safety rating process. The safety specialists receive guidance and training on how to complete this form based on their observations. They identify areas of possible noncompliance with regulatory requirements that are considered "acute" (severe violations that require immediate corrective actions) or "critical" (relating to management and/or operational controls). If noncompliance with an "acute" requirement, as it relates to a specific safety rule, is discovered, the safety specialist answers the specific question "No." With respect to "critical" requirements as they relate to specific safety rules, a question is answered in the negative only after a noncompliance rate of 10 percent or higher in a particular regulatory area is discovered.

The FHWA has developed a computerized safety rating formula for assessing the information obtained from the SR or CR document and is using that formula assessment in assigning a safety rating. Those requirements of the FMCSRs and HMRs that have similar characteristics are combined into five regulatory areas called "rating factors." A sixth factor is included in the process to address the accident history of the motor carrier. Each of the six factors is equally weighted, and a rating for each factor is determined by computing the results of the responses to the applicable questions. The results for each of the six factors are then measured against a rating table which establishes the motor carrier's overall safety rating.

Anyone interested in obtaining a printed explanation of the Safety Rating Process should contact the Regional Director, Office of Motor Carriers (See § 390.27 for the appropriate address), or the Office of Motor Carrier Field Operations, 400 Seventh Street, SW., Washington, DC 20590. A copy of that printed explanation has been placed in the docket for public review.

New Preliminary Rating Procedures

Upon completing the SR, a preliminary assessment of the motor carrier's compliance status will be made based on the results of the Safety Review questionnaire document. If the circumstances warrant, the motor carrier will be served with a notice of consequences of an unsatisfactory

safety rating (See Illustration 1) during the closeout interview with the motor carrier's officials. This notice will explain the regulatory and statutory consequences of an "unsatisfactory" safety rating for motor carriers operating commercial motor vehicles to provide transportation of placardable quantities of hazardous materials or more than 15 passengers, including the driver.

Illustration 1

Notice of Consequences of "Unsatisfactory" Safety Rating

Legislation enacted by the 101st Congress of the United States and resulting regulatory changes to the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Part 385, Subpart B, may affect your company's ability to continue conducting certain types of transportation.

If you transport hazardous materials for which placarding is required or more than 15 passengers, including the driver, and you receive an "unsatisfactory" safety rating from the Federal Highway Administration, you will be prohibited from continuing those operations unless, within 45 days, you take corrective action and receive a "satisfactory" or "conditional" safety rating.

The Motor Carrier Safety Act of 1990 (Public Law 101–500) (the Act) was signed by the President on November 8, 1990. The Act, in part, requires the Department of Transportation to prohibit those interstate motor carriers receiving "unsatisfactory" safety ratings issued by the Federal Highway Administration from operating commercial motor vehicles to (1) provide transportation of hazardous materials for which placarding of motor vehicles is required, or (2) transport more than 15 passengers, including the driver. In addition, such motor carriers will be excluded from contracting or subcontracting with any Federal agency for said transportation.

The Act further provides a period of 45 days for those motor carriers to take such action as may be necessary to improve such safety rating to "conditional" or "satisfactory." If a motor carrier which has received an "unsatisfactory" safety rating requests the Department of Transportation's Federal Highway Administration for a change in a safety rating, the Federal Highway Administration shall conduct such a review within 30 days after the date of such request.

If you currently have an "unsatisfactory" safety rating issued by the Federal Highway Administration, you should immediately take the actions necessary to improve your compliance with the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations.

For additional information or guidance, you may contact your local Federal Highway Administration's Office of Motor Carriers in your respective State.

The FHWA safety specialist will develop a written compliance plan and discuss it with the motor carrier during the closeout interview. The compliance plan will include detailed recommendations and corrective actions to be undertaken by the motor carrier to improve its compliance posture. These recommendations will be tailored to the motor carrier's specific compliance problems.

The FHWA has established a comprehensive system of administrative oversight to ensure that agency actions taken during this safety review process are well founded, reasonable and justified. To ensure proper consideration of the conditions and other factors which will be the bases for the rating process, the safety specialist's findings and determinations made during the review are checked by multiple levels of agency officials.

The FHWA will provide the motor carrier with a written notification of the safety rating assigned. If the motor carrier is assigned a safety rating of "unsatisfactory," the written notification will advise of the statutory prohibitions of the MCSA of 1990. In addition, the FHWA will issue the motor carrier an administrative order, effective on the 46th day after receipt of the order or from the effective date of the "unsatisfactory" safety rating, whichever is later. This order will direct the motor carrier to cease all operations of commercial motor vehicles to transport hazardous materials in quantities requiring placarding or more than 15 passengers, including the driver. The order will also advise the carrier of the recourse available to avoid its consequences. (See Illustration 2)

Illustration 2

Date: _____

Time: _____

Operations Out-of-Service Order (Hazardous Materials or Passenger)

Mr. John P. Owner,
A.B.C. Motor Carrier, Inc., 1234 Main Street, Washington, DC 20036.

Order No.: _____

Dear Mr. Owner: This letter constitutes an Operations Out-of-Service Order by the United States pursuant to 49 U.S.C. 521(b)(5)(A); 49 U.S.C. App. 1614; 49 CFR 385.13; and 49 CFR 386.72.

The United States Department of Transportation's Federal Highway Administration has issued a safety rating of "unsatisfactory" and therefore finds your company's motor carrier operations to be unfit for the (a) highway transportation of hazardous materials for which placarding is required, and (b) transportation of more than 15 passengers, including the driver.

Effective 46 days from the date of receipt of this order or from the effective date of the "Unsatisfactory" safety rating, whichever is later, you must cease the following motor carrier operations:

1. Transportation of hazardous materials for which placarding of motor vehicles is required in accordance with the regulations issued under this title, or

2. Transportation of more than 15 passengers, including the driver.

To obtain relief from this order, you must improve your level of compliance with 49 CFR parts 350–397 and 49 CFR parts 171–180, undertake the actions described below, and obtain a "satisfactory" or "conditional" safety rating.

Actions:

_____

_____

_____

_____

_____

Before resuming your hazardous materials or passenger operations, you must comply with the provisions of this Order.

You have a right to petition for an administrative review of a safety rating pursuant to 49 CFR 385.15, where there are factual or procedural issues in dispute. Your petition should be received within 15 days from the date of notification of the assignment of a safety rating and will be reviewed within 30 days from the date of receipt. The petition must list all disputed issues and be accompanied by any information or documents you wish us to consider. The petition filed pursuant to 49 CFR 385.15 must be sent to the Director, Office of Motor Carrier Field Operations.

A request for a change in a safety rating, pursuant to 49 CFR 385.17, where there are no factual or procedural issues in dispute and the basis for the change is evidence that corrective actions have been taken and that operations are currently being conducted pursuant to the safety fitness standard specified in § 385.5, shall be directed in writing to the Regional Director of Motor Carriers at the address shown below.

Failure to comply with this Operations Out-of-Service Order subjects you to civil penalties of 49 U.S.C. 521(b) of up to $10,000 per offense; $25,000 per offense [49 U.S.C. App. 1801]; or criminal penalties of up to $25,000 and imprisonment for one year [49 U.S.C. 521(b)(6)(A)]. Additionally, violation of this order subjects you to action by the United States Attorney's Office in United States District Court for equitable and such other relief as the Court may grant.

Sincerely yours,

/s/ _____

Regional Director, Office of Motor Carriers, Federal Highway Administration, Street Address, City, State and Zip Code, Telephone No: ( ) – .

Rulemaking Analyses and Notices

Regulatory Impact

The action taken by the FHWA in this document implements a congressional mandate to prohibit the transportation of placardable quantities of hazardous materials and the operation of commercial motor vehicles transporting more than 15 passengers, including the driver, in interstate commerce by motor carriers that have received an "unsatisfactory" safety rating from the FHWA. The effective date of the congressional mandate is January 1, 1991. The FHWA, therefore, finds good cause to promulgate the amendment as an interim final rule without prior notice and to make it effective upon publication. However, in order to

provide an opportunity for public response to the FHWA's procedures for enforcement, the FHWA has established Docket MC–91–8 for receipt of comments.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, but is a significant regulation under the DOT regulatory policies and procedures because of substantial congressional and public interest. This interest is due to the potential for putting some motor carriers out of business. As is explained below, however, it is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rulemaking on small entities. Some small entities will be economically impacted by this rulemaking and will be required to cease all or part of their operations if they are rated as "unsatisfactory" and do nothing to upgrade that rating. However, the FHWA believes that relatively few small motor carriers will be identified as potentially "unsatisfactory." Moreover, this rule will serve as a powerful incentive to gain compliance with the FMCSRs by such carriers who wish to avoid these adverse consequences. Thus, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no additional recordkeeping or reporting requirements associated with this rule. Recordkeeping and reporting requirements of 49 CFR part 385 have been approved under OMB Control No. 2125–0544.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 8, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES [AMENDED]

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), and 3102; 49 U.S.C. App. 1814; 49 U.S.C. App. 2505 and 2512; 49 CFR 1.48.

2. Section 385.1 is revised to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle:

(1) To provide transportation of hazardous materials for which vehicle placarding is required in accordance with part 172, subpart F of this title; or

(2) To transport more than 15 passengers, including the driver.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter.

3. Section 385.3 is amended by placing all the definitions in alphabetical order, by revising the definitions "Reviews" and "Safety ratings," and by adding a definition of the term "Commercial motor vehicle" to read as follows:

§ 385.3 Definitions.

Applicable safety regulations or requirements * * *

Commercial motor vehicle shall have the same meaning as described in § 390.5 of this subchapter.

Preventable accident * * *

Reviews. For the purposes of this part:

(1) *Compliance review* means an on-site examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

(2) *Safety review* means an on-site assessment to determine if a motor carrier has adequate safety management controls in place and functioning to meet the safety fitness standard. The safety review includes an inspection of selected motor carrier records and operations. It is used to gather information for assigning ratings to unrated carriers. The safety review is not ordinarily employed to gather evidence in support of enforcement actions, but will if certain serious violations are discovered (e.g., absence of proof of financial responsibility; document falsification).

(3) *Safety management controls* means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

Safety ratings: (1) *Satisfactory safety rating* means that a motor carrier has in place and functioning adequate safety

management controls to meet the safety fitness standard prescribed in § 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in § 385.5 (a) through (h).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5 (a) through (h). Motor carriers receiving an "unsatisfactory safety rating" may be subject to the provisions of § 385.13.

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FHWA.

4. Section 385.11 is revised to read as follows:

§ 385.11 Notification of a safety rating.

(a) The FHWA shall provide written notification to the motor carrier of the assigned safety rating.

(b) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

(c) A notification of an "unsatisfactory" safety rating will also include a notice that the motor carrier will be subject to the provisions of § 385.13, which prohibit motor carriers rated "unsatisfactory" from transporting:

(1) Hazardous materials requiring placarding under Part 172, subpart F, of this title; or

(2) 15 or more passengers, including the driver.

5. Section 385.13 is revised to read as follows:

§ 385.13 Unsatisfactory safety rating—Prohibition on transportation of hazardous materials and passengers.

(a) (1) A motor carrier that receives a safety rating from the Federal Highway Administration which is "unsatisfactory" shall have 45 calendar days from the effective date of that rating or from the date of notice of that rating, whichever is later, to take such action as may be necessary to improve such safety rating to "conditional" or "satisfactory."

(2) *Prohibition on transportation.* After the last day of the 45-day period established pursuant to paragraph (a)(1) of this section and until notification is issued pursuant to this part of either a "conditional" or "satisfactory" safety rating, a motor carrier rated "unsatisfactory" shall be prohibited from operating a commercial motor vehicle to transport—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(3) *Ineligibility for Federal Government transportation.* Any motor carrier that receives a safety rating of "unsatisfactory" shall be ineligible to contract or subcontract with any Federal agency for the transportation of—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(b) *Penalties.* Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions of 49 U.S.C. App. 1809 and 49 U.S.C. 521.

6. Section 385.15 is revised to read as follows:

§ 385.15 Request for a change in a safety rating; facts and procedure.

(a) A petition for review of a safety rating, where there are factual or procedural disputes, must list all issues in dispute and be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(b)(1) The petition must be submitted to the Director, Office of Motor Carrier Field Operations, within 90 days of the date of notification of the assignment, or change, of a safety rating.

(2) Motor carriers affected by the provisions of § 385.13 should submit their petitions and supporting documentation to the Director, Office of Motor Carrier Field Operations, within 15 days from the date of notification of the assignment of a safety rating.

(c) As part of the consideration of a petition, the Director, Office of Motor Carrier Field Operations, may request the motor carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide such data or to attend the conference may result in dismissal of the petition.

(d) The Director, Office of Motor Carrier Field Operations, shall notify the motor carrier in writing of a decision on a petition for review of a safety rating, which will constitute the final agency action. The decision may:

(1) Confirm the rating; or

(2) Revise the rating.

7. Section 385.17 is revised to read as follows:

§ 385.17 Request for a change in a safety rating; corrective action taken.

(a) A request for a change in a safety rating may be made when the basis for the change is evidence that corrective actions have been taken and that operations currently meet the safety fitness standard specified in § 385.5. The request shall be directed in writing, via certified mail, to the Regional Director, Office of Motor Carriers, for the FHWA Region in which the motor carrier maintains its principal place of business for safety. The Regional Office addresses are listed in § 390.40 of this subchapter. Such a request shall include a written description of corrective actions taken and other documentation that may be relied upon as a basis for improving the assigned rating.

(b) The FHWA will make its determination based upon documentation submitted or any additional investigation deemed necessary.

(c) In cases where the FHWA is unable to make a determination within the 45-day period established in § 385.13 and the motor carrier has submitted evidence that corrective actions have been taken pursuant to paragraph (a) of this section, and has cooperated in any investigation, the FHWA may conditionally suspend the effective date of the "unsatisfactory" safety rating for an additional period of up to 10 days.

[FR Doc. 91-19468 Filed 8-15-91; 8:45 am]
BILLING CODE 4910-22-M

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49 CFR Part 391

[FHWA Docket No. MC-116]

RIN 2125-AA79

Qualification of Drivers; Controlled Substances Testing; Implementation Dates

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires interstate motor carriers subject to the FHWA's controlled substances testing regulations to begin random and certain mandatory post-accident drug testing of their drivers. This action is necessary to notify interstate motor carriers subject to 49 CFR part 391, subpart H, that the injunction against the FHWA's drug testing program has been dissolved and that random and post-accident testing, previously deferred, must be implemented.

DATES: This rule is effective on November 14, 1991, for motor carriers

with 50 or more drivers subject to testing, and on January 1, 1992, for all other motor carriers.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Paul L. Brennan, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA published a final rule on November 21, 1988, requiring motor carriers that operate commercial motor vehicles (CMVs) in interstate commerce to establish and maintain programs to combat drug abuse, including testing of CMV drivers for the use of controlled substances. See 53 FR 47134. Testing under this regulation must be conducted prior to employment/use, periodically, upon reasonable cause, after a reportable accident and randomly. Generally, interstate drivers of CMVs which are defined as vehicles with gross vehicle weight ratings (GVWRs) or gross combination weight ratings (GCWRs) of more than 26,000 pounds, vehicles transporting hazardous materials that are required to be placarded, or vehicles designed to transport more than 15 passengers including the driver, are covered by this rule.

On the same date, November 21, 1988, the Department of Transportation's Office of the Secretary (Department), published an interim final rule, "Procedures for Transportation Workplace Drug Testing Programs," setting forth the testing and reporting procedures applicable to the FHWA rule. 53 FR 47002, 49 CFR part 40. This rule became final on December 1, 1989 (54 FR 49854).

Six lawsuits were filed challenging all aspects of the FHWA's controlled substances testing regulation. In *Owner-Operators Indep. Drivers Ass'n. (OOIDA)* v. *Burnley*, 705 F.Supp. 481 (N.D. Cal. 1989), the United States District Court for the Northern District of California issued a preliminary injunction on January 6, 1989, enjoining the FHWA from implementing random and certain portions of the mandatory post-accident testing of CMV drivers. *Id.* at 485. On August 1, 1989, the same Court denied the Government's motion for judgment on the pleadings on the grounds of lack of subject matter jurisdiction. The District Court certified the question of jurisdiction for interlocutory appeal under 28 U.S.C. 1292(b), which the Government pursued. Meanwhile, by order issued August 21, 1989, the District Court stayed further proceedings; however, the preliminary injunction against random and certain mandatory post-accident testing remained in effect.

The other challenges to the FHWA's controlled substances testing regulation were consolidated in the Ninth Circuit under the name *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al.* v. *U.S. Department of Transportation*, No. 89–70165, etc. No petitioner in that consolidated proceeding contested the jurisdiction of the Court of Appeals, and OODIA was granted amicus status to brief and argue the jurisdictional question (Order, July 17, 1989). The Ninth Circuit indicated that it would decide the jurisdictional question along with the merits of the consolidated challenges to the rule itself.

On November 6, 1989, the FHWA published a final rule deferring implementation of random and certain mandatory post-accident testing requirements pending a judicial resolution of the matter. (54 FR 46618). The FHWA emphasized that motor carriers nationwide must implement pre-employment/pre-use, periodic, reasonable cause, and unenjoined post-accident drug testing in accordance with the implementation schedule set forth in the November 21, 1988, final rule. Unenjoined post-accident testing was defined as "testing when there is any reasonable suspicion of drug usage, or a reasonable cause to believe a driver has been operating a vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug usage may have been a factor." 54 FR 46617; 705 F. Supp. at 485. It should also be noted that on February 1, 1990, the FHWA issued an interim final rule that, among other things, amended the requirement for post-accident testing. This amended requirement was that a CMV driver must be issued a citation for a moving traffic violation arising from the accident. 55 FR 3546, 3557 (1990). Thus, "unenjoined" post-accident testing, since February 1, 1990, has meant that motor carriers have been required to test CMV drivers after such drivers have been involved in a reportable accident if the CMV driver was issued a citation for a moving traffic violation and there is any reasonable suspicion of drug usage, or a reasonable cause to believe a driver has been operating a vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug usage may have been a factor.

The November 21, 1988, final rule, as clarified in the November 6, 1989, final rule, required certain motor carriers to have a drug testing program implemented by December 21, 1990. Motor carriers with 50 or more drivers were to have a program implemented by December 21, 1989, and smaller motor carriers (those with fewer than 50 drivers) by December 21, 1990. The FHWA expects that all motor carriers with drivers subject to testing have fully implemented pre-employment/pre-use, periodic, reasonable cause and post-accident testing that was not enjoined by the courts.

Court Decisions

On April 26, 1991, the Ninth Circuit Court of Appeals, in *International Brotherhood of Teamsters, Chauffeurs, et al.* v. *Department of Transportation*, No. 89–70165, etc., upheld the FHWA drug testing regulations in their entirety. Relying primarily on the recent decisions of the United States Supreme Court in *Skinner* v. *Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989) and *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656 (1989), and on the decision of the Ninth Circuit in *Bluestein* v. *Skinner*, 908 F.2d 451 (9th Cir. 1990), *cert. denied*, 111 S.Ct. 954 (1991), the court concluded that "given the compelling governmental regulation to which commercial drivers are already subject, the FHWA's random, biennial, pre-employment, and post-accident drug testing regulations are constitutional on their face." (Reasonable cause testing was not challenged.) In *OOIDA* v. *Burnley*, No. 89–16332, decided the same day, the Ninth Circuit relied on the reasoning of the First Circuit Court of Appeals in *Cousins* v. *Secretary of Transportation*, 880 F.2d 603 (1st Cir. 1989), to hold that "[c]hallenges to motor carrier safety regulations must be filed with the courts of appeals, rather than with the district courts." The court then went on to reverse the decision of the Northern District of California on the jurisdiction issue and remanded the case with instructions to dismiss the case or transfer it to the Court of Appeals. On June 28, 1991, the Federal District Court for the Northern District of California dissolved its injunction in *OOIDA* v. *Burnley*. The FHWA is now proceeding with full implementation of all components of the drug testing program.

Post-Accident and Random Testing

The effective date of this final rule for the previously enjoined types of

controlled substances testing is November 14, 1991, for motor carriers with 50 or more drivers subject to testing on December 21, 1989, and January 1, 1992, for all other motor carriers, including those motor carriers which began commercial motor vehicle operations after December 21, 1989. Motor carriers which begin operations after January 1, 1992, must implement the requirements of subpart H, as well as all other applicable requirements of the FMCSRs by the date they begin operation. *Drivers subject to testing* is defined in § 391.85, Definitions, as employee drivers and contract drivers under contract for 90 days or more in any period of 365 days. A motor carrier is to determine if it has 50 drivers subject to testing as of December 21, 1989, as previously required. Therefore, even motor carriers which may have dropped to fewer than 50 drivers subject to testing after that date must implement previously enjoined testing by November 14, 1991. The FHWA believes that small motor carriers may need additional time to effectively implement random and mandatory post-accident testing. Motor carriers who are required to implement testing by November 14, 1991, must implement testing for only those drivers who meet the definition of drivers subject to testing through December 31, 1991, and then must include all their drivers who are subject to this subpart after that date.

The phase-in schedule for random testing as provided in § 391.93(d) continues to apply and states:

(d) During the first 12 months following the institution of random drug testing pursuant to this rule, a motor carrier shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the drivers subject to testing.

As noted in the preamble to the final rule on November 21, 1988, 53 FR 47143, these conditions are minimum. Motor carriers may accelerate random testing, i.e., reach the 50% testing rate in less than a 1-year period. The FHWA fully expects random testing to be spread reasonably throughout the year and also after the initial 12-month period.

With respect to post-accident testing, motor carriers will be required to test their CMV drivers who are involved in reportable accidents if they are issued citations for moving traffic violations, in accordance with the schedule set forth in this document. This must be done without regard to whether the carrier has any reasonable suspicion of drug usage, or reasonable cause to believe a driver has been operating a vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug usage may have been a factor. The involvement of a CMV driver in a reportable accident, provided the CMV driver is issued a citation for a moving traffic violation arising from the accident, is all that is needed to trigger a post-accident controlled substance test for that driver under subpart H. To differentiate between enjoined and unenjoined post-accident testing, the FHWA is including a definition of non-suspicion-based post-accident testing. This definition is based upon the court's now-dissolved injunction, and is referenced in the revised implementation schedule in § 391.93.

Rulemaking Analyses and Notices

Regulatory Impact

The action taken by the FHWA in this document amends subpart H of part 391 of the FMCSRs to require interstate motor carriers to test their CMV drivers for the use of certain controlled substances on a random basis and after certain accidents. A final rule imposing this requirement on interstate motor carriers was previously adopted pursuant to notice and comment rulemaking. Implementation of this requirement was deferred by the FHWA in response to a preliminary injunction issued by a Federal District Court. That injunction has been dissolved, and the FHWA is, by this amendment, providing notice to motor carriers that they will be required to begin such testing. Because of the prior notice and opportunity for comment provided in adopting this requirement, the FHWA finds good cause to amend its implementation schedule for this regulation to reflect the new implementation date.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. This document merely amends § 391.93 of the FMCSRs to advise interstate motor carriers that the requirements for random and mandatory post-accident testing originally published by the FHWA on November 21, 1988, and after implementation was deferred due to legal challenges, must now be complied with. However, this document relates to a rule which the FHWA identified as both major under Executive Order 12291 and significant under the regulatory policies and procedures of the DOT. The impacts of the provision addressed in this document have already been considered by the impact documentation prepared for the November 21, 1988, final rule. Any changes to the November 21, 1988, final rule resulting from this document would not appreciably affect the impact documentation initially prepared.

Such impact documentation contained in the November 21, 1988, final rule includes: A Regulatory Impact Analysis which is available for inspection in the Headquarters Office of the FHWA, 400 Seventh Street, SW., Washington, DC.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rulemaking on small entities. It is anticipated that the impacts resulting from the amendment contained in this document do not differ from those already considered in the adoption of the November 21, 1988, final rule. Accordingly, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that the action contained in this document will not have a significant economic impact on a substantial number of small entities which is in addition to that imposed by the November 21, 1988, final rule.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment in addition to that already prepared for the November 21, 1988, final rule.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no recordkeeping or reporting requirements associated with this final rule in addition to those associated with the November 21, 1988, final rule.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: August 9, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 39*, by amending subpart H as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 391.85 [Amended]

2. In § 391.85, a new definition is added in alphabetical order and reads as follows:

§ 391.85 Definitions.

* * * * *

Non-suspicion-based post-accident testing means testing of a commercial motor vehicle driver after a reportable accident:

(1) If the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident, as required by § 391.113 of this subpart; and

(2) Without regard to whether there is any reasonable suspicion of drug usage, reasonable cause to believe the driver has been operating the commercial motor vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug usage may have been a factor.

* * * * *

§ 391.93 [Amended]

3. In § 391.93, paragraphs (b) and (c) are revised, paragraph (d) is redesignated as (e), and a new paragraph (d) is added to read as follows:

§ 391.93 Implementation schedule.

(a) * * *

(b)(1) Motor carriers with 50 or more "drivers subject to testing" on December 21, 1989, are required to implement a controlled substance testing program that meets the requirements of this subpart, except for random and "non-suspicion-based post-accident testing," by:

(i) December 21, 1989, for "drivers subject to testing"; and

(ii) December 21, 1990, for all commercial motor vehicle drivers.

(2) Motor carriers with 50 or more "drivers subject to testing" on December 21, 1989, are required to implement random and "non-suspicion-based post-accident testing" by November 14, 1991, for all commercial motor vehicle drivers.

(c) Motor carriers with fewer than 50 "drivers subject to testing" on December 21, 1989, are required to implement a controlled substance testing program that meets the requirements of this subpart, except for random and "non-suspicion-based post-accident testing," by December 21, 1990, for all commercial motor vehicle drivers.

(d) All motor carriers shall have a drug testing program which conforms to this subpart and 49 CFR part 40 by January 1, 1992, or by the date a motor carrier begins motor carrier operations, whichever is later.

* * * * *

[FR Doc. 91-19470 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS announces that amounts of the operational reserve are apportioned to the following domestic annual processing (DAP) fisheries: Pollock in the Bering Sea subarea, Atka mackerel in the Bering Sea and Aleutian Islands area (BSAI), and squid in the BSAI. This action is necessary to promote optimum use of groundfish in the BSAI area. The intent of this action is to carry out objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective 12 noon Alaska local time (A.l.t.), August 13, 1991, through 12 midnight A.l.t., December 31, 1991. *Comments* are invited through August 28, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and 50 CFR part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area.

Total allowable catch (TAC) specifications for target species and the "other species" category are specified annually within the OY range and apportioned by subarea (§ 675.20(a)(2)).

In accordance with § 675.20(a)(3), 15 percent of the TAC for each target species category is placed in a reserve, and the remaining 85 percent of the TAC for each target species is apportioned between domestic annual harvesting and the total allowable level of foreign fishing. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species category provided that such apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species category. As established in § 675.20(b)(1)(i), NMFS will apportion reserve amounts to a target species category as needed.

The initial TACs specified for pollock in the Bering Sea subarea, Atka mackerel in the BSAI, and squid in the BSAI, are 1,105,000 mt, 20,400 mt, and

850 mt, respectively (56 FR 6290; February 15, 1991). The current total TAC for all groundfish in the BSAI area is 1,712,750 mt, which includes a prior apportionment (56 FR 12853; March 28, 1991). Under the authority provided at § 675.20(b)(1)(i), NMFS finds that these fisheries require additional amounts of groundfish and apportions reserve amounts as follows: To the pollock fishery in the Bering Sea subarea—195,000 mt; to the Atka mackerel fishery in the BSAI—3,600 mt; and to the squid fishery in the BSAI—250 mt (see Table 1). The apportionment to the Atka mackerel fishery does not reopen that fishery. These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of Bering Sea pollock stocks or BSAI Atka mackerel and squid stocks, as the revised TACs are equal to or less than the acceptable biological catch (ABC) for those stocks. Under the definition of overfishing contained in the FMP, exceeding the ABC would cause overfishing. The ABCs are as follows: For pollock in the Bering Sea subarea—1,676,000 mt, for Atka mackerel in the BSAI—24,000 mt, and for squid in the BSAI—3,800 mt.

Classification

This action is taken under 50 CFR 675.20 (a)(8) and (b)(1)(i), and is in compliance with Executive Order No. 12291.

Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP pollock operations who otherwise would be unnecessarily prohibited from fishing due to a premature closure. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and comment or delaying the effective date of this notice is impractical and contrary to the public interest. However, interested persons are invited to submit comments in writing to the above address until August 28, 1991.

Lists of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 13, 1991.

David S. Crestin,

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

TABLE 1.—APPORTIONMENT OF RESERVE IN THE BERING SEA-ALEUTIAN ISLANDS MANAGEMENT AREA

[Values are in metric tons]

	Current TAC	This action	Revised TAC
Pollock (Bering Sea subarea)			
ABC=1,676,000			
DAP	1,105,000	+195,000	1,300,000
Atka mackerel (BSAI)			
ABC=24,000			
DAP	20,400	+3,600	24,000
Squid (BSAI)			
ABC=3,800			
DAP	850	+250	1,100
Total BSAI			
ABC=2,932,485			
DAP	1,712,750	+198,850	1,911,600
Reserve	287,250	−198,850	88,400

[FR Doc. 91–19582 Filed 8–13–91; 11:39 am]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 901199–1021]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Recision of prohibition of retention of groundfish.

SUMMARY: NMFS is allowing directed fishing for "Other Rockfish" by vessels using hook-and-line, pot, and jig gear in the Aleutian Islands (AI) subarea. This action is necessary to achieve the total allowable catch (TAC) for "Other Rockfish" in the AI subarea. The intent of this action is to ensure optimum use of "Other Rockfish" stocks.

EFFECTIVE DATES: 12:00 noon Alaska local time (A.l.t.), August 13, 1991, through 12 midnight A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands Management Area (BSAI) under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations set forth at 50 CFR 611.93 and 50 CFR part 675.

TAC's for target species and the "Other Species" category are specified annually and apportioned by subarea (§ 675.20(a)(2)). The initial 1991 TAC specified for "Other Rockfish" in the AI subarea is 786 metric tons (mt), all of which was apportioned to domestic annual processing (DAP) (56 FR 6290; February 15, 1991).

Previously, the Director of the Alaska Region of NMFS (Regional Director) had determined, under § 675.20(a)(9), that the TAC for "Other Rockfish" in the AI subarea would be reached on May 3, 1991, and required that they be treated in the same manner as prohibited species under § 675.20(c), from 12 noon A.l.t., May 3, 1991, through 12 midnight A.l.t., December 31, 1991, (56 FR 21450; May 9, 1991). As of July 21, 1991, the harvest of "Other Rockfish" was 363 mt, or 46 percent of the TAC.

Under § 675.20(e)(1)(i), NMFS took measures to prevent overfishing of Atka mackerel, including prohibition of all trawling in the AI subarea effective July 10, 1991, through the remainder of the fishing year (56 FR 32338; July 16, 1991).

In order to follow fisheries with other gear types for remaining groundfish targets to continue, NMFS is allowing the directed fishery for "Other Rockfish" by vessels using hook-and-line, pot, and jig gear to resume as of August 5, 1991. Under §§ 675.20(e) (2)(iii) and (3)(iv), the Regional Director has determined that

this measure will both allow harvest of the TAC for "Other Rockfish" and conform with the least restrictive adjustment to allow for the prevention of overfishing of Atka mackerel, as trawling in the AI subarea continues to be prohibited.

Classification

This action is taken under §§ 675.20(a)(9) and 675.20 (c) and (e) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 13, 1991.

David S. Crestin,

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

[FR Doc. 91–19583 Filed 8–13–91; 11:40 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 159
Friday, August 16, 1991

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

Federal Grain Inspection Service

7 CFR Part 800

Aflatoxin Testing Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This notice corrects a proposed rule document (91–18364) published in the **Federal Register** on August 6, 1991, (56 FR 37302) concerning the aflatoxin testing service requirements for export corn shipments.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0619 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: FGIS is correcting errors in proposed § 800.15(b)(1)(ii) of the regulations under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) which appeared in the August 6, 1991, **Federal Register** (56 FR 37302). On page 37303, in the second column, under "Services," § 80.15(b)(1)(ii) incorrectly reads "having all corn, as defined in Part 800–401, exported from the United States tested for aflatoxin contamination unless the buyer and seller agree not to have the corn tested by an entity other than FGIS." The correction to proposed § 800.15(b) reads as follows:

§ 800.15 Services.

* * * * *

(b) *Responsibilities for complying with the official inspection, aflatoxin testing, and weighing requirements*—(1) *Export grain.* Exporters are responsible for: (i) Complying with all inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the Act and the regulations applicable to export grain and (ii) having all corn, as defined in § 810.401, exported from the United States tested for aflatoxin contamination unless the buyer and seller agree not to have the corn tested. The FGIS shall perform the aflatoxin testing service unless the buyer and seller agree to have the corn tested by an entity other than FGIS.

Dated: August 13, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91–19566 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV–91–417]

Georgia Vidalia Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 955 for the 1991–92 fiscal period. Authorization of this budget would permit the Vidalia Onion Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 26, 1991.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 145 handlers of Georgia Vidalia onions under this marketing order, and approximately 250 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Vidalia onions. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on July 18, 1991, and unanimously recommended a 1991–92 budget of $192,800, $10,047 more than the previous year. Increases in the dues and subscriptions, liability insurance and bond, professional fees, office overhead, supplies and printing, postage and courier, and research categories will be partially offset by decreases in the auto expense, furniture/equipment lease, telephone and marketing categories. Since much of the travel expense has been for marketing activities, the major part of this expense has been moved to the marketing category. A portion of the marketing budget includes a supplemental category that will only be implemented upon anticipation of budgeted income being realized. The committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag of onions, the same rate as last season's. This rate, when applied to anticipated shipments of 1.50 million 50-pound bags, would yield $150,000 in assessment income. This, along with $25,750 in miscellaneous income and $17,050 from the Committee's authorized reserve would be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1991–92 fiscal period, estimated at $76,000 would be within the maximum permitted by the order of three fiscal periods' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the program begins on September 16, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Vidalia onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 955 be amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

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

2. A new § 955.204 is added to read as follows:

§ 955.204 Expenses and assessment rate.

Expenses of $192,800 by the Vidalia Onion committee are authorized, and an assessment rate of $0.10 per 50-pound bag of Vidalia onions is established for the fiscal period ending September 15, 1992. Unexpended funds may be carried over as a reserve.

Dated: August 12, 1991.

William J. Doyle,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–19631 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–148–AD]

Airworthiness Directives; SAAB-Scania Models SF–340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain SAAB-Scania Models SF–340A and SAAB 340B series airplanes, which would require modification of the exit and dome light assemblies. This proposal is prompted by a recent design review which revealed that the existing combinations of power supply loads and the inflight temperature gradient for the power packs in the emergency lighting system can lead to a reduction in power pack operating time. This condition, if not corrected, could result in premature failure of the emergency lights after an emergency landing.

DATES: Comments must be received no later than October 7, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–148–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–148–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes. A recent design review revealed that the existing combinations of power supply loads and the in-flight temperature gradient for the power packs while operating the emergency lighting system can lead to a reduction in the operating time to below the 10 minutes required under the provisions of § 25.812(i) of the Federal Aviation Regulations. This condition, if not corrected, could result in premature failure of the emergency lights after an emergency landing.

SAAB has issued Service Bulletin 340-33-030, Revision 1, dated April 29, 1991, which describes procedures for modification of the exit and dome light assemblies to reduce emergency lighting power pack electrical loads. After modification, the emergency lights will meet the intensity and duration requirements of the Federal Aviation Regulations. The LFV has classified this service bulletin as mandatory, and has issued Swedish Airworthiness Directive SAD 1-047 addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the exit and dome light assemblies in accordance with the service bulletin previously described.

It is estimated that 121 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $297 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,592.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

SAAB-Scania: Docket No. 91-NM-148-AD.
Applicability: Model SF-340A series airplanes, Serial Numbers 004 through 159; and Model SAAB 340B series airplanes, Serial Number 160 through 179; certificated in any category.
Compliance: Required as indicated, unless previously accomplished.

To prevent premature failure of the emergency lights after an emergency landing, accomplish the following:

(a) Within 120 days after the effective date of this AD, modify the exit and dome light assemblies, in accordance with SAAB Service Bulletin 340-33-030, Revision 1, dated April 29, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on August 6, 1991.

Darrell M. Peterson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19579 Filed 8-16-91; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AGL-7]

Proposed Transition Area Establishment; Cook, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Cook, MN, transition area to accommodate a new nondirectional beacon (NDB) runway 31 Standard Instrument Approach Procedure (SIAP) to Cook Municipal Airport. The SIAP is predicated on a non-federal NDB located on the airport. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Cook Municipal Airport. If approved, concurrent with the SIAP publication, the operating status of the airport would change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before September 20, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 91-AGL-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System

Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Comments 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. 91-AGL-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. 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 § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Cook, MN. The transition area is being established to accommodate a new NDB runway 31 SIAP to Cook Municipal Airport, Cook, MN. The SIAP is predicated on a non-federal NDB located on the airport. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Cook Municipal Airport. If approved, the operating status of the airport would change from VFR to IFR concurrent with the SIAP publication.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA had 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 12291; (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 the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Cook, MN [New]

That airspace extending upward from 700 feet above the surface within a 7-nautical mile radius of Cook Municipal Airport (lat. 47°49'30" N., long. 92°41'30" W.), Cook, MN.

Issued in Des Plaines, Illinois on August 1, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-19575 Filed 5-15-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-120-86]

RIN 1545-03

Capitalization of Interest

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement of section 263A(f) of the Internal Revenue Code to capitalize interest with respect to the production of property. Section 263A(f) was enacted by the Tax Reform Act of 1986 (the 1986 Act"), Public Law No. 99-514, and amended by the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act"), Public Law No. 100-647. The proposed regulations provide guidance necessary for taxpayers to comply with the requirement to capitalize interest with respect to certain property produced by the taxpayer.

DATES: Written comments must be received by October 15, 1991.

Outlines for persons wishing to speak at the public hearing scheduled for November 20, 1991, must be received by November 6, 1991. See the Notice of Public Hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to speak at the public hearing, and outlines

of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, attn: CC:CORP:T:R room 5228 (IA–120–86). In the alternative, comments and requests may be hand-delivered to: Internal Revenue Service, attn: CC:CORP:T:R (IA–120–86), room 5228, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mary Goode (202) 566–3826, concerning the hearing, Robert Boyer (202) 377–9231 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in this regulation are in §§ 1.263A(f)–1(d)(2)(ii), 1.263A(f)–2(d), 1.263A(f)–2(e)(1)(ii), 1.263A(f)–2(e)(2)(iv), 1.263A(f)–2(f)(2)(iv)(C), 1.263A(f)–2(f)(3)(iv), and 1.263A(f)–9. This information is required by the Internal Revenue Service to verify that taxpayers have capitalized interest with respect to designated tangible personal property, to process requests by taxpayers to change their method of accounting for the capitalization of interest and to segregate activities in calculating the amount of interest required to be capitalized. The likely respondents and recordkeepers are businesses and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for record maintenance and collection of information. They are based upon such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require greater or less time, depending on their particular circumstances.

The burden estimate for reporting requirements for a change in method of accounting under the regulation is reflected in the burden of Form 3115, and is not reflected in the burden estimate set forth below.

The estimated total annual reporting and recordkeeping burden is 125,100 hours.

The estimated average annual reporting burden per respondent is 2 hours.

The estimated average annual recordkeeping burden per recordkeeper is 15 minutes.

The estimated number of respondents is 50.

The estimated number of recordkeepers is 500,000.

Background

This document proposes to add new §§ 1.263A(f)–1 through 1.263A(f)–9 to part 1 of title 26 of the Code of Federal Regulations. The proposed regulations conform the Income Tax Regulations to the requirements of section 263A(f) of the Code, as enacted by section 803(a) of the 1986 Act, and as amended by section 1008(b)(4)(A)–(B) of the 1988 Act.

The proposed regulations implement the statutory requirement that interest be capitalized with respect to the production of certain designated property. Under the statute, this property includes all real property and tangible personal property that has either a class life of 20 years or more, an estimated production period of more than 2 years, or an estimated production period of more than 1 year and an estimated cost of production of more than $1,000,000. The proposed regulations define the term "real property" and explain the application of the classification thresholds for tangible personal property.

The proposed regulations describe the avoided cost method, which taxpayers are required, under section 263A(f)(2)(A), to use to determine the amount of interest that must be capitalized with respect to designated property. In general, interest incurred on debt that is directly attributable to production expenditures with respect to designated property (traced debt) is capitalized first. To the extent that production expenditures with respect to designated property exceed the amount of traced debt, interest on any other debt of the taxpayer is capitalized to the extent that such interest could have been reduced if production expenditures had not been incurred.

The proposed regulations include several provisions designed to reduce administrative complexity without undermining the principles of section 263A(f). These provisions include (1) a de minimis rule exempting certain insignificant activities from the requirement to capitalize interest; (2) an exception from the requirement to capitalize interest for inventory property that has a class life of 20 years or more but does not satisfy the other classification thresholds for tangible personal property; (3) an election not to trace debt to designated property; (4) an election to calculate interest under the avoided cost method on a taxable year basis in lieu of a monthly or more frequent basis; and (5) a simplified method to calculate the amount of interest required to be capitalized with respect to certain inventory property.

Explanation of Provisi

In General

The uniform capitalization rules of section 263A generally require the capitalization of direct costs and all indirect costs that directly benefit or are incurred by reason of the production of property or the acquisition of property for resale. Section 263A(f) contains special rules for capitalizing interest with respect to certain property produced by the taxpayer and for determining the amount of interest required to be capitalized.

In general, section 263A(f)(1) limits capitalization to interest that is paid or incurred during the production period of only specified categories of property (designated property). Designated property includes all real property and certain tangible personal property.

Section 263A(f)(2) provides that the avoided cost method is to be used for determining the amount of interest required to be capitalized. Under the avoided cost method, interest on any indebtedness directly attributable to production expenditures with respect to designated property (*i.e.*, traced debt) is assigned to the property and capitalized first. Interest on any other indebtedness is assigned to designated property and capitalized to the extent that the taxpayer's interest costs theoretically could have been reduced if production expenditures (in excess of those to which indebtedness is directly attributable) had not been incurred.

The legislative history indicates that the avoided cost method is based on rules similar to those applicable under former section 189. S. Rep. No. 313, 99th Cong., 2d Sess. 144 (1986). The legislative history underlying former section 189 indicates that the rules contained in Financial Accounting Standards Board (FASB) Statement No. 34, as amended, apply to the capitalization of interest under section 189. See H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. 484–85 (1982).

Section 263A(f)(3) requires the capitalization of interest on indebtedness that is allocable under the

avoided cost method to property that is used to produce designated property.

Section 263A(i) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the uniform capitalization rules, including regulations to prevent the use of related parties, pass-through entities, or intermediaries to avoid these rules. The Secretary is also authorized to adopt in the regulations simplifying methods and assumptions where, in its judgment, the costs and other burdens of literal compliance may outweigh the benefits. S. Rep. No. 313, 99th Cong., 2d Sess. 142 (1986).

Notice 88–99

On August 16, 1988, the Service published Notice 88–99, 1988–2 C.B. 422, to provide interim guidance to taxpayers in advance of the proposed regulations under section 263A(f). The guidance provided in Notice 88–99 included the following:

(1) The date on which the production period of designated property begins;

(2) The definition of interest subject to capitalization;

(3) The rules for determining whether debt is directly attributable to production expenditures (the tracing rules);

(4) An election to avoid the tracing rules;

(5) The definition of eligible debt, including a rule that excludes debt between related parties that bears a less-than-adequate rate of interest;

(6) A rule suspending the deferral of intercompany interest income under § 1.1502–13(c) where the corresponding interest expense is capitalized by another member of the consolidated group;

(7) A description of the avoided cost method;

(8) A prohibition on the netting of interest income and interest expense in determining the amount of interest capitalized;

(9) A rule providing that only the adjusted bases of assets that are used in a reasonably proximate manner for the production of designated property are to be included in accumulated production expenditures;

(10) A rule requiring cash method taxpayers to capitalize the amount of interest incurred under the accrual method during the production period;

(11) A requirement that taxpayers generally compute the amount of interest required to be capitalized using a monthly or more frequent computation; and

(12) Rules for capitalizing interest with respect to related parties where a producing taxpayer has insufficient eligible debt, including optional methods for making these calculations.

This proposed regulation will generally, when effective, replace the rules contained in Notice 88–99. This proposed regulation does not, however, provide comprehensive rules for capitalizing interest with respect to related parties. A separate regulation will be proposed at a future date to more fully address related party issues. The related-party rules contained in Notice 88–99 continue to apply unless and until they are modified.

Real Property

Designated property is defined in § 1.263A(f)–1(b) to include all real property that is produced by the taxpayer. The proposed regulations define the term "real property" generally to include land, unsevered natural products of land, buildings, inherently permanent structures, and improvements. Thus, under the proposed regulations, capitalization of interest is required with respect to property such as power generating facilities, oil and gas pipelines and wells, telecommunication cables, and similar property. Real property includes structural components of buildings. Inherently permanent structures include any property of a type that would have qualified for the investment credit under section 38 because it would be classified as other tangible property by § 1.48–1(d).

The definition of real property contained in the proposed regulations is consistent with the definition of real property under former section 189. The legislative history under former section 189, for example, suggests an expansive definition of real property, encompassing both buildings and improvements. Similarly, when Congress extended the scope of former section 189 to C corporations, it was apparent that Congress contemplated that former section 189 applied to pipelines and other land improvements. See Discussion of the Senate Finance Committee regarding H.R. 4961, 128 Cong. Rec. S8977–8982 (daily ed. July 22, 1982); S. Prt. No. 169, 98th Cong., 2d Sess. 280 n.19 (1984).

Unsevered Natural Products

Under the proposed regulations, unsevered natural products of land are also real property. Thus, the drilling of an oil well is the improvement of real property and is subject to interest capitalization. For purposes of the proposed regulations, however, growing crops and plants that do not have a preproductive period exceeding 2 years are not treated as real property. Thus, although the activity of growing is a production activity under the proposed regulations, short-term plants and crops (those with a preproductive period of not more than 2 years) are not subject to interest capitalization. In contrast, except as otherwise specified, plants and crops that have a preproductive period of more than 2 years are subject to interest capitalization.

Thresholds For Tangible Personal Property

Tangible personal property produced by the taxpayer is designated property only if it has a class life of 20 years or more (long-lived property), an estimated production period of more than 2 years (2-year property), or an estimated production period of more than 1 year and an estimated total cost of more than $1,000,000 (1-year property). Rules for applying these classification thresholds that determine whether tangible personal property is designated property are provided in § 1.263A(f)–1(d)(2) of the proposed regulations. Under the proposed regulations, the term "tangible personal property" has the same meaning as in § 1.263A–1T(a)(5)(iii) and this includes certain properties that are treated as intangible under other Code sections. See, e.g., Rev. Rul. 89–23, 1989–1 C.B. 85.

The same property class lives that are used under section 168 are used to determine whether property has a class life of 20 years or more (long-lived property). See Rev. Proc. 87–56, 1987–2 C.B. 674, *clarified and modified by*, Rev. Proc. 88–22, 1988–1 C.B. 785. The proposed regulations provide that the long-lived property rule applies to tangible personal property only if it is produced for self use by the taxpayer or a related party. As a result, even if inventory property has a class life of 20 years or more, interest capitalization is not required if the inventory does not have an estimated production period exceeding 2 years or an estimated production period exceeding 1 year and an estimated cost exceeding $1,000,000.

The classification thresholds are applied separately to each unit of tangible personal property, based on the production period for the unit of property and, in the case of 1-year property, the estimated total cost of the unit of property. The activities of all related parties of the taxpayer are taken into account in applying the classification thresholds. For this purpose, a related party includes any person described in section 267(b) or 707(b).

The total cost and production period thresholds are applied on the basis of reasonable estimates made by the taxpayer at the beginning of the production period. Thus, if a taxpayer's estimates are reasonable at the beginning of the production period, no reclassification is required or permitted, even if the actual cost of, or the actual production period for, a unit of property would have resulted in a different classification of the property than that resulting from the estimates. The cost of assets used to produce a unit of property is not taken into account in applying the classification thresholds even though this cost is included in accumulated production expenditures for purposes of determining the amount of interest that must be capitalized with respect to the unit of property.

Definition of "Production"

Property is produced within the meaning of the proposed regulations if the property is produced within the meaning of section 263A(g) and § 1.263A–1T(a)(5)(ii). Accordingly, the term "produce" includes construct, build, install, manufacture, develop, improve, create, raise, or grow. In accordance with section 263A(g)(2), real or tangible personal property produced under a contract for the taxpayer is treated as produced by the taxpayer and therefore is treated as designated property if the conditions for capitalization are otherwise satisfied.

Any improvement to property, within the meaning of § 1.263(a)–1(b), constitutes the production of property. Thus, any improved real property is designated property. For example, the clearing of land, the drilling of an oil or gas well, and the demolition or renovation of an existing building involve the production of designated property.

With respect to tangible personal property, any improvement to property that was previously treated as designated property is also treated as designated property. If tangible personal property has not previously been treated as designated property, an improvement to such property constitutes the production of designated property only if the improvement independently meets the classification thresholds.

De Minimis Exception

Section 1.263A(f)–1(b)(3)(iii) of the proposed regulations provides a de minimis exception from the interest capitalization requirements for any property (or improvement to existing property) that has a production period of not more than 3 months and a total cost of production of not more than $10,000. This de minimis exception applies to both real property and tangible personal property. Because the de minimis exception is limited to property (or improvements) with a 3-month or less production period, the exception applies on the basis of the actual production period and cost of production rather than on the basis of the estimated production period and cost.

Overview of Avoided Cost Method

The avoided cost method described in § 1.263A(f)–2 requires the capitalization of interest that theoretically would have been avoided if production expenditures had been used to repay outstanding debt rather than to produce designated property. This method assumes that debt (and the corresponding interest) is used to finance production expenditures before any other funds that may be available are used to finance those production expenditures. The proposed regulations therefore provide that restrictions concerning repayment do not eliminate the requirement to capitalize interest. In addition, the actual use of debt proceeds for a purpose other than the production of designated property does not affect the requirement to capitalize interest on the debt.

Eligible Debt

Under the proposed regulations, the calculation of the amount of interest required to be capitalized is made by reference to eligible debt. Eligible debt generally includes all debt of the taxpayer on which interest is deductible in computing taxable income. A special rule is provided for indebtedness to parties related to the taxpayer within the meaning of section 267(b) or 707(b). Under this rule, any debt to a related party that bears interest at a rate that does not equal or exceed the applicable Federal rate under section 1274(d) in effect on the date of issuance is not treated as eligible debt.

Although the definition of eligible debt in the proposed regulations is generally consistent with that provided in Notice 88–99, the proposed regulations depart from Notice 88–99 with respect to the treatment of debt, such as accounts payable, that does not bear interest. Under Notice 88–99, this debt was generally considered eligible debt, except in the case of a related lender. However, treating noninterest bearing debt as eligible debt potentially distorts the rate at which interest is capitalized and is inconsistent with the general intent of Congress that the interest capitalization rules follow the principles of the avoided cost method of FASB Statement No. 34. Paragraph 16 of Statement No. 34 recognizes that expenditures to which capitalization rates are applied should include only amounts that have required the payment of cash or the incurring of an interest bearing liability. The inclusion of noninterest bearing liabilities in the calculation of the weighted average interest rate would conflict with a determination of expenditures that does not include expenditures incurred with such liabilities.

Accordingly, the proposed regulations modify Notice 88–99 with respect to noninterest bearing debt owed to unrelated parties. Under the proposed regulations, noninterest bearing debt is excluded from the definition of eligible debt unless the debt is treated as traced debt (or, if the taxpayer makes an election not to trace debt, is debt that would be treated as traced debt in the absence of such an election). In the case of traced debt, any implicit interest reflected in the debt will also be reflected in production expenditures and, therefore, the interest rate will not be distorted by treating such debt as eligible debt.

Computational Procedures

Under the avoided cost method, a traced debt amount and an excess expenditure amount are required to be capitalized with respect to each unit of designated property for each computation period (explained below) that includes a measurement date for the unit of property. A measurement date is a date on which accumulated production expenditures are calculated during a computation period for the purpose of determining traced debt, and nontraced debt, and for computing average excess expenditures for the computation period. The first measurement date for a unit of designated property is the first measurement date following the beginning of the production period and the final measurement date is the first measurement date following the end of the production period.

The traced debt amount is the amount of interest that is incurred on traced debt during the computation period. Traced debt is eligible debt that is directly allocable to accumulated production expenditures. Consistent with Notice 88–99, the proposed regulations provide that the interest allocation principles under § 1.163–8T must be used to determine whether debt is traced debt. The proposed regulations permit taxpayers, for administrative convenience, to elect not to trace debt. The making or revocation of such an election is a change in method of

accounting that requires the consent of the Commissioner.

The calculation of the excess expenditure amount involves two steps. The first step is to determine average accumulated production expenditures in excess of traced debt (average excess expenditures) for each unit of designated property.

The second step is to determine a weighted average interest rate on the taxpayer's eligible debt that is not directly allocable to accumulated production expenditures (nontraced debt) for the computation period and apply that rate to the average excess expenditures for each unit of designated property. The product of the weighted average interest rate and the average excess expenditures is the excess expenditure amount. The taxpayer must capitalize the excess expenditure amount for each unit of designated property to the extent of interest that is incurred and that would be deducted if section 263A(f) did not apply.

In calculating the weighted average interest rate, certain debt is disregarded in order to prevent a distortion of the rate (*e.g.*, below market rate debt between related parties and noninterest bearing debt). Once the weighted average interest rate is used to determine the excess expenditure amount, however, interest (whether or not incurred at a below market rate) that would be deducted if section 263A(f) did not apply is subject to capitalization up to the excess expenditure amount. This calculation ensures that interest is capitalized to the extent required by the avoided cost method.

Computation Period

Notice 88–99 requires taxpayers to calculate the amount of interest required to be capitalized on a monthly or more frequent basis. Because monthly calculations may not be necessary in all circumstances to determine the appropriate amount of interest to be capitalized, the proposed regulations allow taxpayers to elect to calculate interest under the avoided cost method using the taxable year as the computation period, provided that average excess expenditures and average nontraced debt are computed on the basis of quarterly or more frequent measurement dates. Taxpayers electing to use the taxable year as the computation period must calculate a weighted average interest rate on nontraced debt for the entire taxable year, and apply this rate to the average excess expenditures for each unit of designated property for the taxable year. Taxpayers may elect a computation period that is shorter than the taxable year provided all computation periods within the taxable year are the same length.

In certain instances the use of quarterly measurement dates may increase the amount of interest that must be capitalized. In order to minimize instances of increased capitalization the proposed regulations allow taxpayers to modify the frequency of their measurement dates from year to year. In addition, the District Director may require the use of more frequent measurement dates to accurately capitalize interest for a computation period.

A change in the selection of a computation period is a method of accounting that requires the consent of the Commissioner. The selection of measurement dates, however, is not treated as a change in method of accounting.

Guaranteed Payments

Under the proposed regulations, guaranteed payments for the use of capital under section 707(c) are subject to capitalization under certain circumstances. If the partnership's excess expenditure amount for all units of designated property exceeds the total amount of the partnership's interest that is incurred and that would be deducted if section 263A(f) did not apply for the computation period, the partnership must capitalize guaranteed payments for the use of capital (as a substitute for interest) to the extent of the excess, before applying the related party rules under § 1.263A(f)–8.

Notional Principal Contracts

The treatment of amounts paid, received, or accrued with respect to notional principal contracts is reserved under the proposed regulations. Although the proposed regulations do not address this issue, comments and suggestions are invited.

Ordering Rules

Section 263A(f) has priority over certain provisions that affect the treatment of interest, including section 163(d) (investment interest limitation), section 163(j) (limitation on exempt related person interest), section 266 (election to capitalize carrying charges), section 469 (passive loss limitation), and section 861 (allocation of interest to United States sources). Consequently, interest is capitalized under section 263A(f) before these provisions apply. Under the proposed regulations, interest that is capitalized under section 263A(f) is not subject to these provisions. However, in applying section 263A(f) with respect to average excess expenditures, interest that is neither investment interest under section 163(d), passive interest under section 469, nor exempt related person interest under 163(j) is capitalized before any interest that is either investment interest, passive interest, or exempt related person interest. Interest is subject to the above provisions to the extent it is not capitalized under section 263A(f).

Deferred or Contingent Interest

The amount of interest incurred (using economic accrual principles) during a computation period is the amount of interest that is subject to capitalization under section 263A(f). Under the proposed regulations, however, interest is generally not required or permitted to be capitalized until the taxable year in which it would be deducted if section 263A(f) did not apply. This rule is consistent with the provisions of section V. of Notice 88–99 concerning the amount of interest that must be capitalized by a cash method taxpayer.

The proposed regulations provide special rules for applying the avoided cost method when interest (including contingent interest) is incurred during a computation period but is not deductible for that period because of a deferral provision (*e.g.*, sections 163(e)(3), 267, 446, and 461). These special rules apply to the deferral amount with respect to both traced debt and nontraced debt. The deferral amount equals the sum of (1) the amount of interest on traced debt that is incurred and deferred during a computation period (the deferral period) and (2) the amount of interest required to be capitalized with respect to average excess expenditures that is incurred and deferred during the deferral period.

If the special rules apply, the taxpayer may choose one of two methods of accounting for the deferred interest: the substitute cost method or the deferred capitalization method. Under the substitute cost method, the taxpayer must capitalize costs that would be deducted during the deferral period if section 263A(f) did not apply (substitute costs) in an amount equal to the deferral amount. Under the deferred capitalization method, the taxpayer must capitalize the deferral amount in the computation period in which the deferred interest would be deducted if section 263A(f) did not apply. The treatment of this interest in the computation period in which it would be deducted if section 263A(f) did not apply depends on the character and disposition of the designated property to which the deferred interest relates. If the designated property has already been sold, the deferred interest is taken into

account in the computation period in which it would be deducted if section 263A(f) did not apply in the same manner as if the property had been sold in that period. If the designated property is depreciable and has not been sold, the interest is added to the adjusted basis of the property and recovered over the remaining recovery period of the property. The proposed regulations provide rules for redetermining the recovery percentage that applies to each subsequent year. See also Prop. § 1.168–2(d)(3).

Simplified Inventory Method

The Service has provided a simplified method for determining the amount of interest that must be capitalized with respect to inventory property. The simplified inventory method in the proposed regulations is similar to the simplified production method that § 1.263A–1T(b)(5) provides for noninterest costs that must be capitalized. Under this method, the amount that must be capitalized is taken into account as an aggregate adjustment to the ending inventory value (determined by using the simplified production method, if applicable).

Under the simplified inventory method, the amount of interest that must be capitalized is calculated on the basis of several simplifying assumptions. First, the taxpayer must determine the weighted average interest rate for all eligible debt other than debt that is traced debt with respect to designated noninventory property. Second, the taxpayer must determine accumulated production expenditures using the taxpayer's inverse inventory turnover rate for the taxable year. The inverse inventory turnover rate equals the ratio of the average of beginning and ending inventory (determined using total current cost for the inventory year) divided by cost of goods sold for the year. Third, the taxpayer must separate total ending inventory into equal segments by dividing the total ending inventory value by the inverse inventory turnover rate. Each inventory segment is assigned an age starting with 1-year, and ending with the total number of years for which there are inventory segments. Fourth, the taxpayer must compute an interest factor for each segment that reflects annual compounding of the weighted average interest rate based on the age of that segment. Finally, the taxpayer must apply the interest factors to each corresponding segment and then combine the results of each application to produce an aggregate interest capitalization amount. The simplified inventory method must be elected with respect to all inventory within a trade or business. If the overall inverse inventory turnover rate for a trade or business is less than one or if the inventory in that trade or business contains any property that is not designated property, the taxpayer is not eligible to use the simplified inventory method for that trade or business.

Deferred Intercompany Transactions

Notice 88–99, section II. (A) provides that if a member of a consolidated group is required to capitalize interest expense from an intercompany loan, the corresponding interest income of the lending member is not deferred by reason of § 1.1502–13(c), even though the interest arises in a deferred intercompany transaction. Commentators have argued that the rule is overbroad because it requires current inclusion of interest in cases where the amount of currently included interest income on intercompany transactions exceeds the consolidated group's deductible interest on debt owed to nonmembers. Accordingly, the rule in the notice has been modified in the proposed regulations to provide that the amount of interest that must be taken into account by the lending member notwithstanding § 1.1502–13(c) is limited to the combined amount of interest that is deductible by the entire group for that year (excluding interest on loans from other members of the group) after applying section 263A(f).

Definition of Property Unit

Section 1.263A(f)–3 of the proposed regulations defines the unit of property, which is used for purposes of (1) measuring the production period, (2) accumulating production expenditures, and (3) applying the classification thresholds to tangible personal property. The proposed regulations generally define the unit of property as comprising all components of a single project or asset (produced by the taxpayer and all related parties) that are functionally interdependent. The term "functionally interdependent" means that the placing in service of one component is dependent on the placing in service of another component or, in the case of property produced for sale, the components are customarily sold as a single unit.

In addition to treating functionally interdependent components as part of a unit of property, the proposed regulations require an allocable share of the costs of common features to be treated as accumulated production expenditures of a unit of real property, even though these features do not meet the functional interdependence test. A common feature includes any real property owned by the taxpayer or a related party that benefits real property produced by the taxpayer or a related party, and that is not held for the production of income separately from the property it benefits. Common features include streets, sidewalks, sewer lines, and other items of infrastructure, and the land associated with these items, if these items are not held for the production of income separately from the benefited property.

The proposed regulations provide a special rule for common features that are placed in service separately from the unit of real property that they benefit. Under existing law, to the extent a common feature is placed in service separately, the costs of the common feature are recovered separately from the costs of the benefited units. To the extent the common feature is not separately placed in service, the costs of its production are allocated to the basis of the benefited units and recovered when those units are sold or placed in service. Under the special rule, to the extent the common feature is separately placed in service prior to the end of the production of the unit of real property that it benefits, none of the cost of the common feature is included in the accumulated production expenditures of the unit for measurement periods beginning after the common feature is placed in service. In all other cases (in which the costs of the common feature are added to the basis of the unit of real property it benefits), the costs of the common feature are included in the accumulated production expenditures of the unit until the end of the production period of the benefited unit.

If production of the remainder of the unit of real property is completed before the completion of the common feature and the remainder of the unit is neither sold nor placed in service, interest capitalization continues with respect to the costs of the unit of property (including both the common feature and the remainder of the unit) until the common feature is completed or the remainder of the unit is sold or placed in service, whichever occurs first. The Internal Revenue Service invites suggestions concerning situations in which it would be appropriate to cease interest capitalization with respect to the remainder of a unit of real property if a de minimis amount of remaining production activities continue with respect to common features.

Accumulated Production Expenditures

Section 1.263A(f)–4 of the proposed regulations defines accumulated

production expenditures, which are relevant for determining the amount of interest that must be capitalized during each computation period and for applying the 1-year and 2-year tangible personal property classification thresholds. Production expenditures are accumulated separately for each unit of property. Accumulated production expenditures include all costs previously taken into account under the taxpayer's method of accounting and capitalized with respect to the unit of property. Thus, even though interest generally must be capitalized only to the extent it is incurred during the production period, all capitalized costs incurred before the production period, such as land and materials, and planning and design, are included in accumulated production expenditures. The proposed regulations provide that the costs of materials, supplies, or similar items are included in accumulated production expenditures with respect to a unit of property when the items are dedicated to the unit of property. Dedication is evidenced by associating an item with a unit of property, either physically or by record. In the case of units of real property, the costs of shared common features must be allocated to the benefited units under a method that reasonably reflects the benefits provided.

For purposes of determining accumulated production expenditures on any measurement date during any computation period, the interest required to be capitalized for the computation period is deemed to be capitalized on the day immediately following the end of the computation period. For any subsequent measurement dates and computation periods, that interest is included in accumulated production expenditures. See Notice 88–99, section IV. (A).

The proposed regulations require the adjusted bases of assets used to produce designated property to be included in accumulated production expenditures. See Notice 88–99, section IV. (B) and (C). The proposed regulations adopt a reasonable proximity test for determining whether inclusion of a particular asset's adjusted basis is required. Accordingly, machinery and equipment used directly or indirectly in the production process are included, while assets, including buildings, employed in service departments are excluded from accumulated production expenditures.

Subsequent Improvements to Real Property

The proposed regulations provide special rules for determining the accumulated production expenditures for an improvement to existing real property. First, accumulated production expenditures include all direct and indirect costs required to be capitalized with respect to the improvement, plus an allocable portion of the cost of associated land. In addition, the costs of existing property and common features that benefit or are incurred by reason of the improvement are included in accumulated production expenditures if they either are not already placed in service or must be taken out of service in order to complete the improvement, regardless of whether the taxpayer intends to sell or use the improved property. For example, if a taxpayer purchases an existing building for renovation, the basis of the building is included in accumulated production expenditures if the building is not placed in service as a depreciable asset during the renovation (or must be taken out of service during the renovation).

An improvement to real property also includes an allocable portion of associated land. Thus, even though the basis of land may have been included in accumulated production expenditures for the production of the original building, an allocable portion must also be included in accumulated production expenditures for the improvement.

Production Period

Section 1.263A(f)–5 of the proposed regulations defines the production period, which is generally the period during which interest is required to be capitalized. As in the case of accumulated production expenditures, the production period for capitalizing interest is measured with reference to the unit of property. In the case of real property, the production period begins with the commencement of physical activities on the property. For this purpose, physical activities do not include preliminary planning and design activities. In the case of tangible personal property, however, the production period begins on the date on which 5 percent or more of the total estimated accumulated production expenditures, including planning and design costs, have been incurred. See Notice 88–99, section I.

Under section 263A(f)(4)(B)(ii), the production period ends on the date on which the property is ready to be placed in service or is ready to be held for sale. Although property may be offered for sale or lease at a point during production at which it would be theoretically possible for the taxpayer to terminate its activities and undertake no further production of the property, an offering for sale or lease does not end the production period for capitalizing interest. Under the proposed regulations, the test for readiness takes into account all production activities reasonably expected to be undertaken by the taxpayer or a related party with respect to a unit of property. Accordingly, the production period ends in the case of both real property and tangible personal property on the date that all production activities reasonably expected to be undertaken with respect to the property by the taxpayer or a related party are completed, regardless of whether the property is offered for sale or lease in the interim.

Suspension Period

The proposed regulations provide for a suspension of the production period when all but a de minimis amount of production activities cease for a period of 12 consecutive months. If a 12-month period of cessation occurs, interest capitalization is not required for the period beginning with the 13th month of continuous cessation of activity and ending on the date that more than a de minimis amount of production activities resume.

Although the language of section 263A(f)(4)(B) does not expressly provide for an interruption of the interest capitalization period, the proposed regulations are consistent with the principles of FASB Statement No. 34, as expressed in paragraph 17, which provide for a temporary cessation of interest capitalization under certain conditions. For administrative convenience, and to avoid subjective determinations, the proposed regulations adopt an objective test that does not depend on the taxpayer's reason for stopping production.

Property Produced Under A Contract

Under section 263A(g)(2), a taxpayer (the customer) is treated as the producer of any property produced for the taxpayer under a contract. The proposed regulations provide special rules for determining the production period and accumulated production expenditures (and thus the classification and de minimis thresholds) with respect to property that is produced under a contract. Because the production of real property is not subject to the 1-year and 2-year classification thresholds, both the customer and the contractor with respect to real property produced under a contract are treated as producing designated property. The proposed regulations provide that the production period of real property produced under a contract (1) begins for the customer on the date that either the contractor or the

customer begins physical production activity, and (2) begins for the contractor on the date the contractor begins physical production activity.

In the case of tangible personal property produced under a contract, the customer and the contractor must independently apply the classification thresholds to determine whether the property is designated property with respect to each of them. The proposed regulations provide that the contractor's production period for this purpose generally begins on the date 5 percent or more of the contractor's total estimated accumulated production expenditures have been incurred. Because a customer could withhold payment in order to avoid satisfying the classification thresholds, the proposed regulations provide that, solely for purposes of applying the classification thresholds, the customer's production period is treated as beginning on the earlier of the date the contract is executed or the date the customer's accumulated production expenditures are at least 5 percent of the customer's total estimated production expenditures.

For all categories of property, the production period under the proposed regulations ends for the contractor at the same time it would end if the property were not produced under a contract (i.e., when all production activities reasonably expected to be performed are completed). However, the customer's production period does not end until the property is ready to be placed in service by the customer. Thus, the production period will continue for the customer when the customer or a related party expects to perform additional work to finish the property.

Under the proposed regulations, the customer includes any portion of the purchase price in accumulated production expenditures on the earlier of the date of payment to the contractor, using principles applicable to the cash method of accounting, or when economic performance is satisfied, for example, when the customer takes delivery of a portion of the property prior to payment. The customer also includes in accumulated production expenditures any other costs incurred as a result of its own activity that are required to be capitalized with respect to property produced under a contract. The contractor's accumulated production expenditures are reduced by the cumulative amount of payments from the customer determined using the principles applicable to the cash method of accounting.

Oil and Gas Properties

A separate section of the proposed regulations is devoted to illustrating the application of the general rules to the drilling of oil and gas wells. Section 1.263A(f)–6 applies the general principles contained elsewhere in the regulation to the special circumstances of oil and gas development. Consistent with the general rules, § 1.263A(f)–6 defines the beginning of the production period as the date on which site preparation begins. In the case of offshore drilling, site preparation generally means the positioning of a mobile drilling rig to drill an exploratory well.

Each well drilled for production is treated as a separate unit of property with a separate production period. Certain accumulated production expenditures, however, are determined with reference to the entire property (within the meaning of section 614). Thus, accumulated production expenditures include leasehold acquisition costs and costs of other common features associated with the property (within the meaning of section 614), in a manner analogous to the treatment of land acquired for development. Under the proposed regulations, if, at the time of drilling the first well, the taxpayer can specifically establish a plan showing the number and location of future wells to be drilled on the property, the taxpayer may partition the leasehold acquisition costs and costs of other common features equally among all specifically planned wells at the time of drilling the first well. However, if the taxpayer cannot establish such a plan, all acquisition costs and costs of other common features are included in accumulated production expenditures for the first well. If subsequent wells are drilled and the taxpayer has not partitioned at the time of drilling the first well, the leasehold acquisition costs and costs of other common features, the proposed regulations require an allocation of only a portion of the undepleted leasehold acquisition costs and costs of other common features, consistent with the reallocation of land costs required in the building construction context. The portion that is required to be reallocated to a subsequent well is determined by dividing the undepleted leasehold acquisition costs and costs of other common features by the total number of existing wells plus the total number of additional wells that feasibly could be developed on the property.

Effective Dates

In general, the proposed regulations are effective with respect to interest incurred in taxable years beginning after the date the proposed regulations become final, in the case of noninventory property, and for taxable years beginning after the date the proposed regulations become final, in the case of inventory property However, with respect to interest incurred in taxable years beginning on or before the date the proposed regulations become final, in the case of noninventory property, and for tax years beginning on or before the date the proposed regulations become final, in the case of inventory property, taxpayers must comply with an interpretation of the statute that is reasonable in light of the legislative history and any applicable administrative pronouncements.

Section 1.263A(f)–9(d) of the proposed regulations provides automatic consent for taxpayers to change their methods of accounting to the methods that are required or permitted by §§ 1.263A(f)–1 through 1.263A(f)–7. These automatic changes may be effected for the first taxable year that begins after the date the proposed regulations become final, or for an earlier year, provided all necessary amended returns are filed within a 120-day period after the date the proposed regulations become final. In the case of property that is inventory in the hands of the taxpayer, these automatic changes may be made, at the taxpayer's option, either on a cutoff basis or with a section 481(a) adjustment computed as of the beginning of the year of change. In the case of property that is not inventory in the hands of the taxpayer, these automatic changes must be made on a cutoff basis for the year of change.

The automatic changes do not apply if the taxpayer has failed to comply with an interpretation of the statute that is reasonable in light of the legislative history and any applicable administrative pronouncements. In that case, the taxpayer must request a change in method of accounting in accordance with the provisions of section 446(e) and § 1.446–1(e) and the change in method of accounting will be subject to such terms and conditions as the Commissioner may require.

Long-Term Contracts

Section 460(c)(3) provides that interest costs are allocated to long-term contracts in the manner provided in section 263A(f), subject to certain modifications contained in section 460(c)(3)(B) and (C). The guidance on the

special rules applicable to property produced under a longterm contract within the meaning of section 460(f) is expected to be contained in regulations issued under section 460.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. 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, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing is scheduled for November 20, 1991. Notice of the public hearing is published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Carol Conjura of the Office of Associate Chief Counsel (Technical), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.261–1 through 1.280H–1T

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sections 1.263A(f)–0 through 1.263A(f)–9 also issued under 26 U.S.C. 263A(i).

Par. 2. Section 1.263A–1T is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 1.263A–1T Capitalization and inclusion in inventory costs of certain expenses (temporary).

* * * * *

(b) * * *

(2) * * *

(iv) Allocation of interest expense to production activities. See §§ 1.263A(f)–0 through 1.263A(f)–9 for rules regarding the requirement to capitalize interest with respect to the production of certain property.

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Par. 3. New §§ 263A(f)–0 through 1.263A(f)–9 are added to read as follows:

§ 1.263A(f)–1 Outline of regulations under section 263A(f).

This section lists the paragraphs contained in §§ 1.263A(f)–1 through 1.263A(f)–9.

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1.263A(f)–1 Requirement to capitalize interest.

(a) *In general*—(1) *General rule.* Capitalization of interest under the avoided cost method described in § 1.263A (f)–2 is required with respect to the production of designated property described in paragraph (b) of this section.

(2) *Treatment of interest required to be capitalized.* In general, interest that is capitalized under this section is treated as a cost of the designated property and is recovered in accordance with § 1.263A–1T(a)(5)(i). Interest capitalized with respect to assets used to produce designated property (within the meaning of § 1.263A(f)–4(d)) is added to the basis of the designated property rather than the bases of the assets used to produce the designated property. Interest required to be capitalized with respect to the production of land is ordinarily added to the basis of any related depreciable improvements, such as buildings. If there are no depreciable improvements, interest is added to the basis of the improved land.

(b) *Designated property*—(1) *In general.* The term "designated property" means any property that is produced within the meaning of section 263A(g) and § 1.263A–1T(a)(5)(ii), and that is either:

(i) Real property; or

(ii) Tangible personal property that is either:

(A) Property with a class life of 20 years or more under section 168 (long-lived property), but only if the property is produced for the taxpayer's own use or that of a related party (within the meaning of section 707(b) or 267(b)) (self-use),

(B) Property with an estimated production period (as defined in § 1.263A(f)–5) exceeding 2 years (2-year property), or

(C) Property with an estimated production period exceeding 1 year and an estimated cost of production exceeding $1,000,000 (1-year property).

(2) *Special rules*—(i) *Application of thresholds.* The thresholds described in paragraphs (b)(1)(ii)(A), (B), and (C) of this section are applied separately for each unit of property (as defined in § 1.263A(f)–3).

(ii) *Related party activities.* For purposes of determining whether property is designated property, all activities and costs incurred by, or for, the taxpayer and any person related to the taxpayer within the meaning of section 267(b) or 707(b) that directly benefit or are incurred by reason of the production of the property are taken into account.

(3) *Excluded property.* Designated property does not include:

(i) Timber and evergreen trees that are more than 6 years old when severed from the roots;

(ii) Property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit;

(iii) Property that would otherwise be designated property, but that has a production period that does not exceed 3 months and a total cost of production that does not exceed $10,000. For purposes of applying this paragraph (b)(3)(iii), the cost of any land or property used to produce the property is excluded.

(c) *Definition of real property*—(1) *In general.* Real property includes land, unsevered natural products of land, buildings, and inherently permanent structures. Any interest in real property of a type described in this paragraph (c), including fee ownership, co-ownership, a leasehold, an option, or a similar interest is real property under this section. Real property includes structural components of buildings and inherently permanent structures, such as walls, partitions, doors, wiring, plumbing, central air conditioning and heating systems, pipes and ducts, elevators and escalators, and other similar property. Tenant improvements to a building that are inherently permanent or otherwise classified as real property within the meaning of this paragraph (c)(1) are real property under this section. However, property produced for sale that is not real

property in the hands of the taxpayer or a related party (within the meaning of section 267(b) or 707(b)), but that may be incorporated into real property by an unrelated buyer, is not treated as real property by the producing taxpayer (e.g., bricks, nails, paint, and windowpanes).

(2) *Unsevered natural products of land.* Unsevered natural products of land include growing crops and plants, mines, wells, and other natural deposits. Growing crops and plants, however, are real property only if the preproductive period of the crop or plant exceeds 2 years.

(3) *Inherently permanent structures.* Inherently permanent structures include property that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time, such as swimming pools, roads, bridges, tunnels, paved parking areas and other pavements, special foundations, wharves and docks, fences, inherently permanent advertising displays, inherently permanent outdoor lighting facilities, railroad tracks and signals, telephone poles, power generation and transmission facilities, permanently installed telecommunications cables, broadcasting towers, oil and gas pipelines, derricks and storage equipment, grain storage bins and silos. For purposes of this section, affixation to real property may be accomplished by weight alone. Property may constitute an inherently permanent structure even though it is not classified as a building for purposes of former section 48(a)(1)(B) and § 1.48–1. Any property not otherwise described in this paragraph (c)(3) that constitutes other tangible property under the principles of former section 48(a)(1)(B) and § 1.48–1(d) (and that is not property in the nature of machinery under § 1.48–1(c)) is treated for purposes of this section as an inherently permanent structure.

(d) *Definition of tangible personal property*—(1) *In general.* For purposes of this section, the term "tangible personal property" is defined as provided in § 1.263A–1T(a)(5)(iii).

(2) *Classification thresholds for tangible personal property*—(i) *Certain long-lived property.* Because, under paragraph (b)(1)(ii)(A) of this section, capitalization of interest is required with respect to the production of long-lived personal property only if the property is produced for self use, long-lived personal property that is inventory in the hands of the taxpayer is not designated property unless the inventory meets the classification thresholds of paragraph (b)(1)(ii) (B) or (C) of this section.

(ii) *Production period and cost of production.* For purposes of applying the classification thresholds under paragraphs (b)(1)(ii) (B) and (C) of this section to each unit of property, the taxpayer is required, at the beginning of the production period, to reasonably estimate the production period and the total cost of production for the unit of property. The taxpayer must maintain contemporaneous written records supporting the estimates and classification. If the estimates are reasonable based on the facts in existence at the beginning of the production period, the taxpayer's classification of the property is not modified in subsequent periods, even if the actual length of the production period or the actual cost of production differs from the estimates. To be considered reasonable, estimates of the production period and the total cost of production must include anticipated expense and time (including any period that may qualify for a suspension of the interest capitalization period under § 1.263A(f)–5(g)) for delay, rework, change orders, and technological, design or other problems. To the extent that several distinct activities related to the production of the property are expected to occur simultaneously, the period during which these distinct activities occur is not counted more than once. The bases of assets used to produce a unit of property (within the meaning of § 1.263A(f)–4(d)) are disregarded in making estimates of the total cost of production or production period for purposes of this paragraph (d)(2)(ii).

(e) *Definition of produce*—(1) *General rule.* The term "produce" is defined as provided in section 263A(g) and § 1.263A–1T(a)(5)(ii).

(2) *Property produced under a contract*—(i) *General rule.* A taxpayer is treated as producing any property that is produced for the taxpayer (the customer) by another party (the contractor) under a contract with the taxpayer or an intermediary. In the case of any real property produced under a contract, the real property is treated as designated property with respect to both the customer and the contractor. In the case of tangible personal property produced under a contract, the customer and the contractor each determine, under this paragraph (e)(2), whether the property satisfies the classification thresholds described in paragraph (b)(1)(ii) of this section. Thus, tangible personal property may be designated property with respect to either, or both, the customer and the contractor.

(ii) *Definition of contract.* For purposes of this paragraph (e)(2), a contract is:

(A) In the case of a specific unit of property, any agreement providing for the production of property if the agreement is entered into before production of the specific unit of property to be delivered under the agreement is completed, and

(B) In the case of fungible property, any agreement to the extent that, at the time the agreement is entered into, the contractor has on hand an insufficient quantity of completed fungible items of such property that may be used to satisfy the agreement (plus any other agreements of the contractor).

(iii) *Determination of whether thresholds are satisfied.* The provisions of paragraph (d)(2)(ii) of this section are modified as set forth below for purposes of determining whether tangible personal property produced under a contract is 2-year property or 1-year property. In determining a customer's estimated cost of production, the customer takes into account only the costs and payments that are reasonably expected to be incurred by the customer. In determining the contractor's estimated cost of production, the contractor takes into account only the costs that are reasonably expected to be incurred by the contractor, without any reduction for payments from the customer. In determining the customer's estimated length of the production period, the production period is treated as beginning on the earlier of the date the contract is executed or the date the customer's accumulated production expenditures are at least 5 percent of the customer's total estimated production expenditures. In determining the contractor's estimated length of the production period, the production period begins on the date the contractor's accumulated production expenditures (without any reduction for accumulated payments from the customer) are at least 5 percent of the contractor's total estimated accumulated production expenditures.

(3) *Improvements to existing property*—(i) *In general.* Any improvement to property as defined in § 1.263(a)–1(b) constitutes the production of property. The improvement of real property and tangible personal property described in paragraph (b)(1)(ii) of this section constitutes the production of designated property provided the de minimis exception described in paragraph (b)(3)(iii) of this section does not apply. Incidental maintenance and repairs, however, are not improvements. See § 1.162–4.

(ii) *Real property.* An improvement to real property constitutes the production of designated property. For example, the demolition, rehabilitation, or

preservation of a standing building is an improvement that constitutes the production of designated property. Because the clearing of land is an improvement, the clearing of raw land prior to sale constitutes the production of designated property. The drilling of an oil well also constitutes the production of designated property.

(iii) *Tangible personal property.* If the taxpayer has treated a unit of tangible personal property as designated property under this section, an improvement to such property constitutes the production of designated property regardless of the remaining useful life of the improved property (or the improvement) and regardless of the estimated length of the production period or the estimated cost of the improvement. If the taxpayer has not treated a unit of tangible personal property as designated property under this section, an improvement to such property constitutes the production of designated property only if the improvement independently meets the classification thresholds described in paragraph (b)(1)(ii) of this section.

§ 1.263A(f)–2 The avoided cost method.

(a) *In general*—(1) *Description.* The avoided cost method described in this section must be used to calculate the amount of interest required to be capitalized under section 263A(f). Generally, any interest that the taxpayer theoretically would have avoided if accumulated production expenditures (as defined in § 1.263A(f)–4) had been used to repay or reduce the taxpayer's outstanding debt must be capitalized under the avoided cost method. The application of the avoided cost method does not depend on whether the taxpayer actually would have used the amounts expended for production to repay or reduce debt. Instead, the avoided cost method is based on the assumption that debt of the taxpayer would have been repaid or reduced without regard to the taxpayer's subjective intentions or to restrictions (including legal, regulatory, contractual, or other restrictions) against repayment or use of the debt proceeds.

(2) *Overview.* For each unit of designated property (within the meaning of § 1.263A(f)–1(b)), the avoided cost method requires the capitalization of—

(i) the traced debt amount under paragraph (b) of this section, plus

(ii) the excess expenditure amount under paragraph (c) of this section.

These amounts are determined for each taxable year or shorter computation period that includes the production period (as defined in § 1.263A(f)–5) of a unit of designated property. Paragraph (d) of this section provides an election not to trace debt to specific units of designated property. Paragraph (e) of this section provides rules for selecting the computation period, for calculating averages, and for determining measurement dates within the computation period. Special rules are in paragraph (f) of this section.

(3) *Definition of interest.* Except as provided in the case of certain expenses that are treated as a substitute for interest under paragraphs (c)(2)(iii) and (f)(2)(iv) of this section, the term "interest" refers to all amounts that are characterized as interest expense under any provision of the Code, including, for example, sections 482, 483, 1272, 1274, and 7872. The term "incurred" refers to the amount of interest that economically accrues during the period of time in question.

(4) *Definition of eligible debt.* For purposes of this section, the term "eligible debt" includes all outstanding debt (as evidenced by a contract, bond, debenture, note, certificate, or other evidence of indebtedness) of the taxpayer other than:

(i) Debt bearing interest that is disallowed within the meaning of § 1.163–8T(m)(7)(ii);

(ii) Debt, such as accounts payable, that bears no interest, except to the extent that such debt is traced debt (as defined in paragraph (b)(2) of this section);

(iii) Debt that is borrowed directly or indirectly from a person related to the taxpayer within the meaning of section 267(b) or 707(b) and that bears a rate of interest that is less than the applicable Federal rate in effect under section 1274(d) on the date of issuance;

(iv) Debt bearing personal interest within the meaning of section 163(h)(2);

(v) Debt bearing qualified residence interest within the meaning of section 163(h)(3);

(vi) Debt incurred by an organization that is exempt from federal income tax under section 501(a), except to the extent interest on such debt is directly attributable to an unrelated trade or business of the organization within the meaning of section 512;

(vii) Reserves, deferred tax liabilities, and similar items that are not treated as debt for federal income tax purposes, regardless of the extent to which the taxpayer's applicable financial accounting or other regulatory reporting principles require or support treating these items as debt; and

(viii) Current federal and state income tax liabilities, deferred tax liabilities under section 453A, and hypothetical tax liabilities under the look-back method of section 460(b), or similar provisions.

(b) *Traced debt amount*—(1) *General rule.* Interest must be capitalized with respect to the unit of designated property in an amount (the traced debt amount) equal to the total interest incurred on the traced debt during each measurement period (as defined in paragraph (e)(2)(ii) of this section) that ends on a measurement date described in paragraph (e)(2)(iii) of this section. See Example in paragraph (b)(3) of this section. If any interest incurred on the traced debt is not taken into account because of a deferral provision, see paragraph (f)(2) of this section for the time and manner for capitalizing and recovering that amount. This paragraph (b)(1) does not apply if the taxpayer elects under paragraph (d) of this section not to trace debt.

(2) *Identification and definition of traced debt.* On each measurement date described in paragraph (e)(2)(iii) of this section, the taxpayer must identify debt that is traced debt with respect to a unit of designated property. Traced debt with respect to a unit of designated property means eligible debt (as defined in paragraph (a)(4) of this section) the proceeds of which, on any measurement date described in paragraph (e)(2)(iii) of this section, are allocated to accumulated production expenditures with respect to the unit of designated property under the allocation rules of § 1.163–8T.

(3) *Example.* The provisions of paragraphs (b) (1) and (2) of this section are illustrated by the following example.

Example. Corp X, a calendar year taxpayer, is engaged in the production of a single unit of designated property during 1990 (unit A). Corp X adopts a taxable year computation period and quarterly measurement dates. Production of unit A starts on January 14, 1990, and ends on June 16, 1990. On March 31, 1990 and on June 30, 1990, Corp X has outstanding a $1,000,000 loan the proceeds of which are allocated under the rules of § 1.163–8T to production expenditures with respect to unit A. During the period January 1, 1990, through June 30, 1990, Corp X incurs $50,000 of interest related to the loan. Under paragraph (b)(1) of this section, the $50,000 of interest Corp X incurs on the loan during the period January 1, 1990, through June 30, 1990, must be capitalized with respect to unit A.

(c) *Excess expenditure amount*—(1) *General rule.* If there are accumulated production expenditures in excess of traced debt with respect to a unit of designated property on any measurement date described in paragraph (e)(2)(iii) of this section, the taxpayer must, for the computation period that includes the measurement

date, capitalize with respect to each such unit the excess expenditure amount calculated under this paragraph (c)(1) or, if less, a prorata amount (as determined under paragraph (c)(7) of this section) of the total interest described in paragraph (c)(2) of this section. For each unit of designated property, the excess expenditure amount equals the product of—

(i) average excess expenditures determined under paragraph (c)(5)(ii) of this section for the unit of designated property, and

(ii) the weighted average interest rate for the computation period determined under paragraph (c)(5)(iii) of this section.

(2) *Interest required to be copitolized.* Interest incurred during the computation period is capitalized from the following sources and in the following sequence, but not in excess of the excess expenditure amount for all units of designated property:

(i) Interest incurred on nontraced debt (as defined in paragraph (c)(5)(i) of this section);

(ii) Interest incurred on borrowings from a related party described in paragraph (a)(4)(iii) of this section; and

(iii) In the case of a partnership, guaranteed payments for the use of capital (within the meaning of section 707(c)) that would be deductible by the partnership if section 263A(f) did not apply.

(3) *Exomple.* The provisions of paragraphs (c) (1) and (2) of this section are illustrated by the following example.

Example. P, a partnership owned equally by Corporation A and Individual B, is engaged in the construction of an office building during 1991. Average excess expenditures for the office building for 1991 are $2,000,000. When P was formed, A and B agreed that A would be entitled to an annual guaranteed payment of $70,000 in exchange for A's capital contribution. The only borrowings of P, A and B for 1991 include a loan to P from an unrelated lender of $1,000,000 (Loan #1), which is nontraced debt, and which bears interest at an annual rate of 10 percent, and a loan to A from an unrelated lender of $200,000 bearing interest at an annual rate of 15 percent. Thus, P's weighted average interest rate is 10 percent and interest incurred during 1991 is $100,000.

In accordance with paragraph (c)(1) of this section, the excess expenditure amount is $200,000 ($2,000,000×10%). The interest capitalized under paragraph (c)(2) of this section is $170,000 ($100,000 of interest plus $70,000 of guaranteed payments).

After capitalization of the interest on loan #1 and the guaranteed payments, the excess expenditure amount exceeds the amount capitalized by $30,000 ($200,000−$100,000−$70,000). In accordance with paragraph (c)(7)(ii) of this section, the average excess expenditures to which the related party rules of § 1.263A(f)–8 apply equals $300,000 ($30,000÷10%).

(4) *Treatment of interest subject to a deferral provision.* If any interest described in paragraph (c)(2) of this section is not deductible for the computation period because of a deferral provision described in paragraph (f)(1)(ii) of this section, paragraph (c)(2) of this section is first applied without regard to the amount of the deferred interest. If after applying paragraph (c)(2), the amount of interest capitalized with respect to all units of designated property for the computation period is less than the amount that would have been capitalized if a deferral provision did not apply, see paragraph (f)(2) of this section for the time and manner for capitalizing and recovering the difference (the shortfall amount).

(5) *Definitions*—(i) *Nontraced debt*—(A) *Defined.* Nontraced debt means all eligible debt on a measurement date other than any debt that is treated as traced debt with respect to any unit of designated property on that measurement date. For example, nontraced debt includes eligible debt the proceeds of which are allocated to expenditures that are not capitalized under section 263A(a) (*e.g.,* expenditures deductible under section 174 or 263(c)). Similarly, even if eligible debt is allocated to a production expenditure during the production period of a unit of designated property, the debt is included in nontraced debt before the first and after the last measurement date for that unit of designated property. Thus, nontraced debt may include debt that was previously treated as traced debt or that will be treated as traced debt on a future measurement date.

(B) *Exomple.* The provisions of paragraph (c)(5)(i)(A) of this section are illustrated by the following example.

Example. In 1990, Corp X begins, but does not complete, the construction of two office buildings that are separate units of designated property as defined in § 1.263A(f)–3 (Property D and Property E). At the beginning of 1990, X incurs a loan with a principal amount of $2,500,000, the proceeds of which are used exclusively to finance production expenditures for Property D, and the loan remains outstanding at the end of 1990. Corp X also has outstanding during all of 1990 a long-term loan with a principal amount of $2,000,000, the proceeds of which were used exclusively to finance the production of Property C, a unit of designated property that was completed in 1989. Under the rules of paragraph (b)(2) of this section, an amount equal to the portion of the $2,500,000 loan allocated to accumulated production expenditures for property D at each measurement date during 1990 is treated as traced debt for that measurement date. The excess, if any, of $2,500,000 over the amount treated as traced debt at each measurement date during 1990 is treated as nontraced debt for that measurement date, even though it is expected that the entire $2,500,000 will be treated as traced debt with respect to Property D on subsequent measurement dates as more of the proceeds of the loan are used to finance additional production expenditures. In addition, the entire principal amount of the $2,000,000 loan is treated as nontraced debt for 1990, even though it was treated as traced debt with respect to Property C in a previous period.

(ii) *Average excess expenditures*—(A) *General rule.* The average excess expenditures for a unit of designated property for a computation period equal—

(*1*) The sum of accumulated production expenditures in excess of traced debt at each measurement date during the computation period, divided by

(*2*) The number of measurement dates during the computation period.

(B) *Exomple.* The provisions of paragraph (c)(5)(ii)(A) of this section are illustrated by the following example.

Example. Corp X, a calendar year taxpayer, is engaged in the production of a single unit of designated property during 1990 (unit A). Corp X adopts the taxable year as the computation period and quarterly measurement dates. The production period for unit A begins on January 14, 1990, and ends on June 16, 1990. On March 31, 1990, and on June 30, 1990, Corp X has outstanding $1,000,000 of eligible debt (loan #1) the proceeds of which are allocated under the rules of § 1.163–8T to the production of unit A. Accumulated production expenditures for unit A on March 31, 1990, and June 30, 1990, are $1,400,000 and $1,600,000, respectively. Accumulated production expenditures in excess of traced debt for unit A on March 31, 1990, and June 30, 1990, are $400,000 and $600,000, respectively. Average excess expenditures for unit A during 1990 are therefore $250,000 ([$400,000+$600,000+$0+$0]÷4).

(iii) *Weighted average interest rate*—(A) *Determination of rate.* The weighted average interest rate is determined by dividing interest incurred on nontraced debt during the computation period by average nontraced debt for the computation period.

(B) *Interest incurred on nontraced debt.* Interest incurred on nontraced debt during the computation period includes the total amount of interest incurred during the computation period on all eligible debt minus the amount of interest incurred during the computation period on traced debt. Thus, all interest incurred on nontraced debt during the computation period is included in the numerator of the weighted average interest rate, even if the underlying

nontraced debt is repaid between measurement dates and is therefore excluded from the denominator of the weighted average interest rate. However, see paragraph (f)(7) of this section for an election to treat eligible debt that is repaid within the 15-day period immediately preceding a quarterly measurement date as outstanding on that measurement date. See paragraph (a)(3) of this section for the definition of interest incurred.

(C) *Average nontraced debt.* The average nontraced debt for the computation period equals—

(*1*) The sum of the amounts of nontraced debt outstanding on each measurement date during the computation period, divided by

(*2*) The number of measurement dates during the computation period.

(D) *Special rules if taxpayer has no nontraced debt or rate is contingent.* If the taxpayer does not have nontraced debt outstanding during the computation period, the weighted average interest rate for purposes of applying paragraphs (c) (1) and (2) of this section is the highest applicable Federal rate in effect under section 1274(d) during the computation period. If interest is incurred at a rate that is contingent and remains contingent at the time the return for the year that includes the computation period is filed, the amount of interest is determined using the higher of the fixed rate of interest (if any) on the underlying debt or the applicable Federal rate in effect under section 1274(d) on the date of issuance.

(6) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. W, a calendar year taxpayer, is engaged in the production of a unit of designated property during 1991. For purposes of applying the avoided cost method of this section, W uses the taxable year as the computation period. During 1991, W's only debt is a $2,000,000 loan from a related party bearing interest at 7 percent. Assuming the applicable Federal rate in effect under section 1274(d) on the date of issuance of the obligation is 10 percent, the loan is not eligible debt under paragraph (a)(4) of this section. However, W incurs $70,000 ($1,000,000×7%) of interest during the computation period that is described in paragraph (c)(2) of this section and that may be capitalized under paragraph (c)(1) of this section with respect to average excess expenditures.

W determines that average excess expenditures under paragraph (c)(5)(ii) of this section for the unit of property are $600,000. Because W has no eligible debt, the weighted average interest rate for purposes of determining the excess expenditure amount is 10 percent. See paragraph (c)(5)(iii)(D) of this section. In accordance with paragraph (c)(1) of this section, the excess expenditure amount is therefore $60,000. Because this amount does not exceed the total amount of interest described in paragraph (c)(2) ($70,000), W is required to capitalize $60,000 with respect to the unit of designated property for the 1991 computation period.

Example 2. Corp X, a calendar year taxpayer, is engaged in the production of a single unit of designated property during 1990 (unit A). Corp X adopts the taxable year as the computation period and quarterly measurement dates. Production of unit A begins in 1989 and ends on June 30, 1990. On March 31, 1990 and on June 30, 1990 Corp X has outstanding $1,000,000 of eligible debt (loan #1) the proceeds of which are allocated under the rules of § 1.163–8T to accumulated production expenditures with respect to unit A. Interest that is incurred on Loan #1 during each quarter ending March 31, 1990, and June 30, 1990, is $30,000. Loan #1 is not outstanding on the September 30, 1990, and December 30, 1990, measurement dates. Throughout 1990 Corp X also has outstanding $2,000,000 of eligible debt (loan #2) which is not allocated under the rules of § 1.163–8T to the production of unit A. Interest incurred on this nontraced debt during 1990 is $200,000. Accumulated production expenditures on March 31, 1990, and June 30, 1990, are $1,400,000 and $1,600,000, respectively. Accumulated production expenditures in excess of traced debt on March 31, 1990 and June 30, 1990 are $400,000 and $600,000, respectively.

Under paragraph (b)(1) of this section, the amount of interest capitalized with respect to traced debt is $60,000 ($30,000 for the measurement period ending March 31, 1990, and $30,000 for the measurement period ending June 30, 1990). Under paragraph (c)(5)(ii) of this section, average excess expenditures for unit A are $250,000 ([[$1,400,000−$1,000,000]+[$1,600,000−$1,000,000]+$0+$0)÷4). Under paragraph (c)(5)(iii) of this section, average nontraced debt is $2,000,000 ([$2,000,000+$2,000,000+$2,000,000+$2,000,000]÷4). Under paragraph (c)(5)(iii)(B), interest incurred on nontraced debt is $200,000 ($260,000 of interest incurred on all eligible debt less $60,000 of interest incurred on traced debt). Also under paragraph (c)(5)(iii)(A) of this section, the weighted average interest rate is 10% ($200,000÷$2,000,000). Under paragraph (c)(1) of this section, Corp X capitalizes the excess expenditure amount of $25,000 ($250,000×10%), because it does not exceed the total amount of interest ($200,000) subject to capitalization under paragraph (c)(2) of this section. Thus, the total interest capitalized with respect to unit A during 1990 is $85,000 ($60,000+$25,000).

(7) *Special rules where the excess expenditure amount exceeds incurred interest*—(i) *Allocation of total incurred interest to units.* If the sum of the excess expenditure amounts under paragraph (c)(2) of this section for all units of designated property for the computation period exceeds the total amount of interest available for capitalization, as determined under paragraphs (c)(2) (before a reduction for the amount of any deferred interest) of this section, the amount of interest that is allocated to a unit of designated property equals—

(A) The total amount of interest available for capitalization, as determined under paragraph (c)(2) of this section, multiplied by

(B) A fraction, the numerator of which is the average excess expenditures for the unit of designated property and the denominator of which is the sum of the average excess expenditures for all units of designated property.

(ii) *Application of related party rules to average excess expenditures.* If the sum of the excess expenditure amounts under paragraph (c)(1) of this section for all units of designated property for the computation period exceeds the total amount of interest, as determined under paragraph (c)(2) of this section (before a reduction for the amount of any deferred interest), the related party rules of § 1.263A(f)–8 apply to a portion of each unit's average excess expenditures. The amount of a unit's average excess expenditures that must be taken into account by a related party equals—

(A) The excess expenditure amount for the unit, less the amount of interest capitalized with respect to the unit (including for this purpose deferred interest that is not capitalized during the computation period in accordance with paragraph (f)(2) of this section), divided by

(B) The weighted average interest rate for the computation period.

Notwithstanding the preceding sentence of this paragraph (c)(7)(ii), in the case of corporations to which the related party rules of § 1.263A(f)–8 apply, the District Director upon examination may require average excess expenditures allocated to related parties to be determined by excluding the amount of deferred interest under paragraph (c)(4) of this section from the amount of interest considered capitalized in paragraph (c)(7)(ii)(A) of this section.

(d) *Election not to trace debt*—(1) *General rule.* Taxpayers may elect not to trace debt. If the election is made, the weighted average interest rate under paragraph (c)(5)(iii) of this section is determined by treating all eligible debt as nontraced debt. For this purpose, debt (such as accounts payable) is included in eligible debt if it would be treated as traced debt but for an election under this paragraph (d). The election not to trace debt is a method of accounting that applies to the determination of capitalized interest for all designated property of the taxpayer. The making or revocation of the election is a change in method of accounting requiring the consent of the

Commissioner under section 446(e) and § 1.446–1(e).

(2) *Example.* The provisions of paragraph (d)(1) of this section are illustrated by the following example.

Example. Corp X, a calendar year taxpayer, is engaged in the production of a single unit of designated property during 1990 (unit A). Corp X adopts the taxable year as the computation period and quarterly measurement dates. At each measurement date (March 31, June 30, September 30, and December 31) Corp X has the following outstanding indebtedness:

noninterest bearing accounts payable traced to unit A	$100,000
noninterest bearing accounts payable that are not traced to unit A	300,000
interest bearing loans qualifying as eligible debt within the meaning of paragraph (a)(4) of this section	900,000

Corp X elects under this paragraph (d) not to trace debt. Eligible debt at each measurement date for purposes of calculating the weighted average interest rate under paragraph (c)(5)(iii) of this section is $1,000,000 ($100,000+$900,000).

(e) *Selection of computation period and measurement dates and application of averaging conventions*—(1) *Computation period*—(i) *In general.* A taxpayer may (but is not required to) make the avoided cost calculation on the basis of a full taxable year. If the taxpayer uses the taxable year as the computation period, a single avoided cost calculation is made for each unit of designated property for the entire taxable year. If the taxpayer uses a computation period that is shorter than the full taxable year, an avoided cost calculation is made for each unit of designated property for each shorter computation period within the taxable year. If the taxpayer uses a shorter computation period, the computation period may not include portions of more than one taxable year and, except in the case of short taxable years, each computation period within a taxable year must be the same length. The taxpayer must use the same computation periods for all designated property produced during a single taxable year.

(ii) *Method of accounting.* The choice of a computation period is a method of accounting. Any change in the computation period is a change in method of accounting requiring the consent of the Commissioner under section 446(e) and § 1.446–1(e).

(iii) *Production period beginning or ending during the computation period.* The avoided cost method applies to the production of a unit of designated property on the basis of a full computation period, regardless of whether the production period for the unit of designated property begins or ends during the computation period.

(2) *Measurement dates*—(i) *In general.* On each measurement date, the taxpayer must determine traced debt, average excess expenditures, and average nontraced debt. Thus, for each unit of designated property, a taxpayer must separately identify traced debt and accumulated production expenditures on each measurement date. A taxpayer must also identify nontraced debt on each measurement date. If the taxpayer uses the taxable year as the computation period, measurement dates must occur at quarterly or more frequent regular intervals. If the taxpayer uses computation periods that are shorter than the taxable year, measurement dates must occur at least twice during each computation period and at least four times during the taxable year (or consecutive 12-month period in the case of a short taxable year). The taxpayer must use the same measurement dates for all designated property produced during a computation period, and measurement dates must occur at the same intervals during each computation period that falls within a single taxable year. However, a taxpayer is permitted to modify the frequency of measurement dates from year to year.

(ii) *Measurement period.* For purposes of this section, the term "measurement period" means the period that begins on the first day following the preceding measurement date and that ends on the measurement date.

(iii) *Measurement dates on which accumulated production expenditures must be taken into account.* The first measurement date on which accumulated production expenditures must be taken into account with respect to a unit of designated property is the first measurement date following the beginning of the production period for the unit of designated property. The final measurement date on which accumulated production expenditures with respect to a unit of designated property must be taken into account is the first measurement date following the end of the production period for the unit of designated property. Accumulated production expenditures with respect to a unit of designated property must also be taken into account on all intervening measurement dates. See § 1.263A(f)–5 to determine when the production period begins and ends.

(iv) *More frequent measurement dates.* When in the opinion of the District Director more frequent measurement dates are necessary to accurately determine capitalized interest for a particular computation period, the District Director may require the use of more frequent measurement dates. If a significant segment of the taxpayer's production activities require more frequent measurement dates than another significant segment of the taxpayer's production activities, the taxpayer may request a ruling from the Internal Revenue Service permitting a segregation of these activities, notwithstanding paragraph (e)(2)(i) of this section, for the taxable year and all subsequent taxable years. The request for a ruling must be made in accordance with any applicable rules relating to submissions of ruling requests. The request must be filed on or before the due date (including extensions) of the original federal income tax return for the taxable year.

(3) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. Corp X, a calendar year taxpayer, is engaged in the production of designated property during 1990. Corp X adopts the taxable year as the computation period and quarterly measurement dates. Corp X must identify traced debt, accumulated production expenditures, and nontraced debt at each quarterly measurement date (March 31, June 30, September 30, and December 31). Under paragraph (c)(5)(ii) of this section, Corp X must calculate average excess expenditures for each unit of designated property by adding the accumulated production expenditures in excess of traced debt for each unit of designated property at each quarter end and dividing the sum by four. Under paragraph (c)(5)(iii)(C) of this section, Corp X must calculate average nontraced debt by adding the nontraced debt outstanding at the end of each quarter and dividing the sum by four.

Example 2. Corp X, a calendar year taxpayer, is engaged in the production of designated property during 1990. Corp X adopts a 6-month computation period with two measurement dates within each computation period. Corp X must identify traced debt, accumulated production expenditures, and nontraced debt at each measurement date within the computation period (March 31, and June 30, for the first computation period and September 30, and December 31 for the second computation period). Under paragraph (c)(5)(ii) of this section, and for each computation period, Corp X must calculate average excess expenditures for each unit of designated property by adding the accumulated production expenditures in excess of traced debt for each unit of designated property at each quarter end and dividing the sum by two. Under paragraph (c)(5)(iii)(C) of this section and for each computation period, Corp X must calculate average nontraced debt by adding nontraced debt outstanding at

the end of each quarter and dividing the sum by two.

Example 3. Corp X, a calendar year taxpayer, is engaged in the production of two units of designated property during 1990. Production of Unit A starts in 1989 and ends on June 20, 1990. Production of Unit B starts on April 15, 1990, but does not end until 1991. Corp X adopts the taxable year as the computation period described in paragraph (e)(1)(i) of this section, and does not elect under paragraph (d) of this section not to trace debt. Corp X uses quarterly measurement dates. During 1990, Corp X has the following items of eligible debt and uses the proceeds as follows:

No.	Principal	Annual rate (%)	Period outstanding	Use of proceeds
1	$1,000,000	9	1/01–9/01	Unit A.
2	2,000,000	11	6/01–12/31	Nontraced.

Based on the annual 9 percent rate of interest, Corp X incurs $7,500 of interest during each month that Loan #1 is outstanding.

Accumulated production expenditures at the end of each quarter during 1990 are as follows:

Measurement date	Unit A	Unit B
March 31	$1,200,000	$0
June 30	1,800,000	500,000
Sept. 30	0	1,000,000
Dec. 31	0	1,600,000

Corp X must first determine the amount of interest incurred on traced debt and capitalize the interest incurred on this debt (the traced debt amount). Loan #1 is traced to Unit A on the March 31 and June 30 measurement dates. Accordingly, Loan #1 is treated as traced debt for the measurement periods beginning January 1 and ending June 30. The interest incurred during the period Loan #1 is treated as traced debt, and that therefore must be capitalized with respect to Unit A, is $45,000 ($7,500 per month for 6 months).

Second, Corp X must determine average excess expenditures for Unit A and Unit B. For Unit A, this amount is $250,000 ([$200,000+$800,000+$0+$0]÷4). For Unit B, this amount is $775,000 ([$0+$500,000+$1,000,000+$1,600,000]÷4).

Third, Corp X must determine the weighted average interest rate and apply that rate to the average excess expenditures for Units A and B. The rate is equal to the total amount of interest incurred on all eligible debt other than interest incurred on traced debt, divided by the average nontraced debt. The interest incurred on all eligible debt other than interest incurred on traced debt equals $143,333 ([$1,000,000×9%×8/12]+[$2,000,000×11%×7/12]−$45,000). The average nontraced debt equals $1,500,000 ([$0+$2,000,000+$2,000,000+$2,000,000]÷4). The weighted average interest rate of 9.56% ($143,333÷$1,500,000), is then applied to average excess expenditures for Units A and B. Accordingly, Corp X capitalizes an additional $23,900 ($250,000×9.56%) with respect to Unit A and $74,090 ($775,000×9.56%) with respect to Unit B (the excess expenditure amounts).

(f) *Special rules*—(1) *Ordering rules*—(i) *Provisions preempted by section 263A(f).* Interest must be capitalized under section 263A(f) before the application of section 163(d) (regarding the investment interest limitation), section 163(j) (regarding the limitation on interest paid to a tax-exempt related person), section 266 (regarding the election to capitalize carrying charges), section 469 (regarding the limitation on passive losses), and section 861 (regarding the allocation of interest to United States sources). Any interest that is capitalized under section 263A(f) is not taken into account as interest under those sections. However, in applying section 263A(f) with respect to the excess expenditure amount, the taxpayer must capitalize any interest that is neither investment interest under section 163(d), exempt related person interest under section 163(j), nor passive interest under section 469 before capitalizing any interest that is either investment interest, exempt related person interest, or passive interest. Any interest that is not required to be capitalized after the application of section 263A(f) is then taken into account as interest subject to sections 163(d), 163(j), 266, 469, and 861. If, after the application of section 263A(f), interest is deferred under sections 263(d), 163(j), 266, or 469, that interest is not subject to capitalization under section 263A(f) in any subsequent taxable year.

(ii) *Deferral provisions applied before this section.* Interest that is subject to a deferral provision described in this paragraph (including contingent interest) is subject to capitalization under section 263A(f) only at the time it would be deducted if section 263A(f) did not apply. Deferral provisions include sections 163(e) (3), 267, 446, and 461, or any other deferral provision not specified in this paragraph and exclude any provisions described in paragraph (f)(1)(i) of this section. In contrast to the provisions of paragraph (f)(1)(i) of this section, deferral provisions are applied prior to the application of section 263A(f).

(2) *Application of section 263A(f) to deferred interest*—(i) *In general.* This paragraph (f)(2) describes the time and manner of capitalizing and recovering the deferral amount. The deferral amount for any computation period equals the sum of—

(A) The amount of interest incurred on traced debt that is deferred during the computation period because of a deferral provision described in paragraph (f)(1)(ii) of this section, and

(B) The shortfall amount described in paragraph (c)(4) of this section.

(ii) *Capitalization of deferral amount.* The rules described in paragraph (f)(2)(iii) of this section apply to the deferral amount unless the taxpayer elects to capitalize substitute costs under paragraph (f)(2)(iv) of this section with respect to this amount.

(iii) *Deferred capitalization.* If the taxpayer does not elect under paragraph (f)(2)(iv) of this section to capitalize substitute costs, the deferral amount (or the appropriate portion thereof) is capitalized in the year or years in which the deferred interest would have been deductible but for the application of section 263A(f) (the capitalization year). For this purpose, any interest that is deferred from a prior computation period is taken into account in subsequent capitalization years in the same order in which the interest was deferred. If a unit of designated property to which previously deferred interest relates is sold prior to the capitalization year, the deferred interest applicable to that unit of property is deducted in the capitalization year and treated as if recovered from the sale of the property. If the taxpayer continues to hold a unit of depreciable property to which previously deferred interest relates throughout the capitalization year, the adjusted basis and applicable recovery percentages for the unit of property are redetermined for the capitalization year and subsequent years so that the increase in basis is accounted for over the remaining recovery periods beginning with the year of redetermination. See Example 2 of paragraph (f)(2)(v) of this section.

(iv) *Substitute capitalization*—(A) *General rule.* In lieu of deferred capitalization under paragraph (f)(2)(iii) of this section, the taxpayer may elect the substitute capitalization method described in this paragraph (f)(2)(iv). Under this method, the taxpayer capitalizes in the computation period in which interest is incurred and deferred (the deferral period) costs that would be deducted but for this paragraph (f)(2)(iv) (substitute costs). The taxpayer must capitalize an amount of substitute costs equal to the deferral amount for each unit of designated property, or if less, a prorata amount (determined in accordance with the principles of paragraph (c)(7)(i) of this section) of the total substitute costs that would be deducted but for this paragraph (f)(2)(iv) during the deferral period. If the entire deferral amount is capitalized pursuant

to this paragraph (f)(2)(iv) in the deferral period, any interest incurred and deferred in the deferral period is neither capitalized nor deducted during the deferral period and is deductible in the appropriate subsequent period without regard to section 263A(f). If the taxpayer has an insufficient amount of substitute costs in the deferral period, the amount by which substitute costs are insufficient with respect to each unit of designated property is a deferral amount carryforward to succeeding computation periods beginning with the next computation period.

(B) *Capitalization of amount carried forward.* In any carryforward year, the taxpayer must capitalize an amount of substitute costs equal to the deferral amount carryforward or, if less, a prorata amount (determined in accordance with the principles of paragraph (c)(7)(i) of this section) of the total substitute costs that would be deducted during the carryforward year or years (the capitalization year) but for this paragraph (f)(2)(iv) (after applying the substitute cost method of this paragraph (f)(2)(iv) to the production of designated property in the carryforward period). If a unit of designated property to which the deferral amount carryforward relates is sold prior to the capitalization year, substitute costs applicable to that unit of property are deducted in the capitalization year and treated as if recovered from the sale of the property. If the taxpayer continues to hold a unit of depreciable property to which a deferral amount carryforward relates throughout the capitalization year, the adjusted basis and applicable recovery percentages for the unit of property are redetermined for the capitalization year and subsequent years so that the increase in basis is accounted for over the remaining recovery periods beginning with the year of redetermination. See Example 2 of paragraph (f)(2)(v) of this section.

(C) *Method of accounting.* The substitute capitalization method under this paragraph (f)(2)(iv) is a method of accounting that applies to all designated property of the taxpayer. A change to or from the substitute capitalization method is a change in method of accounting requiring the consent of the Commissioner under section 446(e) and § 1.446–1(e).

(v) *Examples.* The following examples illustrate the application of the avoided cost method when interest is subject to a deferral provision:

Example 1. X is engaged in the construction of a warehouse throughout 1990. The warehouse is placed in service in December 1990. X's average excess expenditures for 1990 equal $1,000,000. Throughout 1990, X's only outstanding debt is nontraced debt of $900,000 and $1,200,000, bearing interest at 15 percent and 9 percent, respectively, per year. Of the $243,000 interest incurred during the year ([$900,000×15%]+ [$1,200,000×9%]=[$135,000+$108,000]), $75,000 is deferred under section 267(a)(3).

X must first determine the amount of interest required to be capitalized under paragraph (c)(1) of this section for 1990 (the deferral period) without regard to the application of section 267(a)(3). Therefore, the weighted average interest rate is 11.6% ([$135,000+$108,000]÷$2,100,000), and the excess expenditure amount under paragraph (c)(1) of this section is $116,000 ($1,000,000×11.6%). Under paragraph (c)(4) of this section, X must then capitalize interest described in paragraph (c)(2) of this section without regard to the amount of deferred interest. Since the amount of interest available for capitalization of $168,000 ([$900,000×15%]+[$1,200,000×9%]−$75,000) exceeds the amount required to be capitalized of $116,000, X capitalizes the full $116,000 in the deferral period and the deferred interest is not subject to capitalization in any subsequent period.

Example 2. The facts are the same as in *Example 1*, except that the amount of interest deferred under section 267(a)(3) in 1990 equals $140,000 and the taxpayer does not elect to use the substitute capitalization method. The amount carried over from 1990 is also deferred in 1991 but would be deducted in 1992 if section 263A(f) did not apply. As in *Example 1*, the amount of interest required to be capitalized without regard to the deferral provision is $116,000. However, the amount of interest available for capitalization after excluding the amount of deferred interest is $103,000 ([$900,000×15%]+ [$1,200,000×9%]−$140,000). Since this amount is less than the amount of interest required to be capitalized, the excess of $116,000 over $103,000, or $13,000, is the deferral amount, which must be capitalized in the year in which it would be deducted if section 263A(f) did not apply.

During 1990, X capitalizes $103,000 of interest as a cost of constructing the warehouse. The $140,000 deferred under section 267(a)(3) in 1990 would be deducted in 1992 if section 263A(f) did not apply and it exceeds the deferral amount for 1990 ($13,000). X is therefore required to capitalize an additional $13,000 with respect to the warehouse in 1992. Under section 168, the warehouse has a recovery period of 31.5 years and X is required to use the straightline method of depreciation and the mid-month convention. X placed the warehouse in service in December 1990, at which time the unadjusted basis was $1,500,000. At the beginning of 1992, the basis of the warehouse (adjusted for depreciation allowed in 1990 and 1991) is, therefore, $1,450,397 ($1,500,000−[$1,984 of depreciation for ½ month during 1990 and $47,619 of depreciation for 12 months during 1991]), and the remaining recovery period is 30.46 years. Under paragraph (f)(2)(iii) of this section, the redetermined basis is $1,463,397 ($1,450,397+$13,000). Since X is allowed 12 full-months of depreciation in 1992, the redetermined recovery percentage for 1992 is 3.28 percent (1÷30.46 years). Depreciation allowable during 1992 is $48,043 ($1,463,397×3.28%).

(3) *Simplified inventory method*—(i) *In general.* This paragraph (f)(3) provides a simplified method for capitalizing interest expense with respect to designated property that is inventory. Under this method, the taxpayer capitalizes interest as an aggregate adjustment to ending inventory after applying all other capitalization provisions, including, if applicable, the simplified production method of § 1.263A–1T(b)(5).

(ii) *Accumulated production expenditures*—(A) *General rule.* Under the simplified inventory method, the taxpayer first separates its total ending inventory value into the number of equal segments that is determined by dividing the total ending inventory value by the inverse inventory turnover rate. Each inventory segment is then assigned an age starting with 1-year and ending with the total number of inventory segments. For this purpose, the inverse inventory turnover rate equals the ratio of the average of beginning and ending inventory divided by the cost of goods sold (using the taxpayer's inventory method) for the year, and rounding to the nearest whole number. Beginning and ending inventory amounts are determined using total current cost (rather than carrying value) of the inventory for the inventory year.

(B) *Example.* The provisions of paragraph (f)(3)(ii)(A) of this section are illustrated by the following example.

Example. X, a taxpayer using the FIFO inventory method, determines that total cost of goods sold for 1991 equals $900, and the average cost of beginning and ending inventory equals $3,000. Thus, X's inverse inventory turnover rate equals 3, (or, 3.33 rounded to the nearest whole number). Total ending inventory of $3,000 is divided into three segments of $1,000 each. One segment is treated as three-year-old inventory, one segment is treated as two-year-old inventory and one segment is treated as one-year-old inventory.

(iii) *Weighted average interest rate*—(A) *General rule.* Under the simplified inventory method, the taxpayer determines the weighted average interest rate in accordance with paragraph (c)(5)(iii) of this section, treating all eligible debt (other than debt traced to noninventory property) as nontraced debt (*i.e.*, without tracing debt to inventory costs), regardless of whether the taxpayer has elected not to trace debt under paragraph (d) of this section. This rate is then compounded annually by the number of years assigned to a particular segment to produce an interest factor (applicable

interest factor) for that segment to which the applicable interest factor is then applied. The amounts determined by applying each applicable interest factor to its corresponding inventory segment are then combined to produce an aggregate interest capitalization amount, which is capitalized as an addition to ending inventory. This amount is recomputed at the end of each taxable year to determine whether there is an increase or decrease in the aggregate interest capitalization amount (the incremental capitalization amount). If, for any taxable year, a positive incremental capitalization amount exceeds the amount of interest that would be deducted if section 263A(f) did not apply, the related party rules of § 1.263A(f)–8 apply to the excess amount, and the taxpayer is required to capitalize the excess if the substitute cost method is used and related parties are required to capitalize their share if the deferred asset method is used.

(B) *Example.* The provisions of paragraph (f)(3)(iii)(A) of this section are illustrated by the following example.

Example. The facts are the same as in the Example in paragraph (f)(3)(ii)(B) of this section, and, in addition, X determines that its weighted average interest rate (determined on an annual basis) for 1991 is 10 percent. Under the rules of paragraph (f)(3)(ii) of this section, X computed three inventory segments equal to $1,000 each. One segment is 1-year old inventory, one segment is 2-year old inventory, and one segment is 3-year old inventory. Therefore, X must compute 3 corresponding applicable interest factors. The applicable interest factor for the 1 year old inventory is not compounded. The applicable interest factor for the 2-year old inventory is compounded for 1 year. The applicable interest factor for the 3-year old inventory is compounded for 2-years. The interest factor applied to the 1 year old inventory segment is .1. The interest factor applied to the 2-year old inventory segment is .21 [(1.1×1.1)−1]. The interest factor applied to the 3-year old inventory is .331 [(1.1×1.1×1.1)−1]. In accordance with the rules of this paragraph, the aggregate interest capitalization amount is $641 ($1,000×[.1+.21+.331]).

(iv) *Method of accounting.* The simplified inventory method is a method of accounting that must be elected for and applied to all inventory within a single trade or business of the taxpayer (within the meaning of section 446(d) and § 1.446–1(d)). This method may be elected only if the inventory in that trade or business consists only of designated property and only if the taxpayer's inverse inventory turnover rate for that trade or business (as defined in paragraph (f)(3)(ii)(A) of this section) is greater than or equal to one. A change from or to the simplified inventory method is a change in method of accounting requiring the consent of the Commissioner under section 446(e) and § 1.446–1(e).

(4) *Financial accounting method disregarded.* The avoided cost method is applied under this section without regard to any financial or regulatory accounting principles for the capitalization of interest. For example, this section determines the amount of interest that must be capitalized without regard to Financial Accounting Standards Board (FASB) Statement Nos. 34, 71, and 90, issued by the Financial Accounting Standards Board, Norwalk, CT 06856–5116. Similarly, taxpayers are not permitted to net interest income and interest expense in determining the amount of interest that must be capitalized under this section with respect to certain restricted tax-exempt borrowings even though netting is permitted under FASB Statement No. 62.

(5) *Treatment of deferred intercompany transactions*—(i) *General rule.* If interest capitalized under section 263A(f) by a member of a consolidated group (within the meaning of § 1.1502–1(h)) with respect to a unit of designated property is attributable to a loan from another member of the group (the lending member), § 1.1502–13(c) does not apply to defer the lending member's interest income with respect to that loan, except as provided in paragraph (f)(5)(ii) of this section. For this purpose, the capitalized interest expense that is attributable to a loan from another member is determined under any method that reasonably reflects the principles of the avoided cost method, including the traced and nontraced concepts. For purposes of this paragraph (f)(5)(i) and paragraph (f)(5)(ii) of this section, in order for a method to be considered reasonable is must be consistently applied.

(ii) *Special rule for consolidated groups with limited outside borrowing.* If, for any year, the aggregate amount of interest income described in paragraph (f)(5)(i) of this section for all members of the group with respect to all units of designated property exceeds the total amount of interest that is deductible for that year by all members of the group with respect to debt owed to nonmembers (after applying section 263A(f)), § 1.1502–13(c) applies to the excess, and the amount of interest income that must be taken into account by the group under paragraph (f)(5)(i) of this section is limited to the amount of the group's deductible interest. The amount to which § 1.1502–13(c) applies by reason of this paragraph (f)(5)(ii) is allocated among the lending members under any method that reasonably reflects each member's share of interest income described in paragraph (f)(5)(i) of this section. If a lending member has interest income that is attributable to more than one unit of designated property, the amount to which § 1.1502–13(c) applies by reason of this paragraph (f)(5)(ii) with respect to the member is allocated among the units in accordance with the principles of paragraph (c)(7)(i) of this section.

(iii) *Example.* The provisions of paragraph (f)(5)(ii) of this section are illustrated by the following example.

Example. P and S1 are members of a consolidated group. In 1990, S1 begins and completes the construction of a shopping center and is required to capitalize interest incurred during the construction period. S1's average excess expenditures for 1990 are $5,000,000. Throughout 1990, S1's only borrowings include a $6,000,000 loan from P bearing interest at an annual rate of 10 percent ($600,000 per year). Under the avoided cost method, SI is required to capitalize interest in the amount of $500,000 ([$600,000÷$6,000,000]×$5,000,000).

P's only borrowing from unrelated lenders is a $2,000,000 loan bearing interest at an annual rate of 14 percent ($280,000 per year). Under the principles of paragraph (f)(5)(ii) of this section, because the aggregate amount of interest described in paragraph (f)(5)(i) of this section ($500,000) exceeds the aggregate amount of currently deductible interest of the group ($280,000), § 1.1502–13(c) applies to the excess of $220,000 and the amount of P's interest income that is subject to current inclusion by reason of paragraph (f)(5)(i) of this section is limited to $280,000.

(6) *Notional principal contracts.* [Reserved]

(7) *15-day repayment rule.* A taxpayer may elect to treat any eligible debt that is repaid within the 15-day period immediately preceding a quarterly measurement date as outstanding as of that measurement date for purposes of determining traced debt, average nontraced debt, and the weighted average interest rate. This election may be made or discontinued for any computation period and is not a method of accounting.

§ 1.263A(f)–3 Unit of property.

(a) *In general.* The unit of property as defined in this section is used as the basis to determine accumulated production expenditures under § 1.263A(f)–4 and to determine the beginning and end of the production period under § 1.263A(f)–5. Whether property is 1-year or 2-year property under § 1.263A(f)–1(b)(1)(ii) is also determined separately with respect to each unit of property as defined in this section.

(b) *Units of real property*—(1) *In general.* A unit of real property includes any components of real property owned

by the taxpayer or a related party (within the meaning of section 267(b) or 707(b)) that are functionally interdependent and a prorata portion of any common features owned by the taxpayer or a related party (within the meaning of section 267(b) or 707(b)) that are real property. When the production period begins with respect to any functionally interdependent component or any common feature of the unit of real property, the production period has begun for the entire unit of real property. The portion of land that is a component of real property (or a common feature) includes land on which real property (or the common feature) is situated, land subject to setback restrictions with respect to the real property (or the common feature), and any other contiguous portion of the tract of land that the taxpayer does not hold for investment purposes or for other specified future development as a separate unit of real property.

(2) *Functional interdependence.* Components of real property produced by, or for, the taxpayer, for use by the taxpayer or a related party (within the meaning of section 267(b) or 707(b)), are functionally interdependent if the placing in service of one component is dependent on the placing in service of the other component by the taxpayer or a related party (within the meaning of section 267(b) or 707(b)). In the case of property produced for sale, components of real property are functionally interdependent if they are customarily sold as a single unit. Thus, components of real property that are expected to be separately placed in service or held for resale are not functionally interdependent. For example, the real property components of a single-family house (*e.g.*, the land, foundation and walls) are functionally interdependent. In contrast, dwelling units within a multiunit building that are separately placed in service or sold (within the meaning of § 1.263A(f)–5(d)(1)) are treated as functionally independent of any other units, even though the units are located in the same building.

(3) *Common features*—(i) *In general.* In addition to functionally interdependent components, a unit of real property includes an allocable share of common features that are real property, even though these features do not meet the functional interdependence test. For purposes of this section, a common feature generally includes any real property (as defined in § 1.263A(f)–1(c)) that benefits real property produced by, or for, the taxpayer or a related party (within the meaning of section 267(b) or 707(b)), and that is not separately held for the production of income. A common feature need not be physically contiguous to the real property that it benefits. Examples of common features include streets, sidewalks, playgrounds, clubhouses, tennis courts, sewer lines, and cables that are not held for the production of income separately from the units of real property that they benefit.

(ii) *Special treatment of costs when a common feature is placed in service before the end of production of a benefited unit.* To the extent that a common feature is placed in service before the end of the production period of the remainder of the unit that is benefited, the costs of the common feature are not included in accumulated production expenditures of the benefited unit of real property for measurement periods beginning after the common feature is placed in service. Except as provided in the preceding sentence, the costs of common features are included in accumulated production expenditures of the benefited unit of real property and the production period for the benefited unit of real property continues until the unit is ready to be placed in service or is ready to be held for sale (within the meaning of § 1.263A(f)–5(d)).

(4) *Allocation of costs to unit.* Accumulated production expenditures for a unit of real property include in all cases the cost of land and other property that directly benefits, or is incurred by reason of the production of, the unit of real property. In the case of common features or land that benefit more than one unit of real property or that partially benefit any property other than a unit of real property being produced, a prorata portion of the accumulated costs of the common features or land is included in accumulated production expenditures for the unit of real property being produced.

The prorata apportionment of the cost of common features or land generally may be made using any method that is applied on a consistent basis and that reasonably reflects the benefits provided. For example, an apportionment may be reasonable if it is based on the relative amount of costs expected to be incurred with respect to the units, the relative amount of space to be occupied by the units, or the relative fair market values of the units.

(5) *Excludible areas.* A unit of real property does not include any portion of a tract of land that is held by the taxpayer for investment or personal use.

(6) *Examples.* The principles of paragraph (b) of this section are illustrated by the following examples:

Example 1. B, an individual, is in the trade or business of constructing custom-built houses for sale. B owns a 10-acre tract upon which B intends to build four houses on 2 acre lots. In addition, on the remaining 2 acres B plans to construct a perimeter road that benefits the four houses and is not held for the production of income separately from the sale of the houses. Under the principles of paragraph (b)(2) of this section, each separate house constitutes a separate unit of real property. The area comprising the perimeter road constitutes a common feature under paragraph (b)(3)(i) of this section with respect to all of the planned houses and, thus, a part of each of the separate units of property. In 1992, B completes the perimeter road and clears the land for one house. Because the perimeter road is a common feature with respect to all of the planned houses, the production period for all four houses begins with the production of the perimeter road in 1992, even though B does not undertake any additional production activities with respect to three of the houses. See paragraph (b)(i) of this section. In addition, B must allocate a portion of the cost of the perimeter road to each of the planned houses under paragraph (b)(4) of this section.

Example 2. D, a corporation, is in the trade or business of developing commercial real property. D owns a 20-acre tract upon which D intends to build a shopping center with 150 stores. D intends to lease the stores. In accordance with local zoning ordinances, D will also provide a 1500-car parking lot on the 20 acres, which is not held by D for the production of income separately from the stores in the shopping center. D intends to complete the shopping center in phases and expects that each store will be placed in service independently of any other store. Under paragraph (b)(2) of this section, each store is treated as a separate unit of property. The 1500-car parking lot is a common feature, which benefits each unit of property. Therefore, in addition to the capitalized costs (including underlying land) incurred with respect to each store, D is required under paragraph (b)(4) of this section to include in the accumulated production expenditures for each store during each store's production period a prorata portion of the capitalized costs of the parking garage using a reasonable method of allocation. Under paragraph (b)(4) of this section, the cost of the land associated with the parking lot is similarly allocated among the stores using a reasonable allocation method so that 100 percent of the cost of the land is allocated to all of the stores in the aggregate.

Example 3. X, a real estate developer, begins a project to construct a condominium building and a convenience store for the benefit of the condominium. X may decide to either sell or lease the convenience store. Because the convenience store is held for the production of income separately from the condominium units that it benefits, the convenience store is not a common feature with respect to the condominium building. Instead, the convenience store is a separate unit of property with a separate production period and for which a separate

determination of accumulated production expenditures must be made.

Example 4. In 1991, X, a real estate developer, begins a project consisting of a condominium building and a common swimming pool that is not held for the production of income separately from the condominium sales. The condominium building consists of 10 stories, and each story is occupied by a single condominium unit. Production of the swimming pool begins in January, but no production activity with respect to the building occurs until June. The swimming pool is completed at the end of 1991, and at that time 1 condominium unit has been completed and sold, 3 condominium units have been completed but are unsold, and 6 condominium units are partially complete. Under paragraph (b)(2) of this section, each condominium unit is a separate unit of real property. Under the principles of paragraph (b)(3)(i) of this section, the swimming pool is a common feature with respect to the condominium units and under paragraph (b)(4) of this section the cost of the swimming pool is allocated equally among the units.

Under paragraph (b)(1) of this section, the production period of each of the 10 condominium units begins in January when production of the swimming pool begins. The production period of each of the 4 condominium units that are sold or ready to be held for sale at the end of 1991 (within the meaning of § 1.263A(f)–5(d)) ends at that time and, therefore, interest capitalization ceases at that time with respect to the costs of these units, including the portion of the cost of the completed swimming pool that is allocated to these units.

With respect to the 6 condominium units that are only partially completed at the end of 1991, the production period (and therefore interest capitalization) continues after the end of 1991. In addition, for purposes of interest capitalization after the end of 1991, accumulated production expenditures for each of the 6 partially completed condominium units continues to include the portion of the cost of the completed swimming pool that is allocable to each of those units.

Example 5. Assume the same facts as in *Example 4*, except that the swimming pool is only partially completed as of the end of 1991. Under these facts, no interest is capitalized during measurement periods beginning after the date sale with respect to the cost of the swimming pool that is allocable to the unit that is sold. With respect to the 6 condominium units that are partially completed, and the 3 condominium units that are completed but unsold, however, interest capitalization continues after the end of 1991 and accumulated production expenditures of each unit continues to include the unit's allocable share of the costs of the swimming pool.

Example 6. Assume the same facts as in *Example 4*, except that X intends to lease rather than sell the condominium units, and that the completed swimming pool is placed in service for depreciation purposes at the end of 1991. In addition, assume that 1 unit has been leased, 3 units have been completed but are not leased, and 6 units are partially completed at the end of 1991. Under the principles of paragraph (b)(3)(i) of this section, the swimming pool is a common feature with respect to each condominium unit.

Under paragraph (b)(1) of this section, the production period of each of the 10 condominium units begins in January when production of the swimming pool begins. Under these facts, however, because the swimming pool is a common feature that is placed in service separately from the condominium units that it benefits, under paragraph (b)(3)(ii) of this section, the accumulated production expenditures of each of the units does not include any allocable share of the costs of the swimming pool after 1991. See also § 1.263A(f)–7(a).

(c) *Units of tangible personal property.* Components of tangible personal property are a single unit of property if the components are functionally interdependent. Components of tangible personal property that are produced by, or for, the taxpayer, for use by the taxpayer or a related party (within the meaning of section 267(b) or 707(b)), are functionally interdependent if the placing in service of one component is dependent on the placing in service of the other component by the taxpayer or a related party (within the meaning of section 267(b) or 707(b)). In the case of tangible personal property produced for sale, components of tangible personal property are functionally interdependent if they are customarily sold as a single unit. For example, if an aircraft manufacturer customarily sells completely assembled aircraft, the unit of property includes all components of a completely assembled aircraft. If the manufacturer also customarily sells aircraft engines separately, any engines that are reasonably expected to be sold separately are treated as single units of property.

(d) *Treatment of installations.* If the taxpayer produces or is treated as producing any property that is installed on or in other property, the production activity and installation activity relating to each unit of property generally are not aggregated for purposes of this section. However, if the taxpayer is treated as producing and installing any property for use by the taxpayer or a related party (within the meaning of section 267(b) or 707(b)) or if the taxpayer enters into a contract requiring the taxpayer to install property for use by a customer, the production activity and installation activity are aggregated for purposes of this section.

§ 1.263A(f)–4 Accumulated production expenditures.

(a) *General rule.* The term "accumulated production expenditures" generally means the cumulative amount of direct and indirect costs described in section 263A(a) that are required to be capitalized with respect to the unit of property (as defined in § 1.263A(f)–3), including interest capitalized in prior computation periods, plus the adjusted bases of any assets described in paragraph (d) of this section that are used to produce the unit of property during the period of their use. Accumulated production expenditures may also include the basis to a corporation, partnership, or other entity of property contributed to the entity.

(b) *When costs are first taken into account*—(1) *In general.* Except as provided in paragraph (c)(1) of this section, costs are taken into account in the computation of accumulated production expenditures at the time and to the extent they would otherwise be taken into account under the taxpayer's method of accounting (*e.g.*, after applying the requirements of section 461, including the economic performance requirement of section 461(h)). Costs that have been incurred and capitalized with respect to a unit of property prior to the beginning of the production period are taken into account as accumulated production expenditures beginning on the date on which the production period of the property begins (as defined in § 1.263A(f)–5(c)). Thus, for example, the cost of raw land acquired for development, the cost of a leasehold in mineral properties acquired for development, and the capitalized cost of planning and design activities are taken into account as accumulated production expenditures beginning on the first day of the production period. For purposes of determining accumulated production expenditures on any measurement date during a computation period, the interest required to be capitalized for the computation period is deemed to be capitalized on the day immediately following the end of the computation period. For any subsequent measurement dates and computation periods, that interest is included in accumulated production expenditures. If the cost of land or common features is allocated among planned units of property that are completed in phases, any portion of the cost allocated to completed units is not reallocated to any incomplete units of property.

(2) *Dedication rule for materials and supplies.* The costs of raw materials, supplies, or similar items are taken into account as accumulated production expenditures when they are incurred and dedicated to production of a unit of property. The term "dedicated" means the first date on which the raw

materials, supplies, or similar items are specifically associated with the production of any unit of property, including by record, assignment to the specific job site, or physical incorporation. In contrast, in the case of a component or subassembly that is reasonably expected to be incorporated into a unit of property, costs incurred (including dedicated raw materials) for the component or subassembly are taken into account as accumulated production expenditures during the production of any portion of the component or subassembly and prior to incorporation of the component or subassembly into a specific unit of property. Components and subassemblies of a type that are reasonably expected to be incorporated into a unit of property must be aggregated at each measurement date in the manner that produces the maximum number of units of designated property at the maximum stage of completion.

(c) *Property produced under a contract*—(1) *Customer.* If a unit of property produced under a contract is designated property under § 1.263A(f)–1(e)(2) with respect to the customer, the customer's accumulated production expenditures include any payments under the contract that represent part of the purchase price of the unit of designated property or, to the extent costs are incurred earlier than payments are made (determined on a cumulative basis for each unit of designated property), any part of such price for which the requirements of section 461 have been satisfied. The customer has made a payment under this section if the transaction would be considered a payment by a taxpayer using the cash receipts and disbursements method of accounting. The customer's accumulated production expenditures also include any other costs incurred by the customer, such as interest, or any other direct or indirect costs that are required to be capitalized under section 263A(a) and the regulations thereunder with respect to the production of the unit of designated property.

(2) *Contractor.* If a unit of property produced under a contract is designated property under § 1.263A(f)–1(e)(2) with respect to the contractor, the contractor may treat the cumulative amount of payments made by the customer under the contract attributable to the unit of property as a reduction in the contractor's accumulated production expenditures. The customer has made a payment under this section if the transaction would be considered a payment by a taxpayer using the cash receipts and disbursements method of accounting.

(d) *Property used to produce designated property*—(1) *In general.* Accumulated production expenditures include the adjusted bases (or portion thereof) of any equipment, facilities, or other similar assets, used in a reasonably proximate manner for the production of a unit of designated property during the period of such use. Examples of assets used in a reasonably proximate manner include machinery and equipment used directly or indirectly in the production process, such as assembly-line structures, cranes, bulldozers, and buildings. If an asset is used simultaneously in the production of more than one unit of designated property, or an activity that is not the production of designated property, the taxpayer must use reasonable criteria, such as machine hours, mileage, or units of production, to apportion the adjusted basis among activities in a manner that reasonably corresponds to the use of the asset. Periods during which the asset is not in use must be disregarded. Notwithstanding this paragraph (d)(1), the portion of the depreciation allowance for equipment, facilities, or any other asset that is capitalized with respect to a unit of designated property in accordance with § 1.263A–1T is included in accumulated production expenditures without regard to the extent of use under this paragraph (d)(1) (*i.e.*, without regard to whether the asset is used in a reasonably proximate manner for the production of the unit of designated property).

(2) *Example.* The following example illustrates how the basis of an asset is allocated on the basis of time:

Example. In 1991, X uses a bulldozer exclusively to clear the land on several adjacent real estate development projects, A, B, and C. A, B, and C are treated as separate units of property under the principles of § 1.263A(f)–3. X decides to allocate the basis of the bulldozer among the three projects on the basis of time. At the end of the first quarter of 1991, the production period has commenced for all three projects. The bulldozer was operated for 30 hours on project A, 80 hours on project B, and 10 hours on project C, for a total of 120 hours for the entire period. For purposes of determining accumulated production expenditures as of the end of the first quarter, ¼ of the adjusted basis of the bulldozer is allocated to project A, ⅔ to project B, and 1/12 to project C. Downtime for regularly scheduled working hours, regularly scheduled nonworking hours, and idle periods, is not taken into account in allocating the basis of the bulldozer.

(3) *Excluded equipment and facilities.* The adjusted bases of equipment, facilities or other assets that are not used in a reasonably proximate manner to produce a unit of property are not included in the computation of accumulated production expenditures. For example, the adjusted bases of equipment and facilities, including buildings and other structures, used in service departments performing administrative, purchasing, personnel, legal, accounting, or similar functions, are excluded from the computation of accumulated production expenditures under this paragraph (d)(3).

(e) *Improvements*—(1) *General rule.* If an improvement constitutes the production of designated property under § 1.263A(f)–1(e)(3), accumulated production expenditures with respect to the improvement consist of all direct and indirect costs required to be capitalized with respect to the improvement, plus an allocable portion of the cost of associated land, plus the adjusted bases of any existing structures or common features that directly benefit, or are incurred by reason of, the improvement if either they are not placed in service or they must be taken out of service to complete the improvement, regardless of whether the taxpayer intends to sell or use the improvement. For example, in the case of an improvement to real property, accumulated production expenditures include the direct and indirect costs incurred for the improvement, a prorata share of the cost of any associated land (including a prorata share of land subject to setback restrictions), plus the adjusted basis of any existing structures that are not placed in service or that must be taken out of service to complete the improvement. In the case of an improvement to a unit of tangible personal property, accumulated production expenditures include the adjusted basis of the asset being improved if that asset either is not placed in service or must be taken out of service to complete the improvement, regardless of whether the taxpayer intends to sell or use the improvement.

(2) *Example.* The provisions of paragraph (e)(1) of this section are illustrated by the following examples.

Example. X, a real estate developer engaged in leasing office space, constructs a new high-rise office building. At the time X completes construction of the building, X does not have tenants to occupy the space and, therefore, has not completed any tenant improvements. However, X begins depreciation of the building and common features, exclusive of the tenant improvements. Accordingly, the building and tenant improvements are separate units of designated property for purposes of determining the period for capitalizing interest and the allocable accumulated

production expenditures of the designated property units. See § 1.263A(f)–3(b)(1).

During the production period for the building, interest must be capitalized with respect to the accumulated costs of the building and all associated land until the building is ready to be placed in service. The tenant improvements are improvements within the meaning of paragraph (e)(1) of this section. During the production period of each tenant improvement, interest must be capitalized with respect to the direct and indirect costs of that improvement, plus an allocable portion of the cost of the land associated with the building. A reasonable method of allocation must be used for this purpose. For example, if the building is 20 stories and the improvements are limited to the entire third floor, 1/20 of the cost of the associated land is treated as an accumulated production expenditure. The cost of the building is not required to be included in accumulated production expenditures for the tenant improvements if the building is not taken out of service to complete the tenant improvements.

(f) *Mid-production purchases.* If a taxpayer purchases a unit of property for further production, the taxpayer's accumulated production expenditures include the full purchase price of the property plus, in accordance with the principles of paragraph (e) of this section, additional direct and indirect costs incurred by the taxpayer.

(g) *Related party costs.* The activities of a related party (within the meaning of section 267(b) or 707(b)) are taken into account in applying the classification thresholds under §§ 1.263A(f)–1(b)(1)(ii)(B) and (C), and in determining the production period of a unit of designated property under § 1.263A(f)–5. However, only those costs incurred by the taxpayer are taken into account in the taxpayer's accumulated production expenditures under this section because the related party includes its own capitalized costs in the related party's accumulated production expenditures with respect to any unit of designated property upon which the parties engage in mutual production activities.

(h) *Installation.* If the taxpayer installs property that is purchased by the taxpayer, accumulated production expenditures include the cost of the property that is installed in addition to the direct and indirect costs of installation.

§ 1.263A(f)–5 Production period.

(a) *In general.* Capitalization of interest is required under § 1.263A(f)–2 for computation periods (within the meaning of § 1.263A(f)–2(e)(1)) that include the production period of a unit of designated property. In contrast, section 263A(a) requires the capitalization of all other direct or indirect costs, such as insurance, taxes, and storage, that directly benefit or are incurred by reason of the production of property without regard to whether they are incurred during a period in which production activity occurs.

(b) *Related party activities.* Activities performed and costs incurred by a person related to the taxpayer within the meaning of section 267(b) or 707(b) that directly benefit or are incurred by reason of the taxpayer's production of designated property are taken into account in determining the taxpayer's production period (regardless of whether the related person is performing only a service or is producing a subassembly or component that the related person is required to treat as an item of designated property). These activities and the related party's costs are also taken into account in determining whether tangible personal property produced by the taxpayer is 1-year or 2-year property under § 1.263A(f)–1(b)(1)(ii)(B) and (C).

(c) *Beginning of production period*—(1) *In general.* A separate production period is determined for each unit of property defined in § 1.263A(f)–3. The production period begins on the date that production of the unit of property begins.

(2) *Real property.* The production period of a unit of real property begins on the first date that any physical production activity (as defined in paragraph (e) of this section) is performed on the site of the unit of real property. See § 1.263A(f)–3(b)(1). The production period of a unit of real property produced under a contract begins for the contractor on the date the contractor begins physical production activity on the property. The production period of a unit of real property produced under a contract begins for the customer on the date either the customer or the contractor begins physical production activity on the property.

(3) *Tangible personal property.* The production period of a unit of tangible personal property begins on the first date by which the taxpayer's accumulated production expenditures, including planning and design expenditures, are at least 5 percent of the taxpayer's total estimated accumulated production expenditures for the property unit. Thus, the beginning of the production period is determined without regard to whether physical production activity has commenced. The production period of a unit of tangible personal property produced under a contract begins for the contractor when the contractor's accumulated production expenditures are at least 5 percent of the contractor's total estimated accumulated production expenditures. The production period for a unit of tangible personal property produced under a contract begins for the customer when the customer's accumulated production expenditures are at least 5 percent of the customer's total estimated accumulated production expenditures.

(d) *End of production period*—(1) *In general.* The production period for a unit of property produced for self use ends on the date the unit of property is ready to be placed in service and all production activities reasonably expected to be undertaken by, or for, the taxpayer or a related party (within the meaning of section 267(b) or 707(b)) are completed. The production period for a unit of property produced for sale ends on the date the property is ready to be held for sale and all production activities reasonably expected to be undertaken by, or for, the taxpayer or a related party are completed. In the case of a unit of property produced under a contract, the production period for the customer ends when the property is ready to be placed in service by the customer (i.e., generally, no earlier than when the customer takes delivery). For purposes of this section, the term "placed in service" has the meaning set forth in § 1.46–3(d).

(2) *Special rules.* The production period does not end for a unit of property prior to completion of physical production activities by the taxpayer even though the property is held for sale or lease, since all production activities reasonably expected to be undertaken by the taxpayer with respect to such property have not in fact been completed. See, however, § 1.263A(f)–3(b)(3)(ii) regarding separation of certain common features. In addition, in the case of property that is customarily aged (such as tobacco, wine, or whiskey) before it is sold, the production period includes the aging period.

(3) *Sequential production or delivery.* The production period ends with respect to each unit of property (as defined in § 1.263A(f)–3) and its associated accumulated production expenditures as the unit of property is completed within the meaning of paragraph (d)(1) of this section, without regard to the production activities or costs of any other units of property. Thus, for example, in the case of separate apartments in a multi-unit building, each of which is a separate unit of property within the meaning of § 1.263A(f)–3, the production period ends for each separate apartment when it is ready to be held for sale or ready to be placed in service within the meaning of paragraph (d)(1) of this section. In the case of a single unit of property that

merely undergoes separate and distinct stages of production, the production period ends at the same time (*i.e.*, when all separate stages of production are completed) with respect to the entire amount of accumulated production expenditures for the property.

(4) *Exomples.* The provisions of paragraph (d) of this section are illustrated by the following examples:

Example 1. E is engaged in the original construction of a high-rise office building with two wings. Although one wing is ready to be placed in service at the end of 1991, the second wing is not ready to be placed in service at that time. At the end of 1991, the completed wing is considered placed in service within the meaning of § 1.46–3(d) and E may therefore stop capitalizing interest with respect to the completed wing.

Example 2. F is in the business of constructing finished houses. F generally paints and finishes the interior of the house, although this does not occur until a potential buyer is located. Because F reasonably expects to undertake this production activity (painting and finishing), the production period of each house does not end until these activities are completed.

(e) *Physicol production activities*—(1) *In general.* The term "physical production activities" includes any physical activity that constitutes production within the meaning of § 1.263A(f)–1(e). The production period begins and interest must be capitalized with respect to real property if any physical production activities are undertaken, whether alone or in preparation for the construction of buildings or other structures, or with respect to the improvement of existing structures. For example, the clearing of raw land constitutes the production of designated property, even if only cleared prior to resale.

(2) *Illustrations.* The following is a partial list of activities any one of which constitutes physical production of real property:

(i) Clearing, grading, or excavating of raw land;

(ii) Demolishing a building or gutting a standing building;

(iii) Engaging in the construction of infrastructure, such as roads, sewers, sidewalks, cables, and wiring;

(iv) Undertaking structural, mechanical, or electrical activities with respect to a building or other structure; or

(v) Engaging in landscaping activities.

(f) *Activities not considered production.* The activities described in paragraphs (f) (1) and (2) of this seotion are not considered physical production activities:

(1) *Plonning ond design.* Soil testing, preparing architectural blueprints or models, or obtaining building permits.

(2) *Incidentol repairs.* Physical activities of an incidental nature that may be treated as repairs under § 1.162–4. Examples of activities that primarily repair, maintain, or preserve real property include the following:

(i) Repairing fences; or

(ii) Repairing or repainting the walls of an existing structure.

(g) *Suspension of production period*—(1) *In general.* If production activities related to the production of a unit of designated property cease for a period of 12 consecutive months (the cessation period), the taxpayer is permitted to suspend the capitalization of interest with respect to the unit of designated property beginning with the 13th month of cessation (the beginning of the suspension period). The suspension period ends on the first date on which any production activities take place. Interest incurred on debt that is traced debt with respect to a unit of designated property during the suspension period is, however, subject to capitalization with respect to the production of other units of designated property as interest on nontraced debt. See § 1.263A(f)–2(c)(5). For purposes of this paragraph (g), de minimis production activities may be disregarded. When production activities resume (the end of the suspension period), the taxpayer must resume interest capitalization with respect to the property. For applications of the avoided cost method after the end of the suspension period, the accumulated production expenditures for the property include the balance of accumulated production expenditures as of the beginning of the suspension period, plus any additional capitalized costs incurred during the suspension period and thereafter. No further suspension of the interest capitalization period may occur unless the requirements for a new cessation period are satisfied.

(2) *Example.* The provisions of this paragraph (g)(1) of this section are illustrated by the following example.

Example. D, a calendar-year taxpayer, began production of a residential housing development on January 1, 1990. From January 1, 1990, through December 31, 1990, D incurred accumulated production expenditures of $2,000,000 and capitalized interest of $200,000. On January 1, 1991, a prolonged strike began and forestalled all construction activities until July 1, 1992. During the period January 1, 1991, through December 31, 1991, D is required to capitalize an additional $220,000 of interest with respect to the accumulated production expenditures of $2,200,000. D incurred additional accumulated production expenditures of $3,000,000 for the 6-month period ending December 31, 1992. Because the strike caused a complete cessation of production activities for 12 continuous months, D may treat the 6-month period beginning January 1, 1992, and ending June 30, 1992, as a suspension of the production period. Accordingly, D is not required to capitalize any interest during that period with respect to the accumulated production expenditures of $2,420,000. However, D is required to capitalize interest during the final 6 months of 1992 with respect to the total accumulated production expenditures of $5,420,000.

§ 1.263A(f)–6 Oil and gas activities.

(a) *In general.* This section provides rules for applying the general principles of §§ 1.263A(f)–1 through 1.263A(f)–5 to the activity of drilling oil and gas wells.

(b) *Beginning of production period.* The production period for an oil or gas well begins on the first date physical site preparation activities are undertaken on the property. Physical site preparation includes building of access roads, leveling the site for the drilling rig, excavation of mud pits, or positioning a mobile drilling rig for an exploratory well.

(c) *End of production period.* The production period for an oil or gas well ends when surface production equipment is installed and the well is placed in service (*i.e.*, is capable of producing oil or gas). The production period thus encompasses the period between the drilling of the first exploratory well and the completion of the first well drilled for commercial production. In the case of a nonproductive well, the production period ends on the date the well is plugged and abandoned.

(d) *Accumulated production expenditures.* With respect to any drilling activity, accumulated production expenditures include the following amounts (or an allocable portion of the amounts as determined under paragraph (e)(1) of this section): the cost of acquiring the leasehold, the cost of well casing, the costs of taxes and similar items that are required to be capitalized under section 263A(a) with respect to the leasehold, the basis of any real property that constitutes a common feature within the meaning of § 1.263A(f)–3(b)(3), and the basis of any property used in the drilling operation (such as mobile rigs, or an offshore drilling platform).

(e) *Multi-phase development.* For purposes of determining the unit of property under § 1.263A(f)–3, the following rules in paragraph (e) (1) and (2) of this section apply. Each well drilled for production is a separate unit of property with a separate production period:

(1) In the case of the first well drilled on the property (within the meaning of section 614), the accumulated production

expenditures include the leasehold acquisition costs and costs of other common features associated with the property (within the meaning of section 614). However, if the taxpayer can establish, at the beginning of the production period, a definite plan, which identifies the number and location of other wells planned with respect to the property (within the meaning of section 614), the taxpayer may partition the leasehold acquisition costs and costs of other common features based on the number of such planned wells. For example, if the taxpayer plans to drill 3 wells at different times and on specified sites, ⅓ of the leasehold acquisition costs and costs of other common features is allocable to the first well, and ⅓ of the undepleted leasehold acquisition costs and costs of other common features (determined at the time of drilling succeeding wells) is allocable to each of the succeeding wells.

(2) In the case of wells other than the first well drilled on a property (within the meaning of section 614), if the taxpayer does not partition the leasehold acquisition costs and costs of other common features under paragraph (e)(1) of this section, the accumulated production expenditures for any subsequent well includes a prorata share of the undepleted leasehold acquisition costs and costs of other common features associated with the property (within the meaning of section 614). For this purpose, a prorata share is based on the sum of the number of all existing wells and the number of wells that the taxpayer could feasibly drill on the property (within the meaning of section 614) in the future (without any requirement to identify by a definite plan the number and location of subsequent wells).

(f) *Example.* The provisions of paragraphs (a) through (e) of this section are illustrated by the following example.

Example. Y, an oil company, acquired an onshore oil leasehold in Tract A for development. Seismic studies indicated the possible existence of oil on Tract A. However, in Year 1 when Y began the site preparation, Y was unable to establish a definite plan identifying the number and location of additional wells to be drilled. Because the oil is real property and Y's drilling activities constitute the production of the mineral resource, the tangible personal property thresholds do not apply and interest must be capitalized without regard to the length of the production period or estimated total cost of production. In accordance with paragraph (e) of this section, Well 1 is a separate unit of property with a production period beginning with site preparation and ending when Well 1 is capable of production.

Also in accordance with paragraph (e)(1) of this section, Y may not partition the leasehold for purposes of capitalizing interest with respect to Well 1 during the production period of Well 1. Accordingly, the accumulated production expenditures for Well 1 include the entire cost of the leasehold on Tract A, plus all other direct and indirect costs incurred with respect to tangible well drilling and recovery equipment that are not intangible drilling and development costs within the meaning of section 263(c).

In Year 4, Y began drilling a second well, Well 2, on Tract A. Well 2 is also treated as a separate unit of property with a production period beginning with site preparation and ending when Well 2 is capable of production. As of the beginning of the production period of Well 2, Y estimated that approximately 5 wells in addition to Wells 1 and 2 could feasibly be drilled on the entire Tract A. Under paragraph (e)(2) of this section, therefore, the accumulated production expenditures for Well 2 include, in addition to the direct and indirect capitalized costs of drilling Well 2, ⅓ of the undepleted basis of the leasehold for Tract A.

§ 1.263A(f)–7 Comprehensive real estate example.

The following example illustrates the application of the avoided cost method to a real estate development project:

Example: (1) *General description of facts.* In January of Year 1, X, a real estate developer, purchases land and buildings on 3 contiguous parcels (A, B, and C) of an inner city block for the purpose of developing a complex consisting of a department store, a movie theater and a hotel. X plans to demolish the standing buildings that occupy Parcels A and B and on a portion of those parcels construct an underground parking garage for the entire complex. The parking garage will exclusively benefit the remainder of the project at no charge to the users. The department store is planned to be constructed on Parcel A and the movie theater on Parcel B. Parcel C contains an existing hotel that X plans to renovate rather than demolish and reconstruct.

In March of Year 1, X begins physical work on the project by demolishing the buildings on Parcels A and B and beginning construction of the underground parking garage on Parcel A and B.

X's capital costs for the initial purchase and demolition are as follows:

	Parcel A	Parcel B	Parcel C	Total
Land	$5,000,000	$7,000,000	$4,000,000	$16,000,000
Building	1,000,000	500,000	2,000,000	3,500,000
Demolition	500,000	500,000		1,000,000
Total	6,500,000	8,000,000	6,000,000	20,500,000

X finances the entire initial purchase and the demolition activity with a purchase-money mortgage in the amount of $20,500,000 bearing interest at an annual rate of 10 percent.

In December of Year 1, construction of the parking garage is completed and the parking garage is placed in service. During January of Year 2, X starts construction of the foundation for the department store and the movie theater.

The department store is completed and ready to be placed in service in August of Year 2. The movie theater is completed and ready to be placed in service in October of Year 2. X commences renovation of the hotel in July of Year 3 and completes the renovation in December of Year 3.

(2) *Elections.* X chooses to use the taxable year as the computation period under § 1.263A(f)–2(e)(1) and therefore to apply the avoided cost method on the basis of a full taxable year. X also chooses quarterly measurement dates and the end of each calendar quarter as the measurement dates under paragraph (e)(2) of that section. Further, in accordance with § 1.263A(f)–2(d), X makes an election not to trace debt. Under this election, X treats all eligible debt as nontraced debt (including noninterest bearing liabilities that are traced under the rules of § 1.163–8T to accumulated production expenditures and the $20,500,000 purchase money mortgage used to acquire the property) to determine the weighted average interest rate under § 1.263A(f)–2(c)(5)(iii).

(3) *Unit of designated property.* Under the rules of § 1.263A(f)–3, X must identify the separate units of designated property that make up the development project and apply the avoided cost method separately to each unit. Accordingly, each unit has a separate production period determined under § 1.263A(f)–5 and accumulated production expenditures determined under § 1.263A(f)–4.

The following three units of property consist of areas that are functionally interdependent within the meaning of § 1.263A(f)–3 and that are functionally independent of areas contained within either of the remaining two units:

Unit 1: The department store on Parcel A
Unit 2: The movie theater on Parcel B
Unit 3: The hotel on Parcel C

Because the parking garage will be used for the benefit of all three of the property units, it is a common feature within the meaning of § 1.263A(f)–3(b)(3). Production activity in accordance with § 1.263A(f)–5 and a prorata portion of the costs associated with the

common feature in accordance with § 1.263A(f)–4 are attributed to each of the three property units.

(4) *Production periods.* In accordance with the rules of § 1.263A(f)–5, the production periods for the three property units occur as follows:

Beginning	Suspension	End
Unit 1: March, Yr. 1.		August, Yr. 2
Unit 2: March, Yr. 1.		October, Yr. 2
Unit 3: March, Yr. 1.	Jan. Yr. 3–June Yr. 3.	December, Yr. 3

(5) *Accumulated production expenditures.* For purposes of measuring the accumulated production expenditures for each unit, X is required to apportion its combined basis in the land for Parcels A and B of $14,500,000 ($6,500,000+$8,000,000) (which includes the basis of the demolished buildings and the costs of demolition) among the parking garage, the department store, and the movie theater using a reasonable method of apportionment. See § 1.263A(f)–3(b)(4). In this situation, X determines that apportioning on the basis of relative expected costs would be reasonable. X estimates that its construction costs for the common feature and the two separate property units would be $2,000,000, $4,000,000, and $2,000,000, respectively. Accordingly, ¼ of the land account ($3,625,000) is allocated to the parking garage construction, ½ ($7,250,000) to the department store construction, and ¼ ($3,625,000) to the movie theater construction.

X in turn must apportion the accumulated production expenditures for the parking garage (including the $3,625,000 of allocated land cost) among the three property units. With respect to Parcel C, the hotel is not in service on the date the property is acquired and cannot be placed in service until completion of the renovation activity. Thus, X must include in accumulated production expenditures for Parcel C the entire combined basis in the land and building account of $6,000,000 for Parcel C. X estimates that the renovation activity will cost $3,000,000. For purposes of measuring accumulated production expenditures, the parking garage costs are allocated as follows:

	Land/building	Construction	Total	Percent of total
Store	$7,250,000	$4,000,000	$11,250,000	43
Theater	3,625,000	2,000,000	5,625,000	22
Hotel	6,000,000	3,000,000	9,000,000	35
Total			25,875,000	

The accumulated production expenditures for the parking garage at the end of each quarter in Year 1 are as follows:

	Land/building	Construction	Total
March	$3,625,000	$600,000	$4,225,000
June	3,625,000	800,000	4,425,000
September	3,625,000	1,500,000	5,125,000
December	3,625,000	2,000,000	5,625,000

In accordance with the percentages computed above, the accumulated production expenditures for the parking garage are allocated to the three property units at the end of each quarter of Year 1 as provided below. Because the parking garage is placed in service at the end of Year 1, and this precedes the end of the production periods for the three property units for which it is a common feature, in accordance with § 1.263A(f)–3(b)(3), its costs are taken out of the accumulated production expenditures of the three property units after the parking garage is placed in service. In accordance with § 1.263A(f)–3(b)(3)(ii), the costs that are taken out of accumulated production expenditures include the $5,625,000 of capitalized construction costs plus the amount of interest capitalized with respect to this $5,625,000.

	Store (43%)	Theater (22%)	Hotel (35%)	Total
March	$1,816,750	$929,500	$1,478,750	$4,225,000
June	1,902,750	973,500	1,548,750	4,425,000
September	2,203,750	1,127,500	1,793,750	5,125,000
December	2,418,750	1,237,500	1,968,750	5,625,000

X determines accumulated production expenditures for the three property units on each measurement date at the end of each quarter as follows:

	Store	Theater	Hotel
Year 1			
March:			
Land (building)	$7,250,000	$3,625,000	$6,000,000
Garage	1,816,750	929,500	1,476,750
Construction			
Total	9,066,750	4,554,500	7,478,750
June:			
Land (building)	7,250,000	3,625,000	6,000,000
Garage	1,902,750	973,500	1,548,750
Construction			
Total	9,152,750	4,598,500	7,548,750
September:			
Land (building)	7,250,000	3,625,000	6,000,000
Garage	2,203,750	1,127,500	1,793,750
Construction			

	Store	Theater	Hotel
Total	9,453,750	4,752,500	7,793,750
December:			
Land (building)	7,250,000	3,625,000	6,000,000
Garage	2,418,750	1,237,500	1,968,750
Construction			
Total	9,668,750	4,862,500	7,968,750
Year 2			
March:			
Land (building)	7,250,000	3,625,000	6,000,000
Construction	2,000,000	700,000	
Total	9,250,000	4,325,000	6,000,000
June:			
Land (building)	7,250,000	3,625,000	6,000,000
Construction	3,500,000	1,000,000	
Total	10,750,000	4,625,000	6,000,000
September:			
Land (building)	7,250,000	3,625,000	6,000,000
Construction	4,000,000	1,800,000	
Total	11,250,000	5,425,000	6,000,000
December:			
Land (building)		3,625,000	6,000,000
Construction		2,000,000	
Total		5,625,000	6,000,000
Year 3			
March:			
Land (building)			
Construction			
Total			
June:			
Land (building)			
Construction			
Total			
September:			
Land (building)			6,000,000
Construction			2,000,000
Total			6,000,000
December:			
Land (building)			6,000,000
Construction			3,000,000
Total			9,000,000

(6) *Avoided cost method.* (i) *Average excess expenditures.* In accordance with the election not to trace debt, X treats all accumulated production expenditures as excess expenditures. Thus, to determine average excess expenditures under § 1.263A(f)–2(c)(5)(ii) for the computation period, X divides the sum of accumulated production expenditures measured at the end of each quarter by four, the number of measurement dates during the year, to produce the following average excess expenditures for each computation period:

	Store	Theater	Hotel
Year 1	$9,335,500	$4,692,000	$7,697,500
Year 2	7,812,500	5,000,000	6,000,000
Year 3	N/A	N/A	4,250,000

(ii) *Weighted average interest rate.* Except for traced accounts payable, X has the following outstanding borrowings at all times during Years 1, 2, and 3:

	Principal	Rate (percent)	Annual cost
Mortgage	$20,500,000	10	$2,050,000
Loan 1	5,000,000	14	700,000
Loan 2	15,000,000	11	1,650,000
Total	40,500,000		4,400,000

At each measurement date, X has the following noninterest bearing accounts payable traced under § 1.163–8T (only to accumulated production expenditures taken into account at each measurement date):

	Year 1	Year 2	Year 3
March	$600,000	$1,000,000	
June	800,000	500,000	
September	1,500,000	750,000	$500,000
December	1,500,000	300,000	800,000
Total	4,400,000	2,550,000	1,100,000

In accordance with § 1.263A(f)–2(c)(5)(iii), X divides the balance of nontraced debt at the end of each quarter by four, the number of measurement dates during the computation period, to produce the following average nontraced debt for each computation period:

Year 1: ($4,400,000 ÷ 4) + $40,500,000 = $41,600,000
Year 2: ($2,550,000 ÷ 4) + $40,500,000 = $41,137,500
Year 3: ($1,100,000 ÷ 4) + $40,500,000 = $40,775,000

Under § 1.263A(f)–2(c)(5)(iii), the weighted average interest rate for each computation period is determined by dividing the total interest incurred on nontraced debt for each computation period by the average nontraced debt for that computation period. This calculation produces the following interest capitalization rates:

Year 1: $4,400,000 ÷ $41,600,000 = 10.6%
Year 2: $4,400,000 ÷ $41,137,500 = 10.7%
Year 3: $4,400,000 ÷ $40,775,000 = 10.8%

(iii) *Amounts capitalized.* X must apply the weighted average interest rate determined for each computation period to the corresponding average excess expenditures for the three property units for that year. This calculation produces the excess expenditure amount under § 1.263A(f)–2(c)(1) for each unit. Because the amount of interest described in § 1.263A(f)–2(c)(2) for the computation period equals or exceeds the sum of the excess expenditure amounts for all three units, X is required to capitalize the excess expenditure amount with respect to each property unit:

Store					
Year 1	$9,335,500	×	10.6%	=	$989,563
Year 2	7,812,500	×	10.7%	=	835,938
Total					1,825,501
Theater					
Year 1	4,692,000	×	10.6%	=	497,352
Year 2	5,000,000	×	10.7%	=	535,000
Total					1,032,352
Hotel					
Year 1	7,697,500	×	10.6%	=	815,935
Year 2	6,000,000	×	10.7%	=	642,000
Year 3	4,250,000	×	10.8%	=	459,000
Total					1,916,935

§ 1.263A(f)–8 Related party rules.

Taxpayers must account for average excess expenditures allocated to related parties under existing administrative pronouncements interpreting section 263A(f).

§ 1.263A(f)–9 Effective dates, transitional rules and antiabuse rule.

(a) *Inventory.* In the case of designated property that is inventory in the hands of the taxpayer, section 263A(f) is effective for taxable years beginning after December 31, 1986. See § 1.263A–1T(e) regarding a taxpayer's initial change in method of accounting to comply with section 263A for inventory. Sections 1.263A(f)–1 through 1.263A(f)–9 are effective for taxable years beginning after [*Insert the date this regulation is published as a final regulation in the Federal Register*]. With respect to taxable years beginning on or before [*Insert the date this regulation is published as a final regulation in the Federal Register*], taxpayers must comply with an interpretation of the statute that is reasonable in light of the legislative history and any applicable administrative pronouncements. For this purpose, Notice 88–99, 1988–2 C.B. 422, will apply to taxable years beginning after August 17, 1988. Thus, for taxable years beginning on or before [*Insert the date this regulation is published as a final regulation in the Federal Register*], §§ 1.263A(f)–1 through 1.263A(f)–9 will not be adversely applied to a taxpayer that took a position that is consistent with a reasonable interpretation of the statute, legislative history, and applicable administrative pronouncements.

(b) *Noninventory*—(1) *In general.* In the case of designated property that is not inventory in the hands of the taxpayer, such as developed real estate, section 263A(f) is effective on a cutoff basis to interest that is incurred within the meaning of § 1.263A(f)–2(a)(3) after December 31, 1986, without a restatement of the beginning asset basis to reflect the application of section 263A(f) for prior taxable years. Sections 1.263A(f)–1 through 1.263A(f)–9 are effective on a cutoff basis to interest incurred in taxable years beginning after [*Insert the date this regulation is published as a final regulation in the Federal Register*]. With respect to interest incurred in taxable years beginning on or before [*Insert the date this regulation is published as a final regulation in the Federal Register*], taxpayers must comply with an interpretation of the statute that is reasonable in light of the legislative history and any applicable administrative pronouncements. For this purpose, Notice 88–99, 1988–2 C.B. 422, will apply to interest incurred in taxable years beginning after August 17, 1988. Thus, with respect to interest incurred in taxable years beginning on or before [*Insert the date this regulation is published as a final regulation in the Federal Register*], §§ 1.263A(f)–1

through 1.263A(f)–9 will not be adversely applied to a taxpayer who took a position that is consistent with a reasonable interpretation of the statute, legislative history, and applicable administrative pronouncements.

(2) *Transitional rule for accumulated production expenditures*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, costs incurred before the effective date of section 263A are included in accumulated production expenditures (within the meaning of § 1.263A(f)–4) with respect to noninventory property only to the extent those costs were required to be capitalized under section 263 when incurred and would have been taken into account in determining the amount of interest required to be capitalized under former section 189 (relating to the capitalization of real property interest and taxes) or pursuant to an election that was in effect under section 266 (relating to the election to capitalize certain carrying charges). Thus, for example, the cost of raw land acquired in 1986 for development in 1987, or the cost of a leasehold in mineral properties acquired in 1986 for drilling in 1987, is included in accumulated production expenditures during the development or drilling period after 1986.

(ii) *Property used to produce designated property.* The basis of property acquired prior to 1987 and used to produce designated noninventory property after December 31, 1986, is included in accumulated production expenditures in accordance with § 1.263A(f)–4(d) without regard to whether the basis would have been taken into account under former section 189 or section 266.

(3) *Example.* The provisions of paragraph (b)(2) of this section are illustrated by the following example.

Example. On January 1, 1986, D begins production of a film that constitutes designated property that is not inventory in the hands of D. For the 1986 taxable year, D incurs $5,000,000 of direct and indirect production costs that are required to be capitalized under section 263(a). In 1987, D incurs an additional $9,000,000 of direct and indirect production costs (exclusive of interest) that are required to be capitalized under section 263A.

Assuming the film is not subject to an election under section 266, interest incurred by D during 1986 is not required to be capitalized because former section 189 did not apply to the production of personal property, such as films, and section 263A(f) does not apply to interest incurred before January 1, 1987, with respect to noninventory property.

In 1987, D is required to capitalize interest incurred during 1987 with respect to the $9,000,000 of accumulated production expenditures incurred after December 31, 1986. However, D is not required to capitalize interest with respect to the $5,000,000 of accumulated production expenditures incurred prior to January 1, 1987, because interest was not required to be capitalized with respect to those expenditures under former section 189 and D did not elect to apply section 266.

(c) *Section 481(a) adjustment.* Any taxpayer that changes its method of accounting in connection with the production of inventory pursuant to paragraph (a) of this section for the first taxable year to which section 263A(f) applies, must take the resulting section 481(a) adjustment into account in accordance with § 1.263A–1T(e)(2). Any taxpayer that fails to change its method of accounting in connection with the production of inventory pursuant to the provisions of paragraph (a) of this section for the first taxable year to which section 263A(f) applies, or any taxpayer that fails to properly capitalize interest incurred after December 31, 1986, with respect to the production of designated property that is not inventory is required to obtain the consent of the Commissioner under §§ 446(e) and 1.446–1(e) before changing to a correct method of accounting under this section.

(d) *Special automatic changes in method of accounting.* Consent is granted for taxpayers to change their method of accounting to a method required or permitted by §§ 1.263A(f)–2 through 1.263A(f)–7 for the first taxable year beginning after [*Insert the date this regulation is published as a final regulation in the Federal Register*], provided that the change is from a method that is consistent with a reasonable interpretation of the statute, legislative history, and any applicable administrative pronouncements. A change in method of accounting described in the preceding sentence may also be made for an earlier taxable year, provided all amended returns (if necessary) are filed on or before [*Insert the date that is 120 days after the date this regulation is published as a final regulation in the Federal Register*]. With respect to property that is inventory in the hands of the taxpayer, any change in method of accounting described in this paragraph (e) may be made, at the taxpayer's option, either on a cutoff basis or with a section 481(a) adjustment computed as of the beginning of the year of change. If the change is made with a section 481(a) adjustment, the adjustment must be taken into account ratably over the 4-taxable-year period beginning with the year of change. In the case of property that is not inventory in the hands of the taxpayer, any change in method of accounting described in this paragraph (d) must be made on a cutoff basis in the year of change.

(e) *Anti-abuse rule.* The interest capitalization rules contained in §§ 1.263A(f)–1 through 1.263A(f)–9 must be applied by the taxpayer in a manner that is consistent with and reasonably carries out the purposes of section 263A(f). For example, in applying § 1.263A(f)–3, regarding the definition of a unit of property, taxpayers may not divide a single unit of property to avoid properly classifying the property as designated property. Similarly, taxpayers may not use loans in lieu of advance payments, tax-exempt parties, loan restructurings at measurement dates, or obligations bearing an unreasonably low rate of interest to avoid the purposes of section 263A(f). In such cases the District Director may, based upon all the facts and circumstances, determine the amount of interest that must be capitalized in a manner that is consistent with and reasonably carries out the purposes of section 263A(f).

Par. 4. Section 1.266–1(a) is redesignated as § 1.266–1(a)(1) and § 1.266–1(a)(2) is added to read as follows:

§ 1.266–1 Taxes and carrying charges chargeable to capital account and treated as capital items.

(a) * * *

(1) * * *

(2) See § 1.263A(f)–1 for rules regarding the requirement to capitalize interest, that apply prior to the application of this section. After applying § 1.263A(f)–1, a taxpayer may elect to capitalize interest under section 266 with respect to designated property within the meaning of § 1.263A(f)–1(b), provided a computation under any provision of the Internal Revenue Code is not thereby materially distorted, including computations relating to the source of the deduction.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91–18817 Filed 8–9–91; 1:48 pm]
BILLING CODE 4830–01–M

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26 CFR Part 1

[IA–120–86]

RIN 1545–AK03

Capitalization of Interest; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the requirement of section 263A(f) of the Internal Revenue Code to capitalize interest with respect to the production of property. Section 263A(f) was enacted by the Tax Reform Act of 1986 (the "1986 Act"), Public Law 99–514, and amended by the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act"), Public Law 100–647.

DATES: The public hearing will be held on Wednesday November 20, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, November 6, 1991.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [IA–120–86], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations that provide guidance necessary for taxpayers to comply with the requirement to capitalize interest with respect to certain property produced by the taxpayer. The proposed regulations propose to add new §§ 1.263A(f)–1 through 1.263A(f)–8 to part 1 of title 26 of the Code of Federal Regulations. These regulations appear in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, November 6, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–18905 Filed 8–9–91; 1:48 pm]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 51, 52, AND 60

[FRL–3984–5]

Requirements for Preparation Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period for proposed WEPCO rulemaking.

SUMMARY: On June 14, 1991 (56 FR 27630), EPA proposed regulations clarifying the new source review (NSR) requirements of title I of the Clean Air Act as they pertain to electric utility steam generating units. The proposed rulemaking also clarifies the Agency's policy regarding utility pollution control projects and implements changes made by Congress in the 1990 Clean Air Act Amendments regarding clean coal technology and repowering projects.

To ensure that the public has ample opportunity to fully review and comment on the proposed rulemaking and the information that have been added to the docket (A–90–06) subsequent to the proposal, today's notice extends the public comment period from August 19 through September 18, 1991.

A congressional hearing on the proposed WEPCO rulemaking was held before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Health and the Environment, on July 22, 1991. The transcript from this hearing is expected to be available in mid-September, and it will be added to the docket for this rulemaking as soon as it is available. At that time, the EPA plans to reopen the comment period again solely for the purpose of receiving comments on the information contained in the transcript of the hearing and other related information.

DATES: Written comments on the proposed rulemaking must be received by September 18, 1991.

ADDRESSES: Submit comments on the proposed rule (in duplicate, if possible) to: EPA Air Docket (LE–131), Environmental Protection Agency, ATTN: Docket A–90–06, 401 M Street SW., Washington, DC 20460

DOCKET: Supporting information used in developing the proposed rule is contained in Docket A–90–06. This Docket is available for inspection and copying between 8:30 a.m. and 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Cherbryll Edwards, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, North Carolina 27711, (919) 541–2343.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–19603 Filed 8–15–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–234 RM–7745]

Radio Broadcasting Services; Hastings, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Heartland Radio, Inc., licensee of Station KEZH(FM), Hastings, Nebraska, proposing the substitution of Channel 268C for 268C2 at Hastings, and modification of its license accordingly. Channel 268C can be allotted to Hastings in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 40–39–28 and West Longitude 98–52–04. In accordance

with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 268C at Hastings, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 3, 1991, and reply comments on or before October 18, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William D. Silva, Esq., Blair, Joyce & Silva, 1825 K Street, NW., Washington, DC 20006, (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–234, adopted July 30, 1991, and released August 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–19513 Filed 8–15–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–233, RM–7743]

Radio Broadcasting Services; Armijo, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Matteucci Broadcasting Company, Inc., licensee of Station KMYI(FM), Armijo, New Mexico, proposing the substitution of Channel 296C for Channel 296C2, and modification of its channel accordingly. Channel 296C can be allotted to Armijo in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.3 kilometers (29.4 miles) southeast to avoid short spacings to Stations KBOM(FM), Channel 294C1, Los Alamos, New Mexico, and KHFM(FM), Channel 242C, Albuquerque, New Mexico. The coordinates for Channel 296C are North Latitude 34–41–46 and West Longitude 106–24–17. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 296C at Armijo or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 3, 1991, and reply comments on or before October 18, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William E. Kennard, Esq., Verner, Liipfert, Bernhard, McPherson & Hand, 901 Fifteenth Street, NW., Suite 700, Washington, DC 20005. (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–233, adopted July 30, 1991, and released August 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–19512 Filed 8–15–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 64

[CC Docket No. 91–35; FCC 91–214]

Operator Service Access and Pay Telephone Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted a combined Report and Order and Further Notice of Proposed Rule Making to address issues regarding operator service access and pay telephone compensation. In the Report and Order, which is summarized separately, the Commission determined that owners of competitive public payphones, as defined, should be compensated for access code calls. In the Further Notice, summarized here, the Commission seeks comment on a additional issues concerning the compensation mechanism and amount. These decisions satisfy the requirements of the Telephone Operator Consumer Services Improvement Act of 1990 and will encourage the development of an operator services marketplace in which consumers have ready access to their preferred operator service providers (OSPs) and in which the provision of payphone service is supported by all entities that benefit from such service.

DATES: Comments must be filed on or before November 7, 1991, and replies must be filed on or before December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kurt A. Schroeder, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making (Further NPRM) in CC Docket No. 91-35 (FCC 91-214), adopted July 11, 1991 and released August 9, 1991. The full text of the Further NPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

SUMMARY OF FURTHER NOTICE OF PROPOSED RULE MAKING

I. Background

1. On July 11, 1991, the Commission adopted a combined Report and Order and Further Notice of Proposed Rule Making in CC Docket No. 91-35 (released August 9, 1991, FCC 91-214) in order to establish policies and rules concerning operator service access and pay telephone compensation, as required by the Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. No. 101-435, 104 Stat. 986 (1990) (to be codified at 47 U.S.C. 226) (Operator Services Act or Act). Section 226(e) of the Act specifically requires the Commission to conduct a separate rule making proceeding to address operator service access and payphone compensation issues:

> (e) Separate Rulemaking on Access and Compensation.—
>
> (1) Access.—The Compensation, within 9 months after the date of enactment of this section, shall require—
>
> (A) that each aggregator ensure within a reasonable time that each of its telephones presubscribed to a provider of operator services allows the consumer to obtain access to the provider of operator services desired by the consumer through the use of an equal access code; or
>
> (B) that all providers of operator services, within a reasonable time, make available to their customers a "950" or "800" access code number for use in making operator services calls from anywhere in the United States; or
>
> (C) that the requirements described under both subparagraphs (A) and (B) apply.
>
> (2) Compensation.—The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones. Within 9 months after the date of enactment of this section, the Commission shall reach a final decision on whether to prescribe such compensation.

Because of these statutory requirements, the Commission concluded in CC Docket No. 90-313,[1] the earlier proceeding on operator service issues that was pending before enactment of the statute, that a separate proceeding would have to be initiated to address the access and compensation issues specified by the Act. On March 11, 1991, the Commission released a Notice of Proposed Rule Making that initiated the separate proceeding, CC Docket No. 91-35, and that sought comment on proposed rules and regulatory options concerning access and compensation.[2]

II. Discussion

2. In the Report and Order, summarized separately, the Commission concludes that considerations of equity require it to prescribe compensation for competitive public payphone owners for access code calls. As part of the same document, the Commission is also adopting a Further Notice of Proposed Rule Making in order to seek additional comment on certain issues regarding the compensation scheme. A number of details about the compensation mechanism must be determined, including the types of calls that will be compensable, the mechanism for transferring compensation from the operator service provider (OSP) to the payphone owner, and the compensation charge or formula.

3. The Commission tentatively concluded in the NPRM that only completed calls would be compensable. One commenter argues that uncompleted access code calls should also be compensated to some extent. According to this party, the originating local exchange carrier (LEC) central office does not, for some access code calls, receive answer supervision indicating completion of the call. Instead, the LEC is only signalled that the OSP has received the call and does not know whether the called party has answered. Another commenter, however, maintains that such calls should not be compensable because they generate no revenue for other entities. The Commission concludes that uncompleted calls should not be compensable as a general rule. It would not be equitable to require OSPs to compensate payphone owners for calls that generated no revenue for the OSPs. In addition, purposeful uncompleted calls could be used improperly as a way to increase compensation. The Commission therefore reaffirms its earlier tentative conclusion that only completed calls are compensable. But the Commission thinks it would likewise be inequitable for payphone owners to receive no compensation for a completed call simply because completion of the call could not be determined at the originating LEC central office. The current record does not contain any reliable method for segregating compensable completed calls from uncompleted calls. The Commission therefore encourages parties to suggest such methods as part of their comments on compensation mechanisms.

4. The Commission next addresses the issue of what mechanism should be used to transfer compensation from the OSP to the payphone owner. The Commission sought comment in the NPRM on pooling mechanisms and direct billing arrangements. In addition, the American Public Communications Council (APCC), a payphone association, proposed its own compensation plan: the LECs would collect information about compensable calls, credit the payphone owners on their monthly bills the appropriate compensation amount based on a formula determined by the Commission, and then collect the revenue necessary to cover the compensation amounts from OSPs through a revised carrier common line (CCL) charge that would apply to all interstate calls.

5. First, the Commission considers the pooling option. As many parties have commented, a pooling mechanism would be costly and administratively complex, especially given the large number of expected participants. Beyond such comments, the record contains virtually no evidence to support this option. Thus, the Commission tentatively finds that pooling does not appear to be an appropriate compensation mechanism to adopt.

6. Second, the Commission considers APCC's proposed compensation mechanism, which would utilize the LE

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[1] Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313: Further Notice of Proposed Rule Making, 6 FCC Rcd 120, 56 FR 402 (1990); see also Notice of Proposed Rule Making, 5 FCC Rcd 4630, 55 FR 29639 (1990); Report and Order, 6 FCC Rcd 2744, 56 FR 18519, 25721 (1991), petitions for reconsideration pending.

[2] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Notice of Proposed Rule Making, 6 FCC Rcd 1448, 55 FR 11136 (1991) (hereinafter NPRM). In response to the NPRM, over 130 comments and reply comments were filed. In CC Docket No. 90-313, which originally concerned some of the same issues eventually considered in CC Docket No. 91-35, over 450 comments and reply comments were filed during two separate comment periods. Relevant comments from both dockets were considered in the Report and Order and Further NPRM for CC Docket No. 91-35.

call accounting and access charge systems. APCC emphasizes that this mechanism would have the advantage of employing existing systems for the calculation, collection, and disbursement of compensation, thus avoiding the costs and complexities inherent in the creation of an entirely new compensation system. While some commenters supported this proposal, several parties, including LECs, criticized it as an inappropriate administrative burden on the LECs and an improper use of the access charge system. Although the Commission notes the advantages of a compensation mechanism that employs existing systems, it finds the objections to be valid. The APCC system would inappropriately spread the cost of payphone compensation over all interstate calls via carrier common line charges, thus forcing all interstate callers to bear a cost associated only with access code calls. The Commission also views the burden on the LECs as being misplaced, in that they would be responsible for channeling compensation to their competitors in the payphone marketplace and would therefore be a focal point of any disputes over compensation between the OSPs and the payphone owners. Given the problems with the APCC proposal evident from the existing record, the Commission cannot endorse that proposal.

7. The remaining mechanism for consideration is direct billing between payphone owners and OSPs. Some commenters have favored this mechanism as being simple and inexpensive. Other parties, however, have criticized direct billing arrangements as very inefficient, involving hundreds of individual contractual arrangements and possibly engendering multiple disputes. The Commission tentatively concludes that direct billing arrangements should be utilized in the compensation scheme that is prescribed. These arrangements have the unique advantage of necessarily involving only the entities that benefit from the access code calls—the OSPs—and the entities that benefit from the resulting compensations—the payphone owners. Because only these parties must be involved, there will be an incentive to maintain harmonious, workable relationships that might be missing with any mechanism that required third parties to intervene. Third parties such as LECs, who benefit directly from neither the calls nor the compensation, will not be burdened with administrative tasks. In addition, these individualized arrangements will offer a great degree of flexibility to the entities that enter into them to devise the most efficient and reliable implementation mechanisms.

8. Although the Commission has tentatively concluded that direct billing is the most appropriate compensation mechanism, it anticipates that industry participants may wish to develop alternative mechanisms. The Commission is therefore amenable to any such proposals and seeks comments on what compensation mechanism it should finally adopt.

9. Finally, the Commission turns to the issue of how compensation should be calculated. Although the Commission did receive comments that proposed very general methods for calculating the appropriate compensation charge, it finds the record insufficient to support a final determination of this issue. The record contains no data that are specific or comprehensive enough to support any decision on what compensation charge or formula should be prescribed. The Commission tentatively concludes, however, that a per call charge would be preferable to a per minute charge because a per call charge would allow simplified accounting and monitoring methods. With a per call, rather than a per minute, charge, only the completion of a call, not its length, would have to be monitored and verified. The Commission seeks comment on this tentative conclusion and asks interested parties to suggest alternatives to per call compensation.[3]

10. One example of a potential method for determining the appropriate compensation amount is one using publicly available sources and taking as its basis the average charge for a local payphone call. The data show that in 1990, the average charge for a same-zone daytime business call was $0.09 per call.[4] At the end of that year, the average charge for a five-minute local payphone call was $0.23.[5] This charge includes compensation for the use of the payphone instrument, the local calling, and the collection of the payment. The typical local payphone call is "sent paid," i.e., coins are deposited at the beginning of the call. Thus, the expense of collecting coins must be considered, including the expense of a coin collector, the maintenance of the coin mechanism, and any vandalism induced by the presence of coins. The Commission does not have hard data on the extent to which these costs differ from the billing and collection costs associated with direct compensation from long distance carriers. It is estimated that these excess costs are at least ten percent of gross revenue for each call, which would be $0.02. Using these data, one can calculate a charge of $0.12: this amount is the charge for the average local payphone call ($0.23) minus the average charge for a same-zone daytime business call ($0.09) minus the estimated coin collection expense ($0.02). The Commission emphasizes that it is using these figures only as examples and is not proposing at this time any particular methodology or amount. The Commission seeks comments generally on what compensation amount should be prescribed and on what methodology should be used to calculate that amount.

[3] Because the Commission has found that the record, at this time, cannot support final determinations regarding the compensation mechanism and amount, it likewise concludes that it would be inappropriate to prescribe an interim compensation scheme, which would require virtually identical determinations.

[4] J. Lande, Industry Analysis Division, Federal Communications Commission, "Telephone Rates Update" at 15, Table 5 (dated January 30, 1991).

[5] *Id.*

III. Further Initial Regulatory Flexibility Analysis

11. Reason for action. Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, which requires a rule making proceeding on pay telephone compensation issues, the Commission is issuing this Further Notice of Proposed Rule Making to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

12. Objectives. The objective of this Further Notice of Proposed Rule Making is to solicit the comments necessary to supplement the record in this proceeding so that the Commission can reach final determinations on certain issues regarding pay telephone compensation.

13. Legal basis. Sections 1, 4(i), 4(j), 201–205, 218, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 226, 303(r).

14. Description, potential impact, and number of small entities affected. The proposed compensation scheme will require operator service providers to compensate competitive public payphone owners for calls not routed through the presubscribed provider and may require competitive public payphone owners to bill operator service providers directly. Payphone owners and operator service providers that are small entities may feel some economic impact due to these requirements.

15. Reporting, recordkeeping, and other compliance requirements. The

purposed rules contain no reporting or recordkeeping requirements.

16. Federal rules that overlap, duplicate, or conflict with the Commission's proposal. None.

17. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. The Commission shall consider any alternatives suggested in comments that are consistent with the requirements of the Operator Service Act.

18. Comments are solicited. The Commission requests written comments on this Further Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Further Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, *et seq.*

IV. Ex Parte Requirements

19. *Ex Parte* Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

V. Conclusion

20. With this Further Notice of Proposed Rule Making, the Commission seeks additional comment on the mechanism for transferring compensation from the OSPs to payphone owners and on the appropriate charge that should be prescribed as compensation.

VIII. Ordering Clauses

21. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), 201–205, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 226, 303(r), that a *further notice of proposed rule making is issued.*

22. *It is further ordered*, pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, that all interested parties may file comments on the compensation issues on which comment is specifically sought by November 7, 1991, and reply comments by December 9, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 230) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

23. *It is further ordered* that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

24. *It is further ordered* that the Secretary shall cause a copy of this Further Notice, including the Further Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) (1981). The Secretary shall also cause a summary of this Further Notice to appear in the Federal Register.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-19508 Filed 8-15-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 73 and 76

[MM Docket No. 91-221; FCC 91-215]

Broadcast and Cable Services, Effect of Changes in the Video Marketplace

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry solicits comment on changes in the state of the video marketplace and the public policy implications that flow from these changes. The proceeding was engendered by Office of Plans and Policy Working Paper #26, Broadcast Television in a Multichannel Marketplace (June 1991) (Working Paper). The Commission therefore seeks comment on the conclusions reached in that document, and on several related issues on the implications of the growth of competition for the Agency's regulatory policies. The action is needed to stimulate a review into the continued relevance of the Commission's policies and regulations for video broadcasting.

DATES: Comments are due by October 22, 1991, and reply comments are due by November 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Beverly McKittrick, Mass Media Bureau, Policy and Rules Division, (202) 632-5414.

SUPPLEMENTARY INFORMATION: 1. This is a synopsis of the Commission's Notice of Inquiry in MM Docket No. 91-221, FCC 91-215, adopted July 11, 1991, and released August 7, 1991.

2. The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 659-8659, 1919 M Street, NW, rm. 246, Washington, DC 20554.

Synopsis of Notice of Inquiry

3. The Commission issues this decision to invite broad-ranging comments on changes in the state of the video marketplace and the public policy implications that flow from these changes. This inquiry is prompted by the Commission's general concern that its policies may no longer reflect current industry circumstances, and, more particularly, by a number of apperent trends described in the Working Paper.

4. The Working Paper suggests that, because the recent growth of the cable industry and other technological advancements have diminished the competitive position of broadcast television, the rules established to ensure television diversity may now instead be reducing the ability of broadcasters to serve the public and to compete in a more rigorous marketplace. Therefore the attached Notice of Inquiry would seek comment on the implications of the changing video marketplace for Commission policies.

5. The Commission seeks general comments concerning the staff's findings and analysis as contained in the Working Paper. Commenters who disagree with the conclusions and projections of the Working Paper are

asked to present specific evidence to support alternative conclusions. Commenters in agreement with the Working Paper are asked to provide whatever specific evidence and analysis they believe supports their position as well as to discuss the policy implications. Commenters are also asked to address what steps, if any, the Commission should take to assure that its policies and rules continue to promote localism, diversity, nationwide availability of service, and broadcasting in the public interest.

Ex Parte Consideration

6. This proceeding is exempt from the *ex parte* requirements pursuant to 47 CFR 1.1204(a)(4).

Comment Information

7. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 22, 1991, and reply comments on or before November 21, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-19439 Filed 8-15-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 245

Acquisition Regulations; Reports of Government Property, DD Form 1662, DoD Property in the Custody of Contractors

AGENCY: Department of Defense, (DoD).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Defense Acquisition Regulations Council is withdrawing a proposed rule published in the Federal Register on October 18, 1990 (55 FR 42222) based on our review and analysis of public comments. The proposed rule would have required contractors to report in Item 17 of the DD Form 1662, their beginning and ending balances for government furnished material (GFM) that is in work in process.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, telephone (703) 697-7267.

SUPPLEMENTARY INFORMATION: The DAR Council under DAR Case 90-006 proposed a revision to the Defense FAR Supplement in October 1990 that would require contractors to report in block #17 of the DD Form 1662, their beginning and ending balances for government furnished material that is in work-in-process. Excluded from this reporting requirement were consumable items. These additional reporting instructions were to be added to the reverse of the DD Form 1662. Comments received during the public comment period indicated that this new requirement would place a heavy burden on contractors. Further, many comments indicated problems involved with the identification of consumable items. After a review of the comments, the DAR Council has agreed to withdraw the proposed rule from further consideration. Therefore, the proposed rule published on October 18, 1990 (55 FR 42222), is hereby withdrawn.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 91-19529 Filed 8-15-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 350 and 396

[FHWA Docket No. MC-91-15]

RIN 2125-AC76

Commercial Motor Carrier Safety Assistance Program; Verification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Highway Administration (FHWA) is proposing to amend 49 CFR parts 350 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) to implement the provisions of the Motor Carrier Safety Act of 1990 (the Act). The Act requires States participating in the Motor Carrier Safety Assistance Program (MCSAP States) and the FHWA to establish procedures ensuring proper and timely correction of safety violations noted during inspections funded with moneys authorized under section 404 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2304). These procedures would include the random reinspection of commercial motor vehicles or their drivers placed out-of-service at inspection sites. The purpose of the reinspections would be to ensure that all out-of-service defects had been corrected before the vehicles leave the inspection site. These procedures would also include a requirement that the MCSAP States establish a program of accountability. This program would facilitate the correction of safety violations by issuing an adequate inspection form, by requiring the responsible motor carrier to certify on this form that the indicated corrections had been made, and that the indicated corrections had been made in a timely manner. In addition, the Act requires States to establish systematic penalties against motor carriers for failure to make the prescribed corrections.

In order to accomplish Congress' intent, the FHWA is proposing to amend parts 350 and 396 of the FMCSRs. The proposed amendments would require MCSAP States as a condition of the grants to establish procedures to verify the correction of out-of-service (OOS) and other safety violations. This proposed verification process would require states to track all or a part of the roadside inspection reports and would permit the States to supplement the tracking system through safety reviews and compliance reviews.

DATES: Comments must be received on or before September 16, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-91-15, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb capacity) in a format that is compatible with popular word processing programs such as WordPerfect, WordStar, or Microsoft "Word" for MacIntosh. Please indicate which word processing program was used. The software used should be identified by the commenters (e.g., WordPerfect 5.0). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Hagan, Office of Motor Carrier Standards (202) 366-2981; Ms. Retta Besse, Office of Motor Carrier Safety, Field Operations, State Programs Division, (202) 366-9579; or Mr. Paul

Brennan, Office of the Chief Counsel (202) 366–1353, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Safety Act of 1990 (the Act) (section 15 of the Sanitary Food Transportation Act of 1990, Pub. L. 101–500, 104 Stat. 1218) was signed by the President on November 3, 1990. The Act provides, among other things:

> The Secretary shall, within 9 months after the date of enactment of this Act, issue a final rule establishing procedures to ensure the proper and timely correction of commercial motor vehicle safety violations noted during inspections funded with moneys authorized under section 404 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2304) to carry out the motor carrier safety assistance program. (Pub. L. 101–500, section 15(d), 104 Stat. 1219 (1990))

This rulemaking is intended to implement this provision. The requirements applicable to State programs would be contained under part 350 of the Federal Motor Carrier Safety Regulations. The FHWA is also proposing a conforming amendment to 49 CFR part 396, Inspection, Repair and Maintenance, to facilitate verification of correction of violations discovered during inspections conducted by Federal inspectors.

State Verification

On-Site Verification

In 1989, the States of Idaho, Maine, Oklahoma and Wisconsin engaged in special studies under the MCSAP in an attempt to determine how many vehicles and drivers were leaving the inspection site without complying with the out-of-service orders. The percentage of such vehicles ran from a low of 2% (Idaho) to a high of approximately 17% (Maine).

The Commercial Motor Vehicle Safety Alliance (CVSA) has issued guidelines for an inspection site reinspection and verification program with member States. The program started January 1, 1991. The purpose of this program is to ensure that vehicles and their drivers have corrected the out-of-service defects before leaving the inspection site. These States generally reinspect as long as there are inspection personnel at the inspection site.

As a part of the MCSAP requirements, the MCSAP States are now required to report out-of-service reinspection activity on a quarterly basis to the FHWA. In addition, the information is now made an element of SAFETYNET, which, as described below, is a cooperative effort to share commercial motor carrier safety data electronically among the States and the FHWA. However, as this is a new program and still evolving, the FHWA does not have current information on the number of States reinspecting, their methods of reinspection, or the number of vehicles and drivers reinspected.

Motor Carrier Certification and Return of State Roadside Inspection Reports

Some States require a timely return of roadside inspection reports, certified by a motor carrier official that the safety violations noted thereon have been corrected. Some, but not all, of these same States are tracking roadside inspection reports to ensure that the motor carrier has made the required corrections and returned the inspection reports to the State within a specific time period.

The State of Wisconsin requires the return of the inspection report within 15 days from the date of inspection. While Wisconsin does not track delinquent reports nor does it issue any sort of a notice or follow-up to remind the motor carrier to return the report, approximately 50 percent of the inspection reports are returned within the prescribed time period. An additional 10 percent of the inspection reports are returned late.

On the other hand, the State of Oregon has the same requirements as Wisconsin, except that Oregon tracks each inspection report, sends reminders to motor carriers who have not complied with the return requirements and prosecutes motor carriers who do not return a properly certified inspection report. In 1990, Oregon had an on-time return rate of 78.2 percent; after the first delinquent notice, the total return rate rose to 92.4 percent; and after the second delinquent notice (a warning letter), the total return rate was 98.4 percent. In addition, Oregon initiated a complaint on approximately 1 percent of inspections performed.

The FHWA does not have information concerning all of the States with similar requirements, nor does the FHWA have information concerning the specific requirements of all of the States.

FHWA Proposal

Purpose and Scope

The FHWA proposes to revise parts 350 and 396 of the FMCSR to reflect the provisions of the Act. This proposal would permit the States considerable flexibility by allowing them to tailor their verification programs to their individual operations and authority, as documented through their annual State enforcement plan (SEP).

The FHWA requests that States currently engaged in on-site verification of correction or repairs of driver/vehicle out-of-service violations provide in their comments the following:

1. The additional cost of such verification;
2. The method(s) of verification;
3. The number or percentage of vehicles reinspected;
4. The number of driver/vehicle out-of-service orders issued;
5. The percentage, if known, where the driver or vehicle left the inspection site without correcting the out-of-service defects;
6. Whether or not the State has fixed inspection facilities; and
7. Any data which reflects on the effectiveness of their respective programs.

In the Act, Congress expressed its concern that States were not following up on inspections to ensure the safety violations noted thereon were actually corrected, and mandated a nationwide tracking system to accomplish these ends. Such a system already exists in part, namely, SAFETYNET. The FHWA believes that if each State issues its own form which has the information required by SAFETYNET and a place for the responsible motor carrier to certify that the required repairs have been made, as well as a place for the repairer to certify that any out-of-service condition has been corrected, Congress' purpose will be served without the necessity of the FHWA issuing or requiring a specific form.

SAFETYNET

SAFETYNET is a cooperative effort to share commercial motor carrier safety data electronically among States and the FHWA. Information about the safety performance of individual carriers nationwide is thus available and can be used to most effectively manage and direct Federal and State commercial vehicle safety programs. States and the FHWA collect both accident and roadside inspection data and enter these into their data bases. A copy of the data for interstate carriers is sent electronically from the State data bases to the FHWA's Office of Motor Carriers, Motor Carrier Management Information System (MCMIS) where the data is consolidated. By consolidating information in this fashion, all States contributing data can share in it. The State can, by accessing SAFETYNET, obtain information on each inspection report involving any interstate motor

carrier. The data retrieved from SAFETYNET would provide sufficient information to locate and review the motor carrier's compliance with the roadside inspection findings. Currently there are 48 States and the District of Columbia contributing roadside inspection data into SAFETYNET.

Definitions

The FHWA believes it is necessary to define several terms in common use during roadside vehicle inspections but not currently defined in the FMCSR. The terms *driver/vehicle out-of-service order, imminent hazard, out-of-service driver, out-of-service vehicle,* and *responsible motor carrier* require definition to provide clear meaning to the proposed amendments to part 350 that are required by the Act. The FHWA solicits comments on these definitions.

The FHWA requests that all State commenters address the following issues:

Does your State have regulations or statutes requiring a motor carrier to return a roadside inspection report? Are the motor carriers required to certify they have corrected all of the defects noted on the report? Does your State track the roadside inspection reports and what, if any, steps are taken to ensure a timely return of the reports? If it does, what is the cost of this activity?

The State, when preparing its SEP, would determine how much of its resources it would put into a tracking system and how much of its resources it would use in its compliance program to ensure that motor carriers are correcting driver/vehicle violations described on the roadside inspection report. This proposed amendment would provide flexibility and allow States to tailor their SEP's to fit each State's unique situation.

The FHWA requests that State commenters' responses address the following additional issues: Would your State have to amend its laws or regulations to require that the motor carrier retain copy of the inspection report? Does your State have the necessary statutory or regulatory authority to conduct safety reviews or compliance reviews?

Appropriate State Penalties

The Act also requires appropriate State penalties for failing to return verification forms and for falsifying such forms. Accordingly, as a part of the State's SEP it is proposed that the State provide a statement of penalties to be levied for failure to correct the safety violation, for false statements on the inspection forms, for failure to properly certify inspection forms, for failure to timely return the forms, and for failure to retain a copy of the inspection report on file. In addition the State's SEP would describe the State's system for ensuring these State penalties are properly assessed.

The FHWA requests comments regarding State penalties now in effect, as well as systems currently in place to assess and enforce these penalties. Although each State presents its SEP individually to the FHWA, there are certain general issues that the FHWA believes apply to all recipients of MCSAP funds. These concern the State's ability to reach motor carriers not domiciled within the State; the cost of certification and return enforcement; the effectiveness of such enforcement; whether legislative action is required to comply with the proposed additional MCSAP requirements; whether unique prosecution problems are created; and what problems can be foreseen in the potential enforcement by one State for failure to meet the certification requirements of another State?

Federal Inspections

The FHWA is also requesting comments on the proposed amendment to 49 CFR 396.9 that motor carriers retain copies of the Federal inspection report (MCS–63) at their principal place of business for six months. This will enable FHWA safety specialists to verify corrections required to be made during safety or compliance reviews. Although not required under the newly enacted amendment in the Act, the FHWA is acting under its existing authority in 49 U.S.C. App. 2509 and 49 U.S.C. 3102. This will assure verification procedures are in place for all inspections conducted according to federally approved standards.

Rulemaking Analyses and Notices

Regulatory Impact

The action taken in this document implements a congressional mandate to ensure the timely correction of safety violations noted during inspections funded with moneys authorized under section 404 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2304) generally known as MCSAP. In addition, Congress has mandated that participating States and the Federal Government establish a program that will verify that those commercial motor vehicles and the drivers thereof found in violation of safety requirements have subsequently been brought into compliance with such safety requirements. This verification will require that Federal and State inspectors randomly reinspect out-of-service vehicles before they leave the inspection point, recheck drivers declared out-of-service before permitting them to resume driving, and establish an appropriate schedule of penalties for those motor carriers or drivers who fail to comply with the out-of-service requirements or fail to correct the noted violation. Also, Congress mandated that motor carriers be required, with consequent penalties for failure, to certify correction of safety violations on the inspection report and return the report to the applicable State. Finally the Act requires MCSAP States to establish a tracking system to account for all inspection reports and the assessment of penalties.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Based upon this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. While the congressional mandate in the Motor Carrier Safety Act of 1990 requires a change of the regulations governing the Motor Carrier Safety Assistance Program, the impact of the proposal on the various States is minimal. Nothing in the proposed rule preempts any State laws, regulations or requirements. A number of the MCSAP States are requiring vehicles or drivers placed out-of-service to be reinspected prior to leaving the inspection site. In addition, several MCSAP States require motor carriers to return a copy of the inspection report to the issuing State, certified by the motor carrier that safety violations noted thereon have been corrected. The States are requested to

submit comments on the issues presented under the proposed rule and to advise the FHWA of the effect of the proposal on the States' participation in the MCSAP.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.217, Motor Carrier Safety and 20.218, Motor Carrier Safety Assistance Program. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to these programs. The proposed modification of the MCSAP could affect Federal funding to States for motor carrier safety. This notice of proposed rulemaking provides States and others an opportunity to comment on the proposed modification of the MCSAP.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the reporting and recordkeeping provisions that are included in this regulation are being submitted for approval to the Office of Management and Budget (OMB).

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 350 and 396

Highways and roads, Motor carriers, Motor vehicle safety, Vehicle maintenance, Reporting and recordkeeping requirements.

Issued on: August 8, 1991.

T. D. Larson,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, parts 350 and 396 by revising the authority citations, by amending §§ 350.3, 350.13, appendix A to part 350, and § 396.9 as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. The authority citation for part 350 is revised to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2301–2304, 2505; Public Law 101–500, § 15(d), 104 Stat. 1213, 1219; 49 CFR 1.48.

§ 350.3 [Amended]

2. Section 350.3 is amended by adding the definitions of *driver/vehicle out-of-service order, imminent hazard, out-of-service vehicle, out-of-service driver,* and *responsible motor carrier,* in alphabetical order to read as follows:

§ 350.3 Definitions.

* * * * *

Driver/vehicle out-of-service order means the act of placing a commercial motor vehicle or the driver thereof out-of-service, because of the existence of an imminent hazard.

Imminent hazard means any condition of a vehicle, a driver, or commercial motor vehicle operation which is likely to result in serious injury or death if not discontinued immediately.

* * * * *

Out-of-service driver means any driver who, by reason of his or her physical condition, accumulated prior hours of service, or failure to meet a prescribed condition necessary to qualify as a driver of commercial motor vehicles, is determined to present an imminent hazard.

Out-of-service vehicle means any motor vehicle which, by reason of its operating condition or loading, is determined to present an imminent hazard.

Responsible motor carrier means a motor carrier or its agent, having the operating authority, direction, or control over the operation of a commercial motor vehicle or the driver thereof, when engaged in interstate commerce.

* * * * *

3. Section 350.13, paragraph (b)(4), is revised to read as follows:

§ 350.13 State enforcement plan (SEP) for an implementation grant.

* * * * *

(b) * * *

(4) * * *

(iii) Include roadside inspection activity at such times and locations as would ensure comprehensive enforcement and permit random reinspection of vehicles and drivers placed out-of-service.

(iv) Include the description of a tracking system that would ensure the return of roadside inspection reports to the issuing State agency.

(v) Include the description of safety and compliance review programs that would ensure the review of roadside inspection reports on file at the responsible motor carrier's principal place of business.

(vi) Demonstrate the State has authority to regulate and plans to enforce its regulations with respect to verification to ensure: all safety violation(s) noted on the inspection report have been corrected by the responsible motor carrier; that corrective actions are noted on the inspection report, which is then timely returned to the issuing State agency; and a copy of the completed inspection report is retained by the responsible motor carrier at its principal place of business.

(vii) Describe the system to be used to assure the appropriate State penalties are assessed.

(viii) Provide a State roadside inspection report that will meet the minimum requirements of FHWA's SAFETYNET and assure proper certification by the responsible motor carrier, its agent or repairer that out-of-service and other safety violations have been corrected.

(ix) Describe the penalty provisions for failure to comply with the driver/vehicle out-of-service requirements, failure to repair safety violations noted on the inspection form, making false entries upon the inspection form, failure to return a certified copy of the inspection form in a timely manner, failure to certify correction of out-of-service violations or other safety violations noted on the inspection form and failure to retain a copy of the inspection form at the responsible motor carrier's principal place of business for the prescribed time period.

* * * * *

Appendix A to Part 350 [Amended]

4. Appendix A to part 350 is amended by redesignating paragraphs 6 (e) through (g) to read as paragraphs 6 (f) through (h) and by adding a new paragraph (e) to read as follows:

Appendix A to Part 350—Guidelines To Be Used in Preparing State Enforcement Plan

* * * * *

6. * * *

(e) The State's plan for reinspection of vehicles and operators placed out-of-service at a roadside inspection, its plan to track roadside inspection reports, to ensure their

timely return by the responsible motor carrier to the State, the State's plan to ensure that all safety violations noted on the roadside inspection report are corrected and that such corrections are certified by the responsible motor carrier or its agent, and the State's plan to review roadside inspection reports during safety and compliance reviews. The plan at a minimum should include:

(1) State's proposed method(s) of reinspection and certification;

(2) State's proposed percentage of reinspection;

(3) A copy of the proposed State driver-vehicle inspection form;

(4) A plan to ensure the prompt return of the inspection reports properly certified as to correction of the safety violations by an appropriate motor carrier official or agent;

(5) A schedule of penalties to be imposed upon motor carriers, drivers or other person who attempt to evade or defeat the out-of-service, repair, certification, or timeliness requirements of the inspection report; and

(6) A description of the State's system that ensures the appropriate State penalties are assessed and collected.

* * * * *

PART 396—INSPECTION, REPAIR AND MAINTENANCE

5. The authority citation for part 396 is revised to read as follows:

Authority: 49 U.S.C. App. 2509; 49 U.S.C. 3102; 49 CFR 1.48.

6. Section 396.9 is amended by revising paragraph (d)(3)(ii) to read as follows:

§ 396.9 Inspection of motor vehicles in operation.

* * * * *

(d) * * *

(3) * * *

(ii) Return the completed Form MCS–63 to the FHWA office indicated on the report and, in addition, retain a copy of the completed Form MCS–63 at the responsible motor carrier's principal place of business for 6 months from the date of inspection.

[FR Doc. 91–19469 Filed 8–15–91; 8:45 am]
BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–20; Notice 02]

RIN 2127–AD03

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Brake Failure Warning Indicators

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

ACTION: Termination of rulemaking.

SUMMARY: On September 12, 1990, (55 FR 37497), NHTSA published a request for comment on a petition from Transamerican Consultant Engineers (Transamerican) concerning the brake failure warning indicator requirements of Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*. Transamerican sought an amendment of the standard that would have required warnings of both a low brake fluid level in the master cylinder reservoir and a gross loss of brake pressure. The current standard requires a warning of only one of these two conditions, the selection of which is at the option of the manufacturer. After considering the comments, NHTSA has decided to terminate the rulemaking.

FOR FURTHER INFORMATION CONTACT: Vernon Bloom, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5277).

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from Transamerican Consultant Engineers, an accident investigation engineering organization. Transamerican asserted that its investigation of an automobile accident revealed a deficiency in Standard No. 105. The current standard, in § S5.3.1, requires that an indicator lamp be activated when the ignition is on and any of the conditions (a), (c), or (d) occur, or, at the option of the manufacturer, whenever any of conditions (b), (c), or (d) occur. Conditions (c) and (d) are common to both options. Thus, under both options, the manufacturer must have a brake warning system which activates an indicator lamp when there is a total functional electrical failure in an antilock or variable proportioning brake system (condition c) or there is application of the parking brake (condition d). In addition, a manufacturer has a choice of having the indicator lamp activated when either conditions (a) or (b) occur. Those conditions are listed below:

(a) A gross loss of pressure (such as caused by rupture of a brake line but not by a structural failure of a housing that is common to two or more subsystems) due to one of the following conditions (chosen at the option of the manufacturer):

(1) Before or upon application of a differential pressure of not more than 225 lb/in^2 between the active and failure brake system measured at a master cylinder outlet or a slave cylinder outlet.

(2) Before or upon application of 50 pounds of control force upon a fully manual service brake.

(3) Before or upon application of 25 pounds of control force upon a service brake with a brake power assist unit.

(4) When the supply pressure in a brake power unit drops to a level not less than one-half of the normal system pressure.

(b) A drop in the level of brake fluid in any master cylinder reservoir compartment to less than the recommended safe level specified by the manufacturer or to one-fourth of the fluid capacity of that reservoir compartment, whichever is greater.

Thus, Standard No. 105 currently requires the warning light to be activated upon detection of either a low brake fluid level in the reservoir or a gross loss of pressure measured in one of four ways. (The petitioner referred to gross loss of pressure as differential pressure and NHTSA uses that terminology in this notice.) The petitioner argued that the present system is deficient because loss of half of a split brake system can occur from failure of a cup within a master cylinder without any attendant loss of fluid. The petitioner went on to argue that, for this condition, the flow fluid level indicator, one of the optional warning systems, provides no warning of the brake failure. The petitioner concluded that a warning based upon gross loss of pressure (differential pressure) should be mandatory because the low fluid level warning is inadequate when used alone. The petitioner believed that the low fluid level warning should, preferably, also be made mandatory, but could be included in the standard as an option.

NHTSA concluded that the petition deserved further consideration through the regulatory process and so granted the petition on April 23, 1990. NHTSA sought additional information from the public to help the agency assess whether a proposed requirement for dual brake failure indicators would meet a safety need and would be cost-effective. On September 12, 1990, the agency published a request for comment on the issues raised by the petition (55 FR 37497). In that notice, NHTSA requested responses to the following questions regarding the issues raised by Transamerican's petition:

1. Would a requirement that a brake warning indicator be based on both fluid pressure differential and low fluid level avoid accidents involving brake failure? Is there additional information on accidents that would have been avoided by such a requirement?

2. Would making the differential pressure warning indicator mandatory be sufficient to address the safety concern? Would not requiring the low

brake fluid warning indicator leave a significant safety concern?

3. The current Standard No. 105 allows the same indicator lamp to be activated for warnings of brake failure and for application of the parking brake, if a single indicator, labeled "Brake" is used. In another proceeding, NHTSA received survey data which indicated that only about 20 percent of the driving population know that, in certain cases, the brake indicator lamp warns of pending or partial brake failure. In view of this, would it be appropriate for NHTSA to require two indicator lamps, with one indicating brake failure and the other indicating application of the parking brake? On November 11, 1970, NHTSA proposed to require separate indicator lamps. 35 FR 17346. However, NHTSA did not adopt the requirement of separate indicator lamps in the final rule. 37 FR 17971 (September 2, 1972).

4. How much lead time is necessary for manufacturers to produce vehicles with both differential pressure and low fluid level warning indicators?

5. For each manufacturer, how many model year 1990 vehicles will be equipped with (1) a differential pressure warning indicator, (2) a low brake fluid level indicator, and (3) both types of indicators? NHTSA received 18 comments in response to the request for comment.

Two commenters, a brake manufacturer and an automotive engineer in a State Department of Motor Vehicles, supported requiring two indicators of brake failure. Sixteen commenters, including every motor vehicle manufacturer that commented, opposed a requirement for dual brake failure indicators.

Commenters opposed to requiring dual brake failure indicators asserted that such a requirement would serve little, if any, safety benefit and could cause problems. Commenters stated that a second indicator would add complexity to the braking system, increasing the risk of a safety-related problem, and be a potential source of leaks. Commenters also asserted that a pressure differential indicator would be problematic with anti-lock brakes. According to commenters, pressures in anti-lock braking systems are usually greater than the 225 psi specified in Standard No. 105 for operation of the brake failure indicator.

Commenters also stated that there is nothing to indicate that the current requirements do not provide a sufficient level of safety. They asserted that the number of brake master cylinders replaced is not a reliable basis for assessing a potential safety problem. They argued that many, if not most, master cylinders that are replaced are actually in proper working order. Some commenters also asserted that the differential pressure warning indicator would be of little benefit in a vehicle that already has a fluid level warning indicator. They argued that the differential pressure indicator would not indicate a problem until the driver attempts to apply the vehicle's brakes. At that time, they asserted that the driver would also have a subjective warning of brake failure.

Only a small minority of vehicles currently manufactured have both types of brake failure indicators. A number of commenters indicated that dual warning indicators would cost more than NHTSA estimated in the request for comments. For example, Mercedes-Benz (which equipped its 1974 to 1976 passenger cars for the U.S. market with dual warning indicators) estimated a cost of $15 a vehicle for the addition of a pressure differential indicator. This compares to the NHTSA estimate of $6 a vehicle. Further, General Motors indicated that adding a fluid level warning indicator would require major redesign and large tooling and capital expenses for certain models. Many commenters asserted that a relatively long lead time would be required if dual warning indicators were mandated.

After considering the comments on the notice, NHTSA has decided to terminate the rulemaking concerning the Transamerican petition. Based on current information, NHTSA has concluded that there is not a sufficient safety need to require both types of brake failure indicators. There is nothing to indicate that the various combinations of warning lights and subjective indicators currently used by drivers are not meeting safety needs. In the situation cited by Transamerican in its petition, NHTSA concludes that a driver would receive a subjective indication of brake failure. NHTSA also agrees with commenters that dual warning indicators would likely cost more than originally estimated by NHTSA. NHTSA further agrees with commenters that a requirement of dual warning indicators could make the installation of anti-lock braking systems more difficult. In addition, the requirement would be inconsistent with NHTSA's commitment to international brake harmonization. Only one brake failure indicator is required in Europe. In addition, the proposed Standard No. 135, which seeks to harmonize passenger car braking requirements, calls for only one warning indicator.

NHTSA also received comments concerning the possibility of requiring separate indicator lamps for warnings of (1) brake failure and (2) parking brake application. Transamerican did not request such a requirement in its petition and no commenter supported the approach. Commenters asserted that there are no accident data that indicate that separate indicators are necessary. In addition, one commenter believed that separate indicators would be design-restrictive because of limited instrument panel space on which to mount the indicators. NHTSA agrees with commenters that, based on current information, there is not a sufficient safety need for such a requirement.

Issued on August 12, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-19534 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the Center for Auto Safety asking NHTSA to amend Safety Standard No. 107, *Reflecting Surfaces*, to limit dashboard reflections on windshields. The petitioner believed that glare resulting from dashboard reflections on the windshield impairs driver visibility and is a safety hazard. NHTSA is denying the petition for lack of a safety need for the requested rulemaking.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (202-366-5271).

SUPPLEMENTARY INFORMATION: Standard 107, *Reflecting Surfaces* (49 CFR 571.107), specifies reflecting surface requirements for certain "bright metal" components in the driver's field of view. The components are the windshield wiper arms and blades, inside windshield mouldings, horn ring and hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The standard requires that the specular gloss of the materials used in the components must not exceed 40 units when tested. ("Specular gloss"

refers to the amount of light reflected from a test specimen.) The purpose of the standard is to reduce the likelihood that glare from the components will hinder the safe and normal operation of the motor vehicle.

The Center for Auto Safety (CAS) submitted a petition for rulemaking that requests NHTSA to amend Standard 107 "to include a provision that would significantly limit dashboard reflections in windshields." The petition states that the dashboard reflections, which CAS refers to as "veiling glare," are "a major source of vision impairment for drivers, particularly when driving from a sunlit area to a shaded area." CAS believes that dashboard reflections can be easily controlled by use of dark, non-glossy dashboard surfaces.

The petitioner said that dashboard reflections are a source of complaints and concern among car owners. CAS submitted in its petition seven complaints that the petitioner received. CAS said that there were also 14 complaints sent to NHTSA about dashboard reflections. The petitioner believed that a dashboard design such as that of the 1986-1988 GM H-Body cars is more prone to cause reflections than others, based on CAS's finding that 5 of the 14 NHTSA complaints were about those vehicles.

CAS said that dashboard reflections are considered a safety hazard by vehicle manufacturers. The petitioner referred to reports and other statements made by Ford and GM over the years about the desirability of limiting veiling images on the windshield and the means available to limit the images. The petitioner stated that the industry has made some improvements to dashboard designs over the years. CAS believed, however, that current designs (such as the aerodynamically shaped windshield) "may be offsetting" the benefits of those improvements.

Agency Decision

The issue raised by the petition is whether glare from the dashboard (veiling images) constitutes a visibility problem needing Federal rulemaking. NHTSA has determined that the answer is no.

The agency could find no information showing that the dashboard reflections have hindered driver visibility so as to be a safety problem. NHTSA's search of the agency's 1981–1991 consumer complaint file (containing over 138,000 complaints concerning all makes and models) revealed only 23 complaints about light reflections from the dashboard. In only one of those cases did NHTSA find that dashboard reflections may have contributed to an accident.

Similarly, the agency did not find evidence of a safety problem with 1986–1988 GM H-Body cars in particular. There are over 1,204,000 such cars registered in this country. The five complaints CAS found on the cars are so small that NHTSA does not consider them to constitute a safety problem.

However, because driver visibility through the windshield is crucial for the safe operation of the vehicle, NHTSA will monitor complaints of dashboard glare to see whether veiling images are worsening. The agency also plans to write motor vehicle manufacturers to ask them to design their vehicle interiors so as to ensure that the least amount of glare would be produced. In addition, NHTSA will be initiating a major visibility research program later this year to obtain information on windshield glare from "head-up displays" and other sources. (Head-up displays are informational displays for the driver that are reflected directly onto the windshield so that the driver can see the information without looking down at the dashboard.) If information shows a safety problem with windshield glare, appropriate action will be taken.

After carefully considering the petition, NHTSA concludes that there is not a reasonable possibility that the order requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition is denied.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on August 12, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-19608 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List Taxus Brevifolia (Pacific Yew) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to add *Taxus brevifolia* (Pacific yew) to the List of Endangered and Threatened Plants. The Service finds that the petition has not presented substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this notice was made on January 7, 1991. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Information, comments, or questions concerning the Pacific yew petition may be submitted to the Field Supervisor, Sacramento Field Station, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel at the above Sacramento, California, Field Station address (telephone 916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

On September 19, 1990, the Service received a petition dated September 19, 1990 from Mr. Bruce S. Manheim, Jr., of the Environmental Defense Fund; Dr. Elliott A. Norse of the Center for Marine Conservation; Dr. William P. McGuire; and Dr. Susan B. Horwitz; Mr. John M. Fitzgerald of the Defenders of Wildlife; Mr. Douglas P. Norlen of the Friends of the Ancient Forest; Mr. Jim Waltman of the National Audubon Society; Mr. Wm. Robert Irvin of the National Wildlife Federation; Dr. Faith T. Campbell of the Natural Resources Defense Council; Mr. James Monteith of the Oregon Natural Resources Council; and Mr. George T. Frampton, Jr. of the The Wilderness Society. The petition requested that the Service designate the Pacific yew as a threatened species pursuant to the Act.

This finding is based on numerous published and unpublished studies and

reports, agency documents, literature syntheses, and field sighting records. In addition, staff conducted interviews with botanists, foresters, and other people familiar with the yew. All documents and phone conversation records on which this finding is based are on file in the Sacramento Field Station.

The petitioners stated that though the Pacific yew occurs over a large part of western North America, the species is rare throughout its range, occurring more frequently in old-growth forests than in mature or young stands. They contend that the species is seriously depleted in comparison to its historical distribution. The petition stated that the yew is vulnerable to logging, and is in fact more abundant on public land where more old-growth remains compared to private land. The petition also stated that the species' status on Forest Service lands is precarious because of scheduled logging activities, that the yew is at risk on the Nezperce National Forest in Idaho where logging has reduced yew habitat by at least 10,000 acres, and that these stands are threatened by browsing ungulates and fire. Finally, the petitioners stated that the yew should be afforded protection because it is the major source of taxol, which is in critically short supply, and that the Endangered Species Act would prohibit unauthorized collection of yew bark and could provide for other conservation measures.

Though Pacific yew typically is a minor forest component (Bolsinger and Jaramillo in press), this role is not universal. For example, Bolsinger and Jaramillo (in press) reported that the species is a dominant within 40,000 acres within the South Fork of the Clearwater River basin in Idaho. In addition, they noted that the tree is fairly common in the Cascade Range and abundant in some sites in southern Oregon. The yew extends over 18 degrees of latitude and two climatic zones, Pacific maritime and the Northern Rockies (Bolsinger, pers. comm., U.S. Forest Service, September 30, 1990). Much of the range of the yew has not been subject to statistical inventories, especially the northern portion (i.e., Alaska and British Columbia). Nonetheless, based on stand information together with satellite imagery, the U.S. Forest Service (1990) estimated that 130,000,000 yew trees occur on 1,778,000 acres of National Forest lands in the Washington and Oregon Cascades, and Oregon Coast Range. According to the Bureau of Land Management (BLM), the species occurs on an additional estimated 734,000 acres of public and private land in California, Idaho, Oregon, and Washington. Though likely severely underestimated due to lack of statistical surveys, Pacific yew occurs on at least 2.5 million acres. Thus, the yew is not rare, but merely often subdominant throughout millions of acres of forested habitat.

Spies (*in press*) noted that Pacific yew was one of four taxa that occurred with greater frequency and abundance in old-growth, and Jimerson and Scher (*submitted for publication*) stated that yew may be a useful indicator of old-growth. According to BLM inventory data, the yew occurred in 10 percent or more of the plots located in stands older than 200 years. Nonetheless, the yew was recorded from all age classes, including nearly 5 percent of the BLM sampled stands 50 years or less in age. Bolsinger (pers. comm., 1988) estimated that 60 percent of the yew stands are less than 100 years, and 40 percent of these are less than 50 years. In a representative plot within a Pacific yew stand in northern Idaho, more than 80 percent of the yews were 80 years or younger (Crawford 1983). Because a substantial portion, if not most, of the remaining yew trees likely occur in the more abundant young/seral forests, the greater densities and frequencies of yew in old-growth stands do not substantiate the assertion by the petition that the long-term survival of yew is "ultimately linked to ancient forests."

Spies (*in press*) reported that old-growth species, like *Taxus*, would suffer the greatest decline in regional populations if most of the current old-growth is clearcut and converted to short rotational plantations. However, he noted that conditions favoring the yew and other old-growth species can be found in younger stands. In fact, much of the yew occurs in young and maturing stands and, absent fire (especially broadcast burning), such stands likely will be subject to continual colonization by the yew; the seeds of which are brought into areas by foraging wildlife (Bolsinger and Jaramillo *in press*). Spies stated that many forest species suffer declines after clearcutting and site preparation. The techniques used to reforest clearcuts will determine to what degree the Pacific yew reestablishes its former abundance on these sites. Spies concluded that maintenance of old-growth species in managed stands and landscapes is good, but that additional data are needed on the autecology of such species.

Jimerson and Scher (*submitted for publication*) noted 11 major determinants of Pacific yew distribution. Although old stand age was listed first, this factor is not the major determinant. Instead, proximity to water, vegetative cover, slope position, and elevation are major determinants of yew distribution in northwestern California (Scher and Jimerson 1988). Scher and Schwarzchild (1989) noted the affinity of yew for moist sites. Stand age was mentioned by Scher and Jimerson (1988) as one of three related factors influencing distribution of the species.

Distributional data for the Pacific yew prior to modern settlement (mid-1880s) of the Pacific Coast does not exist. As a result, comparisons of the present and historical ranges of the Pacific yew are largely based on conjecture or inferred from chronosequence studies. Nonetheless, Crawford (pers. comm., University of Idaho, July 17, 1990) concluded that the species' native range has decreased over the last approximately 100 years as a result of development and land clearing in the lowlands and to a lesser degree in the mountains. However, he also noted that the simultaneous reduction in fire frequency likely increased the size of local populations. In addition, Gruell (1983) concluded that climax communities and their associates, like the yew, are more common in the Northern Rockies today than during the period of 1870 to 1940. No data exists to show that any historical reduction in yew abundance has occurred.

The petition stated that the Pacific yew is vulnerable to logging and listed several factors to support this claim. The petition noted that the thin-barked Pacific yew is susceptible to fire and heat. Though this observation has been made by several researchers (Stickney 1980, DeByle 1981, Scher and Jimerson 1988), the long-term effect of this susceptibility to fire is unknown given that the Pacific yew can stump sprout after low-intensity fires. Many species of conifers are typically consumed by fire and, yet, are not threatened by the failure of individual trees to survive a fire. Thus, the significance of this observation in relation to the yew is not well understood.

The petition noted that yew foliage often dies following overstory removal because of increased insolation and greater exposure to frost. Though the foliage of released trees "often dies," "released trees can adapt eventually to unshaded conditions through changes in leaf morphology and twig distribution" (Minore *et al.* 1988). According to Crawford (1983), 78 percent of understory yews survived overstory removal in an experiment in Idaho. Graham and Jones (1985) concluded that the "yew can adapt to high light

intensities." Arthur Zack (pers. comm., U.S. Forest Service, November 30, 1990), noted that yews left within clearcuts in Idaho "appeared to be growing quite well in the openings created by canopy removal." Crawford (1983) concluded that "yew will survive overstory removal and contribute to the development of the next yew stand." As a result, overstory removal leading to increased insolation and greater exposure to frost likely only effects minor or temporary adverse impacts to yew populations.

Scher and Jimerson (1988) noted that the survival and germination of seeds are influenced by "maximum temperature and time of exposure." They also stated that "seedlings are frequently killed at soil level from overheating of the soil surface." However, these remarks refer to conifers and other plants in general, not the yew specifically. Spies (pers. comm., U.S. Forest Service, November 26, 1990) reported densities of 15.4 to 50.8 seedlings per hectare in the Cascades, and Zack (pers. comm., November 30, 1990) noted yew seedlings on sites that were clearcut and burned in Idaho.

Dietrich (1990) noted that browsing wildlife can decrease yew vegetation, while Minore *et al.* (1988) stated yew "growth can be severely affected." Bolsinger and Jaramillo (*in press*) also stated that yew is heavily browsed in some portions of its range. However, none of these researchers or other studies concluded that such browsing actually threatens the species or results in significant mortality. Given the use of *Taxus* in topiary, continued browsing likely only suppresses individual plants until they grow beyond the reach of animals (U.S. Forest Service 1990, cf. Crawford 1983).

The petition stated that the slow-growing Pacific yew will not reach maturity in tree plantations during the typical 50–80 year rotation. However, modern silviculture is less than one cycle old and typical rotations often extend to 120 years. In addition, no experimental data exist to show that silvicultural practices threaten maturing individuals of the species. According to BLM data, 4.8 percent of the sampled plots within 0 to 50 year old stands harbored yew. While yew occurred in 11.3 percent of the BLM plots within stands over 210 years in age, most (i.e., about 55 percent) of the BLM sample plots with yew were recorded from 0 to 50 year old stands. Although this study may have oversampled within younger stands, the precise effect of timber harvest on yew is largely based on conjecture or inferred from chronosequence studies absent pre-harvest data. Clearly, no experimental study has been undertaken to determine the long-term effect of current logging practices and modern silvicultural techniques on the Pacific yew.

In an abstract of a paper he gave at a workshop on taxol and *Taxus*, Bolsinger noted that the yew averaged 18 trees per acre on private land compared to 36 trees per acre on BLM land. In addition, he stated that "stands 100 years or older occupied 41 percent of BLM land, and 14 percent of non-Federal." The source of this information or location for these data is not clear in the Bolsinger abstract. Regardless, as discussed above, Pacific yew does occur in greater densities in old-growth stands. Thus, these statements merely reaffirm that most old-growth and the associated denser stands of yew remain on Federal lands. Whether this observation confirms that logging on private land has effected and will continue to effect a decline in the yew is open to question. According to BLM data on a state-by-state basis, little difference exists between public and private land regarding the percent of acreage with yew. For example, BLM estimated that 4.0 percent of their timberland contained yew versus 3.7 percent on private land in Oregon. In California, BLM estimated that 0.9 percent of the timberland not owned by the Federal government harbored yew compared to a trace from national forest lands. Similar differences were reported from Idaho, Montana, and Washington. To reiterate, no experimental study has been undertaken to determine the long-term effect of current logging practices and modern silvicultural techniques on the yew. The existing data base is largely observational with somewhat conflicting and varying interpretations.

The petitioners stated that the status of the yew on Forest Service lands is also precarious because of scheduled logging operations. With the threat logging poses to the Pacific yew open to question, the claim for public land is also largely unsubstantiated. As an aside, the rates of logging of ancient forests developed by The Wilderness Society (1988) and cited in the petition were made prior to the listing of the northern spotted owl. The actual logging rates likely will be significantly lower.

The petitioners stated that Pacific yew is also at risk on the Nezperce National Forest in Idaho where logging has reduced yew habitat by at least 10,000 acres. In addition, they stated that these stands are threatened by browsing ungulates and fire. Crawford and Johnson (1985) indicated that logging evidently had resulted in the replacement of approximately 10,000 acres of yew-dominated communities in the Nezperce National Forest, not that the yew had been eliminated from 10,000 acres. Given the yew's typically minor role in most forest communities (Bolsinger and Jaramillo in press), timber harvest probably has reduced the species to subordinate status on the subject acreage in Idaho. As an aside, Crawford and Johnson (1985) did not provide the derivation methodology or authority for their claimed loss of yew-dominated communities. Their synecological paper was not an analysis of the effects of logging on yew, but a detailed discussion of a habitat classification involving the yew in Idaho. Given that Crawford (1983) in his dissertation concluded that "yew will survive overstory removal and contribute to the development of the next yew stand," no substantial case has been made that logging on the Nezperce National Forest threatens the long-term survival of the yew.

The petitioners stated that the Pacific yew should be afforded protection because it is the major source of taxol, which is in critically short supply. The compound taxol has been used to treat ovarian as well as other types of cancer. The petitioners stated that listing the yew as threatened under the Act would prohibit unauthorized collection of yew bark and could provide for other conservation measures. The purpose of the Act, however, is not to provide needed supplies of drugs for medical research, but to provide for the conservation of endangered and threatened species and their ecosystems.

Although large Pacific yew trees (i.e., greater than 10 inches in diameter at breast height) are commercially exploited, BLM estimated from data collected in Oregon that only 7.5 percent of the yew trees are 6.0 or more inches in diameter at breast height. We anticipate that similar percentages of large yews will be found throughout the range of the species. Notwithstanding the relative rarity or insufficient quantity of large yew trees needed for cancer research, the potential entire loss of larger size classes due to taxol harvest does not pose a significant threat to the species. In addition, no substantial case has been made that the current lack of special protection by Federal and State agencies resulting in commercial use of yew or continued logging of its habitat threatens the long-term survival of the Pacific yew.

Summary and Recommendation

Due to the lack of thorough distribution/status surveys and experimentally-based studies of the autecology of Pacific yew, insufficient scientific information exists to determine whether regulatory protection under the Act may be justified. Regardless, an analysis of the existing data based strongly suggests that listing is not warranted. This conclusion was reached by other yew researchers, like Crawford (pers. comm., July 17, 1990) who asserted that the species is "not threatened with extinction in any way." Despite the potential for a severe underestimation, Pacific yew still occurs on at least 2.5 million acres. This figure is more than twice the estimate supplied with the petition. In addition, the existing data, which are based largely on synecological work and chronosequence studies, seem to substantiate the contention that the yew is not vulnerable to logging or collection. Logging activities evidently reduce the density of yew immediately after harvest. Moreover, land development and clearing historically have decreased the species' range in the lowlands and to a lesser degree in the mountains (much of which probably has been offset by reduced fire frequencies.) However, based on the relative abundance of the Pacific yew and the conflicting and non-experimental nature of the data on the species, no substantial data exist to show that any historical reduction in yew abundance has seriously depleted the species. In short, due to insufficient information contained in the petition, referenced in the petition, or otherwise available to the Service, the petition to list the Pacific yew does not present substantial information indicating the requested action may be warranted.

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Author

The primary author of this notice is Jim Bartel of the Sacramento, California Fish and Wildlife Enforcement Field Station (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 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.

(Notice: Pacific yew (*Taxus brevifolia*), petition finding)

Dated: August 12, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–19612 Filed 8–15–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 159
Friday, August 16, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Institute; Grant

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: Grant to the Agricultural Research Institute to provide partial funding support for "Training on Commodity Treatments to Satisfy Quarantine Regulations."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1991 (FY1991) to award a grant to the Agricultural Research Institute (ARI) in support of transportation expenses for Latin America and Caribbean participants to attend a group training session on commodity treatments to satisfy quarantine regulations. Scientists from Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Jamaica, Mexico, Panama, Peru, Venezuela, Trinidad and Tobago are expected to attend. The training program is to be held at the USDA/ARS facilities in Gainsville and the USDA/APHIS facilities in Miami.

Based on the above, this is not a formal request for application. An estimated $10,000 will be available in FY1991 as partial project support.

Information on proposed Grant #59–319R–1–017 may be obtained from: USDA/OICD/Administrative Services, Washington, DC 20250–4300.

Dated: August 13, 1991.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 91–19656 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–DP–M

Iowa State University; Grant

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: Grant to Iowa State University to provide partial funding support for the First International Crop Science Congress.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1991 (FY1991) to award a grant to Iowa State University for the First International Crop Science Congress (ICSC), which will be co-hosted and co-organized with the Crop Science Society of America. The ICSC will provide a forum for crop scientists from around the world to exchange knowledge and to interact, for integration of knowledge from crop science and ancillary science areas, and for the development of cooperative scientific and education thrusts on regional and global bases. Funds provided will support travel and subsistence of speakers from Poland, Hungary and other Eastern European countries; Egypt, Sudan, Morocco and other North African countries; and India and other Southern Asian countries.

Based on the above, this is not a formal request for application. An estimated $20,000 will be available in FY1991 as partial project support.

Information on proposed Grant #59–319R–1–018 may be obtained from: USDA/OICD/Administrative Services, Washington, DC 20250–4300.

Dated: August 13, 1991.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 91–19657 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–DP–M

American Society of Agronomy; Grant

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: Grant to the American Society of Agronomy (ASA), Crop Science Society of America (CSSA) and Soil Science Society of America (SSSA) to provide partial funding support for participation of international speakers at the Societies' 1991 annual meeting.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1991 (FY1991) to award a grant to ASA/CSSA/SSSA in support of transportation and per diem expenses for participation of international speakers at the 1991 annual meeting, the overall theme of which is "Global Agronomic Opportunities." A special theme session is planned concerning strategies for developing a viable and sustainable agricultural sector in sub-Saharan Africa. Speakers include representatives of the International Fund for Agricultural Development, the United Nations University Programme on Natural Resources in Africa, and the Institute for Tropical Agriculture.

Based on the above, this is not a formal request for application. An estimated $13,711 will be available in FY1991 as partial project support.

Information on proposed Grant #59–319R–1–016 may be obtained from: USDA/OICD/Administrative Services, Washington, DC 20250–4300.

Dated: August 13, 1991.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 91–19658 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–DP–M

Association of National Agricultural Library; Grant

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: Grant to the Associates of the National Agricultural Library to provide partial funding support a U.S./Eastern European Agricultural Library Roundtable.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1991 (FY1991) to award a grant to the Associates of the National Agricultural Library in support of a U.S./Eastern European Agricultural Library Roundtable. The Roundtable will bring together representatives from the national agricultural libraries of Eastern Europe and U.S. counterparts, as well as representatives of the U.S. library and information network. This Roundtable is an important mechanism through which to begin to creatively address how to forge and strengthen organizational linkages, enhance international cooperation and communication to ensure fluid and cost-effective access to information in a global marketplace.

Based on the above, this is not a formal request for application. An estimated $20,000 will be available in FY1991 as partial project support.

Information on proposed Grant #59–319R–1–015 may be obtained from: USDA/OICD/Administrative Services, Washington, DC 20250–4300.

Dated: August 13, 1991.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 91–19659 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–DP–M

Office of International Cooperation and Development

Agribusiness Promotion Council; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet from 1 p.m. to 5 p.m. on Tuesday, October 1, 1991 and on Wednesday, October 2 from 9:30 a.m. to 4 p.m. The meeting will be held in room 104–A Administration Building, U.S. Department of Agriculture. The agenda for the meeting includes: Report on previous activities, discussion of issues of concern to the entire Council, and recommendations on the future direction of the program and specific projects. The meeting is open to the public. The public may participate as time and space permit.

Comments may be submitted to Dr. Duane Acker, Administrator, Office of International Cooperation and Development, until September 15, 1990. Further information may be obtained by calling Avram E. Guroff, Assistant to the Administrator, Office of International Cooperation and Development, (202) 245–5855.

Done at Washington, DC this 2nd day of August 1991.

Duane Acker,

Administrator.

[FR Doc. 91–19639 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–DP–M

Food Safety and Inspection Service

[Docket No. 91–026N]

Hazard Analysis and Critical Control Point (HACCP) Workshop—Solicitation of Participants; In-Plant Testing—Solicitation of Volunteers

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) intends to assist the meat and poultry industries in developing generic model Hazard Analysis and Critical Control Point (HACCP) plans. This notice solicits participation by technical experts from the meat and poultry industries in the workshop on Poultry Slaughter (young chickens). This workshop will be held August 27–29, 1991, at the Ritz-Carlton in Atlanta, Georgia.

In addition, this notice also extends the deadline for volunteers for in-plant testing of the generic HACCP model for poultry slaughter as provided in the Agency's January 18, 1991, Federal Register notice. The notice provided that plants interested in participating in in-plant testing must notify FSIS by February 15, 1991. Potential volunteers for poultry slaughter testing have requested that the Agency extend the entry deadline for participation in the in-plant testing program.This notice extends the deadline to September 6, 1991.

DATES: Interested participants for the workshop on Poultry Slaughter (young chickens) should supply the requested information no later than August 23, 1991.

Letters of inquiry from persons interested in volunteering a plant for the in-plant testing study of the generic HACCP model for poultry slaughter should be submitted by September 6, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Wallace I. Leary, Director, HACCP Special Team, United States Department of Agriculture, Food Safety and Inspection Service, room 2915, South Building, 14th and Independence Avenue, SW., Washington, DC 20250, (202) 245–5087.

SUPPLEMENTARY INFORMATION: FSIS recognizes the merits of HACCP as a system for sanitation and process control. The industries have expressed an interest in incorporating HACCP into the production of meat and poultry products. It is the intention of FSIS to assist the industries by facilitating product specific workshops at which the industries will develop generic HACCP models. For this purpose, technical experts from the meat and poultry industries are being sought to work on the development of a generic HACCP model for poultry slaughter (young chickens). Individuals or companies volunteering to participate in the development of the model during the workshop need not have previous experience in HACCP-based operations. In fact, it is desirable to include firms with varying degrees of prior HACCP experience.

The workshop on Poultry Slaughter will be held on August 27–29, 1991, at the Ritz-Carlton, 181 Peachtree Street, Atlanta, Georgia 30309.

Anyone interested in participating in the workshop on Poultry Slaughter should submit a written request noting the following:

(1) Organization affiliation, i.e., national and/or local trade association(s), if any;

(2) Company, corporation, or independent operation represented by participant;

(3) Plant size, i.e., small, medium, or large; and

(4) Major product lines and approximate volumes.

The number of industry participants involved in the development of the model HACCP plan may have to be limited. If anyone is interested in participating in the workshop on Poultry Slaughter and/or receiving technical information on the Agency's HACCP initiative, please submit written requests to Dr. Wallace I. Leary at the above address.

The workshop on Poultry Slaughter will also be open to the public for observation. Space available for observers may be limited and seating will be based on a first come, first served basis. Therefore, those desiring to attend the workshop as observers are asked to submit requests in writing, indicating the following:

(1) Name, address, and phone number; and

(2) Name of company or corporation the observer is representing, if applicable.

Observers will be given an opportunity to comment during the course of the workshop session.

There is no registration fee, but transportation and per diem expenses must be borne by the participant or his/her sponsor.

Future **Federal Register** notices will be issued regarding site location, confirmation of times and dates, and future workshop participation.

The tentative schedule for the other workshops is as follows:

Month	Region	Product
December 1991	Western	Fresh ground beef.
March 1992	North Central	Swine slaughter (market hogs).

On January 18, 1991, FSIS published a notice in the **Federal Register** (56 FR 1972) soliciting volunteers for in-plant pilot testing of generic model HACCP plans developed at these workshops. The notice provided that persons interested in participating in the in-plant pilot testing must notify FSIS by February 15, 1991. Potential volunteers for poultry slaughter have requested the Agency to extend the deadline for participation in the in-plant pilot testing program. This notice extends the deadline to September 6, 1991.

Plants interested in volunteering as a test plant for the poultry slaughter HACCP model or receiving more information on the in-plant test study should submit a written request to Dr. Leary at the above address and note the following:

(1) Name, address, phone number, and establishment number;

(2) Affirmation that the plant is volunteering to test the poultry slaughter HACCP model;

(3) Type of poultry slaughtered;

(4) Affiliation, i.e., national and/or local trade association(s), if any;

(5) Poultry slaughter volume per year; and

(6) Type(s) of operation, e.g., New Line Speed Inspection System (NELS) or Streamlined Inspection System (SIS), and number of shifts.

Done at Washington, DC, on: August 12, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-19619 Filed 8-15-91; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Noranda's Montanore Project, Silver/Copper Mine, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Intent to prepare supplement to the Montanore Project Draft Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, Kootenai National Forest (KNF), in conjunction with Montana's Department of State Lands (DSL), Department of Natural Resources and Conservation (DNRC), and Department of Health and Environmental Sciences (DHES) will prepare a supplement to the draft environment impact statement (EIS) for a proposal to permit the development of Noranda's Montanore (previously called the Montana Project) silver/copper mine project and associated power transmission line. The project is located approximately 18 miles south of Libby, Montana. Noranda's proposed plan of operation was submitted March 7, 1989 pursuant to Forest Service locatable mineral regulations 36 CFR part 228, chapter II, subpart A, and State of Montana Metal Mine Reclamation Act, title 82, chapter 4, part 3, MCA. On June 27, 1989, Noranda submitted a transmission line application to the KNF and DNRC pursuant to the 36 CFR 251.50 and Montana Major Facility Siting Act, title 75, chapter 20, MCA.

The Montanore Project, as proposed by Noranda, would consist of a 20,000 ton-per-day underground mine located within the boundaries of the Cabinet Mountains Wilderness and a surface mill located outside the wilderness boundary. Noranda proposes no surface impacts to the wilderness. Noranda has estimated the size of the ore body to be about 140 million tons. The estimated duration of the project is about 19 years, 3 years of which will be the construction period. Access to the ore would be through two 13,000 foot parallel adits with portals located adjacent to the wilderness in Ramsey Creek. An additional 18,000 foot long ventilation adit with a portal in upper Libby Creek, also outside the wilderness, would be used in the project. Ore would be crushed underground and conveyed out of the mine to a mill near the Ramsey Creek portals. Copper and silver sulfides would be removed from the ore by flotation processing. Tailings from the milling process would be conveyed through a pipeline to the tailings disposal impoundment about four miles from the mill in the Little Cherry Creek drainage. Power for the operation would be supplied by a newly constructed 16 mile long, 230 k-V electrical transmission line.

A notice of intent to prepare the EIS was signed by the Forest Supervisor on July 14, 1989, and published in the **Federal Register** on July 26, 1989 (Vol. 54, No. 142, 54 FR 31064). The notice of availability for the Montanore Project DEIS was published in the **Federal Register** on October 12, 1990 (Vol. 55, No. 198, 55 FR 41600). Comments were received through December 10, 1990.

Subsequent to publication of the draft, Noranda submitted additional information and revised several aspects of the proposed project. In response to this and to comments received on the draft the agencies requested clarifying information from Noranda. From this information the agencies have developed additional analysis on the proposed project and alternatives. New analysis is contained on surface and ground water quality, aquatics, grizzly bear, wetlands, old growth timber, and the potential for surface subsidence in the wilderness. In addition, the supplement will contain additional analysis of the transmission line alternatives. The KNF and state agencies have determined that this information will be presented in a supplement to the draft EIS rather than in the final EIS. The supplement will be narrow in scope, addressing only the additional and revised information.

Through scoping and public involvement the draft EIS identified six environmental issues to drive the development of alternatives and evaluation of impacts:

Issue 1—Changes in wildlife habitat and population, particularly the threatened grizzly bear;

Issue 2—Changes in the type and quality of general forest recreational activity and on the area's aesthetic qualities;

Issue 3—Changes in the Cabinet Mountain Wilderness character, such as natural integrity, the opportunity for solitude, and the opportunity for primitive recreation;

Issue 4—Socioeconomic changes, including employment, income, housing, community services, population, and public finance;

Issue 5—Concerns about the location and stability of the tailings impoundment; and

Issue 6—Changes in the quantity and quality of water resources.

The Draft EIS included the following alternatives:

Alternative 1—Noranda's proposal

Alternative 2—Noranda's proposal with modifications

Alternative 3—Noranda's proposal with modifications and water treatment

Alternative 4—Noranda's transmission line proposal with modifications

Alternative 5—North Miller Creek alternative transmission line routing

Alternative 6—Swamp Creek alternative transmission line routing

Alternative 7—No action

The new or supplemental information that Noranda has submitted include the following aspects of Noranda's mining and reclamation plans: The mine plan; ore processing and disposal; tailings storage; water use and management; interim monitoring plans; operational and post-operational monitoring plans; grizzly bear mitigation plan; and, wetlands mitigation plan. The supplemental DEIS will include modification of Alternative 1 to include this information and will include additional clarification of Noranda's plans.

In response to public and agency comments Alternative 2 and 3 will also be revised in the supplement, as will the "Alternatives Considered But Dismissed" section.

Modifications to Alternative 2 include: Increases in operational and post-operational monitoring; changes in the proposed grizzly bear mitigation plan; a proposed amendment to the KNF management area designation for the tailings impoundment area; a comprehensive program to minimize the amount of water flowing into the underground workings; a program of underground rock mechanics testing; a program of chemical analyses on rock encountered underground; a program of micro-seismic monitoring, and; modifications to the hydrologic monitoring program.

Modifications to Alternative 3 include: Dismissal of wetlands and electrocoagulation water treatment system alternatives; modification of the evaporation water treatment system; adoption of two additional water treatment system alternatives (reverse osmosis and ion exchange), and; addition of an alternative seepage collection system.

Modifications to the "Alternatives Considered But Dismissed" section include: Additional information and analysis of underground mine backfilling and its potential effects on the tailings impoundment design and mine subsidence; additional information and analysis for tailings impoundment alternatives site locations; information on other project facilities siting; the addition of wetlands and electrocoagulation water treatment systems to this section.

The estimated date for issuance of the supplemental draft environmental impact statement is September 30, 1991. A public meeting will be held in conjunction with the issuance of the supplemental draft environmental impact statement. The final environmental impact statement is expected to be available in February, 1992.

The comment period on the SDEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), 40 CFR 1502.9(c)(4), allow agencies to exclude scoping when preparing supplements to environmental impact statements. Due to the extensive scoping and public participation that has already occurred, the Forest Supervisor determined there is no need for additional scoping prior to the release of the SDEIS.

The analysis process will ultimately lead to one of the following possible decisions; (1) approval of the plan of operations and application, (2) approval of the plan of operations and application with changes incorporated, (3) approval of the plan of operations and application subject to stipulations, or (4) disapproval of the plan of operations and application.

The responsible official is Robert L. Schrenk, Supervisor of the Kootenai National Forest.

FOR FURTHER INFORMATION CONTACT: Robert J. Thompson, Project Coordinator, Kootenai National Forest, telephone (406) 293–6211.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of supplemental draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the supplemental draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* versus *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the supplemental draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the SDEIS. Comments may also address the adequacy of the supplemental draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: August 5, 1991.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 91–19451 Filed 8–15–91; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m. on Tuesday, September 10, 1991. The purpose of the meeting is to conduct a briefing on Commission plans for a hearing in Mt. Pleasant, learn from Chairman Arthur Fletcher and Staff Director Wilfredo Gonzalez what role the Committee might play in the hearing, and orientation for newly appointed members.

Persons desiring additional information, or planning a presentation to the Committee, should contact John I. Binkley, Director, Eastern Regional Division at (202) 523–5264, TDD (202) 376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 13, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–19613 Filed 8–15–91; 8:45 am]

BILLING CODE 6335–01–M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 4 p.m. on Friday, September 6, 1991, at the Peabody Hotel, 149 Union Avenue, Memphis, Tennessee 38103. The purpose of the meeting is: (1) To orient the Committee; (2) to discuss the status of the Commission; (3) to hear a report on civil rights progress and/or problems in the State; and (4) to plan a project for fiscal year 1992.

Persons desiring additional information, or planning a presentation to the Committee, should contact Tennessee Committee Chairperson Gail Neuman (615/459–1414) or Bobby D. Doctor, Director, Southern Regional Division of the U.S. Commission on Civil Rights (404/730–2476, TDD 404/730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 13, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–19615 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–91]

Foreign Trade Zone 72—Indianapolis, Indiana; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority (IAA), grantee of FTZ 72, requesting authority to expand its zone in Indianapolis, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u) and the regulations of the Board (15 CFR part 400). It was formally filed on August 7, 1991.

FTZ 72 was approved on September 28, 1981 (Board Order 179, 46 FR 50091; 10/9/81) and currently covers 15 acres (20,000 sq. ft.) within the Indianapolis International Airport Complex.

The grantee is now requesting authority to expand the zone to include the entire 5,500-acre airport complex. The Greater Indianapolis Foreign-Trade Zone, Inc., is the current operator of the zone and will operate the expanded project. No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John Da Ponte, (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20203; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 55 Erieview Plaza, Cleveland, OH 44114; and Colonel David E. Peixotto, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201–0059.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 4, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, One North Capital, Suite 520, Indianapolis, Indiana 46204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: August 9, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91–19632 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 527]

Resolution and Order Approving the Application of the Port of Portland for a Special-Purpose Subzone for Export Activity at the Undersea Fiber Optic Cable Plant of STC Submarine Systems in Portland, OR

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Portland, grantee of FTZ 45, filed with the Foreign-Trade Zones Board (the Board) on June 20, 1990, requesting special-purpose subzone status at the undersea fiber optic cable manufacturing (for export) plant of STC Submarine Systems, Inc., located in Portland, Oregon, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Portland, Oregon

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Port of Portland, grantee of Foreign-Trade Zone 45, has made application (filed June 20, 1990, FTZ Docket 25–90, 55 FR 26721) in due and proper form to the Board for authority to establish a special-purpose subzone for export activity at the undersea fiber optic cable manufacturing plant of STC Submarine Systems, Inc. (STC), located in Portland, Oregon;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed June 20, 1990, the Board hereby authorizes the establishment of a subzone at the STC plant in Portland, Oregon, designated on the records of the Board as Foreign-Trade Subzone No. 45C at the location

mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 8th day of August, 1991, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-19630 Filed 8-15-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 526]

Resolution and Order Approving the Application of the Port of Houston Authority for a Special-Purpose Subzone for Export Activity at the Liquor Export Facility of Gulf Coast Maritime Supply in Houston, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter hereby orders:

After consideration of the application of the Port of Houston Authority, grantee of FTZ 84, filed with the Foreign-Trade Zones Board (the Board) on June 22, 1990, requesting special-purpose subzone status for the export distribution facility of Gulf Coast Maritime Supply, Inc., located in Houston, Texas, the Board, finding that the requirements of Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Houston, Texas

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, has made application (filed June 22, 1990, FTZ Docket 27–90, 55 FR 27291) is due and proper form to the Board for authority to establish a special-purpose subzone for export activity at the distribution facility of Gulf Coast Maritime Supply, Inc. (GCMS), in Houston, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal is in the public interest;

Now, therefore, in accordance with the application filed June 22, 1990, the Board hereby authorizes the establishment of a subzone at the GCMS facility in Houston, Texas, designated on the records of the Board as Foreign-Trade Subzone No. 84E at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations;

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone facility in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 8th day of August, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-19629 Filed 8-15-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 46-91]

Foreign-Trade Zone 41—Cudahy, WI; Application for Subzone Stauffer Cheese, Inc., Cheese Processing Plant, Blue Mounds, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of

Wisconsin, Ltd., grantee of FTZ 41, requesting special-purpose subzone status for export activity at the cheese processing plant of Stauffer Cheese, Inc. (SCI), located in Blue Mounds (western Dane County), Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 8, 1991.

The SCI site (14 acres/50,000 sq. ft.) is located at 2819 Highway F South in Blue Mounds, some 24 miles west of Madison, Wisconsin. The facility produces over 40 varieties of refrigerated and non-refrigerated processed cheese products. Although the company is currently using domestically-sourced commodities, it is planning to process, pasteurize and repackage natural cheddar cheese from Canada, which would subsequently be re-exported to Canada.

Zone procedures would exempt the Canadian cheese from current U.S. Department of Agriculture licensing procedures. MSC would also be exempt from Customs duty payments on the foreign products that are re-exported. SCI is not requesting the use of zone procedures for processing cheese for the domestic market. The applicant indicates that subzone status would help improve SCI's competitiveness in the Canadian market.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Richard Rudin, District Director, U.S. Customs Service, North Central Region, 6269 Ace Industrial Drive, P.O. Box 37260, Milwaukee, Wisconsin 53237–0260; and, Colonel Richard Craig, District Engineer, U.S. Army Engineer District St. Paul, 1421 USPO & Custom House, 180 East Kellogg Blvd., St. Paul, Minnesota 55101–1479.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 4, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, 605 Federal Building, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3718, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: August 9, 1991

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91–19633 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–038]

Bicycle Speedometers From Japan; Determination To Revoke Antidumping Finding and Intent To Terminate Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination to revoke antidumping finding and intent to terminate administrative review.

SUMMARY: On December 17, 1990 (55 FR 51742), the Department of Commerce (the Department) initiated an administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826) with respect to one respondent, Sanyo Electric Co., Ltd. (Sanyo), and the period November 1, 1989 through October 31, 1990. The Department is notifying the public of its determination to revoke the antidumping finding and its intent to terminate that administrative review on bicycle speedometers from Japan.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1972, the Department published in the **Federal Register** (37 FR 24826) an antidumping finding on bicycle speedometers from Japan. On November 29, 1990, one respondent, Sanyo, requested that the Department conduct an administrative review for the period November 1, 1989 through October 31, 1990, in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review on December 17, 1990 (55 FR 51742). On February 28, 1991, Sanyo notified the Department that it made no shipments of the subject merchandise to the United States during the period of review. On April 25, 1991, the Stewart-Warner Corporation, the petitioner, informed the Department that it was no longer interested in the antidumping finding on bicycle speedometers from Japan. Petitioner subsequently informed the Department that it had no objection to a revocation of this finding with an effective date of November 1, 1989.

The Department may revoke an antidumping finding if it concludes that the finding is no longer of interest to interested parties (19 CFR 353.25(d)(1)(i)). The petitioner's expression of no further interest in this antidumping finding has satisfied the Department that changed circumstances sufficient to warrant revocation exist. Moreover, because this revocation will moot the need for the current administrative review, we have preliminarily determined to terminate this review, pending final revocation of the finding.

We are hereby notifying the public of our determination to revoke the antidumping finding, and of our intent to terminate the current administrative review on bicycle speedometers from Japan. If this determination to revoke the antidumping finding is made final, it will be effective on November 1, 1989. Given the revocation of the finding, the current administrative review is moot, and is being terminated.

Opportunity to Object

Not later than 30 days from the date of publication of this notice in the **Federal Register**, interested parties, as defined in 19 CFR 353.2(k), may object to the Department's determination to revoke the antidumping finding and intent to terminate the administrative review. Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

This notice is in accordance with 19 CFR 353.25.

Dated: August 12, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19616 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–DS–M

[A-469-007]

Preliminary Results of Antidumping Duty Administrative Review: Potassium Permanganate From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Tracey E. Oakes or Roy A. Malmrose, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3174, or 377-5414, respectively.

PERIOD OF REVIEW: January 1, 1989, through December 31, 1989.

PRELIMINARY RESULTS:

Background

On June 8, 1988, the Department of Commerce (the Department) published in the Federal Register (53 FR 21504) the final results of its last administrative review of the antidumping duty order on potassium permanganate from Spain (49 FR 2277, January 19, 1984).

On January 30, 1990, Industrial Quimica del Nalon (IQN) requested, in accordance with 19 CFR 353.22(a), that the Department conduct an administrative review for the period January 1, 1989, through December 31, 1989. We published a notice of initiation of this antidumping duty administrative review on February 28, 1990 (55 FR 7015).

On February 26, 1990, the Department issued a questionnaire to IQN. After receiving an extension, IQN submitted its response on May 15, 1990. We requested supplemental information from IQN on October 30, 1990 and June 18, 1991. IQN's supplemental responses were received on November 16, 1990 and July 2, 1991, respectively.

The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of potassium permanganate. Potassium permanganate is an inorganic chemical produced in free-flowing, crystal technical, technical, and pharmaceutical grades. This merchandise is currently classifiable under item 2841.60.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price

We based United States price on purchase price because all sales to the first unrelated purchaser took place prior to importation into the United States in accordance with section 772(b) of the Act and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price based on the packed, f.o.b. price to the unrelated customer in the United States. We made deductions, where appropriate, for foreign inland freight, insurance, and foreign handling charges (including port taxes and customs fees) in accordance with section 772(d)(2) of the Act. Because value-added tax (VAT) was paid on home market sales and U.S. sales were exclusive of VAT, we added to the U.S. selling price the amount of VAT that would have been collected if the merchandise had not been exported.

IQN requested that we exclude, or make a special adjustment for, sales to the U.S. distributor made pursuant to the distributor's annual bid commitments to municipalities in the United States. Because there exists no basis under the law for such an exclusion or adjustment, we declined the request.

Foreign Market Value

In order to determine whether there were sufficient sales of potassium permanganate in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1) of the Act. We determined that sales in the home market are the most appropriate basis for calculating FMV.

We calculated FMV based on packed, f.o.t. or delivered prices to wholesalers/distributors in Spain. We made deductions, where appropriate, for foreign inland freight and brokerage charges. For all sales, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We made adjustments, where appropriate, for differences in circumstances of sale, including VAT, credit, technical services, trade show and advertising expenses. We recalculated advertising and trade show expenses to reflect the amount of the expense proportional to sales to wholesalers/distributors as a share of total sales.

We denied the level-of-trade adjustment requested by IQN and have compared U.S. sales to home market sales made at the same level of trade.

Respondent requested an adjustment to home market price for the difference in quantities sold in the U.S. and home markets. We denied the adjustment because respondent failed to conform consistently to the discount schedule on home market sales made at the same level of trade.

In addition, where appropriate, we made further adjustments to FMV for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57. Because IQN included fixed costs in its calculation of expenses associated with differences in merchandise, we recalculated these expenses exclusive of fixed costs. No other adjustments were claimed or allowed.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Results of the Review

As a result of our review, we preliminarily determine that the following margin exists for the period of January 1, 1989, through December 31, 1989:

Manufacturer/exporter	Margin (percent)
Industrial Quimica del Nalon (IQN)	6.19
All others	6.19

The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for IQN will be that established in the final results of this administrative review; and (2) the cash deposit rate for all other exporters/producers of this merchandise will be the same as the rate established for IQN.

These deposit requirements, when imposed, shall remain in effect upon publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in

at least ten copies must be submitted to the Assistant Secretary no later than August 27, 1991 and rebuttal briefs no later than September 3, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing for this proceeding will be held on September 6, 1991 at 10 a.m., at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the date of publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to issues raised in the briefs.

This administrative review is published pursuant to section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19634 Filed 8-15-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-040]

Stainless Steel Plate From Sweden; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on stainless steel plate from Sweden.

EFFECTIVE DATE: August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 26052) its intent to revoke the antidumping finding on stainless steel plate from Sweden (38 FR 15079, June 8, 1973). The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to parties. We had not received a request for an administrative review for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant (19 CFR 353.25(d)(4).

On June 28, 1991, the petitioners in this case, Specialty Steel Industry of the United States, Flat-Rolled Task Force, Allegheny Ludlum Steel Corp., Jessop Steel Company, Washington Steel Corporation, and Cyclops Corporation, objected to our intent to revoke the findings. Therefore, we no longer intend to revoke the finding.

Dated: August 12, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-19635 Filed 8-15-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-020]

Preliminary Results of Antidumping Duty Administrative Review: Titanium Sponge From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Karmi Leiman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1778.

PRELIMINARY RESULTS:

Background

On October 18, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 42227) the final results of its third and fourth administrative reviews of the antidumping duty order on titanium sponge from Japan (49 FR 47053, November 30, 1984). Those reviews covered the periods November 1, 1986, through October 31, 1987, and November 1, 1987, through October 31, 1988, respectively.

In accordance with 19 CFR 353.22(a), the petitioner, RMI Company, requested that we conduct an administrative review of four producers of Japanese titanium sponge for the period November 1, 1988, through October 31, 1989. The four producers are: Toho Titanium Co., Ltd.; Osaka Titanium Co., Ltd.; Showa Denko K.K.; and Nippon Soda Co., Ltd. We published a notice of initiation on June 1, 1990 (55 FR 22366). The Department is now conducting an administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

In March and April of 1991, The Department conducted verifications of the questionnaire responses of Toho, Osaka, and Showa. Nippon Soda reported, and we have confirmed with the Customs Service, that it made no exports of titanium sponge to the United States during the period of review.

Scope of the Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. During the review period, such merchandise was classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated (TSUSA). Titanium sponge is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 8108.10.50.10. Although the TSUSA and HTS numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Product Comparisons

Respondents Showa and Osaka have argued that there are different such or similar categories of titanium sponge. Showa contends that the categories are: Mill use; non-mill use; and off-grade. Osaka contends that the categories are: mill use; additive use produced by magnesium reduction; and additive use produced by sodium leaching. These respondents contend that product comparisons should only be made within the specific categories noted above. Neither respondent, however, has provided sufficient technical information supporting the claims for product segregation. In prior proceedings involving this merchandise, we found that titanium sponge constituted one such or similar category. Further, for comparison purposes, we considered all titanium sponge to be identical. Given the lack of information supplied by resondents, we find no reason to change our practice.

In addition, for each of the three respondents we made price-to-price comparisons at the same level of trade, when information on the record supported such comparisons.

United States Price

A. Osaka

In calculating United States price for Osaka, the Department used purchase price, as defined in section 772 of the Act, both because the merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, harbor and U.S. Customs user fees, U.S. brokerage and handling, and U.S. inland freight. In accordance with section 772(d)(1)(C) of the Act, for the sales made during the period in which a value added tax (VAT) was collected in Japan, we added to the net price the amount of VAT that was not collected by reason of exportation of the merchandise.

B. Showa

In calculating United States price for Showa, the Department used purchase price, as defined in section 772 of the Act, both because the merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because ESP methodology was not indicated by other circumstances. We calculated purchase price based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for cash discounts, foreign brokerage and handling, foreign inland freight, ocean freight, foreign insurance, U.S. brokerage and handling, U.S. duty, and harbor and U.S. Customs user fees. In addition, we made deductions for U.S. inland freight. In order to make this deduction, we used the inland freight data as it appeared on Showa's U.S. sales printout because Showa failed to include this information on the computer tape provided to the Department. In accordance with section 772(d)(1)(C) of the Act, for the sales made during the period in which a VAT was collected in Japan, we added to the net unit price the amount of VAT that was not collected by reason of exportation of the merchandise.

C. Toho

In calculating United States price for Toho, the Department used purchase price, as defined in section 772 of the Act, both because the merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because ESP methodology was not indicated by other circumstances. We calculated purchase price based on packed, delivered prices to the first unrelated customer in the United States. We made deductions, where appropriate for foreign inland freight, foreign brokerage and handling, ocean freight, marine and inland insurance, U.S. duty, harbor and U.S. Customs user fees, U.S. brokerage and handling, and U.S. inland freight. In accordance with section 772(d)(1)(C) of the Act, for the sales made during the period in which a VAT was collected in Japan, we added to the net unit price the amount of VAT that was not collected by reason of exportation of the merchandise.

We made corrections to the reported amounts of U.S. duty, brokerage and handling, and inland freight expenses on certain sales, based on information developed at verification.

Foreign Market Value

A. Osaka

For Osaka, we based foreign market value (FMV) on packed, delivered prices. We used sales to both unrelated customers and to those related customers for which we could establish that sales were at arm's length. We determined that sales were at arm's length if the related parties were, on average, charged prices comparable to the prices charged to unrelated customers. To determine if prices to related customers were comparable to prices charged to unrelated customers, we compared sales made at the same levels of trade.

Osaka contends that it had no direct relationship with one home market customer. Based on information gathered at verification, we preliminarily find that sales to this customer are related party transactions. We further find that the prices to this customer were, on average, lower than prices to unrelated customers and, therefore, not at arm's length. We did not use the sales to this customer in calculating FMV.

We made deductions for foreign inland freight. We made adjustments, where appropriate, for post-sale price adjustments. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, post-sale warehousing expenses, and bank charges, pursuant to 19 CFR 353.56(a). In accordance with 19 CFR 353.56(b), we added U.S. commissions and deducted home market indirect selling expenses up to the amount of the U.S. commissions. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for VAT.

B. Showa

In the previous administrative review, as a result of an allegation from petitioner, the Department initiated an investigation of sales made below the cost of production. As a result of this analysis, below cost sales were found. Therefore, for this review, we also investigated whether sales were made in the home market at less than the cost of production. Showa reported its COP data based on materials, labor, overhead, and selling, general, and administrative costs incurred during the period of review (POR). We relied on the submitted data except in the following instances where the costs were not appropriately quantified or valued:

(1) We adjusted the submitted overhead costs to correct a misclassification of depreciation expense;

(2) We adjusted interest expense to exclude the submitted deduction for interest income, because evidence of short term nature of this interest income is not on the record;

(3) We adjusted G & A expense to account for a clerical error which understated these expenses; and

(4) We allocated a share of write-downs and write-offs to the review period. These expenses were incurred in reorganizing Showa and were allocated on the basis of cost of sales.

In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales (1) were made in substantial quantities over an extended period of time and (2) were at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. In general, when less than 10 percent of home market sales are at prices below the COP, we do not disregard any below-cost sales. When between 10 and 90 percent of a respondent's sales are at prices below the COP, we disregard the below-cost home market sales in our calculation of FMV provided that these below-cost sales were made over an extended period of time. When more than 90 percent of a respondent's home market sales are at prices below the COP and

occur over an extended period of time, we determine that there are an insufficient number of sales to serve as the basis for calculating FMV and we base FMV on constructed value for all U.S. sales.

In this review, we found that below-cost sales were made in substantial quantities because more than 10 percent of Showa's sales of the subject merchandise in Japan were made at prices below the COP. We further determined that the below-cost sales were made in eight months of the review period and thus were made over an extended period of time. Finally, Showa has provided no information that would lead us to conclude that its below-cost home market sales would permit recovery of all costs within a reasonable period of time in the normal course of trade. Accordingly, we disregarded all sales that were made at prices below the COP.

We based FMV on packed, delivered prices. We used sales to both unrelated customers and to those related customers for which we could establish that sales were at arm's length. We determined that sales were at arm's length if the related parties were, on average, charged prices comparable to the prices charged to unrelated customers. To determine if prices to related customers were comparable to prices charged to unrelated customers, we compared sales made at the same levels of trade.

We made deducations for inland freight. We made adjustments, where appropriate, for post-sale price adjustments. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a). In accordance with 19 CFR 353.56(b), we subtracted home market commissions and added U.S. commissions. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for VAT.

With regard to certain home market commissions paid to related commissionaires, we did not have the ability to distinguish these commissions from commissions paid to unrelated commissionaires. We intend to solicit this information for the purpose of our final results, and will reconsider the appropriateness of this adjustment based on that information.

C. Toho

In all previous administrative reviews, the Department initiated an investigation of sales made below the cost of production. As a result of this analysis, below cost sales were found. Therefore, for this review, we have also investigated whether sales were made in the home market at less than the cost of production. Toho reported its COP data based on materials, labor, overhead, and selling, general, and administrative costs incurred during the POR. We relied on the submitted data except in the following instances where the costs were not appropriately quantified or valued:

(1) We adjusted interest expense to exclude the offset for imputed credit since this is not necessary for COP purposes; and

(2) We reduced research and development costs which had been overstated due to a clerical error.

In this review, applying the analysis described above for Toho, we found that below-cost sales were made in substantial quantities because more than 10 percent of Toho's sales of the subject merchandise in Japan were made at prices below the COP. We further determined that the below-cost sales were made in twelve months of the review period and thus were made over an extended period of time. Finally, Toho has provided no information that would lead us to conclude that its below-cost home market sales would permit recovery of all costs within a reasonable period of time in the normal course of trade. Accordingly, we disregarded all sales that were made at prices below the COP.

We based FMV on packed, delivered prices to unrelated customers in the home market. We used sales to both unrelated customers and to those related customers for which we could establish that sales were at arm's length. We determined that sales were at arm's length if the related parties were, on average, charged prices comparable to the price charged to unrelated customers. To determine if prices to related customers were comparable to prices charged to unrelated customers, we compared sales made at the same levels of trade.

We made deductions for inland freight. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a). We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for VAT.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the period November 1, 1988, through October 31, 1989:

Manufacturer/exporter	Margin (percent)
Osaka Titanium Co., Ltd	2.83
Showa Denko K.K	34.99
Toho Titanium Co., Lt	5.67
Nippon Soda Co., Ltd	56.27
All others	34.99

In response to our questionnaire, Nippon Soda responded that it made no shipments of Japanese titanium sponge to the United States during the peirod of review (POR). The U.S. Customs Service verified that Nippon Soda had indeed made no shipments of titanium sponge to the United States during the POR. Future entries of merchandise by Nippon Soda will be assessed the most recent rate calculated for Nippon Soda.

Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of Japanese titanium sponage entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for all other manufacturers or exporters will be 34.99 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Request to Revoke in Part

Osaka has requested that we revoke in part the antidumping finding on Japanese titanium sponge manufactured and exported by Osaka. Based on the preliminary results of this review indicating that Osaka sold merchandise in the United States at less than fair value during the review period, we do not intend to revoke the antidumping duty order with respect to Osaka. If our final results in this review show that Osaka not sell merchandise in the United States at less than fair value during the review period, we will re-

examine and address this issue at that time.

Public comment

In accordance with 19 CFR 353.38, case briefs or any other written comments must be submitted, with ten copies of the non-public version and five copies of the public version, to the Assistant Secretary for Import Administration by September 30, 1991. Rebuttal briefs are due by October 7, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, such hearing will be held at 10 a.m. on October 10, 1991 at the U.S. Department of Commerce, room 1851, 14th Street and Constitution Avenue NW., Washington, DC 20230. Anyone interested in attending the hearing should contact the Department for the exact date and time as they are subject to change.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentatiion only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: August 12, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19636 Filed 8-15-91; 845 am]

BILLING CODE 3510-DS-M

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Global Competitiveness and Trade Performance Subcommittee of the President's Export Council is holding a meeting to discuss organizational issues and ways the Council could encourage excellence in education; recommend removal of regulatory and other constraints to productivity; identify domestic barriers to trade; promote quality in manufacturing; foster technology development and innovation; and explore ways the Council can encourage the development of standards policies which will enable U.S. firms to compete in world markets. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

DATES: Septmber 4, 1991, from 9:30 a.m. to 12:30 p.m.

ADDRESSES: Main Commerce Building, room 1414, 14th Street and Constitution Avenue NW., Washington, DC 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Laureen Daly, President's Export Council, room 3215, Washington, DC 20230.

Dated: August 12, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 91-19618 Filed 8-15-91; 8:45 am]

BILLING CODE 3510-DR-M

National Institutes of Health; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-205R. *Applicant:* National Institutes of Health, Baltimore, MD 21224. *Instrument:* Spectrofluorimeter, Model SF-17. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 23286, May 21, 1991.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) Operation in the range of 200-850 nm, (2) sub-millisecond dead time and (3) sample size minimum to 25 μl. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-19627 Filed 8-15-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Pittsburgh, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-027. *Applicant:* University of Pittsburgh, Pittsburgh, PA 15260. *Instrument:* Laser Scanning Confocal Microscope. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 11546, March 19, 1991. *Reasons:* The foreign instrument provides: (1) Complete color-corrected optics from UV to IR, (2) resolution to 2.0 μm, (3) microspectral measurements in transmission, reflection and fluorescence and (4) 3-D tomographic display. *Advice Submitted By:* National Institutes of Health, June 13, 1991.

Docket Number: 91-029. *Applicant:* VA Medical Center, Bronx, NY 10468. *Instrument:* Dynamic Dedicated Brain SPECT System, Model Tomomatic 564. *Manufacturer:* Medimatic A/S, Denmark. *Intended Use:* See notice at 56 FR 11546, March 19, 1991. *Reasons:* The foreign instrument provides imaging of regional cerebral blood flow using xenon 133 as a tracer. *Advice Submitted By:* National Institutes of Health, June 13, 1991.

Docket Number: 91-030. *Applicant:* U.S. Department of Agriculture, Fargo, ND 58105. *Instrument:* Mass Spectrometer, Model VG Autospec. *Manufacturer:* VG Elementel, United Kingdom. *Intended Use:* See notice at 56 FR 13625, April 3, 1991. *Reasons:* The foreign instrument provides: (1) Scan rate cycle time of 5 scans/second over the mass range of 500-50-500; (2) static and continuous flow FAB and (3)

tandem (MS/MS) capability. *Advice Submitted By:* National Institutes of Health, June 13, 1991.

Docket Number: 91–034. *Applicant:* The University of Texas Health Science Center at San Antonio, San Antonio, TX 78284–7758. *Instrument:* Magnetic Activated Cell Sorter System and Beads. *Manufacturer:* Miltenyi Biotech, West Germany. *Intended Use:* See notice at 56 FR 13625, April 3, 1991. *Reasons:* The foreign instrument provides sorting of cells labelled with very small magnetic beads using a sterile system with biodegradable labelling that is invisible to a FACS instrument. *Advice Submitted By:* National Institutes of Health, June 13, 1991.

Docket Number: 91–061. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* High-Pressure/High-Temperature Materials Testing Apparatus. *Manufacturer:* Anutech Pty., Ltd., Australia. *Intended Use:* See notice at 56 FR 23287, May 21, 1991. *Reasons:* The foreign instrument provides operation at temperatures to 1400 °C and at pressures to 700 MPa and can apply uniaxial load in the pressure vessel for deformation studies. *Advice Received From:* National Institute of Standards and Technology, July 11, 1991.

Docket Number: 91–062. *Applicant:* Ames Laboratory-U.S. Department of Energy, Ames, IA 50010–3020. *Instrument:* Nanosecond Laser Photolysis Spectrometer. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 56 FR 23287, May 21, 1991. *Reasons:* The foreign instrument provides both transient absorption and emission measurements using either right angular or colinear laser excitation, with 8.0 ns pulse excitation and 0.5 J pulse energy. *Advice Received From:* National Institutes of Standards and Technology, July 3, 1991.

The National Institutes of Health and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–19628 Filed 8–15–91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Tuesday, September 10, 1991, from 8:30 a.m. to 5 p.m., and on Wednesday, September 11, 1991, from 8:30 a.m. to 10:30 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. Presentations will be given on the Board on Assessment of NIST Programs' annual report, overview of the Manufacturing Engineering Laboratory, the Manufacturing Technology Program, the Applied Technology Program, the Personnel Management Demonstration Project, and will conclude with laboratory tours. The discussion on NIST budget is scheduled to begin at 3:45 p.m. and end at 5 p.m. on September 10, 1991, and will be closed.

DATES: The meeting will convene September 10, 1991, at 8:30 a.m. and will adjourn at 10:30 a.m. on September 11, 1991. The Meeting will be open to the public on September 10 from 8:30 a.m. to 3:45 p.m. and on September 11 from 8:30 a.m. to 10:30 a.m. The meeting will be closed from 3:45 p.m. to 5 p.m. on September 10.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 30, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: August 12, 1991.

John W. Lyons,

Director.

[FR Doc. 91–19516 Filed 8–15–91; 8:45 am]

BILLING CODE 3510-13-M

Fastener Quality Act Advisory Committee; Meeting

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of Advisory Committee Meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on September 5 and 6, 1991. The meeting will be for the purpose of providing advice to the Department of Commerce, pursuant to statute, on the implementation of the Fastener Quality Act of 1990 (Pub. L. 101–592). The meeting is open to the public.

DATES: The meeting will be held on September 5, 1991 from 9 a.m. to 5 p.m., and on September 6, 1991 from 8:30 a.m. to 5 p.m., or earlier if so adjourned.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building (101), Lecture Room A, Route 117 at Bureau Drive, Gaithersburg, Maryland 20899.

AGENDA: The Advisory Committee will review discussion papers covering issues identified at its last meeting and will review and discuss draft implementing regulations for the Fastener Quality Act.

PUBLIC PARTICIPATION: The meeting is open to the public. Space is available for up to 20 observers on a first come first-served basis. All interested persons wishing to attend the meeting must notify the contact person listed in this notice by August 30.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Deputy Director, Technology Services, National Institute of Standards and Technology, Building

221, room A363, Gaithersburg, MD 20899, Telephone (301)975–4500.

Dated: August 12, 1991.

John W. Lyons,

Director.

[FR Doc. 91–19515 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Buffer Area Around Principal Steller Sea Lion Rookeries; Determinations on Exemption Requests

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

ACTION: Notice of determination on two requests for exemptions to the 3-mile buffer zone.

SUMMARY: Two requests for exemptions to the 3-nautical-mile buffer zone established around principal Steller sea lion rookeries have been received by NMFS's Alaska Regional Office. The request for an exemption from Dr. P. Dee Boersma of the University of Washington and the Exxon Company, U.S.A., were granted on July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (907–586–7233).

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1990, NMFS published a final rule (55 FR 49204) that added Steller (northern) sea lions to the Threatened Species List under the Endangered Species Act. The final rule contained several protective regulations, to be codified at 50 CFR 227.12(a), including the establishment of 3-nautical mile (5.5 km) buffer areas around 35 sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. No vessel is allowed within the buffer areas, with certain exceptions. Similarly, no person is allowed to approach on land not privately owned closer than ½ mile (0.8 km) or within sight of a listed Steller sea lion rookery. On Marmot Island, no person is allowed to approach on land not privately owned closer than 1½ miles (2.4 km) from the eastern shore.

The final rule gives the Director, Alaska Region, NMFS, (Regional Director), with the concurrence of the Assistant Administrator from Fisheries, NOAA, the authority to grant exemptions to the prohibitions of the rule (50 CFR 227.12 (a)(5)). Exemptions allowing entry into buffer areas may be granted only if: (1) The activity will not have a significant adverse impact on Steller sea lions; (2) the activity has been conducted historically and traditionally in the buffer areas; and (3) there is no readily available and acceptable alternative to, or site for, the activity. Notice of all exemptions will be published in the Federal Register.

In a letter dated July 9, 1991, the Exxon Company, Alaska Operations, submitted a request to the Regional Director for an exemption to allow passage through the buffer area around Sugarloaf Island in the Gulf of Alaska. Dr. P. Dee Boersma of the Institute for Environmental Studies and Department of Zoology, University of Washington, submitted a similar request in a letter dated July 10, 1991. Both requests are in support of seabird research on East Amatuli Island, which is contained completely within the Sugarloaf Island buffer area. The proposed research projects cannot be accomplished without entering the buffer areas. The information supplied by the Exxon Company and Dr. Boersma in letters and in discussions with NMFS staff indicates that these requests meet the conditions required for granting exemptions: (1) Steller sea lions on Sugarloaf Island will not be disturbed by these research activities. For Dr. Boersma, the exemption is to allow the scientific party to land on and depart from East Amatuli Island, conduct field work around the island, and resupply the camp. The Exxon request is to allow a 75-foot vessel to approach a large seabird colony at the eastern tip of East Amatuli Island and to completely circumnavigate the island. At no time will either research team be authorized to be within 1 mile (1.6 km) of Sugarloaf Island. (2) There is an historical precedent for seabird research on East Amatuli Island and elsewhere in the Gulf of Alaska. In particular, Dr. Boersma has worked on study plots there since 1976. (3) There are no reasonable and feasible alternatives for either applicant. Dr. Boersma has long-established study plots that include permanently marked burrows and individual birds. Her research depends on revisiting the same locations. The Exxon Company is assessing the status of murre colonies throughout the *EXXON VALDEZ* spill zone in the Gulf of Alaska. Because East Amatuli Island contains one of the largest murre colonies in the Gulf of Alaska (Approximately 60,000 birds), it is crucial to the assessment effort.

For these reasons, the Regional Director recommended granting these exemptions and the Assistant Administrator for Fisheries concurred. In letters of authorization (dated July 25, 1991) to the Exxon Company and to Dr. Boersma, the Regional Director stressed that authority is granted solely to allow passage through the buffer area around Sugarloaf Island, which in turn allows access to East Amatuli Island. Vessels must not approach within 1 nautical mile of the sea lion rookeries on Sugarloaf Island, and both research teams are requested to stay as far away from the rookeries as possible. No disruption or disturbance of sea lions on the rookeries is authorized.

The Exxon Company also proposed to visit a seabird colony on the southeastern coast of Marmot Island. This colony is adjacent to Steller sea lion rookeries on the island, however, and a visit to the seabird colony represents a potential disturbance to the sea lion rookeries. In addition, the murre colony at Marmot Island is quite small (approximately 100–150 birds) and therefore is judged to be less essential than East Amatuli Island to the overall assessment effort. For these reasons, the Regional Director recommended denial of the request to enter the buffer area around Marmot Island and the Assistant Administrator concurred.

Dated: August 9, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 91–19549 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–22–M

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fishery (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public. The FMP proposes changes to the Atlantic mackerel management regime.

DATES: Comments must be received on or before October 15, 1991.

ADDRESSES: All comments should be sent to Mr. Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments on Amendment 4 to the Atlantic Mackerel, Squid, and Butterfish FMP".

Copies of the FMP are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508–281–9300, ext 324.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act 16 U.S.C. 1801 *et seq.*

Amendment 4 to the FMP proposes to: (1) Change the period in which catch specifications would apply from one year (annual) to three years; (2) allow the Director, Northeast Region, NMFS (Regional Director) to limit areas in which foreign directed fishing may occur; (3) allow the Regional Director to impose special conditions on foreign directed fishing including ratios and catch limitations; and (4) revise the definition of overfishing for Atlantic mackerel.

The receipt date for this amendment is August 5, 1991. Proposed regulations to implement this amendment are scheduled to be published within 15 days of the receipt date.

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

Dated: August 12, 1991.

Joe P. Clem,

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

[FR Doc. 91–19581 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Advisory Commission on Patent Law Reform; Open Meeting

AGENCY: Patent and Trademark Office, Department of Commerce.

SUMMARY: The Commission was chartered to advise the Secretary of Commerce on the state of and need for any reform in the United States patent system, as well as the need for any changes in the U.S. laws relating to the enforcement and the licensing of U.S. patents.

Time & Place: September 10, 1991, 9:30 a.m. to 5 p.m.; U.S. Patent and Trademark Office; Crystal Park Two, suite 912; Arlington, Virginia 22202.

Agenda

1. Briefing on Patent and Trademark Office procedures re National security subject matter applications.
2. Statistical profile of public comments received in response to May 16, 1991, notice (56 FR 22702).
3. Presentations from the four working groups of the Advisory Commission.

Background: On March 26, 1991, the Advisory Commission held its first meeting and created four working groups to address an agenda of thirteen issues. The issue assignments, using the labels given in the May 16 notice (56 FR 22702), are as follows:

Working group	Issues
One	I. Protection computer program-related inventions. II. Federal trade secret protection.
Two	III. Cost and complexity of patent enforcement. IV. Grounds for holding patents unenforceable. V. Licensee estoppel.
Three	VI. First-to-file. VII. Automatic publication. VIII. Patent term. IX. In re Hilmer.
Four	X. Deferred examination. XI. Reexamination. XII. Assignee filing. XIII. Patent and Trademark Office funding and fee structure.

Public Observation: The meeting will be open to public observation. Approximately 15 seats have been reserved for the public. Reservations for these seats will be available through the contact person indicated below. If time permits, the Chairperson may allow public comments and questions at the end of the meeting. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

FOR FURTHER INFORMATION CONTACT: E.R. Kazenske, Executive Assistant to the Commissioner, Box 15, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557–3071.

Dated: August 9, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91–19522 Filed 8–15–91; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 16, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Eraser, Mechanical Pencil, Refill
7510–01–332–8794
7510–01–318–8641

Services

Commissary Shelf Stocking, Naval Station, Port Hueneme, California
Commissary Shelf Stocking, Naval Air Station, Point Mugu, California
Grounds Maintenance, Naval Weapons Station, Concord, California
Janitorial/Custodial, U.S. Army Reserve Center, 900 Armory Drive, Greensburg, Pennsylvania
Janitorial/Custodial, #2 U.S. Army Reserve Center, 1300 St. Clair Road, Johnstown, Pennsylvania
Janitorial/Custodial, PVT Sterling L. Morelock USARC, 7100 Leech Farm Road, Pittsburgh, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, 254 McClellandtown Road, Uniontown, Pennsylvania
Janitorial/Custodial, General J. Sumner Jones USARC, 25 Armory Drive, Wheeling, West Virginia
Mailroom Operation, U.S. Geological Survey, Denver Federal Center, Denver, Colorado

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–19592 Filed 8–15–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities, a military resale commodity and services to be furnished by nonprofit agencies

employing the blind or other severely handicapped.

EFFECTIVE DATE: September 16, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 11, April 12, June 7 and 21, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 1180, 14931, 26395, 28539) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities, military resale commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities, military resale commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

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:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodities, military resale commodity and provide the service procured by the Government.

Accordingly, the following commodities, military resale commodity and services are hereby added to the Procurement List:

Commodities

Reel, Cable
8130-L9-015-3420
8130-L9-015-3520
(Requirements of the Oklahoma City Air Logistics Center, Tinker AFB, OK only)

Military Resale Item No. and Name

701—Bag, Canvas

Services

Janitorial/Custodial, Fort Story, Buildings P-102, T-750, T-751, T-752, T-754, T-755, T-756, T-757, T-761, T-766, T-767, T-772, T-1075, T-1080 and T-605, Virginia Beach, Virginia

Janitorial/Custodial, Federal Building, 2800 Cottage Way, Sacramento, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-19591 Filed 8-15-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: September 16, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 24, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 23876) of proposed addition to the Procurement List.

Comments were received from a current contractor for this paper and from a trade association representing the contractor. The contractor questioned the propriety of using the **Federal Register** to notify the public that the Committee proposed to add this item to the Procurement List and stated that the notice did not set forth the basis for the proposal in enough detail to permit informed comment on the issues which the Committee is required to address in making an addition decision.

The contractor stated that it had been supplying this paper to the Government for twenty years and would be significantly affected by losing these sales. It questioned the capability of the nonprofit agencies which would furnish the paper to the Government after its addition to the Procurement List and stated that extensive capital would be needed to produce this paper. It claimed that the cost to the Government of other paper items supplied by the forms industry would increase dramatically if this item were added to the Procurement List because the economies of scale in raw material purchasing the industry now enjoys would be lost if it no longer purchased the raw material for this item as well. It questioned the ability of blind workers to produce this item as production requires operation of potentially hazardous equipment by trained operators and extensive visual inspection. It noted that the forms industry has made substantially investments to produce this item, currently has excess capacity, and is operating in a depressed market which magnifies the impact of any further loss of sales.

The trade association objected to the proposed addition to the Procurement List because it "could possibly place the government in a precarious procurement situation with regard to price, quality and delivery schedules" and because removal of the item from competitive procurement would have a detrimental effect on the business forms industry. The comment did not elaborate on the first objection but stated in regard to the second that the industry is experiencing a substantial decline in sales and profits which is expected to continue for several years.

The Committee is required by its authorizing statute to follow the informal rulemaking procedures of the Administrative Procedure Act (APA) when adding an item to the Procurement List. These APA procedures require publication in the **Federal Register** of the initial proposal and final decision of the Committee. Publication is legally sufficient notice of Committee actions. Under these circumstances, the Committee cannot justify the additional expense of providing actual notice to all persons who may be affected by its proposals, nor is it required to do so, as a court decision cited by the contractor notes, *Barrier Industries* v. *Eckard*, 584 F.2d 1074, 1082-83 (D.C. Cir. 1978).

The APA procedures do not require the Committee to publish a statement of basis and purpose in the notice which proposes an addition to the Procurement List. This statement is required only in the notice which announces the final Committee decision on the addition. The court decision cited by the contractor on this point, *HLI Lordship Industries* v. *Committee for Purchase from the Blind and Other Severely Handicapped*, 791 F.2d 1136 (4th Cir. 1986), addresses the adequacy of the statement in final decision notices, not notices of proposed rulemaking.

The Committee has taken the contractor's record as a Government supplier of this item into account in reaching its conclusion that the addition does not constitute a serious adverse impact on current contractors. As the contract for this item represents only a

small portion of the contractor's total sales, the contractor cannot be said to be dependent on sales of this item to the Government even if it has been a long-time supplier of this item. The Committee has also determined that the nonprofit agencies which will produce the item have the necessary industrial and financial capability, and that the item will be furnished to the Government at a fair market price.

The nonprofit agencies for the blind and their central nonprofit agency have a long history of adapting industrial equipment and training blind workers to ensure safe and efficient operations. The Committee took this into account in finding the agencies capable of producing this item. Visual inspection is considered to be indirect labor which may be performed by sighted workers.

The Government market for this item is only a small part of the total market. The Committee does not consider addition of the Government market for this paper to the Procurement List to constitute serious adverse impact on the forms industry. As the contractor has not provided any information to support its claims concerning the price of other paper items, the Committee has not taken them into account in reaching its decision.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

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:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Paper, Tabulating Machine
7530–00–800–0996

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91–19594 Filed 8–15–91; 8:45 am]
BILLING CODE 6820–33–M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: September 16, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 31, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 24790) of proposed addition to the Procurement List.

Comments were received from the current contractor for this item. The contractor claimed that it would be adversely affected by loss of its contract for this item. It noted that its sales are declining and that addition of three similar items to the Procurement List had contributed to the decline in its business. Enclosed with its comment were copies of earlier correspondence with the Committee elaborating on the impact of Committee actions on the company, including a statement that its employees included minorities and person with disabilities.

The Committee has determined that the contract value of this item is to small a percentage of the contractor's total sales to constitute serious adverse impact. Of the three similar items mentioned by the contractor, only two have been added to the Procurement List. This contractor was not the current contractor for either item at the time it was added to the Procurement List. Accordingly, the contractor has only lost the opportunity to bid on future procurements to these two items, which the Committee does not consider to be serious adverse impact on a contractor.

The contractor has not indicated whether it still employs minorities or persons with disabilities or whether these persons are involved in producing this item. As the item will be produced by blind persons after its is added to the Procurement List, the Committee considers the gain in disabled employment to outweigh a possible loss by the contractor's employees.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

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:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Air Freshener Deodorant, General Purpose
6840–00–932–4692

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91–19593 Filed 8–15–91; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Physician and Dentists Survey: Desert Storm and Military Medicine.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 15 mins.

Responses Per Respondent: 1.

Number of Respondents: 15,000.

Annual Burden Hours: 3,750.
Annual Responses: 15,000.
Needs and Uses: Physicians and dentists selected at random from mailing lists maintained by the American Medical Association and the American Dental Association will be asked how Operation Desert Storm affected their attitudes toward military service. The results will guide programs and policies to recruit and retain physicians and dentists for the military services.
Affected Public: Individuals or households.
Frequency: One-time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Joseph F. Lackey.
Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer, room 3002, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce.
Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: August 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–19646 Filed 8–15–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Title, Applicable Form, and Applicable OMB Control Number: DoD Survey of Recruit Socioeconomic Status, OMB Control Number 0704–0293.
Type of Request: Revision of a currently approved collection.
Average Burden Hours/Minutes per Response: .167 hours.
Responses per Respondent: One.
Number of Respondents: 20,000.
Annual Burden Hours: 3,340.
Annual Responses: 20,000.
Needs and Uses: This survey collects socioeconomic background information from a representative sample of new recruits to the active-duty military. It provides annual data that are descriptive of the military composition as a whole. The data are included in an annual report to Congress on population representation in the U.S. military. The data will be used by members of Congress and DoD policy makers in the debate over relative merits of voluntary accession and alternative means of recruitment.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Office: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce.
Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: August 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–19595 Filed 8–15–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission; Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of change.

SUMMARY: On Monday August 5, 1991, (56 FR 37205) the Department of Defense published a notice announcing the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories meeting to be held on August 28–29, 1991.

The purpose of this change is to give notice that the Commission meeting scheduled for August 28–29, 1991, will be expanded to include a public session on August 27, 1991, to provide Congress and other interested parties an opportunity to present oral testimony before the Commission. This open session will be held in the Madison Building of the Library of Congress, 101 Independence Avenue, SE., room LM 412, (Conference Room A), Washington, DC. This session will begin at 9 a.m. and end at 5 p.m.. Those wishing to provide testimony must provide notice by close of business, August 23, 1991. Those providing testimony are requested to provide 20 copies of their written testimony at the meeting.

All other information published on Monday August 5, 1991, (56 FR 37205) concerning the August 28–29, 1991, meeting remains unchanged.

For notification of intent to testify and for further information concerning this meeting, contact: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, The Pentagon, room 3D375, Washington, DC, 20301–3080, Phone (703) 614–0205.

Dated: August 12, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–19647 Filed 8–15–91; 8:45 am]

BILLING CODE 3810–01–M

Meeting of Defense Intelligence Agency Advisory Board

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: Wednesday, September 25, 1991 (8 a.m. to 5 p.m.).

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay USAF, Chief, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical intelligence matters.

Dated: August 12, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-19600 Filed 8-15-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

8 August 1991.

The USAF Scientific Advisory Board will hold its Fall General Board Meeting on 23-24 October 1991 from 8 a.m. to 5 p.m. at Fort Lesley J. McNair, Washington, DC.

The purpose of this meeting is to provide attendees the opportunity to hear results of important SAB studies and to enable members and senior Air Force leaders to become better acquainted. Additionally, the attendees will begin planning for future studies.

This meeting will involve discussions of classified defense and contractor proprietary matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-19524 Filed 8-15-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Notice of Intent to Prepare Environmental Impact Analyses for Base Realignment Actions

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent to prepare environmental impact analyses for the base realignment actions.

SUMMARY: The Defense Base Closure and Realignment Commission was mandated by Public Law 101-510, the Defense Base Closure and Realignment Act of 1990, to recommend military installations for realignment and closure. The Commission's recommendations were included in their report which was presented to the President on July 1, 1991. The President approved the Commission's recommendations and they were forwarded to Congress on July 11, 1991. This Notice of Intent does not apply with respect to the Commission's recommendations pertaining to the reorganization of the U.S. Army Corps of Engineers.

Public Law 101-510 exempted the decisionmaking process of the Commission in recommending installations to be closed or realignment from the provisions of the National Environmental Policy Act of 1969. The law also exempted the Department of Defense from considering the need for closing, realigning or transferring functions and from looking at alternative installations to realign or close. The Department of Army still must prepare environmental impact analyses to assess the environmental effects of realignment on installations receiving functions from other installations and on installations subject to property disposal. These analyses will include the cumulative effects of these and other actions impacting the installation during the same timeframe.

SCOPING: The Army will conduct scoping meetings prior to preparing Environmental Impact Statements at receiving installations listed below to aid in determining the significant environmental issues associated with the realignment. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be used in the environmental impact analysis. Useful information includes other environmental studies, published and unpublished data, and potential mitigation measures associated with the proposed action.

Scoping meetings are scheduled to begin in the next four weeks. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending public scoping meetings that will be announced in the local media of the affected installation. Comments, suggestions, and requests to be placed on the mailing list for announcements should be sent to the parts identified in the announcements of the scoping meetings.

The Army intend to prepare Environmental Impact Statements on the following actions:

A. Fort Hood, Texas receiving: 5th Infantry Division from Fort Polk

B. Fort Huachuca, Arizona retaining: Information Systems Command (ISC) activities (this is a Supplemental Environmental Impact Statement to address the environmental effects of the recommendation to retain the ISC activities at Fort Huachuca rather than relocate them to Fort Devens, Massachusetts)

C. Redstone Arsenal, Alabama receiving: Fuze Development and Production Mission (missiles) from Adelphi, Maryland, Material Readiness Support Activity from Lexington-Bluegrass Army Depot, KY, Logistics Control Activity from Presidio of San Francisco, California Armaments, Munitions and Chemical Command from Rock Island, Illinois

SUPPLEMENTARY INFORMATION: The Army intends to prepare environmental impact analyses to assess the environmental effects of the actions listed below. In some cases the Army will prepare Environmental Assessments to determine the significance of the environmental effects. The public will have an opportunity to comment on these analyses before any action is taken to implement these realignment actions.

A. Fort Carson, Colorado receiving: 10th Special Forces Group from Fort Devens

B. Fort Lewis, Washington receiving: 7th Infantry Division from Fort Ord Communications Systems Test Activity from Sacramento Army Depot, California, Proposal to receive Electronic Maintenance functions from Sacramento Army Depot

C. Fort Jackson, South Carolina receiving: U.S. Army Soldier Support Center from Fort Benjamin Harrison, Indiana

D. Aberdeen Proving Ground, Maryland receiving: Army Research Institute MANPRINT function from Alexandria, Virginia, Material basic and applied research from Fort Belvoir, Army Materials Technology Laboratory from Watertown, Massachusetts (less the Structures Element)

E. Adelphi, Maryland receiving: Directed Energy and Sensors basic and Applied Research from Forth Belvoir, Electronic Technology Device laboratory from Fort Monmouth, New Jersey, Battlefield Environmental Effects from White Sands Missile Range, New Mexico, Woodbridge Research Facility element from Woodbridge, Virginia (which will form the new Combat Material Research Laboratory)

F. Fort Hunter Ligget receiving: Portions of base operations that supported Fort Hunter Ligget from Fort Ord

For further information regarding these environmental impact analyses, please

contact the Public Affairs Office of the affected installation.

John T. Nash,

Acting Deputy Assistant Secretary of the Army, (Environmental, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 91-19573 Filed 8-15-91; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Privacy Act of 1974; Amend a Record System

AGENCY: Department of the Navy, DoD.

ACTION: Amend a record system.

SUMMARY: The Department of the Navy proposes to amend one existing system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective on September 16, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (703) 614-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as assumed, (5 U.S.C. 552a) were published in the Federal Register as follows:

51 FR 12908 Apr. 16, 1986
51 FR 18086 May 16, 1986 (DON Compilation changes follow)
51 FR 19884 Jun. 3, 1986
51 FR 30377 Aug. 26, 1986
51 FR 30393 Aug. 26, 1986
51 FR 45931 Dec. 23, 1986
52 FR 2147 Jan. 20, 1987
52 FR 2149 Jan. 20, 1987
52 FR 8500 Mar. 18, 1987
52 FR 15530 Apr. 29, 1987
52 FR 22671 Jun. 15, 1987
52 FR 45846 Dec. 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun. 8, 1988
53 FR 25363 Jul. 6, 1988
53 FR 39499 Oct. 7, 1988
53 FR 41224 Oct. 20, 1988
54 FR 8322 Feb. 28, 1989
54 FR 14378 Apr. 11, 1989
54 FR 32682 Aug. 9, 1989
54 FR 40160 Sep. 29, 1989
54 FR 41495 Oct. 10, 1989
54 FR 43453 Oct. 25, 1989
54 FR 45781 Oct. 31, 1989
54 FR 48131 Nov. 21, 1989
54 FR 51784 Dec. 18, 1989
54 FR 52976 Dec. 26, 1989
55 FR 21910 May 30, 1990 (Navy Mailing Addresses)
55 FR 37930 Sep. 14, 1990
55 FR 42758 Oct. 23, 1990
55 FR 47508 Nov. 14, 1990
55 FR 48678 Nov. 21, 1990
55 FR 53167 Dec. 27, 1990
56 FR 424 Jan. 4, 1991
56 FR 12721 Mar. 27, 1991
56 FR 27503 Jun. 14, 1991
56 FR 28144 Jun. 19, 1991
56 FR 31394 Jul. 10, 1991 (DoD Updated Indexes)

The amendment is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific change to the system of records is set forth below followed by the system of records notice published in its entirety as amended.

Dated: August 12, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01301-2

System name:

Naval Officer Development and Distribution Support System (51 FR 18106, May 16, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Bureau of Naval Personnel, Navy Department, Washington, DC 20370-5000".

* * * * *

Authority:

At the end of the entry, add "Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first two paragraphs.

* * * * *

Retrievability:

Delete the entry and replace with "Records may be retrieved by Social Security Number and/or name."

Safeguards:

In second paragraph, line three, delete "a" and replace with "an official".

* * * * *

System manager(s) and address(es):

Delete the entry and replace with "Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000".

Notification procedure:

Delete the entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Chief of Naval Personnel at the Bureau of Naval Personnel, Navy Annex (Federal Building #2), Washington, DC 20370-5000. Advance notification is required for personal visits. Proof of identification will consist of military identification card".

Record access procedures:

Delete the entry and replace with "Individuals seeking access to records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Chief of Naval Personnel at the Bureau of Naval Personnel, Navy Annex (Federal Building #2), Washington, DC 20370-5000. Advance notification is required for personal visits. Proof of identification will consist of military identification card".

Contesting record procedures:

Delete the entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager".

* * * * *

N01301-2

SYSTEM NAME:

Naval Officer Development and Distribution Support System.

SYSTEM LOCATION:

Bureau of Naval Personnel, Navy Department, Washington, DC 20370-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval officers on active duty; all Naval Reserve officers requesting recall to active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and personnel records in both automated and non-

automated form concerning classification, qualifications, assignment, placement, career development, education, training, recall, release from active duty, and management of naval officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5504, Lineal List; 10 U.S.C. 5706, Promotion Selection List; and, Executive Order 9397.

PURPOSE(S):

To assist Navy officials and employees in the classification, qualification determinations, assignment, placement, career development, education, training, recall and release of officer personnel pursuant to meet manpower allocations and requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Automated records may be stored on magnetic tapes, disc, or drums. Manual records may be stored in paper file folders, microfiche, or microfilm.

RETRIEVABILITY:

Records may be retrieved by Social Security Number and/or name.

SAFEGUARDS:

Computer terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having an official need to know.

RETENTION AND DISPOSAL:

Records are generally maintained until superseded, or for a period of two years or until release from active duty and disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Chief of Naval Personnel at the Bureau of Naval Personnel, Navy Annex (Federal Building #2), Washington, DC 20370-5000. Advance notification is required for personal visits. Proof of identification will consist of military identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000.

The letter should contain full name, rank, Social Security Number, designator, address and signature. The individual may visit the Chief of naval Personnel at the Bureau of Naval Personnel, Navy Annex (Federal Building #2), Washington, DC 20370-5000. Advance notification is required for personal visits. Proof of identification will consist of military identification card.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel Service Jackets; records of the officer promotion system; officials and employees of the Department of the Navy, Department of Defense, and components thereof, in performance of their official duties and as specified by current instructions and regulations promulgated by competent authority; education institutions; official records of professional qualifications; general correspondence concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–19648 Filed 8–15–91; 8:45 am]
BILLING CODE 3810–01–M

Office of the Inspector General

Privacy Act of 1974; New System of Records

AGENCY: Inspector General, DoD.

ACTION: Notice of a proposed new record system.

SUMMARY: The Office of the Inspector General proposes to add two record systems to its inventory of record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on September 16, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to David C. Stewart, Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, room 1016, 400 Army Navy Drive, Arlington, VA 22202–2884. Telephone (202) 697–6035 or Autovon 227–6035.

SUPPLEMENTARY INFORMATION: The complete inventory of record system notices subject to the Privacy Act for the Office of the Inspector General, DoD, has been published in the Federal Register to this date as follows:

50 FR 22279, May 29, 1985 (DoD Compilation, changes follow)
52 FR 26547, Jul. 15, 1987
52 FR 35754, Sept. 23, 1987
54 FR 24377, Jun. 7, 1989
54 FR 33956, Aug. 17, 1989
55 FR 18152, May 1, 1990
55 FR 48681, Nov. 21, 1990

A new system report, as required by 5 U.S.C. 552(r) of the Privacy Act, was submitted on August 7, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: August 12, 1991.

Ms. Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–13

SYSTEM NAME:

Travel and Transportation System.

SYSTEM LOCATION:

DoD Inspector General, Office of the Assistant Inspector General for Administration and Information Management, Administration and Resources Acquisition Directorate, Operations Support Division, Travel and Transportation Branch, 400 Army Navy Drive, room 414, Arlington, VA 22202–2884.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

All current and former DoD Inspector General employees who participate or who are eligible to participate in IG Temporary Duty (TDY) and Permanent Change of Station (PCS) Travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of name, Social Security Number, title, grade and series/rank of employee, and trip ticket number assigned to travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95–452, the Inspector General Act of 1978, as amended; 10 U.S.C. 133, Secretary of Defense: Appointment, Powers, Duties and Delegation by; Executive Order 9397; DoD Directive 5106.1, Inspector General of the Department of Defense (32 CFR part 373).

PURPOSE(S):

Information in this system will be used to issue travel orders (including Blanket Travel Orders) for TDY and PCS travel; to track travel performed in accordance with budgetary requirements; and to track travel vouchers submitted for reimbursement of travel; and to alert authorities to any discrepancies in travel performed by DoD OIG employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Office of the Inspector General's compilation of records system notices apply to this system of records.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in an automated file server and automated records on computer disks.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number or trip ticket number.

SAFEGUARDS:

The system is accessible only by authorized personnel on a need-to-know basis. Access to the automated file server is by assigned password restricted to only those individuals requiring access to the system module in connection with their official duties. Access to the area is through a cipher locked room with the code provided only on a need-to-know basis. Computer disks and paper records are stored in locked file cabinets residing in a monitored area which is locked after normal business hours.

RETENTION AND DISPOSAL:

Records are maintained in an active status for the current fiscal year. Records are then archived to NARA, Suitland and held for three years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

DoD Inspector General, Office of the Assistant Inspector General for Investigations, Director, FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

The request should contain their full name, Social Security Number, (current home address and telephone number). The request should contain a notarized signature of the individual to whom the record pertains; and, if authorizing someone to represent them, a statement to that effect.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Director, FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

The request should contain the full name of the individual, non-duty mailing address and daytime telephone number. The request should also contain a notarized signature of the individual to whom the record pertains; and, if authorizing someone to represent them, a statement to that effect.

CONTESTING RECORD PROCEDURE:

Agency rules for access to records and for contesting contents and appealing initial agency determination by the individual concerned are contained in OSD Administrative Instruction No. 81; 32 CFR part 286b; IG DoD Policies and Procedures Manual, Chapter 33 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data is obtained directly from the individual on IG Form 7750.50–4, Request for Temporary Duty Travel Form; Request for Permanent change of Station Form; and computer tape of the OIG Personnel Listing (PERLIS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CIG–14

SYSTEM NAME:

Auditor and Inspector Log.

SYSTEM LOCATION:

Department of Defense (DoD), Office of the Assistant Inspector General for Administration and Information Management, Information Systems Directorate, 400 Army Navy Drive, Arlington, VA 22202–2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees of the Office of the Inspector General, DoD, who have participated in audits or inspections; as well as current and former DoD contractor personnel and other DoD Component personnel who have participated in the audits or inspections, and whose names appear in the audit or inspection reports.

CATEGORIES OF RECORDS IN THE SYSTEM:

The individuals who performed the audit or inspection, and the complete text and findings of the audit and inspection reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95–452, the Inspector General Act of 1978, as amended; 10 U.S.C. 133, Secretary of Defense: Appointment, Powers, Duties and Delegation by; DoD Directive 5106.1, Inspector General of the Department of Defense (32 CFR part 373).

PURPOSE(S):

To identify the auditors or inspectors who participated in audits or inspections for the Office of the Inspector General; and, to identify the specific audits or inspections in which an auditor or inspector participated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Office of the Inspector General's compilation of records system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and in computer and optical disks formats.

RETRIEVABILITY:

Records are retrieved by individual name.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly cleared and trained, and who require access on a need-to-know basis. Access to records requires an assigned password, and reside in a controlled area.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed or after three years, whichever is sooner.

SYSTEM MANAGER AND ADDRESS:

DoD Inspector General, Office of the Assistant Inspector General for Investigations, Director, FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

The request should contain their full name and be notarized. If the request is authorizing someone to represent them, a statement to that effect should appear in the request.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Director, FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

The request should contain the full name of the individual, non-duty mailing address and daytime telephone number.

The request should contain a notarized signature of the individual to whom the record pertains; and, if authorizing someone to represent them, a statement to that effect.

For personal visits, the individual should make advance arrangements with the system manager for an appropriate time to be set aside to review the record; and, at the time of review, be able to provide some acceptable form of identification, i.e., driver's license or employee identification card.

CONTESTING RECORD PROCEDURES:

Agency rules for access to records and for contesting contents and appealing initial agency determination by the individual concerned are contained in OSD Administrative Instruction No. 81; 32 CFR part 286b; IG DoD Policies and Procedures Manual, Chapter 33 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from Audit Final Reports and Inspection Final Reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–19649 Filed 8–15–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.219]

Student Literacy Corps; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide grants to higher education institutions to establish for academic credit, courses of instruction that combine training of undergraduate students in various academic departments with experience as tutors in public community agencies that serve educationally or economically disadvantaged individuals.

Eligible Applicants: Accredited institutions of higher education.

Deadline for Transmittal of Applications: November 4, 1991.

Deadline for Intergovernmental Review: January 3, 1992.

Applications Available: September 6, 1991.

Available Funds: The President's 1992 budget requested no funding. This program was proposed for Consolidation with the Innovative Projects for Community Service Program. Awards are contingent upon the availability of appropriations for FY 1992. No funds have been appropriated at this time.

Estimated Range of Awards: Up to $50,000.

Estimated Average Size of Awards: $446,000.

Estimated Number of Awards: 116.

Note: The Department is not bound by any estimates in this notice.

Project Period: 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation. (34 CFR 75.210(b)(3)). The 15 points are added to this criterion for a possible total of 30 points.

For Applications or Information Contact: Diana Hayman, U.S. Department of Education, 7th and D Streets, SW., room 3022, Washington, DC 20202–5251. Telephone: (202) 708–8394 or 708–7389. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1018, 1018f.

Dated: August 9, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–19550 Filed 8–15–91; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services; Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on May 22, 1990, an arbitration panel rendered a decision in the matter of *the State of Mississippi, Mississippi Vocational Rehabilitation for the Blind, State Licensing Agency* v. *the National Aeronautics and Space Administration (Docket No. R–S/88–7).* This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d–1(b), upon receipt of a complaint filed by the State of Mississippi on April 18, 1988. Under this section of the Act, whenever a State Licensing Agency determines that a Federal property managing agency is failing to comply with the Act or implementing regulations, it may file a complaint with the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, room 3230, Mary E. Switzer Building, Department of Education, 330 C Street, SW., Washington, DC 20202–2738. Telephone: (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision follows. The full text of the arbitration panel

decision can be obtained from this contact.

Dated: August 12, 1991.

Robert R. Davila,

Assistant Secretary for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

Background

On April 18, 1988, the Mississippi Vocational Rehabilitation for the Blind (MVRB) filed a complaint through the Office of the Attorney General of Mississippi with the Secretary of the Department of Education alleging that the National Aeronautics and Space Administration (NASA) had violated 20 U.S.C. 107(b) of the Randolph-Sheppard Act and implementing regulations in 34 CFR 395.30 by denying MVRB a permit to operate a vending facility. The facility sought by the State consisted of approximately 45 vending machines scattered throughout 20 separate locations at the National Space Technology Laboratories (NSTL), Mississippi, presently known as the John C. Stennis Space Center (SSC). MVRB requested that an arbitration panel be convened to resolve the dispute.

Since 1966, blind vendors have operated three vending facilities at the SSC. However, prior to 1981, the approximately 45 vending machines in question were operated by the NSTL Recreation Association. This association used the profits from these vending machines to provide recreational activities to the personnel who worked at the SSC. In January 1981, the NASA Exchange (Exchange) assumed responsibility for providing these vending services and awarded a five-year contract under which payments by the Concessionaire to the Exchange were used for the same purposes as before.

In February 1987, the Exchange again issued a Request for Proposals (RFP) to obtain bids on the operation of the scattered vending machines. MVRB decided to seek a permit under the Randolph-Sheppard Act rather than respond to the REP, which would have required the blind vendors to make concession payments to the Exchange. NASA responded that MVRB was not entitled to a permit to operate these scattered vending machines and awarded the contract to a private concessionaire, effective July 8, 1987.

On March 4, 1988, MVRB submitted a formal request for a permit for the operation of the machines, commencing July 1, 1989. The permit was denied by NASA, and on April 18, 1988, MVRB sought arbitration of this dispute under the Randolph-Sheppard Act.

In its arbitration complaint, MVRB stated that these vending machines comprised a single vending facility under the Randolph-Sheppard Act, which gives priority to blind vendors, pursuant to 20 U.S.C. 107(b) and implementing regulations in 34 CFR 395.30. Petitioner maintained that the machines collectively would provide remunerative employment to at least one blind vendor.

The respondent, NASA, argued in rebuttal that none of the individual locations provided enough income to support a Randolph-Sheppard vendor because the vending machines served small work forces in remote areas. NASA further argued that none of the income from a single location exceeded or even came close to $3,000 annually.

MVRB maintained that 20 U.S.C. 107d–3(d) (income, i.e. commissions, from vending machines in certain locations excepted from income distribution) does not exempt NASA from the priority provisions of 20 U.S.C. 107(b). It was the position of MVRB that the provisions on income sharing have no application to the issue of granting a permit under the priority provisions.

Arbitration Panel Decision

The central issues before the arbitration panel were—(1) Whether the approximately 45 vending machines located at about 20 various locations throughout the Stennis Space Center constitute a single vending facility under the Randolph-Sheppard Act to which MVRB had a priority to operate under a permit; and (2) whether the vending machine income-sharing provisions of the Act in 20 U.S.C. 107d–3(d) exempt NASA from the priority provisions in section 107(b).

The arbitration panel concluded that a group of vending machines in scattered buildings constitutes a feasible vending facility within the meaning of the Randolph-Sheppard Act. The panel specifically found that a State Licensing Agency, subject to exceptions not applicable in this case, is entitled to a permit if there is a feasible vending facility available on Federal property. The arbitration panel further held that this entitlement to a permit applied regardless of the number of existing vending facilities already operated by blind vendors on the Federal property in question.

The arbitration panel then considered whether the income-sharing provisions of the Act and the regulations indicated a congressional intent to allocate a portion of the vending machine income from these scattered vending machines to the Federal agency for use in social, health, and welfare activities, rather than to allow a blind vendor to receive some or all of the commissions from the machines. In particular, the arbitration panel focused on the language contained in 20 U.S.C. 107d–3(d) and 34 CFR 395.32(i) that exempts from income sharing income from "facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually."

Reading the statute in its entirety, the panel concluded that Congress did not intend, by enacting the income-sharing provisions and the exceptions thereto, to deprive blind vendors of the opportunity to operate feasible vending facilities. The panel determined, with one panel member dissenting, that NASA improperly denied MVRB a permit to operate the approximately 45 vending machines located in about 20 scattered locations at the SSC. The panel held that if MVRB submits a request for a permit for these machines and locations, NASA is directed to terminate the existing concessionaire contract in a timely fashion and grant MVRB the requested permit.

The views and opinions expressed by the panel do not necessarily represent the views of the Department of Education. This panel decision is presently in litigation pursuant to the judicial review provisions of the Randolph-Sheppard Act.

[FR Doc. 91–19551 Filed 8–15–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Scope of Surplus Marketing Policy

AGENCY: The Bonneville Power Administration (BPA), DOE.

ACTION: Notice of scope of policy.

SUMMARY: This Notice describes the scope for this policy by identifying specific issues which are inside or outside the scope. BPA will consider adding to the scope any new issues or subissues that may be raised in the process.

RESPONSIBLE OFFICIAL: Robert D. Griffin, Director, Division of Power Supply, Office of Power Sales, is the official responsible for development of the Surplus Marketing Policy.

DATES: A draft Surplus Marketing Policy is expected to be published by May 1, 1992. Meetings with the Technical Review Panel, to be held during the course of preparing a draft policy, will be announced.

ADDRESSES: Comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Griffin at the above address or by telephone at 206–690–2102. Telephone numbers, voice/TTY, for the Public Involvement Office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; toll-free 800–547–6048 for California, Idaho, Montana, Nevada, Utah, and Wyoming. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, room 243, 1500 Plaza Building, 1500 NE Irving, Portland, Oregon 97232. 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue Nort, suite 400, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas Blankenship, Boise District Manager, 304 North Eighth, room 450, Boise Idaho, 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

On February 23, 1990, BPA published in the **Federal Register** a "Proposal for Adoption of Policy on Sales of Surplus Energy under Public Law 88–552 and Public Law 96–501." 55 FR 6420 (2/23/90). By this notice, BPA recognized that the priority of Pacific Northwest (PNW) customers to BPA's surplus power and nonfirm energy is a subject of increasing concern in the region. Changing conditions on the Federal System and EPA's declining surplus make it timely that past practices be reviewed and relevant issues be identified and addressed. The **Federal Register** Notice identified three broad issue areas, based on applicable statutes, which would be addressed in a public forum. These issues are discussed below.

On June 12 and June 28, 1990, BPA met with its customers and other interested parties to discuss BPA's current surplus marketing practices and to clarify the intent, scope, and schedule of the proposed policy development. Beginning in early February 1990, the public was invited to provide written comments regarding the proper content and scope of the issues to be addressed. After the close of the public comment period on July 30, 1990, all written comments were made available to interested parties by letter dated September 17, 1990. On December 18, 1990, BPA met with a Technical Review Panel, composed of interested parties to identify and discuss the scoping issues. The purpose of this paper is to determine the final scope of the proposed policy.

BPA presented three broad areas of inquiry in the **Federal Register** Notice:

1. Should the definition of "energy requirements of any PNW customer" and "electric power requirements of any PNW customer" as used in the Northwest Preference Act and the PNW Electric Power Planning and Conservation Act (Northwest Power Act) be further defined?

2. Should BPA further define the terms "the lack of a market therefore at any established rate" and "for which there is no market in the PNW at any rate established for the disposition of such energy" as used in the Northwest Preference Act and the Northwest Power Act to define surplus energy?

3. What standard should BPA adopt for Federal System reliability of service to PNW loads and availability of Federal power for use in the PNW?

Each of these questions asks BPA's customers whether and to what extent BPA should refine the way it administers its statutory obligations as they relate to the priority of BPA power for Northwest customers.

II. Operational Considerations

Throughout most of the 1980's, the PNW operated with a large regional firm power surplus, that is, power in excess of its firm load obligations. BPA's share of this surplus firm power was sizeable enough to satisfy the market in both the PNW and Pacific Southwest (PSW). With the recent and rapid decline of large firm power surpluses, the distinction between surplus firm power and surplus nonfirm energy in terms of BPA's obligation to meet PNW loads bears reexamination. Any implementation of BPA's statutory obligations must recognize the differences between these two products.

The differences between surplus firm power and surplus nonfirm energy include their relative firmness, potential duration and pricing constraints. BPA's regional preference issues must consider these differing characteristics. Assume, for example, that surplus firm power is available on a planning basis for several years. It is important to consider whether the statutes require BPA not to enter into a valuable, long-term PSW sale in order to protect against an improbable failure to meet PNW loads in the current operating year. Similarly, a provisional sale of surplus firm energy, from a practical standpoint, is more likely to find a PSW market than the provisional sale of surplus nonfirm energy. The conditions under which BPA is obligated to offer surplus firm or nonfirm energy to the PSW on a provisional basis is a central issue in this policy development.

The decline of operating flexibility in recent years due to greater constraints on the Federal hydro system also impacts the conditions under which BPA implements PNW preference obligations. A loss of flexibility on the hydro system means a greater likelihood of spilled or wasted energy, which means, in turn, higher firm power rates and reduced mutual benefits between both PSW and PNW regions. A practice of conserving energy on BPA's hydro system until any risk of BPA's failing to meet its PNW load obligations is past might not provide the best protection for PNW firm loads, and it ignores other viable actions BPA or PNW utilities may take to protect loads. Current trends toward further restrictions on river operations make an examination of this question of critical importance.

BPA's standards for reliability of service for PNW loads will conform to the statutory, operational, and contractual constraints that govern its system operation, including those agreements related to operating limitations of Federal Columbia River Power System resources (FCRPS). Operating constraints on the hydro system, imposed by the U.S. Army Corps of Engineers (Corps), U.S. Bureau of Reclamation (Bureau), and other entities in the PNW, are frequently modified as competing needs for the uses of the Columbia River system continue to increase. This policy will use presently existing Columbia River system constraints as the basis for any proposals. In addition, BPA's surplus marketing policy will conform to the operating constraints of the FCRPS, as those constraints are further defined. Operating constraints on the FCRPS currently are being discussed and

reviewed through the System Operations Review (SOR) process. BPA, the Corps, and the Bureau are preparing an Environmental Impact Statement on system operations which is scheduled for completion in 1994.

III. Scope of the Policy Development

The principal object of this policy development proceeding is to further define the conditions and circumstances under which BPA may market surplus capacity and energy outside the PNW consistent with its governing statutes. During this proceeding, BPA will identify and analyze a comprehensive list of issues related to BPA's extraregional power sales under the Regional Preference Act and the Northwest Power Act. The end result of this proceeding will be a set of procedures which BPA will use to determine, among other things: (1) How much surplus energy is available for an extraregional sale; (2) when it may be made available and for how long; (3) what type of sale, provisional or nonprovisional, should be made; (4) what advance notification procedures are required; and (5) under what conditions such sales must be terminated or deliveries returned. These procedures may differ for different types of sales and may depend on the nature of the surplus energy, whether firm or nonfirm, and the expected duration of this availability.

Responses to the questions proposed in the **Federal Register** Notice, 55 FR 6420 (2/23/90), were invited to help define the scope of this policy development, bearing in mind that resolution of those issues may be particular to the type of sale and expected duration of the surplus energy at hand. Comments received in response to the questions raised in the **Federal Register** Notice are discussed below.

A. *Issue #1: Should the definition of "energy requirements of any Pacific Northwest customer" and "electric power requirements of any Pacific Northwest customer" be further defined?*

Responses to this issue came principally from the PNW public utilities. The majority of the responses focused on the proper allocation of BPA's available surplus energy. Under section 3(a) of the Regional Preference Act and section 9(c) of the Northwest Power Act, BPA must include provisions in its nonprovisional PSW surplus power contracts that permit BPA to terminate delivery of energy when the Administrator determines it is necessary to meet the energy requirements of PNW customers. Under section 3(b) of the Regional Preference Act, BPA must include provisions in its provisional surplus power sales contracts which permit BPA to require the return of energy when the Administrator determines it is necessary to meet the energy requirements of any PNW customer. The determination of a PNW customer's energy requirements turns on the definition of a customer's firm loads and the firm capability of its resources, as described in section 1(f) of the Regional Preference Act and sections 9 (c) and (d) of the Northwest Power Act. Further definition of these requirements may be obtained by specifying the particular types of loads and resources that must be included or excluded in this calculation.

Addressing the matter of firm loads, public utility customers suggest that BPA consider whether the firm power load of a PNW utility should include firm load overruns in addition to the existing and planned loads of the utility. The Direct Service Industries (DSI's) would distinguish between load overruns that BPA has a contractual obligation to serve and those which it does not. The Association of Public Agency Customers (APAC) asks the related question of whether BPA must continue to reserve energy to serve forecasted firm loads even when utilities' loads consistently underrun forecasts. Another issue raised by public utility customers is whether BPA must terminate deliveries of surplus firm energy sold to the PSW in order to assure top quartile service to the DSI's.

Regarding firm resources, customers ask if unplanned resource outages and unexpected adverse hydro conditions should be considered in defining energy requirements. If BPA must reserve surplus energy in the event of unplanned outages, then the questions of how much energy must be reserved and the duration of an outage also become relevant. Another issue raised by customers is whether BPA should reserve secondary energy for the economic displacement of PNW resources, even when decremental costs are less than BPA's prevailing nonfirm energy rate. APAC asks whether BPA must conserve energy for resources that are not expected to be operated. A third issue relevant to firm resource capability is whether PNW energy requirements should include resources that PNW utilities have not submitted in coordinated planning. Fourth, Portland General Electric Company (PGE) inquires whether BPA should be required to displace, with its secondary energy, the contractual purchase by non-Federal PNW utilities of option energy from outside the region.

Section 3(d) of the Regional Preference Act and sections 9(c) and 9(d) of the Northwest Power Act exclude from BPA's obligation to conserve for a PNW customer's energy requirements any amount of energy generated from that customer's resources that is sold outside the region which could have been conserved or otherwise kept available for the customer's own needs or retained for service to regional load. If a PNW customer sells energy or otherwise disposes of it outside the region, the BPA may offer as replacement energy for such extraregional sales only Federal power that otherwise is surplus to the region. The Public Generating Pool (PGP) asks under what conditions customers subject to a section 9(c) restriction should have access to surplus Federal power. A related issue is whether BPA's obligation regarding a PNW customer's energy required should be increased when that utility sells energy to another PNW utility for resale outside the PNW.

More general questions regarding the definition of energy requirements are posed by others. Should BPA conserve energy to serve any PNW customer's firm energy planning deficits? If so, do BPA's obligations differ for utilities that make best efforts to overcome a deficit versus those that make no such effort? Another question is whether or not Billing Credit resources should be considered firm resources for purposes of determining access to surplus firm power. Finally, under what conditions should BPA recall the energy from provisional sales, and how should recalled energy be distributed among regional utilities?

BPA will respond to the foregoing questions as part of its policy development process. Addressing these questions and similar types of questions which may arise will provide greater definition of the obligations BPA must consider when planning to meet the energy requirements of the PNW.

The Western Public Agencies Group (WPAG) asks whether BPA may use surplus energy to displace BPA's own resources before BPA offers to sell surplus energy in the region to the DSIs or non-Federal utilities. This issue does not address extraregional surplus power and surplus nonfirm energy marketing issues. Rather, it addresses the use of Federal power before BPA makes such power available for sale to anyone. Therefore, this issue is not relevant to this policy.

B. *Issue #2: Should BPA further define the terms "the lack of a market therefore at any established rate" and "for which there is no market in the*

Pocific Northwest at any rate estoblished for the disposition of such energy" os used in the Regional Preference Act ond the Northwest Power Act, to define surplus energy?

This issue will address the manner by which BPA will ensure that PNW customers are permitted first call on Federal power. BPA markets power first to PNW customers prior to marketing such power outside the region. This includes ensuring that, subject to the provisions of the Regional Preference Act and Nortwest Power Act, all power sold outside the region is power for which there is no market in the PNW. This issue will clarify the statutory definitions of surplus power as electric energy for which there is no market in the PNW at any rate established for the disposition of such energy and electric peaking capacity for which there is no demand in the PNW at the rate established for the disposition of such capacity. This issue will also include analysis of "established rates" and the manner in which BPA implements its rate schedules in marketing power first to the PNW and then outside the region. Although the statutes define surplus power, they do not expressly address the flexible rate schedules that BPA utilizes for its sales of surplus firm and nonfirm energy. A complete understanding of the technical steps BPA takes in evaluating the PNW market is critical to determining BPA's ability to offer power outside the PNW. All of these issues will be viewed in the historical context of BPA's power marketing, particularly from enactment of the Northwest Power Act in 1980 to the present. BPA's historical sales to all customers during this period, both regional and extraregional, are particularly instructive in analyzing BPA's power marketing.

One issue for consideration is the extent to which the definition of a "market" should include the likelihood of future as well as real-time energy needs. A second issue, raised in the form of a proposal by the California parties, is that BPA should allow extraregional sales once the PNW market is saturated at the rates that BPA has offered power for sale in excess of its Northwest Power Act section 5(b), (c), and (d) obligations. One party proposed that the PNW market should be served until it is saturated "at essentially a hydroelectric rate." The term saturated, in this context, means that all PNW customers willing to purchase at the offered price have made their purchases, and no other PNW customers would purchase at that price. Several other customer groups acknowledged the importance of this particular issue, without raising any additional questions. The foregoing issues will be included in the scope of the present proceeding.

In addition, BPA seeks comment on the notice practices BPA employs for its sales, particularly its monthly, weekly, and daily surplus firm energy sales. Also of interest is to what extent regional preference applies to real-time availability of nonfirm energy.

C. *Issue #3: What standord should BPA odopt for Federal System reliability of service to PNW loods and ovailability of Federol power for use in the PNW?*

This issue asks what standards should be adopted and what actions taken by BPA in order to implement its obligations to meet the energy requirements of its PNW customers. Throughout each operating year, BPA periodically conducts Conservability Studies to measure current Federal System conditions against historical water conditions. Thereby, BPA assures a reasonable probability that the Federal System can meet these energy requirements on a planning basis. One issue to be reviewed is whether BPA's Conservability Study and the assumptions used in it continue to be a model that is reasonable and adequate, and whether modifications or changes should be made.

Many issues raised by customers regarding the implementation of the conservability standards will be addressed, in part, by the first group of issues, that is, by further specifying and defining the loads and resources that are included in computing the energy requirements of PNW customers. For example, the Public Power Council (PPC) suggests that pricing flexibility should be considered in the context of whether BPA must conserve energy to protect PNW loads. The PGP and PPC request that BPA consider how contract options should be accounted for in the Conservability Study. The California parties ask whether BPA should conserve energy to displace non-Federal PNW resources that have little likelihood of being operated. An additional issue is whether or not BPA's reliability standard may be supported by resource, storage, or other contractual options, power purchases, or resource acquisitions.

Other issues include such questions as the appropriate application of probabilities in the Conservability Study and the frequency with which the study should be conducted. PGE expressed a wish to discuss the treatment of provisional energy in the Conservability Study. A suggestion also was made that mechanisms other than BPA's Conservability Study be explored to implement the surplus marketing policy.

APAC suggests that the reliability obligations of other parties in the region affect BPA's load obligations and should be considered in the scope of this proceeding. Also, the extent to which BPA should consider PNW capacity needs in determining its ability to market surplus energy was suggested as an issue.

The foregoing issues will be included in the scope of the policy development process.

The DSI's caution that a reliability standard should be considered only in the context of BPA's marketing surplus power for export and regional preference, rather than in the context of BPA's service obligations under the existing DSI Power Sales Contracts. BPA agrees that the reliability standard should not address in-region obligations under the DSI Power Sales Contracts. The other issues, described above, will help to define a reliability standard providing practical guidelines to BPA.

WPAG raises the question of whether or not critical water planning should continue to be the basis on which BPA and PNW non-Federal customers determine the amount of power generation available from the hydro system, including the amount of surplus Federal power. This issue is beyond the scope of the present proceeding. It would raise for consideration actions with far reaching changes in the way all PNW utilities, the Regional Power Planning Council, state Public Utilities Commissions, and others do power planning. At a minimum, it would require modification of numerous contracts, including the Pacific Northwest Coordination Agreement. In its initial Federal Register Notice, 37 FR 64620 (2/23/90), BPA stated that the surplus marketing policy would be developed based upon the current planning and operating standards and constraints. A proposal to adopt a different planning basis from critical water planning is beyond this proceeding and is an issue more appropriately raised in the SOR or another proceeding.

D. *Other Issues.*

Several interested parties provided written comments addressing the needs of anadromous and resident fish. The National Marine Fisheries Service (NMFS), the Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and the Columbia-Snake Rivers Main Stem Flow Coalition all recommend that BPA consider the flows

that are required to meet the biological needs of fish populations, as identified by the "Columbia Basin Fish and Wildlife Flow Proposal," before deciding on its surplus marketing policy. Some of these same agencies also suggest that BPA defer its surplus marketing policy development entirely, pending completion of the System Operation Review Environmental Impact Statement (SOR/EIS). The Idaho Fish and Game Service requests that BPA defer new capacity sales contracts until completion of the SOR/EIS.

This policy focuses on how BPA will conduct its export marketing when excess generation is available on the Federal System. It will not make decisions on balancing power uses of FCRPS facilities with other multiple purposes such as fish passage, recreation, or other similar issues, which will be addressed in the SOR process and ESA proceedings. Any policy that results from this proceeding will conform to system operating requirements imposed by reservoir owners, as such requirements may be modified in the future.

Environmental analysis for this policy development will assess the effects of the proposal and its alternatives on resource operations, as such operations may be constrained by license provisions and current operating requirements.

This policy is not intended to determine the amount of generation available from flows, firm or nonfirm, that BPA may have available for marketing from the Federal System. Nor will this policy determine the amount of flow available for nonpower uses or determine changes in any constraint on the hydro system. Rather, it will provide guidance for BPA in its surplus marketing actions when BPA does have surplus nonfirm energy or surplus firm power available to market. The policy will consider any changes made to such factors as a result of the adoption of final policy in the other forums mentioned above to the extent those occur prior to the adoption of this policy and are relevant to it. Other forums appear most appropriate to determine operating constraints for the biological needs of fish.

For these reasons, BPA will coordinate this policy with other BPA processes. Included among these other processes is the Pacific Power & Light Capacity Sale Environmental Impact Statement (EIS), the SOR EIS, and the BPA 1992 Resource Program EIS.

IV. Conclusion

In conclusion, the general scope of this policy development will be as defined in the foregoing discussion. BPA understands that certain issues may be refined and new issues identified as this policy development proceeds, and it will consider such issues for inclusion in the scope as they arise. As a next step, BPA will prepare a draft technical paper on the issues for review by the Technical Review Panel before drafting a policy for publication. BPA will then draft a policy and solicit public comment on its contents.

Issued in Portland, Oregon, on August 5, 1991.

James J. Jura,

Administrator.

[FR Doc. 91-19651 Filed 8-15-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-576-000, et al.]

Ocean State Power II, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 8, 1991.

Take notice that the following filings have been made with the Commission:

1. Ocean State Power II

[Docket No. ER91-576-000]

Take notice that Ocean State Power II ("OSP II"), on August 1, 1991, tendered for filing the following supplements (the "Supplements") to its rate schedules with the Federal Energy Regulatory Commission (the "Commission"):

Supplement No. 10 to Rate Schedule FERC No. 5
Supplement No. 10 to Rate Schedule FERC No. 6
Supplement No. 10 to Rate Schedule FERC No. 7
Supplement No. 10 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of OSP II's proposed rate of return on equity for the period beginning with the requested effective date of the Supplements, October 1, 1991, to the effective date of OSP II's updated rate of return on equity to be filed in February, 1992. The Supplements are being field pursuant to section 7.5 of each of OSP II's unit power agreements (the "Agreements") between Ocean State II and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively. The Supplements do not constitute a rate increase.

Ocean State Power has requested that the Supplements be permitted to become effective without suspension on October 1, 1991.

Copies of the filing have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: August 22, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. SEMASS Partnership

[Docket No. ES91-38-001]

Take notice that on August 5, 1991, SEMASS Partnership ("SEMASS") filed an amended application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authority (1) to increase from $340 million to $355 million their assumption of obligation in connection with the issuance of Resource Recovery Revenue Bonds and subordinated notes to be issued by the Massachusetts Industrial Finance Agency and SEMASS Partnership and (2) to increase from $16 million to $20 million the amount of additional contribution to be reallocated among partnership interests by certain partners.

Comment date: August 19, 1991 in accordance with Standard Paragraph E at the end of this notice.

3. Moreno Valley Unified School Distric

[Docket No. QF91-115-000]

On August 5, 1991, Moreno Valley Unified School District of 13911 Perris Blvd., Moreno Valley, California 92388 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's Regulations No determination has been made that the submittal constitues a complete filing.

The topping-cycle cogeneration facility will be located at the Moreno Valley High School, in Moreno Valley, California. The facility will consist of one reciprocating engine generator and necessary heat recovery equipment. The primary energy source will be natural gas. The electric power production capacity will be 75 kilowatts. Installation of the facility will begin August 30, 1991.

Comment date: 30 days from publication in the **Federal Register**, in accordance in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19540 Filed 8–15–91; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2413–017, et al.]

Hydroelectric Applications (Georgia Power Company, et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Amendment of License.

b. *Project No.:* 2413–017

c. *Date Filed:* May 23, 1991.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The project reservoir, Lake Oconee, is located on the Oconee River in Georgia. Lake Gregory is adjacent to the reservoir in Putnam County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* J.A. Wilson, Vice President—Land, Georgia Power Company, P.O. Box 4545, Atlanta, GA 30302, (404) 526–2406.

i. *FERC Contact:* John Estep, (202) 219–2654.

j. *Comment Date:* September 16, 1991.

k. *Description of Amendment:* The licensee is requesting that the Commission amend the license to authorize the licensee to allow the breach of an earthen dam separating the project reservoir, Lake Oconee, from an adjacent 14-acre private lake, Lake Gregory. Approximately 150 cubic yards of material would be removed to create a 20-foot-wide opening.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2a. *Type of Application:* Transfer of License.

b. *Project No.:* 2655–016.

c. *Date Filed:* July 2, 1991.

d. *Applicant:* Consolidated Hydro Southeast, Inc., and Eagle & Phenix Hydro Company, Inc. (Licensees).

e. *Name of Project:* Eagle & Phenix Mills Project.

f. *Location:* On the Chattahoochee River, in Muscogee County, Georgia and Russell County, Alabama.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ralph H. Walker, Jr., President, Consolidated Hydro Southeast, Inc., and Eagle & Phenix Hydro Company, Inc., 531 South Main, RL4, Greenville, SC 29601, (803) 233–8567.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* September 9, 1991.

k. *Description of Proposed Action:* On September 12, 1978, a license was issued for the construction, operation, and maintenance of the Eagle & Phenix Mills Project. It is proposed to transfer the license from the Licensees to Eagle & Phenix Hydro Company, Inc. (Transferee). The proposed transfer will not result in any changes to the proposed development. The Licensees certify that they have fully complied with the terms and conditions of the license and the Transferee agrees to be bound thereby to the same extent as though it were the original licensee. The transferee is a wholly-owned subsidiary of Consolidated Hydro Southeast, Inc.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3a. *Type of Application:* Transfer of License.

b. *Project No.:* 6188–013

c. *Date filed:* July 9, 1991.

d. *Applicants:* Camille E. and Walton B. Held, A.W. Stuart Trust, W. Titus Nelson, and Dale E. Grenoble (Camille et al.), and Sierra Hydro, Inc. (Sierra).

e. *Name of Project:* Tinnemaha and Red Mountain Creeks Project.

f. *Location:* County of Inyo, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Joseph M. Keating, President, Sierra Hydro, Inc., c/o Keating Associates, 847 Pacific Street, Placerville, CA 95667, (916) 622–9013.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* September 13, 1991.

k. *Description of Project:* On January 20, 1988, a license was issued to Camille et al. for the construction, operation, and maintenance of the Tinnemaha and Red Mountain Creeks Project. The project would consist of a diversion structure, a penstock, a powerhouse with an installed capacity of 950 kW, a transmission line, and appurtenant facilities. Camille et al. requests approval to transfer the license to Sierra.

l. This notice also consists of the following standard paragraphs: B and C.

4a. *Type of Action:* Proceeding Pursuant to Reserved Authority To Determine Whether Modifications to License are Appropriate.

b. *Project No.:* 9885–020.

c. *Date filed:* November 1, 1990.

d. *Applicant:* Idaho Department of Fish and Game.

e. *Name of Project:* Falls River Hydroelectric Project.

f. *Location:* On Falls River, in Fremont County, Idaho.

g. *Authorization:* Federal Power Act, 16 U.S.C. 791(a)-825(r) and Articles 12 and 15 of the project license.

h. *Applicant Contact:* Jerry M. Conley, Director, Idaho Department of Fish and Game, 600 South Walnut, Box 25, Boise, ID 83707.

i. *FERC Contact:* Daniel R. Kenney, (202) 219–2652.

j. *Comment Date:* September 9, 1991.

k. *Description of Project:* The Idaho Department of Fish and Game (IDFG) requested that the Commission amend article 402 of the license for the Falls River Hydroelectric Project to require the licensee, Marysville Hydro Partners, to provide a minimum flow of 200 cubic feet per second (cfs) in the full length of the project's 6.2 mile bypass reach. Article 402 requires the licensee to provide 200 cfs as measured at a gage 0.5 miles below the project's Marysville diversion. During the irrigation season, it is possible that up to 106 cfs could be removed from the Falls River at the Farmer's Own Canal diversion, 0.7 miles upstream of the project's powerhouse. At a 200 cfs minimum flow release, this could leave the lower 0.7 miles of the bypass reach with only 94 cfs of flow at times during the irrigation season. The IDFG contends that a flow of 94 cfs could cause a significant loss of aquatic habitat. The licensee has offered to release additional flows in order to make up for irrigation diversions in excess of 40 cfs. This would provide for a minimum flow of 160 cfs in the lower 0.7 miles of the bypass reach.

l. This notice also consists of the following standard paragraphs: B, C, and D2

5a. *Type of Application:* Transfer of License.

b. *Project No.:* 10800–002.
c. *Date filed:* July 1, 1991.
d. *Applicants:* Hydrodynamics, Inc. and Ross Creek Hydro, Inc.
e. *Name of Project:* Ross Creek Hydroelectric Project.
f. *Location:* On Ross Creek near the town of Bozeman, in Gallatin County, Montana.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).
h. *Applicant Contact:* Mr. George L. Smith, Smith & Associates, P.O. Box 51016, Idaho Falls, ID 83405, (208) 529–8115.
i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.
j. *Comment Date:* September 13, 1991.
k. *Description of Project:* On June 19, 1990, a license was issued to Hydrodynamics for the construction, operation, and maintenance of the Ross Creek Hydroelectric Project. The project consists of a stream-side intake structure, a 3,200-foot-long pipeline, a powerhouse with an installed capacity of 450 kW, and a 0.5-mile-long transmission line. Hydrodynamics requests approval to transfer the license to Ross Creek Hydro, Inc.
l. This notice also consists of the following standard paragraphs: B and C.
6a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11120–000.
c. *Date filed:* April 5, 1991.
d. *Applicant:* Cameron Gas & Electric Company.
e. *Name of Project:* Middleville Dam Project.
f. *Location:* On the Thornapple River, near the Town of Middleville, in Barry County, Michigan.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (1)—825(r).
h. *Applicant Contact:* Ms. Jan Marie Evans, 4572 Sequoia Trail, Okemos, MI 43864, (517) 351–5400.
i. *FERC Contact:* Mary C. Golato (202) 219–2804.
j. *Comment Date:* September 26, 1991.
k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing reinforced concrete dam 12 feet high and 80 feet long; (2) an existing reservoir with a surface area of 30 acres, a storage capacity of approximately 170 acre-feet, and a maximum surface elevation of 708.5 feet mean sea level; (3) an existing powerhouse with one generating unit having a capacity of 350 kW to be refurbished; (4) an existing 100-foot-long transmission line; and (5) appurtenant facilities. The dam is owned by the Middleville Power Company. The applicant estimates that the average annual generation would be approximately 1,400,000 to 1,500,000 kW. The estimated cost of the studies under permit would be $88,000.00.
l. This notice also consists of the following standard paragraphs: A3, A5, A7, A9, A10, B, C, and D2.
7a. *Type of Application:* Preliminary Permit.
b. *Project No.* 11129–000.
c. *Date filed:* April 15, 1991.
d. *Applicant:* Payette Power Company.
e. *Name of Project:* Payette Lake Outlet Hydroelectric Project.
f. *Location:* At river mile 75.3 (North Fork Payette River) at the outlet dam of Payette Lake in Valley County Idaho, near the town of McCall. In section 8, T.18 N., R.3 E. Boise Meridian.
g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)–825(r).
h. *Applicant Contact:* Gary D. Babbitt, Vice President, Payette Power Company, 2315 Claremont Drive, Boise, ID 83702, (208) 344–6000.
i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.
j. *Comment Date:* September 18, 1991.
k. *Description of Project:* The proposed project would consist of: (1) An existing 8.2-foot-high, 168-foot-long outlet dam; (2) the existing 5,337 acre Payette Lake with a storage capacity of 41,000 acre-feet with a water surface elevation of 4,990.9 feet msl; (3) an overflow spillway; (4) a powerhouse containing two generating units with a total rated capacity of 225 kilowatts, producing an estimated average annual generation of 924.9 MWh; (5) a 300-foot-long, 480-volt transmission line tying into an existing line.
No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $25,000.
l. *Purpose of Project:* Project power will be sold to a utility in the project area.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.
8a. *Type of Application:* Preliminary Permit.
b. *Project No.* 11139–000.
c. *Date filed:* May 2, 1991.
d. *Applicant:* Kodiak Electric Association, Inc.
e. *Name of Project:* Terror Lake Release-Water Hydroelectric Project.
f. *Location:* Partially within the Kodiak National Wildlife Refuge on the Terror River on Kodiak Island, Alaska. T29S, R24W in section 13. T29S, R23W in sections 1, 10, 11, 12, 15, 16, 18, 19, 20, 21, and 29.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* E. Woody Trihey, P.E., Principal, Trihey & Associates, P.O. Box 4964, Walnut Creek, CA 94596, (415) 689–8822.
i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.
j. *Comment Date:* September 27, 1991.
k. *Description of Project:* The proposed project would consist of: (1) The existing 880–acre Terror Lake reservoir; (2) the existing 150-foot-high Terror Lake dam; (3) a valvehouse; (4) a 36-inch-diameter, 9,000-foot-long penstock; (5) a powerhouse containing a 3-MW generator; (6) an 8-mile-long underground transmission line interconnecting with an existing 138-kV transmission line; and (7) appurtenant facilities.
No new access roads will be needed to conduct the studies. The approximate cost of the studies under the permit would be $275,000.
1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
9a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11160–000.
c. *Date filed:* June 13, 1991.
d. *Applicant:* GSA International Corporation.
e. *Name of Project:* Ancram.
f. *Location:* On the Roeliff Jansen Kill Creek, in Village of Ancram, Columbia County, New York.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Dr. Kenneth M. Grover; P.O. Box 536, Croton Falls, NY 10519; (914) 277–8000.
i. *FERC Contact:* Mary Golato (202) 219–2804.
j. *Comment Date:* September 19, 1991.
k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing concrete gravity dam 22 feet high and 93 feet long; (2) an existing reservoir with a surface area of 6.5 acres, a storage capacity of 80 acre feet, and an elevation of 463 feet mean sea level; (3) an existing penstock 6 ft. in diameter; (4) a proposed powerhouse containing one generating unit with a total installed capacity of 370 kilowatts; (5) an existing 13.8-kilovolt transmission line 600 feet long; and (6) appurtenant facilities. The dam is owned by the Kimberly Clark Corporation. The average annual generation would be 1.8 million kilowatthours. The applicant estimates that the cost of the studies under permit would be $43,500.
l. This notice also consists of the following standard paragraphs: A3, A5, A7, A9, A10, B, and C.
10a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11166–000.

c. *Date Filed:* July 16, 1991.

d. *Applicant:* Andrew S. Olesin.

e. *Name of Project:* Snows Mill Pond Project.

f. *Location:* On Whitman River near Fitchburg in Worcester County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Andrew S. Olesin, P.O. Box 143, 1 Hubbardston Road, Princeton, MA 01541, (508) 464–2780.

FERC Contact: Michael Dees, (202) 219–2807.

j. *Comment Date:* October 7, 1991.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) An existing granite block and concrete dam 23 feet high; (2) a 45-acre reservoir with a normal surface elevation of 661 feet m.s.l.; (3) an existing penstock 36 inches in diameter and 800 feet long; (4) an existing powerhouse to contain a 350-kW hydropower unit; (5) an existing tailrace; (6) a 13.8-kV transmission line; and (7) appurtenant facilities. The applicant estimates the average annual energy production to be 1,000 MWh and the cost of the work to be performed under the preliminary permit to be $5,000. The project energy is proposed to be sold to Princeton Municipal Light Department. The dam is owned by James River Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

11a. *Type of Application:* Amendment of License.

b. *Project No:* 2086–027.

c. *Date Filed:* April 25, 1991.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Vermilion Valley Project.

f. *Location:* The project is located on Sierra National Forest Lands in Fresno County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David N. Barry III, Vice President and General Counsel, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, room 349, Rosemead, CA 91770, (818) 302–1920.

i. *FERC Contact:* Kenneth Fearon, (202) 219–2657.

j. *Comment Date:* September 16, 1991.

k. *Description of Amendment:* The licensee proposes to remove the two generating units located at the toe of the dam located on Mono Creek with a combined capacity of 270-kW, a 4,170-foot-diameter penstock, a powerhouse containing a single 7,500-kW generator, and a transmission line which was authorized by the Order Amending License, issued on June 3, 1987. Additionally, the licensee requests the removal of articles 40 through 58 which were added to the license by the amendment order. The licensee says that the proposed project works are no longer economically feasible to construct.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

12a. *Type of Application:* Declaration of Intention.

b. *Project No:* EL91–38.

c. *Date Filed:* May 23, 1991.

d. *Applicant:* Dwayne Cales.

e. *Name of Project:* Meadow Creek.

f. *Location:* On Meadow Creek, Fayette County, Meadow Bridge, West Virginia.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dwayne Cales, 3121 Main Street, Meadow Bridge, WV 25976, (304) 484–7494.

i. *FERC Contact:* Diane M. Scire, (202) 219–2682.

j. *Comment Date:* September 9, 1991.

k. *Description of Project:* The proposed project would consist of: (1) A 10-inch-high concrete dam; (2) a 36-inch-diameter, 30-foot-long wooden flume; (3) a 3-foot-wide, 14-foot-high water wheel; (4) a powerhouse containing one generating unit with a rated capacity of 5 kilowatts; (5) a 100-foot-long transmission line; and (6) appurtenant facilities. All power produced will be used by the applicant.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* The power produced would be used in the applicant's garage.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit

would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 12, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19542 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI91-29-000, et al.]

Meridian Oil Production Inc., et al.; Natural gas certificate filings

August 8, 1991.

Take notice that the following filings have been made with the Commission:

1. Meridian Oil Production Inc.

[Docket No. CI91-29-000]

Take notice that on December 24, 1990, Meridian Oil Production Inc. (Meridian) of 2919 Allen Parkway, suite 900, Houston, Texas 77019, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest for authorization to continue the sales previously made by John F. and Ciel Sullivan and Edward G. Arcaro, now the Arcaro Family Irrevocable Inter Vivos Trust, under the contracts listed in the Appendix hereto and requested that the Commission designate such contracts as Meridian's rate schedules, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective May 1, 1989, the Trustees of the Arcaro Family Irrevocable Inter Vivos Trust assigned all their interest in certain properties located in San Juan County, New Mexico to Kaiser-Francis Oil Company which in turn assigned the subject properties to Southland Royalty Company and Meridian. Southland then assigned its interest in these same properties to Meridian. In addition, effective May 1, 1989, John F. and Ciel Sullivan assigned all their interest in these same properties to Exxon Corporation which assigned its interest to Southland which in turn assigned its interest to Meridian.

Comment date: August 27, 1991, in accordance with Standard Paragraph J at the end of the notice.

APPENDIX

Contract date	Contract No.	Purchaser and location
10-8-51	EPNG #6337 & 891L	El Paso Natural Gas Company Blanco Field, San Juan County, New Mexico.
7-24-56	EPNG #6683	El Paso Natural Gas Company Mesa Verde Field, San Juan County, New Mexico.
11-2-56	EPNG #6483	El Paso Natural Gas Company Pictured Cliffs Field, San Juan County, New Mexico.
5-17-76	EPNG #8298	El Paso Natural Gas Company Pictured Cliffs Field, San Juan County, New Mexico.

2. Helmerich & Payne Energy Services, Inc.

[Docket No. CI91-110-000]

Take notice that on July 26, 1991, Helmerich & Payne Energy Services, Inc. (Helmerich & Payne) of Utica at Twenty-First, Tulsa, Oklahoma 74114, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of gas subject to the jurisdiction of the Commission under the NGA, gas purchased from non-first sellers, including interstate pipelines selling gas off-system under authorization such as interruptible sales service (ISS), and imported natural gas, including liquefied natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 28, 1991, in accordance with Standard Paragraph J at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP91-2648-000]

Take notice that on August 2, 1991, CNG Transmission Corporation (CNG), 445 West Main St., Clarksburg, West Virginia 26302-2450, filed in Docket No. CP91-2648-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorizations to transport natural gas on behalf of shippers in the following transactions under the blanket certificate issued in Docket No. CP86-311-000, all as more fully set forth in the

request with the Commission and open to public inspection.

CNG proposes to transport gas for the following shippers, on an interruptible basis, from various receipt points on its system to various interconnections between CNG and certain local distribution companies (LDCs) and pipelines. The receipt and delivery points, along with maximum daily, average daily and annual volumes are shown in the appendix.

CNG reported these transactions, with commencement dates, to the Commission, as shown by the ST docket numbers also in the appendix. CNG proposes to continue these services in accordance with §§ 284.211 and 284.223(b).

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP91-2647-000]

Take notice that on August 2, 1991, United Gas Pipe Line Company (United), P.O. 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-2647-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon, by sale to Entex, Inc. (Entex), 5,960 feet of 2-inch pipeline, which services Entex, in Lamar County, Mississippi, under the certificate issued in Docket No. CP82-430-000 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.

United proposes to abandon 5,960 feet of the 2-inch Baxterville Tap Line lateral used to deliver gas to Entex in Lamar County, Mississippi. It is stated that Entex is the only customer serviced by this line and has agreed in writing to the abandonment. United maintains that the abandonment of the 2-inch Baxterville lateral line by sale to Entex will be accomplished without detriment or disadvantage to its other existing customers.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-2646-000]

Take notice that on August 2, 1991, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP91-2646-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and appurtenant facilities and to provide interruptible transportation service for Formosa Plastics Corporation (Formosa), an industrial end user, in Point Coupee Parish, Louisiana, under the certificate issued in Docket No. CP82-426-000 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.

It is stated that Transco has agreed to construct and operate a 4-inch tap valve, separator, storage tank, related piping and appurtenant facilities to interconnect its 8-inch diameter Raccouri Island Lateral in Point Coupee Parish, Louisiana, to Formosa. It is further stated that the addition of the Transco Formosa Interconnect will have no effect on Transco's peak day or annual deliveries to any existing sales customer.

Transco estimates the cost of the proposed tap and appurtenant facilities to be $182,770, which will be directly reimbursed by Formosa.

In addition, Transco states that Formosa has requested 8,500 Mcf per day of interruptible transportation service through Transco's system and delivery at the proposed interconnect. Transco proposes to provide such interruptible transportation service for Formosa under its blanket certificate issued in Docket No. CP88-328-000. Transco also proposes to charge Formosa rates in accordance with the applicable IT Rate Schedule under Transco's FERC Gas Tariff.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Colorado Interstate Gas Company, Tennessee Gas Pipeline Company

[Docket Nos. CP91-2643-000, CP91-2644-000; CP91-2645-000]

Take notice that on August 2, 1991, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-589, *et al.* and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initial service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 23, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day,[1] average day, annual dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2643-000 (8-2-91)	Westar Marketing Company (Marketer).	40,000 40,000 14,600,000	TX, OK, KS, CO, WY	CO	TI-1, Interruptible	ST91-9395-000, 6-1-91
CP91-2644-000 (8-2-91)	Celsius Energy Company (Producer).	40,000 40,000 14,600,000	TX, OK, KS, CO, WY	CO	TI-1, Interruptible	ST91-9394-000, 6-1-91
CP91-2645-000 (8-2-91)	Citizen Gas Supply Corporation (Marketer).	100,250 100,250 36,591,250	LA, TX, AL, WV, KY	Various	IT, Interruptible	ST91-9673-000, 7-1-91

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.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings 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 of Practice and Procedure (18 CFR 385.211, .214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19541 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL91-49-000]

Petition for Revocation of Qualifying Facility Status; Citizens for Clean Air and Reclaiming Our Environment v. Newbay Corporation

August 9, 1991.

Take notice that on August 5, 1991, Citizens for Clean Air and Reclaiming our Environment (CCARE) filed a petition with the Commission requesting that the Commission revoke the qualifying facility status of the Newbay Corporation which was granted by the Commission in Docket No. QF88-399-000.

Among other things, CCARE contends that Exhibit A of Newbay's application for QF status is misleading in that it is approximately 100 mmbtu/hr short of the maximum heat imput to the boiler. CCARE maintains that this discrepancy evinces an intent by Newbay not to operate the facility as represented. CCARE also maintains that Newbay intends to change the operation of the facility and produce more cogenerated steam that it represented to the Commission in its application. CCARE submits that Newbay obtained a QF certificate without disclosing the true power production capacity of the facility, only the capacity that the facility intended to operate by, in violation of § 292.297(b)(2)(iv) of the Commission's regulations.

Any person desiring to be heard or objecting to the revocation of qualifying status should file a petition to intervene or protest with 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 petitions or protests must be filed within 30 days after the date of publication of this notice. 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. 91-19539 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-5-000]

CNG Transmission Corporation; Sale of Natural Gas

August 9, 1991.

Take notice that on June 28, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, WV 26302-2450, submitted the following information regarding the sale of natural gas to be made to an affiliate under CNG's Rate Schedule USA, pursuant to the authorization granted by order in Docket No. CP89-5-000 issued December 20, 1988 (45 FERC ¶61,466).

(1) and (2) Name and Location of Buyer:

The East Ohio Gas Co. (East Ohio), Cleveland, OH
Hope Gas, Inc. (Hope), Clarksburg, WV
The Peoples Natural Gas Co. (Peoples), Pittsburgh, PA
The River Gas Com. (River), Marietta, OH
Virginia Natural Gas, Inc. (VNG), Norfolk, VA
Republic Engineered Steels, Inc. (Republic) [through Agent East Ohio Gas Co., Cleveland, OH]

(3) Affiliation between CNG and Buyer:

All of the above except Republic Engineered Steels, Inc. are LDC affiliates of CNG, owned by the same parent, Consolidated Natural Gas Co. There is no affiliation between CNG and Republic, but CNG affiliate, East Ohio is acting as Republic's agent for the purposes of securing gas supplies.

(4) Nature of Affiliate Involvement:

In each case but one the CNG affiliate is the purchaser. In addition, East Ohio is acting as Agent for Republic, for the purpose of securing gas supplies. Republic is the actual purchaser, but East Ohio may be "involved" in the sale, due to its agency relationship with Republic.

(5) Term of Sale:

The agreements with East Ohio, Republic, VNG and Hope are for a 6-month primary term and month to month thereafter, terminable by either party on 30 days' notice. The agreement with River is for 2 months, with the same month-to-month provision thereafter. The Peoples agreement is for 1 year, month-to-month afterwards.

(6) Estimated Total and Maximum Daily Quantities:

The maximum daily quantities are specified in Article I of each Service Agreement. The anticipated total quantities by customer are as follows:

	Bcf
East Ohio	4.300
Peoples	.760
Hope	.550
River	.096
VNG	2.000

(7) Maximum and Minimum Rates:

The maximum sales rate will be the 100% load factor RQ rate. The minimum will be the actual WACOG, plus adjustments. The contracts all provide for payment of the maximum USA rates unless otherwise agreed. Except for Republic Steels, the actual rate to be charged will be $2.68 per Mcf, provided that it is within the specified maximum-minimum range. Republic, which is a transaction unrelated to the others, will have a negotiated rate within the USA range.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of December 20, 1988. If no protest is filed

within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, CNG may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19537 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-22-005 and GT91-34-000]

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

August 9, 1991.

Take notice that on August 5, 1991, Natural Gas Pipeline Company of America (Natural) tendered for filing the proposed tariff sheets listed in Exhibit 1 attached to the filing, to be part of its FERC Gas Tariff, to be effective August 1, 1991.

Natural states that the tariff sheets are submitted in compliance with the Commission's Order issued July 25, 1991, at Docket Nos. RP91-22, RP91-31 and CP89-1281, *et al.* Natural notes that the tariff sheets reflect the provisions of Natural's Stipulation and Agreement on Transition Cost Recovery (Settlement) which was approved by the Commission in the above mentioned order.

In addition, Natural also submitted tariff revisions that it states are necessary to comply with Order No. 500-K issued April 4, 1991, at Docket Nos. RM87-34-065, *et al.*

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective August 1, 1991. The effective date is consistent with the provisions of the Settlement.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional sales customers, interested state regulatory agencies and all parties set out on the official service list at Docket Nos. RP91-22, RP91-31 and CP89-1281, *et al.*

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 16, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19538 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP91-12-000]

OXY USA, Inc.; Petition for Waiver

August 12, 1991.

Take notice that on August 5, 1991, OXY USA, Inc. (OXY) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Rule 207, a petition requesting waiver of § 154.94(b) of the Commission's regulations. The waiver would allow the price set forth in a contract amendment to become effective June 1, 1980, and allow OXY to retain the difference between the otherwise effective filed rate and the amended contract rate for the period June 1, 1980 through September 21, 1984, amounting to $352,403.88.

OXY states that Columbia purchased gas from nine wells in Raleigh County, West Virginia, under OXY (formerly Cities Service Company) Rate Schedule No. 271. OXY applied for, and received, NGPA section 108 (stripper) well classification for each of these wells prior to June 1, 1980. The rate on file for these wells was the then-effective contract rate of $0.29/Mcf, which subsequently escalated to the NGPA section 104 minimum rate effective November 1983.

OXY states that in November 1980, Columbia submitted to OXY a contract amendment for the rate schedule covering these wells. The amendment raised the contract price to $1.031 per MMBtu, to be escalated monthly by the escalation factor for NGPA section 102 gas. OXY filed the amendment in August 1984, requesting an effective date of June 1, 1980. OXY's filing was accepted by the Commission with an effective date of September 21, 1984.

In February 1985, Columbia paid to OXY a sum equal to the difference between the old contract rate and the NGPA section 108 rate. Contemporaneously with the filing of its petition, OXY states it is filing with the Commission a refund report showing that a refund to Columbia of $1,472,719.04 principal and interest, has been made, reflecting the difference between the NGPA section 108 rate and the lower contract rate specified in the June 1, 1980 amendment for gas produced from June of 1980 forward. The waiver if granted would permit OXY to retain the difference between the old contract rate and the amended contract rate by allowing the contract amendment to be effective commencing June 1, 1980.

Any person desiring to be heard or protest this petition should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests shall be filed within 30 days following publication of this notice in the Federal Register. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19530 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000 and RP90-119-001 (Phase II/PCBs)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

August 12, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on August 29, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of resolving the PCB-related issues.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin at (202) 208-0042 or Arnold H. Meltz at (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19531 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000, RP90-119-001, RP91-4-000 and RP91-119-000 (Phase I/Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

August 12, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on August 21 and 22, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing issues related to transition costs, comparability of service, rate design and cost allocation.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin at (202) 208-0042 or Arnold H. Meltz at (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19532 Filed 8-15-91; 8:45 am]

BILLING CODE 6717-01-M

Proposed Power Rate Extension; Opportunities for Public Review and Comment

AGENCY: Southwestern Power Administration (Southwestern), Department of Energy (DOE).

ACTION: Notice of proposed Sam Rayburn Dam power rate extension and opportunities for public review and comment.

SUMMARY: The Current Sam Rayburn Dam (Rayburn) project rate was approved by the Federal Energy Regulatory Commission (FERC) on October 11, 1988. This rate was effective July 1, 1988, and will expire September 30, 1991. The Administrator, Southwestern, has prepared Current and Revised 1991 Power Repayment Studies for Rayburn which show a need for a minor rate adjustment of $13,884 (0.8 percent increase) in annual revenues. In accordance with Southwestern's Rate Adjustment Threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of plus-or-minus two percent, deferral of a formal rate filing is in the best interest of the Government. Also, the Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR 903.22(h) and 903.23(a). In accordance with DOE rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rate be extended for a one-year period effective through September 30, 1992.

DATE: Written comments are due on or before September 3, 1991.

ADDRESS: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Morin, Acting Director, Administration and Rates, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7439.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Rayburn project, located in eastern Texas, is not operated as a part of Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Rayburn project is marketed by Southwestern on an isolated basis under a contract through which the customer purchases the entire power output of the project at the dam. The Robert D. Willis project, located on the Neches River downstream from Rayburn, is also marketed as an isolated project under a contract through which the customer receives the entire output of the project as a result of funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its operation being hydraulically, electrically, and/or financially isolated.

The Rayburn project is located on the Angelina River in the State of Texas in the Neches River Basin. Since the beginning of its operation in 1965, it has been marketed as an isolated project, under a contract with the Sam Rayburn Dam Electric Cooperative, Inc. The contract originally provided for a rate of $79,167 per month ($950,004 annually). This rate was subsequently increased several times since and, on October 11, 1988, the Federal Energy Regulatory Commission (FERC) approved an increase in the rate to $1,810,368 for the period July 1, 1988, through September 30, 1991, which is the current annual rate for the output of the project.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1991 Current Power Repayment Study (PRS) for the Rayburn project using the existing annual rate of $1,810,368. The 1991 Current PRS shows the actual status of repayment through FY 1990 at $7,479,969 on a total investment of $23,873,102. The 1991 Revised PRS indicates the need for an increase in annual revenue of $13,884, or 0.8 percent, over and above the present annual rate of $1,810,368.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold, which was established in 1987, was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. Rayburn's 1990 (last year's) PRS concluded that the rate at the project needed to be increased by 1.4 percent. At that time, it was determined prudent to defer the increase in accordance with the established threshold. As previously cited, the 1991 (this year's) PRS indicates that revenues would need to be increased by 0.8 percent, or $13,884 per year. It, once again, seems prudent to defer a rate adjustment in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the 1992 (next year's) PRS.

On October 1, 1988, Rayburn's current annual rate of $1,810,368 was confirmed and approved by the FERC on a final basis for a period that ends on September 30, 1991. In accordance with 10 CFR 903.22(h) and 903.23(a), the Deputy Secretary may extend a rate on an interim basis beyond the period specified by the FERC. As a result of the

benefits obtained by a rate adjustment deferral and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to extend Rayburn's current rate of $1,810,368 per year, for the one-year period beginning October 1, 1991, and extending through September 30, 1992.

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Rayburn project. If you desire a copy of the Repayment Study Data Package for the Rayburn project, please submit your request to: Mr. Richard E. Morin, Acting Director, Administration and Rates, P.O. 1619, Tulsa, OK 74101, (918) 581–7439.

Following review of the written comments, the Administrator will submit the rate extension proposal for the Rayburn project to the Deputy Secretary of Energy for confirmation and approval.

Issued in Tulsa, Oklahoma, this 30th day of July, 1991.

Charles A. Borchardt,

Acting Administrator, Southwestern Power Administration.

[FR Doc. 91–19652 Filed 8–15–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–3985–2]

Fuel Economy Retrofit Device Evaluation for the Platinum Gasaver

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the completion of the EPA evaluation of the "Platinum Gasaver" under provisions of section 511 of the Motor Vehicle Information and Cost Savings Act. The notice also announces our findings, conclusions, and the availability of the report.

SUPPLEMENTARY INFORMATION:

I. Background

Section 511(b)(1) and section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) "Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate."

(c) "The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) The effect of any retrofit device on fuel economy;

(2) The effect of any such device on emissions of air pollutants; and

(3) Any other information which the Administrator determines to be relevant in evaluating such device."

EPA published final regulations establishing procedures for conducting evaluations of fuel economy retrofit devices on March 23, 1979 [44 FR 17946].

II. Origin of Request for Evaluation, Device Descriptions and Report Identification

This second evaluation of the *Platinum Gasaver* device was conducted upon the request of the Federal Trade Commission.

The Platinum Gasaver is a vapor bleed device. It functions by bleeding a mixture of air and "platinum concentrate" through a "T" connection that is installed in the Positive Crankcase Ventilation (PCV) line. The device consists of a liquid reservoir, proprietary liquids, an orifice, and connecting tubing to the PCV line. During vehicle operation, air is drawn through the controlling orifice by engine manifold vacuum. The device is claimed to reduce emissions, improve fuel economy, raise the octane of gasoline, and extend engine life.

Report: "Second EPA Evaluation of the Platinum Gasaver Device Under section 511 of the Motor Vehicle Information and Cost Savings Act", Report Number EPA–AA–TEB–511–91–1 contains the analysis and conclusions and consists of 22 pages including all attachments.

EPA also tested the Platinum Gasaver device. The EPA testing is described completely in the report "Emissions and Fuel Economy Effects of the Platinum Gasaver, a Retrofit Device", EPA–AA–TEB–91–2, consisting of 16 pages. This report is contained in the preceding 511 Evaluation as an attachment.

III. Availability of Evaluation Reports

Copies of these reports may be obtained from the National Technical Information Service by using the above report numbers. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: (703) 487–4650 or FTS 737–4650.

IV. Summary of Evaluation

EPA fully considered all of the information submitted for the device. The evaluation of the Platinum Gasaver device was based on that information and the results of the EPA test program.

Three typical vehicles were tested at EPA's Motor Vehicle Emission Laboratory. The basic test sequence included 2,000 miles of mileage accumulation, replicate Federal Test Procedures (FTP) and replicate Highway Fuel Economy Tests (HFET). This test sequence was conducted both without and with the Platinum Gasaver installed.

The overall conclusion is that the Platinum Gasaver did not significantly change vehicle emissions or fuel economy for either the FTP or HFET. The device clearly did not produce the large—greater than 20 percent—fuel economy benefits claimed by the manufacturer. Therefore, users of the device would not be expected to realize either an emission or fuel economy benefit. Vehicle operation and performance were unchanged by the device.

FOR FURTHER INFORMATION CONTACT: Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668–4299.

Dated: August 9, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–19604 Filed 8–15–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3984–9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed August 5, 1991 Through August 9, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910263, Final EIS, EPA, MS, Pascagoula Harbor Ocean Dredged Material Disposal Site (ODMDs), Designation, Gulf of Mexico, Pascagoula, MS, Due: September 16, 1991, Contact: Jeffrey A. Kellam (404) 347–1740.

EIS No. 910264, Final Supplement, AFS, CO, Grand Mesa, Uncompahgre and Gunnison National Forests, Land and

Resource Management Plan, Timber Management Amendment, Implementation, Several Counties, CO, Due: September 16, 1991, Contact: R.E. Greffenius (303) 874-7691.

EIS No. 910265, Draft EIS, BLM, CA, South Coast Planning Area, Land and Resource Management Plan, Implementation, California Desert District, San Diego, Riverside, San Bernardino, Los Angeles, and Orange Counties, CA, Due: November 15, 1991, Contact: Duane Winters (619) 323-4421.

EIS No. 910266, Final EIS, AFS, UT, Chepeta Lake, Whiterocks River and Lakeshore Basin Allotment Management Plans, Updated and Issuance of Grazing Permits, Ashley National Forest, Vernal Ranger District, Duchesne and Uintah Counties, UT, Due: September 16, 1991, Contact: Kathy Paulin (801) 789-1118.

EIS No. 910267, Final EIS, AFS, AK, Crystal Mountain or Sumner Mountain Communication Site, Designation/Nondesignation, New and Additional Information, Tongass National Forest, Strikine Area, AK, Due: September 16, 1991, Contact: Mark Hummel (907) 772-3841.

EIS No. 910268, Draft EIS, AFS, WA, Lafferty Timber Sale and Road Construction, Implementation, Wenatchee National Forest, First Creek Area, Chelan Ranger District, Chelan County, WA, Due: September 30, 1991, Contact: Darlene Robbins (509) 784-1511.

EIS No. 910269, Final EIS, VAD, IL, Northeastern Illinois Area National Cemetery Development, Construction and Operation, Site Selection, Fort Sheridan, Grant Park, Cissna Park, Possible Section 404 Permit, Lake, Kankakee and Iroquois Counties, IL, Due: September 16, 1991, Contact: Robert Frazier (202) 233-7085.

Amended Notices

EIS No. 900202, Draft EIS, AFS, CA, Goleta and Gaviota Substations 66kV Transmission Line Construction, Phase I, Goleta Substation to Exgen Substation, Las Flores Canyon, Santa Barbara County, CA, Due: August 6, 1990, Contact: Raul Barker (705) 705-2870.

Published FR 06-22-90—Officially Withdrawn by Preparing Agency.

EIS No. 900283, Draft EIS, IBR, CA, South Delta Water Management Program, Phase I of Water Banking Program, Implementation, COE section 10 and 404 Permits, San Joaquin River, San Joaquin Delta, CA, Due: September 30, 1991, Contact: Wayne Deason (916) 324-9336.

Published FR 08-10-90—Review period reopened and extended.

EIS No. 910114, Regulatory Draft EIS, OSM, Revisions to the Permanent Program Regulations Implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Addressing Valid Existing Rights (VER), Due: September 16, 1991, Contact: Andrew F. DeVito (202) 343-5150.

Published FR 04-19-91—Review period extended.

EIS No. 910282, Draft EIS, EPA, VA, Offshore Norfolk Ocean Dredged Material Disposal Site, Designation, Norfolk, VA, Due: September 30, 1991, Contact: William Muir (215) 597-2541.

Published FR 08-09-91—Withdraw due to noncompliance of distribution.

Dated: August 13, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-19673 Filed 8-15-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3985-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 29, 1991 through August 2, 1991 pursuant to the Environment 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) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-J61084-UT Rating EC2, Brighton Ski Resort Area Development and Master Plan, Approval, Possible New Long-Term Special Use Permit and COE section 404 Permit, Wasatch-Cache and Uinta National Forests, Big Cottonwood Canyon, Salt Lake and Wasatch Counties, UT.

Summary

EPA is concerned that Alternative D may result in impacts to water, air, and wetlands resources in the project area. The final EIS should discuss indirect impacts from secondary development.

ERP No. D-AFS-J65182-MT Rating EC2, Spring Creek Timber Sales and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Musselshell Ranger District, Little Belt Mountains, Meagher and Harlowton, MT.

Summary

EPA is concerned that the draft EIS does not fully address wildlife issues or provide a monitoring plan to ensure that project activities will comply with state water quality standards. The final EIS should provide the rationale for selecting alternative 5 over environmentally preferable alternative 7.

Final EISs

ERP No. F-AFS-J65166-UT, Tippets Valley Timber Harvest Project, Timber Sale and Road Construction, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

Summary

EPA has no objections to the proposed project.

ERP No. F-AFS-J65167-MT, Lost Silver Timber Harvest Project, Timber Sale and Road Construction, Implementation, Flathead National Forest, Horse Ranger District, Flathead County, MT.

Summary

EPA believes the final EIS adequately discloses the potential impacts of harvest activities. EPA also believes that both proposed and follow-up monitoring are needed to ensure that water quality objectives will be met.

ERP No. F-AFS-J82014-MT, Flathead National Forest Noxious Weeds Management Project, Herbicide Use on Seven Sites, Bob Marshall Wilderness Area, Implementation, Spotted Bear and Hungry Horse Ranger Districts, Flathead County, MT.

Summary

EPA commends the quality of the final EIS, but is concerned that alternatives to chemical treatments were not also selected by the Forest Service for weed control.

ERP No. F-AFS-L65139-ID, West Moyie Decision Area Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forest, Bonners Ferry Ranger District, Boundary County, ID.

Summary

EPA reviewed the final EIS and had no objections to the preferred alternative.

Dated: August 13, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-19674 Filed 8-15-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3984-6]

Open Subcommittee Meetings of the Committee on National Accreditation of Environmental Laboratories

Under the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Committee on National Accreditation of Environmental Laboratories will be holding a series of subcommittee meetings. These meetings may be held by teleconference.

Three subcommittees will convene to discuss the following aspects of a national environmental laboratory accreditation program: (a) The needs of all affected parties, (b) the definition of the scope, and (c) the basic elements of a national program. A fourth committee will convene to identify and evaluate alternatives to a national environmental laboratory accreditation program. These subcommittees are charged with gathering information, analyzing relevant issues and facts, and drafting position papers for deliberation by the full advisory committee.

Members of the public may participate by providing oral or written comment or by listening to any calls. The availability to participate on teleconferences is limited by the nature of the teleconference call equipment. In the case of a teleconference call, opportunities for oral comment will be limited to a total of 15 minutes per teleconference call. Written comment should be submitted (10 copies) as soon as possible. If interested in attending please write or send a business card with name and address to Jeanne Hankins, US EPA (WH-550G), 401 M Street, SW., Washington, DC 20460. Any members of the public who have previously submitted their names for inclusion on the mailing list are requested to please confirm in writing their desire to be on the mailing list. All persons included on the mailing list will be notified of time and location of each subcommittee meeting.

A briefing on each subcommittee meeting will be provided at the next meeting of the Committee on National Accreditation of Environmental Laboratories to be held later this year.

Dated: August 9, 1991.

E. Ramona Trovato,

Executive Secretary, Environmental Monitoring Management Council.

[FR Doc. 91-19602 Filed 8-15-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3984-7]

Notice to Extend Comment Period for Proposed De Minimis Settlement Under 122(G), Colorado Avenue Subsite, Hastings Ground Water Contamination Site

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period for proposed De Minimis Settlement under 122(g), Colorado Avenue Subsite.

SUMMARY: The United States Environmental Protection Agency is extending the comment period to submit comments on the proposed de minimis administrative settlement for the Colorado Avenue Subsite to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9622(g). Notice of settlement was published in the **Federal Register** on July 10, 1991.

DATES: Written comments must be provided on or before September 9, 1991.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of the Colorado Avenue Subsite of the Hastings Groundwater Contamination Site, Hastings, Nebraska, EPA Docket No. VII-90-F-0025.

FOR FURTHER INFORMATION CONTACT: Audrey Asher, United States Environmental Protection Agency, Office of Regional Counsel, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7255.

Morris Kay,

Regional Administrator.

[FR Doc. 91-19605 Filed 8-15-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 9, 1991

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, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. 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: 3060-0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (Report and Order, CC Docket 90-571).

Action: Revision.

Respondents: Individuals or households, state or local governments, and businesses or other for-profit.

Frequency of Response: On occasion and Other: Renewal is every 5 years.

Estimated Annual Burden: 72 responses; 112.64 hours average burden per response; 8,110 hours total annual burden.

Needs and Uses: The attached *Report and Order* amends 47 CFR parts 0 and 64 to promulgate rules and regulations to implement certain provisions of the Americans with Disabilities Act of 1990 (ADA). The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal government play a central role in enforcing these standards on behalf of individuals with disabilities. Title IV of the ADA adds new section 225 of the Communications Act of 1934, amends section 711 and makes conforming amendments to sections 2(b) and 221(b). Section 225 requires the Commission to promulgate regulations that require all domestic telephone common carriers to provide telecommunications relay services (TRS). Section 711 requires any broadcast television public service announcement funded by the Federal

government to include closed captioning. Section 64.605 of the Commission's rules describes the state certification procedures by which states may apply to assert jurisdiction over the provisions of intrastate TRS. The information submitted in response to the state certification program will be used to determine whether the program is certifiable under Federal requirements. Information submitted by complainants will be used to determine the merits of the complaints, and to attempt resolution.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 91-19514 Filed 8-15-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Alaska Sightseeing Tours, Inc., 4th and Battery Building., #700, Seattle, WA 98121

Vessel: Spirit of Glacier Bay

Dated: August 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-19638 Filed 8-15-91; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2095R.

Name: J.D. MacDonald & Co., Inc.

Address: One Massachusetts Tech Center, Logan Airport, Box 487, East Boston, MA 02128.

Date Revoked: November 16, 1990.

Reason: Surrendered license voluntarily.

License Number: 2812.

Name: F.B. Vandegrift & Co., Inc.

Address: 222-16 144th Ave., (South Conduit) Springfield Gardens, NY 11413.

Date Revoked: December 7, 1990.

Reason: Failed to furnish a valid surety bond.

License Number: 2177.

Name: Bill White, Inc.

Address: 343 S. Glasgow Ave., Inglewood, CA 90301.

Date Revoked: April 14, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 2765.

Name: Tri-Way Movers Inc. dba Tri-Ways International, Movers.

Address: 15702 Producer Lane, Unit C, Hunting Beach, CA 92649.

Date Revoked: June 4, 1991.

Reason: Surrendered license voluntarily.

License Number: 997R.

Name: James A. Bronson, Inc. dba Gladish & Associates.

Address: 1511 Third Avenue, 8th Floor, Seattle, WA 98101.

Date Revoked: June 4, 1991.

Reason: Surrendered license voluntarily.

License Number: 3432.

Name: Coral International Transport, Inc.

Address: 142 Mine Lake Court, Raleigh, NC 27615.

Date Revoked: June 28, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 159.

Name: Trans-International Forwarders, Inc.

Address: One World Trade Center, Suite 8955, New York, NY 10048.

Date Revoked: July 16, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 1657R.

Name: American Forwarding Services, Inc.

Address: Hemisphere Center, Routes 1 & 9 South, Newark, NJ 07114.

Date Revoked: July 26, 1991.

Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 91-19637 Filed 8-15-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Notice of final list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990 requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply. The Centers for Disease Control (CDC) published an interim list and request for comments on May 16, 1991 (56 FR 22726). Six comments were received. The interim list was reviewed in light of the comments and the final list is set forth below.

EFFECTIVE DATE: August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Morris E. Potter, National Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C09, Atlanta, Georgia 30333; telephone (404) 639-2237.

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;
2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
3. Publish the methods by which such diseases are transmitted; and
4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually.

After consultation with the Food and Drug Administration, the National Institutes of Health, State and local health officers, and national public health organizations, CDC published an interim list and request for comments in the **Federal Register** on May 16, 1991 (56 FR 22726).

Six written comments were received; four before publication of the interim list and two during the comment period. Organizations representing the food

processing/food service industries provided four of the comments; a professional medical association and an association representing State, local, and federal public health regulatory officials also submitted comments. In general, the commenters approved of the approach taken in response to the Act's requirement, especially the listing of relevant signs and symptoms that indicate the possibility of elevated risk of transmission of infectious and communicable diseases through the handling of the food supply.

Comment: Food industry associations and the medical association expressed the view that persons who are sick should not handle food and therefore advocated expanding the list of include upper and lower respiratory tract infections.

Response: Section 103(d) of the Act specifies that the infectious and communicable diseases to be listed are those that are transmitted from infected food workers through the handling of the food supply. Therefore, while infectious and communicable diseases exist that can be transmitted to the public and coworkers by routes other than through food, diseases spread through the air are inappropriate on this list. However, appropriate measures undertaken to protect the public's health from non-foodborne diseases should not be constrained by this list.

Comment: Commenters suggested that a wider range of skin lesions should be included (e.g., rashes, boils, acne, and burns).

Response: Open skin lesions are included on the list to protect consumers from foodborne exposure to *Staphylococcus aureus* and *Streptococcus pyogenes*. While intact skin provides a measure of protection, the presence of unruptured boils could indicate elevated risk to the public, and therefore boils are included in the final list.

Comment: One respondent from the food service industry advocated adding to the list headache, unusual fatigue, unexplained chills, and conditions which would be likely to increase manual or airborne exposure to secretions and excretions, such as colostomy/ileostomy pouches, urinary catheters/pouches, incontinence, nasal catheters, blood clotting disorders, or other invasive or indwelling devices.

Response: Headache, unusual fatigue, and unexplained chills are not specific to or indicative of foodborne diseases that are likely to be transmitted from infected food workers through contamination of the food supply and are, therefore, inappropriate on this list. Persons with medical conditions that increase their contact with their secretions and excretions certainly require additional education about prevention of fecaloral transmission of disease-producing microorganisms and training regarding hand washing. However, in the absence of evidence of infection by one of the listed pathogenic microorganisms, persons with such medical conditions do not require special consideration under section 103(d) of the Act.

Comment: Comment was made that identifying pathogenic microorganisms by name and providing separate lists of pathogens that are often transmitted by contamination of the food supply and occasionally transmitted by such contamination is not helpful to managers in the food processing/food service industries.

Response: The signs and symptoms in the list can inform the public and alert food workers and their employers of the possibility of increased risk of transmission of infectious diseases. Identifying specific pathogens and separating them according to whether infected food workers play a major or minor role may be helpful in guiding medical care providers and public health officials who may examine the food workers and determine the appropriate public health response. Separating diseases according to whether infected food workers play a major or minor role also emphasizes the importance of primary contamination of raw food ingredients in the epidemiology of foodborne disease.

Comment: Two respondents encouraged adding to the list food workers living with a person infected by the hepatitis A virus and having travelled to countries with high rates of enteric diseases, including hepatitis A.

Response: Persons infected with hepatitis A can transmit their infection for a few days before they become clinically ill. However, everyone exposed does not become infected, and it seems unreasonable to exclude from food service all workers who have been potentially exposed to hepatitis A virus until they have passed the 15- to 50-day incubation period for the disease.

Comment: The association representing regulatory officials advocated limiting the list to those diseases for which risk of transmission from infected food workers through contamination of the food supply has been established.

Response: In fact, the list only contains such diseases. As provided in the Act, we will consider new information as it becomes available and will update the list with additional pathogenic microorganisms when scientific evidence indicates that it is appropriate.

Therefore the final list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted are set forth below:

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and the Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and contamination during processing are more important causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by one of these pathogens: diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food employees to wash hands (in situations such as after using the toilet, handling raw chicken, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also important in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following:

Hepatitis A virus
Norwalk and Norwalk-like viruses
Salmonella typhi
Shigella species
Staphylococcus aureus
Streptococcus pyogenes

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons who Handle Food, But Usually Transmitted By Contamination at the Source or in Food Processing or by Nonfoodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens:

Campylobacter jejuni
Entamoeba histolytica
Enterohemorrhagic *Escherichia coli*
Enterotoxigenic *Escherichia coli*
Giardia lamblia
Nontyphoidal *Salmonella*
Rotavirus
Vibrio cholerae 01
Yersinia enterocolitica

References

1. World Health Organization. *Health surveillance and management procedures for food-handling personnel: report of a WHO consultation.* World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.

2. Frank JF, Barnhart HM, Food and dairy sanitation. In: Last JM, ed. *Maxcy-Rosenau public health and preventive medicine,* 12th edition. New York: Appleton-Century-Crofts, 1986:765–806.

3. Bennett JV, Holmberg SD, Rogers MF, Solomon SL. Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. *Closing the gap: the burden of unnecessary illness.* New York: Oxford University Press, 1987:102–114.

Dated: August 9, 1991.

Walter R. Dowdle,

Acting Director, Centers for Disease Control.

[FR Doc. 91–19567 Filed 8–15–91; 8:45 am]

BILLING CODE 4160–18–M

[Program Announcement 140]

Breast and Cervical Cancer Education for Primary Care Providers; Amendment

A notice announcing the availability of funds for Fiscal Year 1991 for cooperative agreements for the Breast and Cervical Cancer Education for Primary Care Providers was published on July 17, 1991, (56 FR 32577). The notice is amended as follows:

On page 32578, first column, the heading "Application Submission and Deadline" is amended as follows: The original and two copies of the completed application Form PHS–5161–1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Mailstop E–14, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before September 4, 1991. Applications will be considered to meet the deadline if they are received at the above address on or before the stated deadline or if they bear a postmark of September 4, 1991, and are received in time for submission to the independent review group. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

All other information and requirements in the notice remain the same.

Dated: August 12, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–19564 Filed 8–15–91; 8:45 am]

BILLING CODE 4160–18–M

[Announcement Number 159]

Availability of Federal Funds for Fiscal Year 1991 for Cooperative Agreements for Surveillance and Epidemiologic Studies for the Prevention of Infectious Diseases and Injuries in Children in Child Day Care Settings

Introduction

The Centers for Disease Control (CDC) announces a program for competitive cooperative agreement applications to conduct surveillance and epidemiologic investigations for the prevention of infectious diseases and injuries in children in child day care settings. For purposes of this cooperative agreement, child day care is defined as care provided to children outside the home for at least 10 hours per week in child day care centers, child day care homes, family group homes, or similar settings. Funds will be provided to: (1) Conduct surveillance and epidemiologic studies to monitor trends and to determine risk factors for infectious diseases and injuries; (2) develop, implement and evaluate prevention and control strategies for infectious diseases and injuries; and (3) conduct studies to evaluate the economic and other impacts of these strategies for prevention and control of infectious diseases and injuries.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of unintentional injuries, maternal and infant health, immunization and infectious diseases, and surveillance and data systems. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 301(a). 317(k)(3) and 392 of the Public Health Service Act [42 U.S.C. 241(a), 247b(k)(3), and 280b–1].

Eligible Applicants

Eligible applicants for this program are the official public health agencies of states and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau; serving cities and counties with populations greater than one million persons as determined by the 1990 census.

Collaborations with academic health centers are encouraged.

Availability of Funds

Approximately $400,000 will be available in Fiscal Year 1991 to fund 1 or 2 cooperative agreements. Cooperative agreements are expected to begin on or about September 25, 1991, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. There are no matching or cost participation requirements; however, the applicant's anticipated contribution to the overall program costs, if any, should be provided on the application. Funds awarded under this cooperative agreement should not be used to supplant existing state expenditures in this area.

Purpose

The purpose of these cooperative agreements is to provide assistance in: (1) Determining demographic characteristics of child day care settings in a specified city or county through a survey of child day care centers, family and group homes and other types of child day care settings; (2) establishing and maintaining an active surveillance system for infectious diseases and injuries in child day care; (3) assessing risk factors for illness and injury in child day care facilities; (4) developing, implementing and evaluating specific prevention and intervention strategies including education and information dissemination designed to reduce the transmission of infectious diseases and the occurrence of injuries in child day care settings; and (5) developing methodology to assess economic and other impacts of diseases and injuries in child day care and comparative costs and potential cost-savings of prevention and control strategies. Each recipient

will conduct program activities within a single city or county.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under Item A. below and CDC shall be responsible for conducting activities under Item B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Survey and describe the demography of child day care settings within the city or county under study and define child day care settings within the city or county so as to identify appropriate reporting and sampling units for surveillance and epidemiologic studies.

2. Establish, maintain and evaluate an active surveillance system with the capacity to monitor trends and to identify changes in disease incidence and prevalence as a result of interventions.

3. Using this active surveillance system, collect, analyze, and disseminate information which should include, but not be limited to, incidence of illness and injury in children and staff, detection of outbreaks, information on number of days lost to children and staff from illness or injury per selected time period, and, in selected samples, incidence of illness in household contacts. Injury surveillance should be limited to those situations which necessitate medical or dental attention or a visit to an emergency facility within 24 hours of occurrence. Using these data, determine what proportion of child day care-related illness and injury is currently reported through the existing public health surveillance system.

4. Conduct epidemiologic studies to identify and assess risk factors for infectious diseases and injuries in child day care settings.

5. Conduct a baseline survey of infection and injury prevention and control knowledge, attitudes, behaviors and policies among managers and staff of child day care centers and other child day care settings and parents of children in child day care settings.

6. Participate in the analysis of research information and presentation of research findings.

In the second and third years, pending the availability of funds, recipients will be required to perform the following activities:

1. Develop, implement, and evaluate prevention/intervention strategies.

a. Devise, implement, and evaluate strategies for the prevention and control of infectious diseases and injuries based on existing studies and published recommendations and standards and on the results of surveillance and epidemiologic data collected during the first year.

b. Determine the relative cost effectiveness of interventions. Based upon the prevalence and severity of injuries and the cost of interventions, determine which risk factors should be addressed and which interventions should be recommended.

c. Develop, publish, and disseminate information on the prevalence, incidence, risk factors, and successful prevention/intervention strategies for selected infectious diseases and injuries in children who attend child day care.

d. Develop new educational materials specifically for local and state health departments, child care organizations, child day care management and staff, and parents concerning prevention and control of infectious diseases and injuries in child day care facilities.

e. Develop innovative and effective training materials on infectious disease and injuries prevention for child care staff including sound-slides series, video tapes, and self education workbooks.

f. Develop recommendations for more effective and standardized site inspection methods.

g. Design inspection data record keeping systems that integrate data from fire/safety and food/kitchen inspection programs that are often performed by different government organizations.

h. Conduct a follow-up survey of knowledge, attitudes and behaviors using the population and methods developed in item A.5. under recipient activities above.

2. Develop methodology for assessing economic and other impacts of infectious diseases and injuries associated with child day care in such a way that the data can be used to analyze the cost/benefit of prevention strategies.

B. CDC Activities

1. Provide technical assistance in the design and conduct of research and in the design of educational and training strategies and the dissemination of educational and training materials.

2. Provide assistance to recipients regarding development of study protocols, data collection methods, and analyses as necessary.

3. Assist in the development of data management processes.

4. Participate in the analysis of research information and presentation of research findings. Ensure that data on the epidemiology of injuries in child day care settings are appropriately and specifically compared to existing data on the epidemiology of childhood injuries in the home.

5. Form a panel of epidemiologists, health educators, state/local health department managers, university child health/injury specialists, child day care managers, et. to review prevention/control recommendations and educational materials before they are disseminated as a package. Each panel will be composed of individuals known to have expertise in the area of interest.

Review and Evaluation Criteria

Applications will be reviewed and evaluated based on the following weighted criteria:

A. The applicant's understanding of the purpose of the proposed activity and the feasibility of accomplishing the outcomes described (10%).

B. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and ability to access appropriate target populations or study objects (10%).

C. The extent to which these target populations and study objects will ensure an adequate sample size and representativeness of both the type of child day care setting (number of "centers," "group homes" and "family homes") and of the cultural diversity of the population so that epidemiologic analysis of risk factors and evaluations of intervention strategies will be appropriate and statistically valid (10%).

D. The adequacy of the plan for establishing the active surveillance system described under recipient activities and supporting evidence that applicant can implement and maintain this system (25%).

E. The extent to which applicant demonstrates capacity for timely access to public health surveillance data from the jurisdiction or area under study, and a capacity to integrate future surveillance activities into existing surveillance systems (15%).

F. The degree to which the proposed objectives are consistent with the defined purpose of this program, specific, measurable and time-phased (10%).

G. The degree to which program plans will be able to achieve the objectives, and the quality of the methods and instruments to be used to evaluate the program (10%).

H. The qualifications, including training and experience, of project personnel, and the projected level of effort by each toward accomplishment of the proposed activities (10%).

I. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds (not numerically scored).

Other Requirements

This program involves research on human subjects. Therefore, all applicants must comply with Public Law 93–348 regarding the protection of human subjects. Assurances must be provided that demonstrate that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Data collection initiated under this cooperative agreement has been approved by the Office of Management and Budget under number 0920–0269, Title: "Surveys of Policies and Practices in Day Care Settings," Expiration date October 1991. [A request for extension of this information collection is currently in process.]

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This order sets up a system for State and local review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Centers for Disease Control, Attention: Candice Nowicki, Grants Management Officer, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305 no later than 30 days after the application deadline date for the new awards (the appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within fiscal year 1991). The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 must be submitted to Candice Nowicki, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E14, Atlanta, Georgia 30305 on or before August 23, 1991.

Applications will be considered to meet the deadline if they are:

1. Received on or before the stated deadline date, or,

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable proof of timely mailing.

Applications which do not meet the criteria in 1. or 2. above, will be considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Mailstop E14, Atlanta, Georgia 30305, telephone (404) 842–6595 or FTS 236–6595.

Programmatic technical assistance may be obtained from either Steven L. Solomon, M.D., Associate Director for Epidemiologic Science, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road NE., Mailstop C12, Atlanta. GA 30333, telephone (404) 639–2603 or FTS 236–2603; or, Jeffrey J. Sacks, M.D., Medical Epidemiologist, Center for Environmental Health and Injury Control, Injury Control Division, Centers for Disease Control, Mailstop F36, Atlanta, GA 30333, telephone (404) 488–4652 or FTS 236–4652.

Please refer to Announcement Number 159 when requesting information and submitting an application in response to this Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: August 12, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–19565 Filed 8–15–91; 8:45 am]

BILLING CODE 4160–18–M

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Time and Date: 6 p.m.–9 p.m., Sunday, September 22, 1991; 8 a.m.–12 noon, Monday, September 23, 1991.

Place: CDC, Auditorium A, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters To Be Discussed: The Committee will discuss the state of the art in diabetes care and will begin defining appropriate translation methodologies for clinical and community settings. Specific issues surrounding translation efforts will also be discussed. In addition, Division of Diabetes Translation (DDT) staff will provide updates on the progress of the CDC diabetes program in coordinating the overall effort of the Public

Health Service in translating promising diabetes research findings into clinical and public health practice.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Frederick G. Murphy, Program Analyst, DDT, National Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road NE., (K-10), Atlanta, Georgia 30333, telephone 404/488-5005 or FTS 236-5005.

Dated: August 9, 1991.

Robert L. Foster,

Assistant Director for Special Projects; Office of Program Support; Centers for Disease Control.

[FR Doc. 91-19571 Filed 8-15-91; 8:45 am]

BILLING CODE 4160-18-M

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC), announces the following committee meeting:

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 8 a.m.-5 p.m., September 23, 1991; 8 a.m.-12 noon, September 24, 1991.

Place: Holiday Inn Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters To Be Discussed: The Committee will discuss the external cause of injury coding of hospital discharges, progress in developing a national agenda for injury control, accomplishments of the CDC injury control program, scientific oversight and evaluation activities, intramural research, extramural research grants, and state based surveillance and intervention programs.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: John F. Finklea, M.D., Executive Secretary, ACIPC, Division of Injury Control, National Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road NE., Mailstop F-36, Atlanta, Georgia 30333, telephone 404/488-4690 or FTS 236-4690.

Dated: August 9, 1991.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-19572 Filed 8-15-91; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Long-Term Care Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting (working session).

Name: NCVHS Subcommittee on Long-Term Care Statistics.

Time and Date: 1 p.m.-5 p.m., September 10, 1991.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee's fiscal year 1992 workplan will be discussed during this working session. No public testimony will be taken.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: August 9, 1991.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-19568 Filed 8-15-91; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Ambulatory and Hospital Care Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: 9 a.m.-5 p.m., September 19-20, 1991.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to continue a systematic review of the Uniform Hospital Discharge Data Set. The Subcommittee also will address other aspects of its charge, as time permits.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: August 9, 1991.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-19569 Filed 8-15-91; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on State and Community Health Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting.

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.-5 p.m., September 11-12, 1991.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to continue to explore issues and concerns about the availability of statistics to monitor the health of communities.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph. D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: August 9, 1991.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-19570 Filed 8-15-91; 8:45 am]

BILLING CODE 4160-18-M

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package to OMB since the last publication.

(For a copy of a package, call the FSA, Report Clearance Officer 202-401-5604)

JOB Opportunities and Basic Skills Training (JOBS) Program Tribal Application Preprint—Form ACF-116—

New—Information contained on AFC–116 is used to determine if the Tribal grantee is operating in accordance with its application where issues of compliance arise, either in the executive or judicial sphere. Also, to assess the technical assistance needs of the Tribal grantees in implementing the JOBS program.

Transmittal and Notice of Approval of Tribal Plan Material—Form ACF–117—New—The Tribal application will be forwarded to the Administration for Children and Families via ACF–117. This form will also be used to notify the Tribal grantee of the approval of the JOBS application. *Respondents:* States or local governments/Indian Tribes; *Number of Respondents:* 76; *Frequency of Response:* Biennially; *Average Burden per Response:* 140.25 hours; *Estimated Annual Burden:* 10,659 hours.

OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: August 9, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management & Information Systems.

[FR Doc. 91–19584 Filed 8–15–91; 8:45 am]

BILLING CODE 4150–04–M

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of the package, call the FSA, Report Clearance Officer 202–401–5604)

Title IV–F—JOB Uniform Report Requirement—ACF–332—The information collected will be used to determine the extent to which State JOBS expenditures are made per family component and activity. *Respondents:* State and local governments non-profit institutions; *Number of Respondents:* 54; *Frequency of Response:* Quarterly; *Estimated Average Burden per Response:* 12 hours; *Estimated Annual Burden:* 2,592 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: August 9, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 91–19585 Filed 8–15–91; 8:45 am]

BILLING CODE 4150–04–M

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following are the packages submitted to OMB since the last publication.

(For a copy of a package, call the FSA, Report Clearance Officer 202–401–5604)

Applications and Discontinuances for Aid to Families with Dependent Children (AFDC)—FSA–3800–0970–0003—The information collected on the FSA–3800 is needed to monitor and AFDC program. This form provides basic quarterly information on applications, disposition of applicants and reasons for discontinuances. *Respondents:* State or local government; *Number of Respondents:* 54; *Frequency of Response:* Quarterly; *Average Burden per Response:* 4 hours; *Estimated Annual Burden:* 864 hours.

Fraud Activity Report—FSA–4110—0970–0031—Form 4110 provides information on administrative and legal actions taken in clearly defined instances of willful misrepresentation; developments in prevention of recipient fraud and in working with law enforcement officials; and State actions to eliminate or reduce opportunities for fraud. *Respondents:* State or local government; *Number of Respondents:* 54; *Frequency of Response:* Annually; *Average Burden per Response:* 8; *Estimated Annual Burden;* 432 hours.

OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: August 5, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management & Information Systems.

[FR Doc. 91–19586 Filed 8–15–91; 8:45 am]

BILLING CODE 4150–04–M

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of the package, call the FSA, Report Clearance Officer 202–401–5604)

Requirement for Application and Annual Report, Emergency Community Services Homeless Grant Program (0970–0088). Regulations require annual reports from grantees, in order to supply information for a mandatory HHS annual report to Congress on the Emergency Community Services Homeless Grant Program. *Number of Respondents:* 132; *Frequency of Response:* Annually; *Estimated Average Burden per Response:* 30/80 hours (supporting statement identifies the difference in estimated average burden); *Estimated Annual Burden:* 8,784 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: July 31, 1991.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

[FR Doc. 91–19011 Filed 8–15–91; 8:45 am]

BILLING CODE 4150–04–M

Health Resources and Services Administration

Program Announcement for the Disadvantaged Health Professions Faculty Loan Repayment Program; Correction

ACTION: Semi-Correction.

REFERENCE: FR Doc. 91–18697 which appeared in the **Federal Register** on Wednesday, August 7, 1991, on page 37559.

SUMMARY: This notice is to publish the contract which was inadvertently omitted from publication in the **Federal Register** Wednesday, August 7, 1991 (56 FR 37559). The contract referenced on page 37561, second column, line 2 is published as follows:

Dated: August 13, 1991.

John H. Kelso,

Acting Administrator.

BILLING CODE 4160–15–M

CONTRACT FOR THE DISADVANTAGED HEALTH PROFESSIONS FACULTY LOAN REPAYMENT PROGRAM

WITH

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
HEALTH RESOURCES AND SERVICES ADMINISTRATION
BUREAU OF HEALTH PROFESSIONS

Section 761 of the Public Health Service Act ("Act") [42 United States Code 294 et seq.], as added by Pub. L. 101-527, authorizes the Secretary of Health and Human Services ("Secretary") to repay the educational loans of applicants from disadvantaged backgrounds selected to be participants in the Loan Repayment Program Regarding Service on Faculties of Certain Health Professions Schools ("Faculty Loan Repayment Program"). In return for these loan repayments, applicants must agree to provide teaching faculty services at an approved accredited health professions school determined by the Secretary for a designated period of obligated service pursuant to section 761 of the Act.

Sections 761(e)&(g) of the Act require applicants to submit with their applications a signed contract with an accredited health professions school and a signed contract which states the terms and conditions of participation in the Faculty Loan Repayment Program. The Secretary shall sign only those contracts submitted by applicants who are selected for participation.

The terms and conditions of participating in the Faculty Loan Repayment Program are set forth below:

Section A-Obligations of the Secretary

Subject to the availability of funds appropriated by the Congress of the United States for the Faculty Loan Repayment Program, the Secretary agrees to:

1. Pay, in the amount provided in paragraph 2 of this section, the undersigned applicant's qualifying educational loans. Qualifying educational loans consist of the principal and interest on educational loans received by the applicant for the following expenses of enrollment:

   a. tuition expenses;

   b. all other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant; or

   c. reasonable living expenses as determined by the Secretary.

2. If the applicant agrees to serve 2 or more years:

   a. Except as provided in subparagraph b. of this paragraph, pay annually, for each year of service not more than $20,000 of the principal and interest of the qualified educational loans of such individual due for that year but not to exceed an amount equal to 50 percent of such loan payments due for that year; or

   b. The Secretary's liability will not exceed a cap of $20,000 of principal and interest annually. This would include the amount waived under Sec. 761(f) of the Act for the school's proportionate share of the loan repayment amounts. The applicant must pay that portion not covered.

3. Make loan repayments for a year of obligated service no later than the end of the fiscal year in which the applicant completes such year of service.

Section B-Obligations of the Participant

1. The applicant agrees to:

   a. Continue loan repayments to lenders for the first quarter after which the Secretary will make delayed quarterly payments to applicant for the years stated in paragraph c of this section. Applicant must pay lender(s) these payments.

   b. Serve his or her period of obligated faculty service as contracted with the school and as determined by the Secretary to be acceptable.

   c. Serve in accordance with paragraph b. of this section for _____ years. The applicant must serve a minimum of two years.

2. If the applicant's eligibility to participate in the Faculty Loan Repayment Program is based on section 761(b)(3) of the Act (i.e. based on his or her enrollment in an accredited health professions school), he or she also agrees to:

   a. Maintain full-time enrollment, (as determined by the School), in good academic standing as determined by the School, in the final year of the course of study leading to a degree in medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, nursing, or public health, or schools offering graduate programs in clinical psychology in which the applicant is currently enrolled, until completion of such course of study;

   b. Enter into a contract with an accredited school described in subsection (c) of Section 761 to serve as a member of the faculty of the school for not less than 2 years according to the requirements described in subsection (e)(2) of section 761.

   c. Begin service obligation as contracted.

Section C-Breach of Written Loan Repayment Contract

1. If the participant fails to comply with section B.1.c. of this contract or is dismissed for disciplinary reasons or voluntarily terminates the contracts, neither the Secretary nor the School is obligated to continue loan repayments as stated in Sec. A of this Contract. The participant shall be liable to the United States and the School for the amounts specified in paragraph 2 of this section.

2. If the applicant agrees to serve as a full-time faculty member for two years or more and fails to serve the 2 year minimum requirement, he or she is liable to pay monetary damages to the United States amounting to the sum of (a) the total amounts specified in paragraph 2 of this section plus (b) an "unserved obligation penalty" of $1,000 for each month unserved as set forth in paragraph 3 of this section plus (c) interest, penalties and administrative charges for past due payments.

3. The "Unserved Obligation Penalty" means the amount equal to the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

4. If the applicant agrees to serve more than the 2-year minimum service obligation and has completed the 2-year minimum he or she will be liable for such sums paid for any months that are not a full year beyond the 2-year minimum requirement as agreed to in paragraph 2 of this contract, plus an "unserved obligation penalty" of $1,000 for each month unserved.

5. Any amount the United States is entitled to recover shall be paid within one year of the date the Secretary determines that the applicant is in breach of this written contract. Failure to pay by the due date will incur delinquent charges provided by Federal Law.

Section D-Cancellation, Suspension, & Waiver of Obligation

1. Any service or payment obligation incurred by the applicant under this contract will be canceled upon the applicant's death.
2. The Secretary may waive or suspend the applicant's service or payment obligation incurred under this contract if:

   a. compliance by the applicant with the terms and conditions of this contract is impossible or would involve extreme hardship, and.

   b. enforcement of such obligation would be unconscionable.

The Secretary or his/her authorized representative must sign this contract before it becomes effective.

Applicant Name (**Please Print**) Applicant Signature * Date

Secretary of Health and Human Services or Designee Date

* Before signing, be sure you have completed section B.1.c. on page 1 of this contract indicating the number of years of service you agree to perform.

[FR Doc. 91-19662 Filed 8-15-91; 8:45 am]
BILLING CODE 4160-15-C

National Institutes of Health

Aging Research Task Force; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), and section 301 of The Home Health Care and Alzheimer's Disease Amendments of 1990 (Pub. L. 101–557), the Director, NIH, announces the establishment by the Secretary, Department of Health and Human Services, of the Task Force on Aging Research.

The Task Force on Aging Research shall make recommendations regarding support of research on aging, which includes research no the aging process and on the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause; research on treatments, and on medical devices and other medical interventions regarding such disease, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the functional ability of individuals to perform activities of daily living or instrumental activities of daily living without assistance or supervision. In addition, the Task Force on Aging shall make recommendations specifying the particular projects of research or categories of research that should be conducted, projects that should be given priority in the provision of funds, and the amount of funds that should be appropriated for such research.

Unless renewed by appropriate actions prior to expiration, the Task Force on Aging Research shall expire on July 31, 1993.

Dated: August 9, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91–19655 Filed 8–15–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–39]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 16, 1991.

ADDRESSES: For further information, contact James N. Forsberg, 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 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD publishes a Notice, on a weekly basis, to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. 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.). Today's Notice is for the purpose of announcing that no additional properties have been reviewed for suitability this week.

Dated: August 9, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 91–19318 Filed 8–15–91; 8:45 am]

BILLING CODE 4211–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–01–4212–13, CACA–28121 FD]

Realty Action; Exchange of Public Lands in Calaveras Co., CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Selected Public Land

T.4N., R.9E., MDM, California
Sec. 23, Lot 1, NE¼NW¼
Containing 74.49 acres, more or less.

Publication of this notice in the Federal Register segregates the public land described herein from all forms of appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of publication of this notice in the Federal Register.

The subject parcel is proposed for use by the Bureau of Land Management in its exchange program to acquire wetlands in the Central Valley, California, consistent with the North American Waterfowl Management Plan, the Central Valley Habitat Joint Venture, and BLM's Wildlife 2000 Program. Such a transfer through conservation groups like The Nature Conservancy and Trust for Public Lands would serve the public interest by protecting or creating additional wetlands, riparian areas, and other sensitive habitat.

The above-described land is an isolated parcel with no access which is difficult and uneconomic to manage as part of the public lands and is not considered suitable for management by another Federal agency. The public land parcel would be transferred to a nonprofit conservation organization. In exchange, the public would receive wetlands adjacent to the Consumnes River Preserve, located about 15 miles south of Sacramento in southern Sacramento County. The exchange would involve lands of approximately equal value or would be subject to the Statewide TNC/BLM Pooling Agreement in California.

SUPPLEMENTARY INFORMATION: The Federal lands would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

All necessary clearances, including archaeology and threatened and endangered plant and animal species, shall be completed prior to conveyance of title by the U.S.

FOR ADDITIONAL INFORMATION: Contact Dean Decker, (916) 985–4474, or at the address listed below.

ADDRESSES: For a period of 45 days from publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630.

Dated: August 8, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91–19526 Filed 8–15–91; 8:45 am]

BILLING CODE 4310–40–M

[CA-050-4212-13; CA-27838]

Realty Action; Proposed Land Exchange in Lake, Colusa, Napa, Yolo and Mendocino Counties, CA; Correction

ACTION: Third Correction to notice of realty action CA-27838, In Lake County, California.

SUMMARY: The Notice of Realty Action published on Friday, July 5, 1991, in Volume 56, No. 129 of the **Federal Register**, Page 30761, in Column 2, is hereby corrected as follows:

1. In paragraph 3, line 3, "Sec 1420 W1/2NE1/4" should read "Sec 14 W1/2NE1/4".

2. In paragraph 4, line 3, "Sec 20 SE1/4SE1/4" should read "Sec 19 SE1/4SE1/4".

These were in error and are being corrected.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Clear Lake Resource Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 94582: Phone (707) 462-3873.

Dated: July 31, 1991.

Catherine Robertson,

Clear Lake Resource Area Manager.

[FR Doc. 91-19281 Filed 8-15-91; 8:45 am]

BILLING CODE 4310-84-M

[AK-932-4214-10; AA-74608]

Proposed Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw approximately 407.3 acres of National Forest System lands for the Seward Highway Reconstruction Project. The proposed withdrawal is for the evaluation and preparation of road design of the highway alignment of State Highway 1 within Chugach National Forest. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all uses which can be made of National Forest lands except mining.

DATES: Comments and requests for meeting should be received on or before November 14, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907-271-5477.

SUPPLEMENTARY INFORMATION: On July 10, 1991, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Seward Meridian

Chugach National Forest

A corridor 300 feet each side of centerline of the proposed highway located within:

T. 7 N., R. 1 E., unsurveyed,
  Sec. 6, NW¼NE¼.
T. 8 N., R. 1 E., unsurveyed,
  Sec. 31, SW¼.
T. 7 N., R. 1 W., unsurveyed,
  Sec. 4, E½W½.
T. 8 N., R. 1 W., unsurveyed,
  Sec. 25, SW¼, SW¼SE¼;
  Sec. 28, W½;
  Sec. 33, E½W½;
  Sec. 36, NE¼

The areas described aggregate approximately 407.3 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Alaska State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized office that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those allowed on National Forest System lands with the exception of the disposal of the minerals resources under the mining laws.

The temporary segregation of the lands in connection with the withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 91-19527 Filed 8-15-91; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-930-4214-10; A-25553]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

August 9, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 360 acres of National Forest System lands for use as a site for the Northern Arizona Visitor Center and Interagency Administrative Site (Verde Valley Project). This proposed project is a cooperative venture between the Forest Service, National Park Service, and Arizona State Parks to construct a visitor center and administrative facility. This notice closes the lands for up to 2 years from location and entry under the United States mining laws only. The lands will remain open to all uses other than the mining laws.

DATES: Comments and requests for a public meeting should be received on or before November 14, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management, 3707 N. 7th Street, or P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, Bureau of Land Management Arizona State Office, 602-640-5509.

SUPPLEMENTARY INFORMATION: On July 26, 1991, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Prescott National Forest

T. 14 N., R. 4 E.,
Sec. 34, SE¼, SE¼SW¼,
Sec. 35, SW¼.

The area described contains 360 acres in Yavapai County.

For a period of 90 days from the date of publication of this notice all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Arizona State Director, Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Uses which will be permitted during this segregative period are all those applicable to Forest Service administered lands except those under the mining laws.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands.

Beaumonth C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 91–19525 Filed 8–15–91; 8:45 am]

BILLING CODE 4310–32–M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 45; Amendment No. 12 [1]]

Niagara Frontier Tariff Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Niagara Frontier Bureau, Inc. (Niagara), has filed a petition seeking approval of a minor amendment to its ratemaking agreement approved under 49 U.S.C. 10706(b). The amendment would modify sections 7.1, 7.2, and 7.4 of Niagara's bylaws to: (1) Reduce the number of members on the Board of Directors from 14 to 12 and the number of directors elected annually from seven to six; (2) make corresponding changes to the process for nomination and election of directors; and (3) reduce the quorum for board meetings from six to four directors. The Commission has issued a decision proposing to approve the amendment.

Copies of Niagara's No. 45 approved agreement and the amendment are available for public inspection and copying at the Public Docket Room (room 1227) of the Commission in Washington, DC, and from Niagara's representative: Robert G. Gawley, 405 N. French Road, suite 100, Buffalo, NY 14228.

DATES: Comments from interested persons are due September 16, 1991. Replies are due 15 days thereafter. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If adverse comments are filed, the comments and and reply will be considered, and the Commission will issue a final decision.

ADDRESSES: An original and 10 copies, if possible, of comments referring to section 5a Application No. 45 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicant's representative.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 275–7691. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: August 9, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19590 Filed 8–15–91; 8:45 am]

BILLING CODE 7035–01–M

[1] Niagara notes that, due to a numbering error, the Bureau has made two Amendment Nos. 10 (and no No. 11). The Bureau has therefore identified this amendment as Amendment No. 12.

[Ex Parte No. 504]

Railroad Revenue Adequacy—1990 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On August 15, 1991, the Commission served a decision announcing the 1990 revenue adequacy determinations for the Nation's Class I railroads. One carrier (Illinois Central) is found to be revenue adequate. The remaining carriers are found to be revenue inadequate.

EFFECTIVE DATE: This decision shall be effective on August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275–7489, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: This annual determination of railroad revenue adequacy is made in accordance with the standards developed in Standards for Railroad Revenue Adequacy, 364 I.C.C. 803 (1981), as modified in Standards for Railroad Revenue Adequacy, 3 I.C.C.2d 261 (1986), and Supplementary Reporting of Consolidated Information for Revenue Adequacy Purposes, 5 I.C.C.2d 65 (1988). It also incorporates modifications made in Railroad Revenue Adequacy—1988 Determination, 6 I.C.C.2d 933 (1990). This decision applies the rate of return standard to data for the year 1990.

A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment at least equal to the current cost of capital for the railroad industry for 1990, determined to be 11.8 percent in Railroad Cost of Capital—1990, 7 I.C.C.2d 620 (1991). Additional information is contained in a concurrent

decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.] This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: August 9, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19596 Filed 8–15–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–355; Sub-No. 1X]

Springfield Terminal Railway Co.; Abandonment Exemption in Sullivan County, NH, and Windsor County, VT

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.90-mile line of railroad between milepost 1.78, at Charlestown, Sullivan County, NH, and milepost 5.68, at Springfield, Windsor County, VT.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 20, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 3, 1991.[4]

Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by September 10, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Nadolny, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 26, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 12, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–19597 Filed 8–15–91; 8:45 am]

BILLING CODE 7035–01–M

[1] Although styled an abandonment and discontinuance, the notice of exemption will be considered as one to abandon the line. It does not appear that any railroad other than applicant has any operations to discontinue over the involved line. An abandonment implies the discontinuance of operations over the line being abandoned.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex (FCC) Beaumont, Jefferson County, TX

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

Summary

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal Correctional Complex (FCC) is needed in its system. A 1,028 acre tract of land near Beaumont, Texas will be evaluated. The proposal calls for a construction of a 500 bed high security facility, a 750 bed medium security facility, a 1,000 bed low security facility, a 500 bed minimum security camp, and a 500 bed detention facility.

Approximately 500 of the 1,028 acres would be used for road access, inmate housing, administration, program spaces, services and support facilities. Recreation areas would also be included.

In the process of evaluating the tract of land, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Scoping Process: During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Beaumont and the surrounding areas. The meeting will be well publicized and held at a time which will make it possible for the public and interested agencies or organizations to attend. Various meetings have already been held and

will be continued by representatives of the Bureau of Prisons with interested community leaders, officials and citizens.

DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: Patricia Sledge, Chief, Site Selection and Environmental Review, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 514–6470.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review.

[FR Doc. 91–19650 Filed 8–15–91; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ([202] 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration

ETA Validation Handbook No. 361. Chapter IV A

1205–0055; no forms

Annual

State or local governments

53 respondents; 7,208 burden hours; 136 average hours per response

Data provided to ETA's Unemployment Insurance Service is used to determine the distribution of administrative funds; to trigger the extended benefits program as economic indicators; as well as to obtain general information for operating the program. Validation attempts to assure the accuracy and comparability of reported data.

Extension

Employment Standards Administration

29 CFR parts 530—Employment of Homeworkers in Certain Industries; and 516—Records to be Kept by Employers

1215–0013; WH–46 and WH–75

Individuals or households; Businesses or other for profit; Non-profit institutions; Small businesses or organizations

Form	Respondents	Frequency	Average time per response
WH–46	50	1 time	30 minutes.
WH–75	14,400	4 times	30 minutes.
Piece Rate (Recordkeeping).	50	3 times	1 hour
Homeworker Handbook.	14,400	4 times	30 seconds.

Total Burden Hours = 29,456

These reporting and recordkeeping requirements for employers and employees in industries employing homeworkers are necessary to ensure employees are paid in compliance with the Fair Labor Standards Act.

Mine Safety and Health Administration

Safety Defect Record of Self-Propelled Equipment

1219–0089

Other (each shift)

Businesses or other for-profit; Small businesses or organizations 486,560 respondents; 40,532 hours; .083303 average hours per recordkeeper

Requires equipment operators to make a visual and operational check of the various primary operating systems that affect safety, such as brakes, lights, tires, steering, and related items. Any defects found are verbally reported to the mine operator who is required to make a record of the defects. The record must be retained until the defect is corrected.

Signed at Washington, DC this 13th day of August, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91–19610 Filed 8–15–91; 8:45 am]

BILLING CODE 4510–27–M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: September 11, 1991, 9:30 am—12 noon, rm. S–2508, FPBldg., Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

PURPOSE: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523–2752.

Signed at Washington, DC this 9th day of August, 1991.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 91–19607 Filed 8–15–91; 8:45 am]

BILLING CODE 4510–28–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by the applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled General Wage Determinations Issued Under The Davis-Bacon And Related Acts, shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Florida, FL91–9 (Feb. 22, 1991).	p. 121, p. 122.
Pennsylvania:	
PA91–8 (Feb. 22, 1991).....	p. 1029, pp. 1030–1038a.
PA91–10 (Feb. 22, 1991).....	p. 1047, pp. 1048–1052.
PA91–14 (Feb. 22, 1991).....	p. 1063, pp. 1064–1071.
West Virginia, WV91–2 (Feb. 22, 1991).	p. 1421, pp. 1421, 1424. p. 1431.

Volume II:

Arkansas, AR91–6 (Feb. 22, 1991).	p. 15, p. 16.
Kansas, KS91–9 (Feb. 22, 1991).	p. 381, pp. 382–386.
Minnesota, MN91–5 (Feb. 22, 1991).	p. 577, p. 583.
Minnesota:	
MN91–8 (Feb. 22, 1991).....	p. 607, pp. 608–622.
MN91–12 (Feb. 22, 1991)...	p. 629, p. 630.
MN91–15 (Feb. 22, 1991)...	p. 637, pp. 638–648.
Missouri, MO91–2 (Feb. 22. 1991).	p. 673, pp. 674–682.
Oklahoma, OK91–18 (Feb. 22, 1991).	p. 1005, pp. 1006–1007.
Wisconsin:	
WI91–1 (Feb. 22, 1991).....	p. 1197, pp. 1198–1199.
WI91–2 (Feb. 22, 1991).....	p. 1201, pp. 1202–1203.
WI91–3 (Feb. 22, 1991).....	p. 1205, pp. 1206–1208.
WI91–4 (Feb. 22, 1991).....	p. 1209, pp. 1210–1212.
WI91–5 (Feb. 22, 1991).....	p. 1213, pp. 1214–1216.
WI91–6 (Feb. 22, 1991).....	p. 1217, p. 1218.
WI91–7 (Feb. 22, 1991).....	p. 1221, p. 1222
WI91–11 (Feb. 22, 1991)....	p. 1259, pp. 1260–1262.
WI91–12 (Feb. 22, 1991)....	p. 1263, pp. 1264–1265.
WI91–13 (Feb. 22, 1991)....	p. 1267, pp. 1268–1270.
WI91–14 (Feb. 22, 1991)....	p. 1271, p. 1272.
WI91–15 (Feb. 22, 1991)....	p. 1275, p. 1276.
WI91–16 (Feb. 22, 1991)....	p. 1279, p. 1280.

Volume III:

Colorado, CO91–1 (Feb. 22, 1991).	p. 151, pp. 151–158.
Idaho:	
ID91–1 (Feb. 22, 1991).....	p. 207, pp. 208, 210.
ID91–3 (Feb. 22, 1991).....	p. 221, pp. 222–223a.
ID91–4 (Feb. 22, 1991).....	p. 225, p. 226.
ID91–5 (Feb. 22, 1991).....	p. 229, p. 230.
Nevada, NV91–1 (Feb. 22, 1991).	p. 299.
Washington, WA91–8 (Feb. 22, 1991).	p. 507, p. 508.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled General Wage Determinations Issued Under The Davis-Bacon And Related Acts. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be

purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 9th day of August 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–19343 Filed 8–15–91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begain or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 26, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 26, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210.

Signed at Washington, DC this 5th day of August, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition no.	Articles produced
Ansell, Inc (Wkrs)	El Paso, TX	08/05/91	07/25/91	26,147	Latex Gloves.
Consolidation Coal Co, Northern Div (UMWA)	Blacksville, WV	08/05/91	07/18/91	26,148	Coal Mining.
Corry Hiebert Corp (Wkrs)	Corry, PA	08/05/91	07/24/91	26,149	Files, Desks, Chairs.
Crystal Brands Sportswear Group ACTWU	Allentown, PA	08/05/91	07/23/91	26,150	Distribution of Men's Sweaters.
Dover Handbag, Inc. (Co)	Summerst, NJ	08/05/91	07/09/91	26,151	Ladies Handbags.
Gelfo Mfg. Co., Inc. ILGWU	Jericho, NY	08/05/91	07/23/91	26,152	Knitted Goods.
General Electric Co. (IUE)	Pittsfield, MA	08/05/91	07/19/91	26,153	Electronic Equipment.
General Motors Corp, CPC Willow Run (UAW)	Ypsilanti, MI	08/05/91	07/19/91	26,154	Assembly of Chevrolet and Oldsmobile.
Halliburton Services (Wkrs)	Ducan, OK	08/05/91	07/22/91	26,155	Oilfield Services.
Herman Rynveld's Son Corp (Wkrs)	New Albany, PA	08/05/91	07/26/91	26,156	Artificial Christmas Trees, Wreaths.
Herman Rynveld's Son Corp (Wkrs)	Montgomery, PA	08/05/91	07/26/91	26,157	Artificial Christmas Trees, Wreaths.
Hillwood Manufacturing Co. (Wkrs)	Euclid, OH	08/05/91	07/29/91	26,158	Threaded Nails.
Honeywell (Wkrs)	Minneapolis, MN	08/05/91	07/01/91	26,159	Thermostats and Air Cleaners.
James River Corp (Wkrs)	Minerva, OH	08/05/91	07/26/91	26,160	Waxed Cloth for Boxed Beef.
K-Mart (Wkrs)	Duncan, OK	08/05/91	07/18/91	26,161	Retail Store.
Laser Master Technologies (Wkrs)	Eden Prairie, MN	08/05/91	07/16/91	26,162	Laser Printers and Computers.
Marina De Italia Sportswear, Inc. ILGWU	Westbury, NY	08/05/91	07/23/91	26,163	Bathing Suits.
MidAmerica Resources, Inc (Co)	Midland, TX	08/05/91	07/12/91	26,164	Oil and Gas Exploration.
Millersburg Div. of Calvin Klein ACTWU	Millersburg, PA	08/05/91	07/18/91	26,165	Ladies Jeans, shorts.
Reid Industries, Inc. (Co)	Roseville, MI	08/05/91	07/22/91	26,166	Broach Cutting Tools.
Roth/LeBaron ACTWU	Los Angeles, CA	08/05/91	07/23/91	26,167	Men's tailored suits.
Simsco, Inc (Attalla Casting) (USWA)	Attalla, AL	08/05/91	07/15/91	26,168	Gray Iron Castings.
Sportswear Cafeteria/J.C. Vending (Co)	Parsons, TN	08/05/91	07/15/91	26,169	Cafeteria Services.
Union Drilling (Wkrs)	Centerville, PA	08/05/91	07/19/91	26,170	Oil and Gas Drilling.
Western Atlas International (Wkrs)	Cody, WY	08/05/91	07/16/91	26,171	Oilfield Service.

[FR Doc. 91–19641 Filed 8–15–91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,603; TA-W-25,604]

Northern Paper Division, Georgia Pacific Corp.; East Millinocket, ME and Millinocket, ME; 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 May 22, 1991 applicable to all workers of the Northern Paper Division of the Georgia Pacific Corporation in East Millinocket and Millinocket, Maine. The Notice was published in the **Federal Register** on June 5, 1991 (56 FR 25700).

At the request of the State Agency, the Department is clarifying its certification for workers of the subject firm.

Investigation findings show that both facilities produce several products; however, the predominant portion of production at both facilities is newsprint, the trade impacted article. Other findings show that the workers are not separately identifiable by product.

Accordingly, the amended notice applicable to TA-W-25,603 and TA-W-25,604 is hereby issued as follows:

All workers of the East Millinocket and Millinocket, Maine plants of the Northern Paper Division of Georgia Pacific Corporation who became totally or partially separated from employment on or after February 6, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 9th day of August 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-19653 Filed 8-15-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,673]

Gilbert & Bennett Manufacturing Co., Georgetown, CT; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Gilbert & Bennett Manufacturing Co., Georgetown, Connecticut. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,673; Gilbert & Bennett Manufacturing Co., Georgetown, Connecticut (August 7, 1991)

Signed at Washington, DC this 9th day of August, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-19660 Filed 8-15-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,751]

Maxwell House Coffee Co., Hoboken, NJ; Affirmative Determination Regarding Application for Reconsideration

On July 8, 1991 the United Food & Commercial Workers Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on June 19, 1991 and published in the **Federal Register** on June 28, 1991 (56 FR 29717).

The union claims that the Department did not investigate increased imports of instant and decaffeinated coffee affecting worker separations at Hoboken, New Jersey.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th of August 1991.

Robert O. Deslongchamps;

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-19645 Filed 8-15-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,851]

Sunshine Mining Co., Kellogg, ID; Affirmative Determination Regarding Application for Reconsideration

On July 19, 1991 the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 10, 1991 and published in the **Federal Register** on July 30, 1991 (56 FR 36065).

The company claims, among other things, that the Department's survey was inadequate and submitted an additional list of customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th of August 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-19644 Filed 8-15-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program Extended Benefits; Ending of Extended Benefit Period in the State of Maine

This notice announces the ending of the Extended Benefit Period in the State of Maine, effective on August 10, 1991.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reached the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Maine on February 17, 1991, and has now triggered off.

Determination of an "Off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the state for the period consisting of the week ending on July 20, 1991, and the immediately preceding twelve weeks, fell below the State

trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending August 10, 1991.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(c)(4).

Persons who wish information about their rights to Extended Benefits in the State named above would contact the nearest State employment service office in their locality.

Signed at Washington, DC on August 9, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-19642 Filed 8-15-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Sunshine Precious Metals, Inc.

[Docket No. M-91-12-M]

Sunshine Precious Metals, Inc., P.O. Box 1080, Kellogg, Idaho 83837-1080 has filed a petition to modify the application of 30 CFR 57.11041 to its Sunshine Mine (I.D. No. 10-00089) located in Shoshone County, Idaho. The petitioner proposes to post a warning sign instead of a landing gate at the bottom of every stope in which the timber slide ladderway inclinations exceed 70 degrees.

2. Richem Construction, Inc.

[Docket No. M-91-13-M]

Richem Construction, Inc., P.O. Box 853, Choteau, Montana 59422 has filed a petition to modify the application of 30 CFR 56.14107 to its Gravel Mining Operation and Wash Plant (I.D. No. 24-00452) located in Teton County, Montana. The petitioner proposes to enclose the plant with a six foot chain link fence with electrified barbed wire at the top, an electrified entrance gate, and an electrified padlock on the gate instead of installing guards on moving equipment.

3. Doverspike Bros. Coal Company, Inc.

[Docket No. M-91-64-C]

Doverspike Bros. Coal Company, Inc. R.D. #4, Box 271, Punxsutawney, Pennsylvania 15767 has filed a petition to modify the application of 30 CFR 75.1710 to its Clutch Run Mine (I.D. No. 36-06191) located in Jefferson County, Pennsylvania. Due to low mining heights, the petitioner requests relief from the use of canopies or cabs on self-propelled face equipment.

4. Rocky Top Coal Company

[Docket No. M-91-65-C]

Rocky Top Coal Company, 818 Franklin Avenue, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1400 to its No. 1 Slope (I.D. No. 36-07369) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) equipped with a secondary safety rope instead of safety catches.

5. Eastern Associated Coal Corporation

[Docket No. M-91-66-C]

Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.305 to its Harris No. 1 Mine (I.D. No. 46-01271) located in Boone County, West Virginia. The petitioner proposes to monitor ventilation in the longwall tailgate entry instead of traveling the return aircourse in its entirety.

6. Consolidation Coal Company

[Docket No. M-91-67-C]

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.1105 to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. The petitioner requests that their granted petition dated June 4, 1991 be amended to allow a signal, activated by the heat or equivalent type sensor placed inside each fireproof structure be located so that it can be seen or heard by a responsible person.

7. Peabody Coal Company

[Docket No. M-91-68-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1700 to its Marissa Underground Mine (I.D. No. 11-02440) located in Washington County, Illinois. The petitioner proproses to seal and mine through oil and gas wells.

8. McElroy Coal Company

[Docket No. M-91-69-C]

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petitioner proposes to establish ventilation evaluation points in a return aircourse instead of traveling the aircourse in its entirety.

9. Energy West Mining Company

[Docket No. M-91-70-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.326 to its Deer Creek Mine (I.D. No. 42-00121) its Cottonwood Mine (I.D. No. 42-01944) located in Emery County, Utah. The petitioner requests that their petition Docket No. 86-MSA-3, M-85-127-C allowing the use of nonpermissible diesel equipment be extended.

10. L.V. Coal Company

[Docket No. M-91-71-C]

L.V. Coal Company, P.O. Box 153, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 to its No. 4 Slope (I.D. No. 36-08014) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) equipped with a secondary safety rope instead of safety catches.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1991. Copies of these petitions are available for inspection at that address.

Dated: August 9, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-19643 Filed 8-15-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* September 6, 1991.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for United States Newspaper Program, submitted to the Division of Preservation and Access, Office of Preservation, for projects beginning after January, 1992.
2. *Date:* September 10, 1991.
   Time: 8:30 a.m. to 5 p.m.
   Roam: 430.
   Program: This meeting will review applications for NEH Digest Teacher/Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.
3. *Date:* September 12, 1991.
   Time: 8:30 a.m. ta 5 p.m.
   Room: 430.
   Program: This meeting will review applications for NEH Digest Teacher/Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.
4. *Date:* September 17, 1991.
   Time: 8:30 a.m. to 5 p.m.
   Room: 430.
   Program: This meeting will review applications for NEH Digest Teachers/Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education, for projects beginning after September 1, 1992.
5. *Date:* September 19, 1991.
   Time: 8:30 a.m. to 5 p.m.
   Room: 430.
   Program: This meeting will review applications for NEH Digest Teacher/Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.
6. *Date:* September 19–20, 1991.
   Time: 8:30 a.m. to 5 p.m.
   Roam: 415.
   Program: This meeting will review applications for Preservation Program (Library/Archival), submitted to the Division of Preservation and Access, Office of Preservation Programs, for projects beginning after January 1, 1992.

David Fisher,

Advisory Committee, Management Officer.

[FR Doc. 91–19523 Filed 8–15–91; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are witnin exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biological and Critical Systems.

Dates & Times: September 6, 1991 8:30 a.m.–5 p.m.

Location: Washington Circle Hotel, Washington, DC 20550.

Type of Meeting: Closed.

Agenda: To provide advice and recommendations concerning support for Small Business Innovative Research.

Contact Persan: Dr. Shih-Chi Liu, Program Director, room 1133, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9780.

Dated: August 12, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–19554 Filed 8–15–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Chemistry.

Dates & Times: September 4, 1991, 4 p.m.-5 p.m., September 5, 1991, 8:30 a.m.-5 p.m., September 6, 1991, 8:30 a.m.-5 p.m.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 543.

Type of Meeting: Closed.

Agenda: Review and evaluate Small Business Innovative Research proposals.

Contact Persan: Dr. Arthur F. Findeis, Head, Special Projects Office, room 340, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7503.

Dated: August 12, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–19555 Filed 8–15–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources: Committee of Visitors; Meeting

The National Science Foundation announces the following meeting:

Name: Committee of Visitors Review of the Career ACCESS Program.

Date & Time: September 3, 1991; 8 a.m. to 5 p.m. September 4, 1991; 8 a.m. to 5 p.m.

Place: Room 1242, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Ms. Griselio P. Moranda, Program Analyst or Dr. Roosevelt Calbert, Section Head, Division of Human Resource Development, room 1225, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7552.

Purpose of Meeting: To provide oversight review of the Career ACCESS Program within the Division of Human Resource Development.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: August 12, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–19552 Filed 8–15–91;8:45am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Polar Programs.

Dates & Times: September 5–6, 1991 8: a.m.–5 p.m.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 536.

Type of Meeting: Closed.

Agenda: Review and evaluate research proposals for Polar Earth Sciences.

Contact Person: Dr. Herman B. Zimmerman, Polar Earth Sciences Program, room 620, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7894.

Dated: August 12, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–19556 Filed 8–15–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs

SUMMARY: In accrodance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The Purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Polar Programs.

Dates & Times: September 6–7, 1991; 8:30 a.m.–5 p.m.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 540B.

Type of Metting: Closed.

Agenda: Review and evaluate research proposals on polar glaciology.

Contact Person: Dr. Julie M. Palais, Polar Glaciology Program, room 620, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7894.

Dated: August 12, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–19557 Filed 8–15–91; 8:45 am]

BILLING CODE 7555–01–M

Statement of Organization, Functions, and Delegations of Authority

AGENCY: National Science Foundation.

ACTION: Statement of organization, functions, and delegations of authority.

SUBJECT: In accordance with the Administrative Procedures Act [5 U.S.C. 551 et seq.], this notice replaces the Statement of Organization last published at 55 FR 21807–21804 of May 29, 1990.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Modestine Rogers, National Science Fundation, Division of Personnel and Management, room 208, Washington, DC. 20550, telephone 202–357–9520.

Dated: August 8, 1991.

M. Rebecca Winkler,

Management Analyst, Division of Personnel and Management.

Revised August 7, 1991.

I. Creation and Authority

The National Science Foundation (NSF) is an independent agency of the U.S. Government, established by the National Science Foundation Act of 1950, as amended, and related legislation, 42 U.S.C. 1861 *et seq.*, and was given additional authority by the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885), and Title I of the Education for Economic Security Act (20 U.S.C. 3911 to 3922). The Foundation consists of the National Science Board of 24 part-time members and a Director (who also serves as *ex offico* National Science Board member), each appointed by the President with the advice and consent of the U.S. Senate. Other senior officials include a Deputy Director who is appointed by the President with the advice and consent of the U.S. Senate, and eight Assistant Directors.

The Foundations organic legislation authorizes it to engage in the following activities:

A. Initiate and support, through grants and contracts, scientific and engineering research and programs to strengthen scientific and engineering research

potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

B. Award graduate fellowships in the sciences and in engineering.

C. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

D. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

E. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating its research and educational programs with other Federal and non-Federal programs.

F. Maintain a current register of scientific and technical personnel, and in other ways provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other Federal agencies.

G. Determine the total amount of Federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

H. Initiate and support specific scientific engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

I. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

J. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education in the sciences and engineering including independent research by individuals, throughout the United States.

K. Support activities designed to increase the participation of women and minorities and others under-represented in science and technology.

II. Overview of Operations

A. *General Procedures, Forms, Descriptions of Programs.* The Foundation accomplishes its mission primarily through the award of grants and other agreements to universities, colleges, and other nonprofit organizations, as well as to individuals and profit-making organizations. In instances where NSF has a specially assigned mission, or where services are being procured, contracts are used rather than grants. Generally, a person or organization desiring support should submit a request, application, or proposal in accordance with NSF guidelines. If the request is approved, NSF will provide financial support. NSF supports basic and applied research and education in the sciences and engineering. Ordinarily grants are made on the basis of merit after a review process involving several qualified outside commentators drawn from the scientific, educational, and industrial communities.

B. *Honorary Awards.* The National Science Foundation annually presents the Alan T. Waterman Award to an outstanding young scientist or engineer for support of research and study. From time to time, the National Science Board presents the Vannevar Bush Award to a person who, through public service and technology, has made an outstanding contribution toward the welfare of the Nation and mankind. The two awards are designed to encourage individuals to seek to achieve the Nation's objectives in scientific and engineering research and education.

The National Science Foundation also provides support for the President's Committee on the National Medal of Science.

III. Organization

The Foundation is organized along functional and disciplinary lines corresponding to program support of science, engineering, and science and engineering education.

A. *National Science Board.* The National Science Board is composed of 25 members, including the Director of the Foundation *ex officio*. Members serve for 6-year terms and are selected because of their distinguished service in the fields of the basic, medical, or social sciences, engineering, agriculture, education, public affairs, or research management. They are chosen in such a way as to be representative of scientific and engineering leadership in all areas of the Nation. The officers of the Board, the Chairman and Vice Chairman, are elected by the Board from among its members for 2-year terms. The Board exercises authority granted it by the NSF Act, including establishing policies for carrying out the purposes of the Act. Meetings of the Board are governed by the Government in the Sunshine Act (Pub. L. 94–409) and the Board's Sunshine and regulations (45 CFR 614). The policies of the Board on the support of science and engineering and development of human resources are generally implemented through the various programs of the Foundation. The National Science Board is required by statute to render a biennial report on indicators of the state of science and engineering to the President for submission to the Congress.

B. *Director.* The Director of the National Science Foundation is Chief Executive Officer of the Foundation and serves *ex officio* as a member of the National Science Board and as Chairman of its Executive Committee. The Director is responsible for the executive of the Foundation's programs in accordance with the NSF Act and other provisions of law. The Director is also responsible for duties delegated to him by the Board and for recommending policies to the Board. The Director is assisted by a Deputy Director who is appointed by the President, with the advice and consent of the Senate. The Senior Science Advisor serves as science advisor to the Director providing broad policy-level advice, assistance and support on a wide range of scientific and policy matters relevant to the mission of the Foundation.

IV. Activities of the Foundation

The activities of the Foundation are carried out by a number of Foundation components reporting to the Director through their respective senior officers.

A. Staff Offices

1. National Science Board Office (NSB).

NSBO is responsible for operating and representing the National Science Board, identifying policy issues for consideration by the Board, developing congressional testimony for Board members, and providing liaison between the Board and the Director and his staff.

a. *Office of Inspector General (OIG).* OIG is responsible for audit and oversight of the financial, administrative, and programmatic aspects of NSF's activities. OIG is the focal point of contact with other Federal audit organizations in the Executive Branch and with GAO. OIG is organized with four subordinate components: External Audit, Internal Audit, Oversight, and Investigations/Counsel.

2. Office of Budget and Control (OBAC)

OBAC is responsible for the development, analysis, and execution of the Foundation's budget to the Office and Management and Budget and the Congress and for evaluation of NSF programs and related activities. This responsibility encompasses budget formulation and development in cooperation with the Director, the National Science Board, Assistant Directors, and other staff, working with staff and officials of the Office of Management and Budget and the Office of Science and Technology Policy, appropriate budget execution and control through operating plans and special analyses, assisting in the development of long-range plans for the Foundation, and assisting the Director in the general management of the Foundation.

3. Office of Information Systems (OIS)

OIS is responsible for development, operation, maintenance, and oversight of automated systems that provide management information and support program and administrative staff activities throughout the Foundation's business cycle.

4. Office of Legislative and Public Affairs (OLPA)

OLPA is responsible for representing the Foundation, the Director, and key associates in relationships with the Congress, the communications media and the public, various academic groups and professional societies, institutions, and other NSF clientele. Legislative responsibilities include providing the coordination, analysis, liaison, and other assistance necessary for the annual congressional consideration of the NSF budget as well as all science and technology related legislative issues and providing information and advice to the Director and key NSF staff on interactions with the Congress. Public affairs and communications responsibilities include informing and educating the general and specialized publics about NSF programs, activities, and services; maintaining relations with the public and news media (both print and electronic media); preparing and issuing report, audio-visual materials, and publications (including MOSAIC, NSF's magazine) that serve the general and specialized publics; and responding to both Freedom of Information Act requests and general inquiries from the public. The Office is also responsible for coordinating special projects and activities such as National Science and Technology Week; overseeing the work of the NSF Historian; and approving and coordinating publications created by other NSF offices, in accordance with OMB requirements.

5. Office of the General Counsel (OGC)

OGC provides legal advice to the Director, the National Science Board, and NSF staff and represents them in legal matters, including the development of laws and regulations likely to affect the NSF, science, or the use of science. They prepare and coordinate NSF comments on proposed legislation.

6. Office of Science and Technology Infrastructure (OSTI)

OSTI was established in the Office of the Director to provide leadership, coordination, and oversight for the Foundation's Science and Technology Centers, Facilities and Instrumentation; and help stimulate other sectors (industry, the States) to support and participate in these efforts.

B. Directorates

1. Directorate for Administration (ADM)

a. *Assistant Director for Administration.* The Assistant Director serves as the principal advisor to the Director on all administrative and general management activities of the National Science Foundation. This responsibility encompasses: grants and contracts administration, personnel management and employee-oriented programs, health services, financial management, management analysis, and general administrative and logistic support functions.

b. *Office of Equal Opportunity (OEO).* OEO is responsible for assisting management in developing, maintaining, and carryintg out a continuing Agency-Wide affirmative action program and for developing all other aspects of the Agency's equal opportunity program.

c. *Division of Administrative Services (DAS).* DAS is responsible for the management and direction of official travel services and conference arrangements, procurement, issuance and maintenance of supplies, materials, and equipment; space management; telecommunications and building maintenance; records disposition; mail and messenger services; property accountability; warehouse management; document and building security; printing, typesetting, graphics, reproduction and binding services; publications distribution and storage; and the NSF Library.

d. *Division of Financial Management (DFM).* DFM is responsible for the development, coordination, and direction of financial management policies, programs, and operations, and for the design of modern automated business management systems. This Division provides funds control, payroll and disbursing services, and maintains accounting systems to manage the financial aspects of Foundation operations and to produce timely and accurate data for financial management and budgetary purposes.

e. *Division of Grants and Contracts (DGC).* DGC is responsible for the award process including negotiation and administration of grants and contracts or other arrangements in accordance with existing laws, regulations, and Foundation policy and procedures. Negotiation includes those activities necessary to obtain agreement on the arrangements between the grantee or contractor and the Foundation prior to the making of an award. Administration includes those activities necessary to execute the award, monitor performance, and close out the grant or contract, as well as audit resolution, procurement reporting, intergovernmental reviews, FOIA and proposal release, Small and Disadvantaged Business programs, contracting out, and other special activities. The Division also develops and coordinates the implementation of Foundation grant, contract and cooperative agreement administration policies and procedures with staff, external organizations and other Federal agencies.

f. *Division of Personnel and Management (DPM).* DPM is responsible for planning, developing, and implementing the personnel management program of the Foundation to provide for the effective acquisition, retention, motivation, development, and use of NSF personnel. The Division is also responsible for improvement of Foundation management systems and procedures, management of the NSF Internal Issuance System, and the Committee Management Program.

2. Directorate for Biological, Behavioral, and Social Sciences (BBS)

a. *Assistant Director for Biological, Behavioral, and Social Sciences.* The Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the biological, behavioral, and social sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of six divisions reporting to the Assistant

Director, is structured primarily on a disciplinary basis. Each division, headed by a Division Director, is subdivided into programs. In addition to supporting research projects, divisions may support dissertations, research conferences and workshops, meetings, and the organization or development of specialized research facilities and equipment.

b. *Division of Instrumentation and Resources (DIR).* DIR was established in response to the need for a coordinated activity of infrastructure and research resource programs. The division is responsible for both internal and external infrastructure activities, including support for instrumentation and instrument development, biological facilities centers, and other biology facility programs, and also includes the coordination of all cross-directorate programs, maintenance and improvement of all BBS ADP systems and information management, as well as training for automated systems.

c. *Division of Behavioral and Neural Sciences (BNS).* BNS is responsible for basic and applied research in anthropology, linguistics, memory and cognitive processes, social and developmental psychology, developmental neuroscience, integrative neural systems, molecular and cellular neurobiology, psychobiology, and sensory physiology and perception. The Division also provides support for systematic anthropological collections. The major goals of the Division are to advance understanding of the structure and function of nervous systems and to comprehend better the biological, psychological, and cultural mechanisms underlying behavior.

d. *Division of Biotic Systems and Resources (BSR).* BSR is responsible for research in ecology, ecosystem studies, population biology and physiological ecology, and systematic biology. The Division provides support for biological research resources such as systematic collections, controlled environmental facilities, field research facilities, and culture collections. The research supported by this Division is to advance knowledge to the attributes and interrelations of organisms, populations, and communities as they exist in their natural environment.

e. *Division of Molecular Biosciences (DMB).* DMB is responsible for supporting research in the fields of biochemistry, biophysics, metabolic biology, prokaryotic aspects of genetic biology, and biological instrumentation. Research in plant biology is emphasized in all programs, and the Division supports a limited number of postdoctoral research fellowships in molecular plant biology.

f. *Division of Cellular Biosciences (DCB).* DCB is responsible for supporting research in the fields of cell biology, cellular physiology, developmental biology, eukaryotic aspects of genetic biology, and regulatory biology. Although major emphasis is on research on cellular mechanisms, the scope of the research includes the study of life processes at the subcellular, cellular, and organismal levels. General topics supported include how plants, animals, and microorganisms develop, grow, reproduce, and regulate their physiological activity. Research in plant biology is emphasized in all programs. Together with the Division of Molecular Biosciences, 20 postdoctoral fellowships in plant biology are awarded each year.

g. *Division of Social and Economic Science (SES).* SES is responsible for basic and applied disciplinary and multidisciplinary research in economics, geography and regional science, history and philosophy of science, law and social sciences, political science, sociology, measurement methods and data improvement, and decision, risk, and management science. The Division supports research on social and economic systems, organizations and institutions, and individual social behavior. Support is also provided for data collection and improvement and for methodological and measurement research.

3. Directorate for Computer and Information Science and Engineering (CISE)

a. *Assistant Director for Computer and Information Science and Engineering.* The Assistant Director serves as the principal advisor to the Director, within the framework of statutory and NSB authority, in computer and information sciences and engineering. Development and implementation of research and facilities support policies, annual programs and budgets, long-range plans and the establishment of research priorities to further national goals and strengthen the scientific research potential are responsibilities of the Assistant Director. Four divisions, each dealing with a substantive area, report to the Assistant Director. In addition to the specific areas, support is provided for advanced scientific computing facilities, networking, microelectronic prototyping, appropriate conferences, symposia, and research workshops in the areas for which it has responsibility.

b. *Office of Cross-Disciplinary Activities (CDA).* CDA is responsible for centralizing intra-divisional activities such as those relating to infrastructure building; for providing a central focus for activities between CISE and industry, other governmental agencies, professional societies, and international organizations; and for proposing and initiating new cross-divisional programs. The Office manages and coordinates cross-divisional targeted activities including Science and Technology Centers, CISE Presidential Young Investigators, Research Initiation in Computer and Information Science and Engineering, Research Experiences for Undergraduates, Minority Research Initiation, Research Opportunities for Women, Ethics and Values Studies, and the like.

c. *Division of Computer and Computation Research (CCR).* CCR is responsible for research in several broad areas including theories of computation, numerical, symbolic and algebraic computation, computer and software systems architectures, graphics, operating systems, programming languages, program semantics, theorem proving and other aspects of software systems science and software engineering. It also provides experimental facilities for research in computer and information science and engineering, and special-purpose equipment for research.

d. *Division of Information, Robotics and Intelligent Systems (IRIS).* IRIS is responsible for research on the representation and utilization of knowledge, database design and implementation, robotics and machine intelligence, perception and cognition, machine-human interface design, and social science and engineering research fundamental to understanding the social and economic consequences of the wide use of information technologies. It also provides for experimenting with real time systems.

e. *Division of Microelectronic Information Processing Systems (MIPS).* MIPS is responsible for research on the design, fabrication and testing of microelectronic integrated systems. This encompasses VLSI architecture, simulation, circuit theory and signal processing; and the development and testing of prototypes of novel computer and information processing systems. It also provides access, for research and education purposes, to a fast turnaround service for implementing microelectronic components, circuits and systems.

f. *Division of Advanced Scientific Computing (ASC).* ASC provides researchers access to advanced computational facilities located at several centers, provides a variety of

services and training opportunities to new users, supports research on new algorithms, peripheral devices, and innovative supercomputing systems. The Centers program is devoted to delivering needed advanced computational services to the academic research community and to maintaining and improving supercomputer performance at the facilities. The New Technologies program is responsible for research and development and implementation of novel systems for increasing the future power and expanding the horizon of computational capabilities for frontier scientific and engineering research.

g. *Division of Networking and Communications Research and Infrastructure (NCRI).* NCRI has a three-fold responsibility. NSFNET's mission is improving scientific networking infrastructure for both supercomputing and general research productivity improvement. EXPRES is charged with experimenting with and developing a system for exchanging compound documents among academic researchers. The Networking and Communications Research Program supports research in networking and communication theory including such topics as digital communications networks, communications and information theory, network architectures, distributed systems, and digital encryption and data security.

4. Directorate for Education and Human Resources (EHR)

a. *Assistant Director for Education and Human Resources.* The Assistant Director is responsible for the initiation of and support for programs to strengthen science education at all levels and to maintain the vitality of science and engineering education in the United States. This responsibility includes improving science and mathematics education of precollege students and addressing the long-term development of a strong human resource base to meet the needs of science and technology. The Directorate has four major long-range goals: to help ensure that a high-quality precollege education in science is available to every child in the United States, thereby enabling those who are interested and talented to pursue technical careers; to help ensure the best possible professional education in science and engineering; to help ensure that college-level opportunities are available to broaden the science backgrounds of nonspecialists; and to support informal science education programs for the public.

b. *Division of Materials Development, Research and Informal Science Education (MDRISE).* MDRISE supports the development of a wide variety of instructional materials for use in formal surroundings; research on the processes of teaching and learning to generate the knowledge and understanding essential to effective educational development; the exploration of advanced educational models and technology; and the development of a rich and stimulating environment for informational learning through such means as television and museums.

c. *Division of Research Career Development (DRCD).* DRCD promotes the career development of young scientists and engineers, thereby helping to assure a steady flow of high-ability students through the educational and research training systems of the country.

d. *Division of Teacher Preparation and Enhancement (DTPE).* DTPE is responsible for administering precollege science education programs to improve the subject matter, competence, and pedagogical skills of the Nation's science and mathematics teachers; to develop examples and prototypes of successful pre-service and in-service teacher education programs; to disseminate the materials and methods developed in NSF-funded projects and other information likely to enhance the quality of science teaching; and to encourage and promote the communication and collaboration of individuals throughout the science education community.

e. *Division of Undergraduate Science Engineering, and Mathematics Education (USEME).* USEME is responsible for managing and coordinating the NSF-wide undergraduate education support activities and promoting understanding and support for undergraduate education throughout the scientific communities. The Division supports and/or coordinates projects whose purpose is to improve the quality of undergraduate education in science, mathematics, and engineering through programs for faculty, students, curriculum development, laboratory development, course development, instrumentation, and equipment.

f. *Office of Studies, Evaluation and Dissemination (OSED).* OSED supports projects designed to provide information that will assist the Foundation in designing initiatives to strengthen science, mathematics, and engineering education in the United States. The Office also supports policy studies of National trends in science, engineering, and mathematics education and supports assessments of student achievement.

g. *Division of Human Resource Development (DHRD).* DHRD consolidates all EHR programs designed to attract and retain under-represented scientists. Specific programs include programs designed to attract and retain female and minority scientists; to improve the research infrastructure in minority institutions; and to assist persons with disabilities in reaching their full potential in the science and engineering enterprise.

5. Directorate for Engineering (ENG)

a. *Assistant Director for Engineering.* The Assistant Director participates with the Director in planning, analyzing, and evaluating activities and in establishing and maintaining an effective liaison with the Congress, other Federal agencies, the educational and scientific communities, professional societies, and other interested parties. The overall mission of NSF's Engineering (ENG) Directorate is to promote the progress of engineering and technology, thereby contributing to national prosperity and security. Specifically, ENG seeks to strengthen the engineering science base, which provides the foundation for engineering education, research, technological innovation and practice; to develop a knowledge base for technology-driven areas such as design and manufacturing; to encourage technological innovation through the support of research in emerging areas; to promote the cross-disciplinary research approach through the support of research groups and centers; to improve the quality of engineering education in order to attract the most capable students to the engineering profession and produce first-rate engineers; and to provide additional opportunities for minorities, women, and the disabled through programs to remove barriers and provide incentives for full participation in education and research.

b. *Division of Engineering Infrastructure Development (DEID).* The aim of this division is to develop and provide a Directorate-wide focus for (1) activities that affect one or more of the divisions of the Directorate for Engineering and that will optimize the effective use of university, industry, and other resources; (2) activities that will advance U.S. engineering through international cooperation; and (3) the activities of the Directorate with respect to engineering education.

The division is responsible for coordination with other organizations concerned with engineering research and engineering infrastructure, including the Office of Science and Technology Policy, the National Academy of

Science, the National Academy of Engineering, the National Research Council, foreign research organizations, engineering professional societies, and other parts of the engineering community. The division also coordinates the Directorate's effort to increase the participation of women, minorities, and disabled persons in NSF engineering programs and activities.

c. *Division of Chemical and Thermal Systems (CTS).* CTS funds research that strengthens the engineering base for technologies involving chemical, thermal and flow processes. The processes are important in areas like microelectronics, specialty chemicals, pharmaceuticals, energy production and transfer, molecular engineering of advanced materials, and chemical processing of hazardous waste.

d. *Division of Mechanical and Structural Systems (MSS).* MSS seeks to improve and expand fundamental engineering knowledge in the broad areas of mechanics, structures, and materials engineering. Research is supported that will improve existing industrial processes and create new technology in areas such as the formulation and processing of novel engineering materials, the performance and service life of machines and equipment, and more efficient construction techniques for large scale structures.

e. *Division of Electrical and Communications Systems (ECS).* ECS directs its efforts towards enhancing the engineering knowledge base for the analysis, synthesis, design and fabrication of materials, devices, systems, and phenomena that involve electrical, electronic, electromechanical or optical technologies.

f. *Division of Design and Manufacturing Systems (DDM).* DDM seeks to develop and expand the scientific foundations of design, manufacturing and computer-integrated engineering across a broad spectrum of American industry. This long-term effort is needed: to deepen our understanding of the processes, operations and systems that comprise our manufacturing base; to render this base more competitive; and to make it responsive to new needs and receptive to innovation. Complementing this effort is support of the development of operations research methodologies that underlie the full range of engineering production systems.

g. *Division of Biological and Critical Systems (BCS).* Within the ENG activity, BCS provides a focus for engineering research and educational activities focused on biological and environmental problems, and hazard mitigation.

h. *Division of Engineering Centers (ECD).* ECD supports university-based research centers aimed at enhancing our country's industrial competitiveness by strengthening university/industry coupling in research and education. The programs focus research teams on scientific and engineering areas where the infusion of knowledge from several disciplines and viewpoints will enhance the probability of innovative and industrially relevant research. The Division has three broad objectives: to focus and integrate fundamental research on knowledge breakthroughs underlying technological advances; to increase cooperation between university engineers and scientists and their industrial counterparts in order to focus research on current and projected industry needs; and, to better prepare students in designing, synthesizing, integrating and managing technological systems.

6. Directorate for Geosciences (GEO)

a. *Assistant Director for Geosciences.* The Assistant Director is the principal advisor to the Director in the development and implementation of research, facilities, and instrumentation support policies; annual programs and budgets; long-range plans and the establishment of research priorities to further national scientific goals, strengthen the scientific potential of global geosciences, and enhance the basic programs in atmospheric, earth, ocean, and polar sciences within the framework of statutory and National Science Board authority. The Geosciences Directorate is composed of four divisions that report to the Assistant Director. The divisions are structured primarily along disciplinary and functional lines. Each division is managed by a Division Director and is subdivided into sections and programs as required for appropriate management and oversight. In addition to the specific areas of research, facilities, and instrumentation support described below, the divisions maintain close liaison with mission-oriented Federal agencies that support similar or complementary areas of research and provide NSF representation on standing interagency committees and joint advisory and planning groups.

b. *Division of Atmospheric Sciences (ATM).* The objective of ATM is to improve fundamental knowledge of the behavior of the earth's atmosphere. The Division, through its Grant Programs Section, provides support for basic research on the physics and chemistry of the earth's atmosphere and its response to solar and terrestrial influences including those of the hydrosphere and biosphere. This research is relevant to national needs of improved prediction and understanding of weather, climate, and the global environmental system. It also provides basic knowledge that can be used to support applications by mission-oriented agencies. The Division's Centers and Facilities Section supports the National Center for Atmospheric Research (NCAR), the Nation's major research center in atmospheric sciences. NCAR is engaged in large-scale atmospheric research projects including those requiring the use of aircraft, specialized instruments, powerful computers, and data archival systems. NCAR's state-of-the-art facilities are utilized by universities and Federal agencies such as NASA, NOAA, and the FAA. Support also is provided for Upper Atmospheric Research Facilities comprising four large incoherent-scatter radar systems in a longitudinal chain from Greenland to Peru that permit scientists to investigate the local and global upper atmosphere.

c. *Division of Earth Sciences (EAR).* The objective of EAR is to increase understanding of the solid earth—its composition and structure, its historical evolution, and the dynamic processes, both internal and external, which formed and continued to modify its features. The Division supports basic research across the broad nature of geoscience disciplines including: research on the fundamental nature of earthquakes; research on hydrothermal and magmatic systems and their relationship to mineral deposits; research on earth history as reflected by rock stratigraphy, the fossil record, and other evidence of both cataclysmic and gradual events; research on the structures and properties of rocks and minerals at the pressures and temperatures existing within the earth; and research on volcanoes and their historical patterns of eruption. The Division's Instrumentation and Facilities program seeks to provide earth scientists in U.S. universities and colleges with essential research instrumentation and provides support for the development of new kinds of instruments or the adaptation of existing instruments for new uses in the geosciences. The Continental Lithosphere program supports medium to large scale projects designed to bring important new tools and approaches into the hands of university-based earth scientists that offer an opportunity to improve dramatically our understanding of the continental lithosphere through the major advances brought about by the application of plate tectonic theory

to the study of the continental crust and lithosphere.

d. *Division of Ocean Sciences (OCE).* OCE supports research to improve understanding of the ocean, the ocean floor and their relationships to human activities. Ocean Sciences Research Programs foster research in all aspects of ocean sciences to improve our understanding of the complex interactions of physical, chemical, geological, and biological processes in the ocean and at its boundaries. Oceanographic Facilities programs support operations of ships and specialized facilities and equipment needed by U.S. oceanographers to conduct research. The Ocean Drilling Program supports U.S. scientists participating in the Program and manages the Ocean Drilling Program as an international enterprise, ensuring the financial and scientific participation of scientists from partner nations in jointly sponsored scientific and operational activities.

e. *Division of Polar Programs (DPP).* DPP is responsible for funding and management of the U.S. Antarctic Research Program and for support of a small Arctic Research Program. It also provides staff assistance to plan and coordinate Federal research support in the Arctic. The U.S. Antarctic Research Program aims at extending knowledge of Antarctica, including its glaciers and geology, the surrounding ice and oceans, its lower and upper atmosphere, and terrestrial and marine biota. International cooperation contributes to research objectives, to environmental protection, and to strengthening the Antarctic Treaty system. Much polar research relates environmental processes to a global context. As in the Antarctic, the Arctic Research Program supports science spanning the full spectrum of the environment from the ocean bottom through the sea ice cover and out into space where the first interactions of solar radiation with the earth's atmosphere begin. Studies of glaciers and land-based ecosystems also are supported. In addition, the Division has major responsibilities for NSF implementation of the Arctic Research and Policy Act of 1984 that calls for the development and implementation of national policies and research plans and more extensive coordination of planning and budgeting by Federal agencies.

7. Directorate for Mathematical and Physical Sciences (MPS)

a. *Assistant Director for Mathematical and Physical Sciences.* The Assistant Director serves as an advisor to the Director in the development of long-range plans, annual programs, and research policy in the areas of mathematical and physical sciences, as established under statutory and National Science Board authority; and is responsible for developing and carrying out a program to accomplish the Foundation's research support mission in these areas. Five divisions report to the Assistant Director for Mathematical and Physical Sciences. Each division is headed by a Division Director and generally is subdivided on a disciplinary or functional basis into sections and/or programs. In addition to the specific areas of support discussed below, each division supports appropriate conferences, symposia, and research workshops in the areas of science for which it has responsibility.

b. *Division of Astronomical Sciences (AST).* The objectives of the Division are to increase our understanding of the physical nature of the universe, particularly that of the solar system, individual stars, star clusters, galaxies, and special objects in space such as molecular clouds and quasars. Through its astronomy project support programs, the Division supports researchers in all areas of ground-based astronomy, including research on the sun, the solar system, the structure and evolution of the stars, stellar distances and motions, the composition and distribution of interstellar gas and dust, and galaxies and quasars. Also, support is provided for research programs of several major university observatories and for the development and acquisition of new instrumentation incorporating the latest technology for the detection and analysis of radiation through the electromagnetic spectrum. In addition, the Division provides developmental and operational support for the three National Astronomy Centers, operated and managed by nonprofit organizations or universities, under contract to NSF. The Centers provide a variety of optical, infrared, radio and other specialized instrumentation, on a competitive basis, to scientists throughout the Nation. Scientific and support staff are maintained at the Centers to support the research programs of visiting scientists, to develop advanced instrumentation, and to participate in national research programs.

c. *Division of Chemistry (CHEM).* CHEM is responsible for the support of fundamental research in all areas of chemistry, to improve understanding and make possible new applications of chemistry beneficial to other sciences, engineering and technology. The broad subfields supported are organic and macromolecular chemistry, physical chemistry, analytical and surface chemistry, and inorganic, bioinorganic and organometallic chemistry. Special programs exist to assist departments and individual investigators in acquiring advanced instrumentation critical to modern chemical inquiry, and to support interdisciplinary research areas such as the chemistry of life processes and materials chemistry.

d. *Division of Materials Research (DMR).* DMR is responsible for the support of multidisciplinary research designed to gain a deeper understanding of the properties of materials in terms of their composition, structure and processing history and the interactions between their constituents. The broad subfields supported are condensed matter physics, materials chemistry, materials science and engineering, and special programs in materials. The latter includes an instrumentation program, the materials research laboratories, materials research groups, and national facilities for materials research.

e. *Division of Mathematical Sciences (DMS).* DMS is responsible for providing research support in mathematics and statistics, and in their applications to other sciences. The Division has special programs to support conferences, to provide support for postdoctoral fellows, and to assist groups of researchers in acquiring computational equipment. In addition the Division is interested in supporting interdisciplinary groups of researchers developing computational algorithms to be used in studying problems in science and engineering.

f. *Division of Physics (PHY).* PHY is responsible for development of new knowledge about the existence, structure, and interactions of the various forms of matter and energy, and about the basic forces that govern these interactions. The ultimate goal is to understand and predict the effects of nature on a scale ranging from the microscopic to the cosmic. The Division supports research to advance knowledge in the areas of elementary particle physics; nuclear physics; atomic, molecular, and plasma physics; and gravitational physics. Both experimental and theoretical studies are required to produce fuller understanding in each of the areas of interest. The research supported is balanced with respect to the scientific areas as well as to the types of research thrusts for certain fields or for major new projects. Examples include development of new techniques and instrumentation; university-based accelerator laboratories, some of which provide

centralized facilities for outside user groups; university-based research groups performing experiments at their own laboratories or at centralized facilities; and theoretical interpretation, exploration, and prediction.

8. Directorate for Scientific, Technological, and International Affairs (STIA)

a. *Assistant Director for Scientific, Technological and International Affairs.* The Assistant Director serves as a principal advisor to the NSF Director in the development of long-range plans, programs, and policy for scientific, technological, and international affairs. The Assistant Director has responsibility for providing policy analysis and assessments of scientific and technological issues of interest to decision makers in the Executive Office of the President, the National Science Board, and the Congress. The Directorate is responsible for programs designed to: collect and analyze data pertaining to U.S. and international science, engineering and technology; study public policy issues related to science and technology; and support research that cuts across scientific disciplines and is directed toward strengthening the science, engineering and technology base, both nationally and internationally.

b. *Division of Industrial Science and Technological Innovation (ISTI).* ISTI provides a focus for small business activities of the National Science Foundation. Opportunities are provided under the Small Business Innovation Research Program for small science and technology-based firms to perform research projects leading to more rapid commercialization of new ideas, products, and processes. An Equipment Donation and Discount Program seeks to obtain donations of or reduced prices on equipment used by NSF awardees.

c. *Division of International Programs (INT).* INT administers programs for international cooperative scientific activities, including joint research projects, seminars, and scientific visits. It facilitates U.S. scientists' access to unique facilities and sites abroad and provides support for Joint Commissions and other U.S. international scientific efforts. It manages the use of Special Foreign Currency for programs in research and related activities, and coordinates other National Science Foundation programs with international aspects.

d. *Division of Policy Research and Analysis (PRA).* PRA conducts quantitative analyses of national science policy data, and provides the NSF senior staff with estimates of the impacts of alternative policies on the nation's science and engineering capabilities. Typical issues include supply and demand of scientists and engineers, the role of four-year colleges in support of science infrastructure, economics of academic scientific instrumentation and facilities, geographic distribution of NSF funds, faculty age distribution, and the health of science. Analyses are based on science and engineering personnel and infrastructure data from NSF, Department of Education, the National Institutes of Health, the National Academy of Sciences, other Federal agencies, and professional organizations.

e. *Division of Science Resources Studies (SRS).* SRS is responsible for development and maintenance of a data base dealing with the characteristics, magnitude, and utilization of the Nation's human and financial resources for S&T activities. Studies and analyses provide information on scientific, engineering, and technical personnel, science education, scientific institutions, the funding of S&T activities, the nature and relationship of different types of research and development (R&D) activities, the economic impact of R&D, and related topics. The Division also supports studies designed to develop new or improved techniques for analyzing S&T resources data and new or improved indicators of the inputs, outputs, and impacts of S&T activities.

f. *Office of Small Business Research and Development (OSBRD).* OSBRD is responsible for fostering communication between the National Science Foundation and the small business community; collecting, analyzing, compiling, and publishing information concerning grants and contracts awarded to small businesses by the Foundation; assisting small businesses in obtaining information regarding programs, policies, and procedures of the Foundation; and recommending to the Director and to the National Science Board any changes in procedures and practices which would enable the Foundation to use more fully the resources of the small business research and development community.

g. *Office of Small and Disadvantaged Business Utilization (OSDBU).* OSDBU is responsible for NSF compliance with the provisions of Public Law 95–507. It assists small and disadvantaged businesses with information about NSF programs and procurement opportunities.

V. Information for Guidance to the Public

A. General

1. Inquiries and Transaction of Business

All inquiries, submittals, or requests should be addressed to the National Science Foundation, Washington, DC 20550. Members of the public may visit Foundation offices at 1800 G Street NW., Washington, DC during business hours, 8:30 a.m. to 5 p.m., Monday through Friday. The Division of Personnel and Management has a Telephonic Device for the Deaf (TDD) which assists individuals with hearing impairment in obtaining information about NSF programs or employment. The TDD is available Monday through Friday on (202) 357–7492. The information provided below indicates the offices members of the public should contact for specific information.

Individuals uncertain about which office to contact may write to the Foundation's mailing address or visit the National Science Foundation, Public Affairs Group, room 527, 1800 G Street NW., Washington, DC 20550.

2. Availability of Information

Persons desiring to obtain information, including documents, may submit a request by telephone or in writing to the Public Affairs Group, to other Foundation units or, where applicable, under terms of NSF Freedom of Information Act regulations, 45 CFR part 612, or the NSF Privacy Act regulations, 45 CFR part 613. All documents will be made available for inspection or copying, except for those which fall within the exemptions specified in the law and the withholding of which is deemed absolutely necessary.

- Freedom of Information Act (FOIA) requests from the public for Agency records should be clearly identified as "FOIA REQUEST" and addressed to Public Affairs Group, room 527, National Science Foundation, 1800 G Street NW., Washington, DC 20550.
- Privacy Act inquiries allow anyone to obtain personal records legally available under the Privacy Act of 1974. Individuals may submit a request to the NSF Privacy Act Officer, room 208, 1800 G Street NW., Washington, DC 20550.

B. Pertinent Publications

The Foundation and the National Science Board publish a variety of booklets and other materials describing the programs and procedures of the Foundation and assessing the status of science in the Nation. Unless otherwise noted, all publications and forms may

be obtained by calling (202) 357–7861 or by writing: Forms and Publications Unit, National Science Foundation, room 232, 1800 G Street NW., Washington, DC 20550.

The booklet, Publications of the National Science Foundation (NSF 91–61), provides a listing of NSF publications available to the public, with prices where they apply. The following are key publications of the Foundation.

1. *About the NSF* (NSF 91–38) is a flyer for the general public that briefly describes NSF programs and activities.

2. *Grants for Research and Education in Science and Engineering* (NSF 90–77) provides basic guidelines and instructions for investigators applying to the Foundation for scientific and engineering research project support and for other closely related programs, such as the support of foreign travel, conferences, symposia, and specialized research equipment and facilities. Complete details are given on application procedures. The brochure also provides information on the merit review of proposals for support.

3. *NSF Grant Policy Manual* (NSF 88–47, as revised) is a compendium of basic NSF grant administration policies and procedures generally applicable to most types of NSF grants and to most categories of recipients. The Manual includes fiscal regulations regarding expenditure reporting and use of NSF granted funds and other specific administrative procedures and policies. This Manual is updated periodically and is available only by subscription from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9371. GPM subscription rules and prices are subject to change by GPO.

4. *Guide to Programs* (NSF 90–25) contains general information for individuals interested in participating in NSF support programs. Program listings describe the principal characteristics and basic purpose of each activity, as well as eligibility requirements, closing dates (where applicable), and the address to obtain more information, brochures, or application forms.

5. *NSF Bulletin* is a monthly publication (except July and August) that summarizes program announcements, deadlines and target dates for proposal submissions, and other NSF activities.

6. *Individual Program Announcements and Solicitations* provide detailed program publications are issued by individual program areas of the Foundation, announcing and describing award programs and containing critical dates and application procedures.

7. *NSF Annual Report* (NSF 91–1) is an annual presentation to the President, for submission to the Congress, highlighting the activities of the Foundation for the prior fiscal year. The report reflects accomplishments in research support activities and in science and engineering education, along with recent NSF policy or program initiatives and trends. Appendices contain other data on Foundation staff and National Science Board members and patents and financial reports. The report covering activities of the previous fiscal year is available mid-year.

8. *National Science Board Reports* contain assessments of the status and health of science and engineering. A report on indicators of the state of science and engineering in the United States is rendered biennially to the President for submission to the Congress. Other reports on policy matters related to science and engineering and education in science and engineering are provided from time to time.

9. *Mosaic* is an interdisciplinary magazine of basic and applied research. Published four times a year, the *Mosaic* is edited for nonspecialists in the sciences as a way for the Foundation to report on the research it supports. The *Mosaic* is available from Superintendent of Documents, Government Printing Office, Washington, DC 20402–9371. Subscription is $8.00 per year in the United States and possessions ($10.00 foreign). A single copy may be purchased for $2.75 ($3.44 foreign).

10. *Antarctic Journal of the United States* is a magazine published quarterly available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Subscriptions are available for $13.00 per year in the United States and possessions ($16.25 foreign). A single copy may be purchased for $1.50 ($1.88 foreign). The *Annual Review Issue of the Antarctic Journal* may be purchased for $13.00 (domestic) or $16.25 (foreign).

11. *Important Notices* are the primary means of general communication by the Director, NSF, with organizations receiving or eligible for NSF support. These notices convey important announcements of NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.

12. *Internal Issuances* are the Foundation system for communication within the Agency on matters of policy, procedures, and general information. The internal issuances are published to establish organizations, define missions, set objectives, assign responsibilities, delegate or limit authorities, establish program guidelines, delineate basic requirements affecting activities of the Foundation, and serve other internal needs.

C. Sources for Specific Subjects.

For information concerning the following topics, contact the offices listed below.

1. *Contracts.* The Foundation publicizes contracting and subcontracting opportunities in the *Commerce Business Daily* and other appropriate publications. Organizations seeking to undertake contract work for the Foundation may contact the Division of Grants and Contracts, (202) 357–7842, room 1140, or the Division of Administrative Services, (202) 357–7922, room 248, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

2. *Small Business.* Information concerning NSF research and procurement opportunities for small, disadvantaged, or women-owned businesses may be obtained from the Office of Small Business Research and Development/Office of Small and Disadvantaged Business Utilization, (202) 357–7464, room 1250, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

3. *Engineering Information Resources.* Information concerning engineering resources may be obtained from the Office of the Assistant Director for Engineering, room 537, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

4. *National Science Board Activities.* Schedules of Board meetings, agendas, and summary minutes of the open meetings of the Board may be obtained from the NSB Office, (202) 357–9582, room 545, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

5. *NSF Advisory Committee Activities.* Summary of meeting minutes may be obtained from the contacts listed in the Notice of Meetings published in the **Federal Register**. General information about the Foundation's advisory groups may be obtained for the Committee Management Officer, Division of Personnel and Management, Management Analysis Branch, room 208, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 357–7363.

6. *Employment.* Inquiries may be directed to the National Science Foundation, Division of Personnel and Management, (202) 357–7840, room 208, 1800 G Street NW., Washington, DC

20550. The NSF Job Information Hotline can be accessed 24 hours a day in the Washington, DC metropolitan area by dialing (202) 357–7735; outside Washington, DC., dial 1–800–628–1487. Hearing impaired individuals can call Monday-Friday to access a Telephonic Device for the Deaf (TDD). The TDD number is (202) 357–7492. The National Science Foundation is an equal opportunity employer.

D. Other Access to Information

1. *Reading Room.* Persons who wish to inspect or copy records should contact the NSF Public Affairs Group, (202) 357–9498, room 527, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

2. *Science and Technology Information System (STIS).* NSF has an electronic dissemination system that provides easy access to NSF publications and other information. The full text of publications can be searched online and copied from the system. There is no charge for connect time and no need to register for a password. The service is available 24 hours a day, except for maintenance periods. Up to 10 people can be on the system simultaneously. For more information and instructions to use STIS, request "STIS—The Science and Technology Information System" (flyer), NSF 91–10, by calling (202) 357–7861 or by writing: Forms and Publications Unit, National Science Foundation, room 232, 1800 G Street NW., Washington, DC 20550.

[FR Doc. 91–19558 Filed 8–15–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8786]

Uranium Resources, Inc.; Final Finding of No Significant Impact Regarding the Termination of Source Material License SUA–1400 Authorizing the Research and Development Operation of the North Platte In-Situ Leach Project Located in Converse County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate Source Material License SUA–1400.

2. Reasons for Final Finding of No Significant Impact

Three separate environmental assessments were prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC), Uranium Recovery Field Office (URFO), Region IV. The initial assessment was documented by review memorandum dated September 23, 1987. This assessment compared ground-water quality data associated with preoperational conditions and restoration monitoring. Although restoration efforts did not produce baseline concentrations for all monitored constituents, the class of use for the water resource was preserved. Confirmatory sampling performed by the NRC indicated that the licensee's data was accurate. Considering the accuracy of the data as well as preservation of the class of use, both the NRC and the Wyoming Department of Environmental Quality suspended further monitoring and authorized abandonment of the well field.

Subsequent to the ground-water restoration work, data packages dated June 15, 1990, and January 28, 1991, were submitted to the NRC. These data indicated that the one acre well field had soil radium-226 concentrations that allowed unrestricted release of the site. All contaminated process equipment had been transferred to other licensed uranium recovery operations and the process building, which is to be deeded to the land owner, was decontaminated. NRC inspections and independent measurements verified the decontaminated nature of the remaining structure as well as the soil radium-226 concentrations.

Contaminated wastes consisting of pipe, sludges, building materials, and pond liners were appropriately packaged and shipped to a licensed site for disposal. A final NRC inspection verified the shipments as well as the decontaminated nature of the site.

Based upon the NRC inspection findings and sampling results, the Commission has determined that no significant impacts have resulted from the research and development operations that took place at the site. Due to this, Source Material License SUA–1400 may be terminated without any significant impacts.

In consideration of this situation, the Director of the Uranium Recovery Field Office, in accordance with 10 CFR part 51.35 is issuing a final finding of no significant impact. Concurrent with this finding, the Commission's Uranium Recovery Field Office will terminate Source Material License SUA–1400.

Dated at Denver, Colorado, this 9th day of August, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 91–19589 Filed 8–15–91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Instrumentation and Control Systems; Meeting

The ACRS Subcommittee on Instrumentation and Control Systems will hold a meeting on August 29, 1991, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, August 29, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss EPRI's reactor set-point methodology for future designs and other related issues.

Oral statements may be presented by members of the public with the occurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with EPRI's representatives, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two

days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 9, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-19587 Filed 8-15-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409, Facility License No. DPR-45]

Dairyland Power Cooperative, La Crosse Boiling, Water Reactor (LACBWR); Order Authorizing Decommissioning of Facility

By application dated December 21, 1987, as revised February 22, 1988, September 9, 1988, September 30, 1988, January 26, 1989, March 28, 1989, June 6, 1989, October 3, 1989, July 25, 1990, May 10, 1991, and July 25, 1991, Dairyland Power Cooperative (DPC) requested approval of its proposed Decommissioning Plan for the La Crosse Boiling Water Reactor (LACBWR) and an amendment to License No. DPR-45. A Notice of Consideration of Issuance of Amendment and Opportunity for Hearing was published in the Federal Register on April 8, 1988 (53 FR 11718). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that decommissioning as stated in the licensee's Decommissioning Plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis for these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared. The Notice of Issuance of Environmental Assessment was published in the Federal Register on August 7, 1991 (56 FR 37574).

Accordingly, the license is hereby ordered to decommission the reactor facility in accordance with its Decommissioning Plan and the Commission's rules and regulations.

For further details with respect to this action, see: (1) The licensee's application for authorization to decommission the facility, dated December 21, 1987, as revised February 22, 1988, September 9, 1988, September 30, 1988, January 26, 1989, March 28, 1989, June 6, 1989, October 3, 1989, July 25, 1990, May 10, 1991, and July 25, 1991; (2) Amendment No. 66 to License No. DPR-45; (3) the Commission's related Safety Evaluation; and (4) the Environmental Assessment and Finding of No Significant Impact. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601. Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland this 7th day of August 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nucleor Reactor Regulation.

[FR Doc. 91-19344 Filed 8-15-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors; Meeting

The purpose of the National Advisory Committee on Semiconductors (NACS) is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on Thursday, September 5, 1991 at Science Applications International Corporation (SAIC), 1555 Wilson Boulevard, 7th Floor, Rosslyn, Virginia. The proposed agenda is:

1. Briefing of the Committee on its organization and administration.

2. Presentations to the Committee by OSTP personnel and personnel of other agencies on proposed and ongoing studies regarding semiconductors.

3. Discussion of Working Group actions.

A portion of the September 5th session will be closed to the public.

The briefing on some of the current activities of OSTP and other agencies may involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on working group actions. As well, a portion of both of these briefings will require discussion of confidential commercial information related to the semiconductor industry and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b. (c)(1), (2), (4), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b. (c)(6).

Because of advance security arrangements, persons wishing to attend the open portion of the meeting should contact Ms. Kathleen Elim, at (703) 284-3334 prior to September 4, 1991. Ms. Elim is also available to provide specific information regarding time, place and agenda for the open session.

Dated: August 13, 1991.

Damar W. Hawkins,

Executive Assistant to the Director, Office of Science and Technology Policy.

[FR Doc. 91-19722 Filed 8-15-91; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29544; File No. SR-Amex-91-16]

Self-Regulatory Organization; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Reduction or Waiver of Listing Fees Under Certain Circumstances

August 9, 1991.

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 July 18, 1991, the American Stock Exchange, Inc. (Amex or Exchange) filed with the Securities and Exchange Commission (Commission) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt section 146 to the Amex Company Guide to allow the Exchange, in its discretion, to reduce or waive [1] the amount of original, annual, and/or additional listing fees under certain limited circumstances to accommodate unique situations.[2]

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

(1) Purpose

Currently, when an applicant files for listing on the Amex, an original listing fee is levied on the company based on the total number of shares to be listed. Thereafter, annual fees are imposed based on the number of shares outstanding, and additional listing fees are normally collected for listing additional shares of an existing issue. Under the Amex's current fee structure, the Exchange generally has no flexibility to reduce or waive listing fees, even in situations where the facts might justify such action.

While the increase in the number of closed-end mutual funds and other non-traditional equity issues has opened new listing opportunities for the Amex, the Exchange has found that the rigidity of its fee structure has, in certain circumstances, kept it from fully capitalizing on this growth. This has been particularly true in connection with efforts to list a series of related mutual funds or unit investment trusts marketed by a single sponsor. Currently, the Amex would treat the listing of multiple funds by a single sponsor as individual listings, charging the full original listing fee for each. This practice is in marked contrast to the practices of the National Association of Securities Dealers, Inc. (NASD), which has recently revised its listing fee schedule for NASDAQ companies to specify that both original and annual fees may be lowered or waived on a case-by-case basis.[3]

The Exchange has also from time-to-time faced other situations where an equitable adjustment in original or additional listing fees would appear to be in order. The spin-off of various operations by a listed company into a series of separate enterprises (each to be owned initially by the same shareholders), and the relisting of a company that has been restructured within a short period of time after delisting, are examples where the Exchange might find it appropriate to consider some relief from full listing charges.

Accordingly, the Amex proposes to amend the Company Guide to add a new provision authorizing the Exchange, in unique situations such as those described above, to reduce or waive listing fees where deemed appropriate to achieve an equitable result. It is not intended that the Exchange would exercise this discretion in such a way as to open listing fees to negotiation on a routine basis or that financial hardship in itself would be a justification for reducing such fees; rather there would have to be an equitable rationale for granting relief based on the circumstances presented in each case.

(2) Basis

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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 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 Amex. All submissions should refer to File No. SR-Amex-91-16 and should be submitted by September 6, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19624 Filed 8-15-91; 8:45 am]

BILLING CODE 8010-01-M

[1] In the original filing, the Exchange proposed to allow the Exchange, in its discretion, to adjust the amount of original, annual, and/or additional listing fees under certain limited circumstances to accommodate unique situations. The Exchange later amended the filing to allow the Exchange, in its discretion, to reduce or waive the amount of original, annual, and/or additional listing fees under certain limited circumstances to accommodate unique situations. See Amendment No. 1 to File No. SR-Amex-91-16.

[2] The exact text of the proposal was attached to the rule filing as Exhibit A and is available at the Amex and the Commission at the address noted in Item IV below.

[3] See part IV of Schedule D of the NASD By-Laws which provides that the NASD's Board of Governors may waive all or any part of the entry and annual fees for both National Market System ("NMS") and regular NASDAQ applicants. See also Securities Exchange Act Release No. 28731 (January 2, 1991), 56 FR 906 (approving File No. NASD-90-61).

[Release No. 34-29543; File No. SR-PSE-91-28]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Price Protection of Limit Orders

August 9, 1991.

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 July 31, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend several rules of the Exchange's Rules of the Board of Governors in order to allow the Exchange to provide primary market protection to orders that have been entered with the PSE but are designated to receive the execution price that will be established in the primary market's after-hours session. The PSE has requested accelerated approval of the proposed rule change.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE proposes the instant rule change as a competitive response to the American Stock Exchange's (Amex) after hours trading facility that was recently approved by the Commission.[1]

In this rule filing, the PSE proposes to amend its rules which allow the Exchange to provide primary market protection to orders that have been entered with the PSE but are designated to receive the execution price that will be established in the primary market's after-hours session. In particular, the PSE proposes to delete from its rules specific references to Crossing Session I of the NYSE's OHT facility [2] and to replace these references with new language that refers to a "primary market" after-hours trading session. The purpose of the amendment is to allow the Exchange to extend primary market protection to orders based on prices established in any primary market's after-hours trading session and not only to prices established by the NYSE's OHT facility.

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 facilitate transactions in securities, to foster a free and open market and, in general, to protect investors and the public interest by encouraging the competitive market place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[1] The Amex has extended its trading hours to establish an after-hours trading facility that would permit the execution of single-stock closing-price orders and crosses of closing-price buy and sell orders. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (approving File No. SR-Amex-91-15). The Amex's after-hours trading facility is substantially similar to the New York Stock Exchange's (NYSE) "Crossing Session I," which was approved by the Commission on May 20, 1991. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (approving Files No. SR-NYSE-90-52 and NYSE-90-53).

[2] On June 13, 1991, the Commission approved changes to the PSE rules which allowed the Exchange to require its specialists to provide primary market protection for limit orders, designated as executable after the close of the regular trading session, based on volume that prints in Crossing Session I of the NYSE's OHT facility. See Release No. 34-29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE-91-21).

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 in 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 PSE. All submissions should refer to File No. SR-PSE-91-28 and should be submitted by September 6, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission has determined to approve the proposed rule change. The Commission believes that the PSE proposal is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market.

The Exchange does not propose to change the substantive meaning of existing PSE rules that require specialists to provide primary market protection. Instead, the proposal merely expands the scope of those rules to cover the Amex's after-hours trading session. The PSE currently trades both NYSE-listed and Amex-listed securities pursuant to unlisted trading privileges. As a result of the rule change, PSE specialists now will be required to provide primary market protection to certain designated orders based on order executions that occur in either primary market's after hours trading session. Thus, PSE specialists will be required to provide primary market protection not only to certain designated

orders in NYSE-listed securities based on order executions that occur in the NYSE's Crossing Session I, but also to designated orders in Amex-listed stocks based on volume that prints in the Amex's recently-approved after-hours trading facility. [3]

The Commission believes that allowing the PSE to require its specialists to provide primary market protection to certain designated orders based on order executions that occur in either the NYSE's Crossing Session I or in the Amex's after-hours trading facility is consistent with fair and orderly markets. The Commission also believes that requiring PSE specialists to provide primary market protection to orders in both NYSE-listed and Amex-listed stocks should help to ensure that investors receive the best execution of their orders. For these reasons, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[4]

In addition, 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. The PSE's proposal merely extends the Exchange's current rules, which allow the Exchange to require its specialists to provide primary market protection to orders that have been entered with the PSE but are designated to received the execution price that will be established in the primary market's after-hours session, so that they will apply to any primary market's after-hours session and not only to the NYSE's OHT facility. It does not substantially alter current PSE procedures, nor does it raise issues not already addressed in the order approving the PSE rules regarding providing primary market protection to certain limit orders. Also, the substance of this proposal was published in the Federal Register for the full statutory period and no comments were received by the Commission.[5] Accordingly, the Commission believes it is appropriate to approve the proposed rule change on an accelerate basis in order to provide uninterrupted, primary market protection for eligible limit orders and to permit the PSE to compete with the Amex's after-hours trading facility and with any other primary market's after-hours session.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] That the proposed rule change is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19625 Filed 8-15-91; 8:45 am]

BILLING CODE 8010-01-M

[3] The Commission recently approved proposals by several of the regional stock exchanges to require their specialists to provide primary market protection to limit orders, designated as executable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session (see Securities Exchange Act Release Nos. 29301 (June 13, 1991), 56 FR 28182 (granting temporary accelerated approval to File No. BSE-91-4); 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE-91-11); 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE-91-21); and 29300 (June 13, 1991), 56 FR 28212 (granting temporary accelerated approval to File No. Phlx-91-26). The Commission notes that its approval of these proposals is limited in application to providing execution guarantees based on volume that prints in the primary market crossing sessions that have been approved by the Commission [i.e., NYSE's Crossing Session I (see *supra* note 1) and Amex's after-hours trading facility (see *supra* note 1)]. If the NYSE or the Amex were to propose new after-hours trading systems, the PSE, as well as the Boston, Midwest, and Philadelphia Stock Exchanges would have to submit new proposed rule changes to extend their execution guarantees to the new systems.

[4] 15 U.S.C. 78f and 78k-1 (1988). The Commission approved the PSE rules relating to GTX orders for a temporary pilot period ending on May 24, 1993. See Release No. 29305, supra, note 2. Because the instant rule change amends these same rules, the Commission is approving these changes for the same time period.

[5] See Securities Exchange Act Release No. 29305, supra note 2.

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1).

[Release No. 34-29533; File Nos. SR-PTC-90-09]

Self-Regulatory Organizations; The Participants Trust Co.; Withdrawal of Proposed Rule Change Relating to the Allocation and Distribution of Collected Principal and Interest Payments

August 7, 1991.

On December 17, 1990, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change (File No. PTC-90-09) relating to the allocation and distribution of collected principal and interest payments.

Notice of the proposed rule change was published in the Federal Register on January 14, 1991,[2] on August 5, 1991, PTC withdrew the proposal.[3]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19536 Filed 8-15-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18265; 811-5532]

Appalachian Income Shares, Inc.; Application

August 9, 1991.

AGENCY: Securities and Exchange Commission (SEC or Commission).

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the 1940 Act).

APPLICANT: Appalachian Income Shares, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on June 14, 1991 and an amendment was filed on August 7, 1991.

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 September 6, 1991, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o DG Bank, 609 Fifth Avenue, New York, New York 10017-1021.

[2] Securities Exchange Act Release No. 28744 (January 7, 1991), 56 FR 1427.

[3] Letter from Alison N. Hoffman, Assistant Counsel, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (July 3, 1991).

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Assistant Director, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On April 10, 1988, applicant filed a notification of registration pursuant to section 8(a) of the 1940 Act and a registration statement pursuant to section 8(b) of the 1940 Act. Applicant's securities are not registered under the Securities Act of 1933. Applicant has no more than 100 security holders and has never made a public offering of its securities.

2. Applicant was organized primarily to provide institutional investors organized in the Federal Republic of Germany with an investment subject to favorable tax treatment. Pursuant to a new income tax treaty between the United States and what was then the Federal Republic of Germany, these tax advantages were eliminated as of December 31, 1990. Upon losing the tax advantages, applicant's shareholders requested the redemption of all outstanding shares. Because of the redemptions, as of April 1, 1991, applicant's board of directors authorized the dissolution of applicant.

3. In connection with the liquidation, applicant's portfolio securities were sold through government dealers at market price without the payment of any brokerage commissions.

4. On December 17, 1990, applicant distributed to its shareholders $9.97 per share, which represented all of applicant's assets on that date.

5. Applicant paid approximately $3,500 in legal and other expenses related to the liquidation.

6. Applicant is in the process of filing articles of dissolution with the State of Maryland.

7. As of the date of the application, applicant had not debts or liabilities, and was not a party to any litigation or administrative proceeding.

8. Applicant is neither engaged in, nor proposes to engage in, any business activities other than those necessary for the winding up of its affairs as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19620 Filed 8–15–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–29359]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 9, 1991.

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 September 3, 1991 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.

New England Energy Incorporated (70–6971)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a fuel supply subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and Rule 50 thereunder.

By order dated August 16, 1984 (HCAR No. 23397), NEEI was authorized to enter into interest payment exchange contracts ("Swap Agreement(s)") with one or more parties, on or before December 31, 1985, covering a total principal amount of up to $150 million of its outstanding debt ("Covered Amounts"). The Swap Agreements could have a term or terms ranging between three and seven years. By order dated March 7, 1986 (HCAR No. 24046), this authority was extended through December 31, 1987 and the Covered Amounts could be increased up to $200 million. Subsequently, by order dated December 17, 1987 (HCAR No. 24531), NEEI was authorized to enter into additional Swap Agreements and other types of interest rate protection mechanisms on or before December 31, 1989. Finally, by order dated December 29, 1989 (HCAR No. 25015), all such authority was extended through December 31, 1991, under all of the same terms and conditions.

To date, NEEI has entered into one five-year Swap Agreement with Harris Trust and Savings Bank, having a Covered Amount of $25 million. NEEI now seeks to extend this same authorization through December 31, 1993.

Granite State Electric Company, et al. (70–7765)

Granite State Electric Company ("Granite"), Massachusetts Electric Company ("Mass-Electric"), Narragansett Energy Resources Company ("NERC"), The Narragansett Electric Company ("Narragansett"), New England Electric Transmission Corporation ("NEET"), New England Energy Incorporated ("NEEI"), New England Hydro Finance Company, Inc. ("Hydro-Finance"), New England Hydro-Transmission Electric Company, Inc. ("Mass-Hydro"), New England Hydro-Transmission Corporation ("NH-Hydro"), New England Power Company ("NEP") and New England Power Service Company ("NEPSCO"), subsidiaries of New England Electric System ("NEES"), a registered holding company, each located at 25 Research Drive, Westborough, Massachusetts 01582, and NEES (collectively, "Applicants") [1] have filed a post-effective amendment to the application-declaration under sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 42, 43 and 45 thereunder.

By orders dated September 21, 1990 and January 7, 1991 (HCAR Nos. 25176 and 25238, respectively), Granite, Mass-Electric, Narragansett, NEET, NEP and

[1] As authorized by order dated July 20, 1990 (HCAR No. 25121), on November 7, 1990, NEES sold its energy management services subsidiary, NEES Energy, Incorporated ("NEES Energy"), to Northeast Energy Services, Inc., a nonassociate company. Consequently, NEES Energy is not an applicant to this filing.

NEPSCO were authorized through October 31, 1993 to borrow from the NEES Money Pool ("Money Pool") and/or banks and, in the cases of Mass-Electric, Narragansett and NEPSCO, to issue commercial paper in varying amounts. The Money Pool is administered by NEPSCO as agent. The Applicants now propose to amend the Money Pool to include new lenders and borrowers and to divide the Money Pool's borrowers into two groups, as described below. In all other respects, the current terms of the Money Pool shall remain unchanged.

The Applicants propose that: (1) NERC and Hydro-Finance be authorized to participate as lenders in the Money Pool; and (2) Mass-Hydro and NH-Hydro, which currently participate as lenders only, also be authorized to borrow from the Money Pool up to a combined maximum amount outstanding at any one time of $25 million through October 31, 1993. Mass-Hydro's and NH-Hydro's total outstanding short-term borrowings from both the Money Pool and banks [2] shall not exceed a combined maximum amount of $25 million at any time outstanding.

Applicants also propose to divide Money Pool borrowers into two groups: (1) "Group I," composed of Granite, Mass-Electric, Narragansett, NEET, NEP and NEPSCO, all wholly owned subsidiaries of NEES; and (2) "Group II," composed of Mass-Hydro and NH-Hydro, majority owned subsidiaries of NEES. Loans from the Money Pool will be made to Group II borrowers only after Group I's borrowing needs have been satisfied. Applicants state that, subject to further Commission authorization, new participants may be added to the Money Pool from time-to-time, either as lenders or borrowers, or both, in either Group I or Group II as may be approved and designated by NEPSCO.

Jersey Central Power & Light Company, et al. (70–7850)

Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, N.J., Metropolitan Edison Company ("Met-Ed"), P.O. Box 16001, Reading PA 15907, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania, electric public-utility subsidiaries of General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, N.J. 07054, a registered holding company, and GPU Service Corporation ("Service"), 100 Interpace Parkway, Parsippany, N.J. 07054, service company subsidiary of GPU (collectively, "Applicants") have filed an application under sections 9(a) and 10 of the Act. JCP&L, Met-Ed and Penelec (collectively, "Utilities") propose to build and have Service operate and maintain a fiber optic communication system ("Fiber Optic System") that will initially link the GPU system companies from Morristown, New Jersey to Johnstown, Pennsylvania.

The Utilities propose to build a Fiber Optic System that, when initially completed, will be comprised of a segmented cable containing up to 36 fibers. Additional segments of the Fiber Optic System could contain less or more than 36 fibers, depending on the defined needs for each segment. The Utilities project that the GPU system will initially utilize only 8 of the fibers for its own needs but anticipate that all of the fibers should be utilized by the GPU system within 20 years.

The Applicants request authorization, through December 31, 2002, for Service, as agent for the Utilities, to enter into lease agreements ("Leases") with non-affiliated companies ("Lessees"), for a consideration to be negotiated with the prospective Lessees, to lease up to 50% of the total number of fibers in the Fiber Optic System until such time as these fibers are required to meet GPU system needs. The Applicants state that the Leases will not interfere with the primary and priority use of the Fiber Optic System by GPU system companies and will include reasonable termination provisions which will allow the Owners to recapture the use of leased fibers required to meet GPU System needs. The Applicants anticipate that the leases will be for an initial ten year period with an option for an extension thereafter of up to five years. The Applicants also request authorization, through December 31, 2002, for Service, as agent for the Utilities, to offer and provide maintenance services to the Lessees for an additional consideration to be negotiated with prospective lessees depending upon the amount and type of services.

The Applicants anticipate that it will cost approximately $19 million to construct the Fiber Optic System. The construction costs will be allocated among the Utilities on the basis of the number of line miles of the Fiber Optic System in the service territory of each Utility. As currently planned, the allocation is as follows:

	Percent
JCP&L	17.2
Met-Ed	44.6
Penelec	38.2

Each Utility will own an undivided interest in the Fiber Optic system in accordance with the same allocation formula.

The Applicants anticipate that, during the first five years of Fiber Optic System operations, total annual revenues from the Leases and the provision of services to Lessees will not exceed $4 million and $200,000, respectively, and that total annual expenditures by the Applicants in connection with the negotiation and administration of the Leases and the provision of maintenance services will not exceed $200,000 and $200,000, respectively. Revenues and expenses will be apportioned among the Utilities in proportion to their respective ownership interests in the Fiber Optic System. The Utilities anticipate that the revenues can be used to offset or reduce the cost of service charged by the Utilities to their ratepayers (assuming favorable State rate treatment) by including the revenues in their jurisdictional cost of service studies used in establishing electric rates.

National Fuel Gas Company et. al. (70–7866)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its wholly owned subsidiary companies, National Fuel Gas Distribution Corporation ("Distribution"), Penn-York Energy Corporation ("Penn-York"), National Fuel Gas Supply Corporation ("Supply") and Seneca Resources Corporation ("Seneca") (collectively, "Subsidiaries"), all located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45, 50 and 50(a)(5) thereunder.

National proposes to issue and sell in one or more transactions through December 31, 1993, an aggregate principal amount up to $200 million in any combination of (a) debentures ("Debentures") maturing from one to forty years, under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission Statement of Policy dated September 2, 1982 (HCAR No. 22623), and/or (b) medium-term notes ("MTNs") with maturities from nine months to forty years. National proposes to sell the MTNs under an exception from the

[2] By order dated April 10, 1991 (HCAR No. 25293), Mass-Hydro and NH-Hydro were authorized to make short-term borrowings from banks up to a combined maximum amount of $25 million at any one time through October 31, 1993.

competitive bidding requirements of Rule 50 under Rule 50(a)(5). National has requested that it be authorized to begin negotiations with potential agents to place the MTNs. It may do so. The Debentures and/or MTNs will be issued under an Indenture dated as of October 15, 1974, as supplemented, between National and Irving Trust Company.

National proposes to use the proceeds from the proposed financing to lend, in exchange for unsecured notes ("Notes"), up to (a) $150 million to Distribution, (b) $100 million to Penn-York, (c) $100 million to Supply, and (d) $50 million to Seneca. The total amount lent by National to its Subsidiaries will not exceed the proceeds received by National from the issuance of the Debentures and/or MTNs.

The Notes will bear interest at the effective interest cost of the principal amount of the Debentures and/or MTNs, in each case rounded to the next highest 1/100th of 1%. The Notes will mature serially on the date of maturity of the corresponding Debentures and/or MTNs.

The Subsidiaries will use the proceeds from the Notes (i) to reduce their outstanding short-term borrowings under their lines of credit, (ii) for their construction programs, and (iii) for general corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19628 Filed 8-15-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18267; 811-6018]

Short-Intermediate Assets Fund, Inc.; Application

August 9, 1991.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the 1940 Act).

APPLICANT: Short-Intermediate Assets Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATIONS: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed June 28, 1991.

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 September 6, 1991, and should be accompanied by proof of service on the 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 5th Street NW., Washington, DC 20549. Applicant, Short-Intermediate Assets Fund, Inc., 144 Glenn Curtiss Boulevard, Uniondale, New York 11556-0144.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, at (202) 272-7324, or Jeremy N. Rubenstein, Assistant Director at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a corporation organized and existing in good standing under the laws of the State of Maryland.

2. Applicant registered as a non-diversified, open-end management investment company under section 8(a) of the 1940 Act on May 24, 1990.

3. On May 24, 1990, Applicant filed a registration statement under the Securities Act of 1933 to register an unlimited number of shares of common stock. Applicant's registration statement was not declared effective, and Applicant has not offered any of its shares of common stock to the public or otherwise.

4. Applicant has not commenced operations and does not intend to commence operations. Applicant has no securityholders, no assets, and no liabilities.

5. Applicant is not now engaged in any business activities, and will not engage in any business activities other than in connection with winding up its affairs.

6. Applicant is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19621 Filed 8-15-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18266; Int'l. Series Release No. 304; 812-7768]

The Taiwan Fund, Inc; Application

August 9, 1991.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the 1940 Act).

APPLICANT: The Taiwan Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act that would grant an exemption from section 12(d)(3) of the 1940 Act and rule 12d-3.

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) of the 1940 Act to permit it to invest in Taiwan Stock Exchange listed equity and debt securities issued by foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from securities related activities, provided such investments meet the conditions of the proposed amendments to rule 12d3-1 under the 1940 Act.

FILING DATE: The application was filed on August 6, 1991.

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 September 6, 1991, and should be accompanied by proof of service on the 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, c/o Laurence C. Cranch, Esq., Rogers & Wells, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Jeremy N. Rubenstein,

Assistant Director (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered under the 1940 Act as a closed-end management investment company. China Securities Investment Trust Corporation and Fidelity International Investment Advisors Limited are Applicant's investment advisers.

2. Applicant seeks to invest in Taiwan Stock Exchange listed equity and debt securities issued by foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as broker, dealer, underwriter or investment adviser (Foreign Securities Companies).

3. Applicant seeks relief from section 12(d)(3) of the 1940 Act and rule 12d3–1 thereunder to invest in securities of Foreign Securities Companies to the extent allowed in the proposed amendments to rule 12d3–1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Applicant's proposed acquisition of securities issued by Foreign Securities Companies will satisfy each of the requirements of proposed amended rule 12d3–1.

Applicant's Legal Conclusion

1. Section 12(d)(3) of the 1940 Act generally prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the 1940 Act provides an exemption from section 12d(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Applicant's proposed acquisition of securities issued by Foreign Securities Companies will satisfy each of the requirements of rule 12d3–1 under the 1940 Act except subparagraph (b)(4) thereof, which provides that "[a]t the time of acquisition, any equity security of the issuer [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a margin security generally must be one which is traded in United States markets, securities issued by many Foreign Securities Companies would not meet this test. Accordingly, Applicant seeks an exemption from the margin security requirements of rule 12d3–1.[1]

2. Proposed amended rule 12d3–1 provides that the margin security requirement would be excused if the acquiring company purchases the equity securities of Foreign Securities Companies that meet criteria comparable to those applicable to equity securities of United States securities related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees that any relief will be subject to the following condition:

1. Applicant will comply with the provisions of the proposed amendments to rule 12d3–1, [Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989)], and as such amendments may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19622 Filed 8–15–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System has amended Regulation T to include "foreign margin stock." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stock" under Regulation T. See 12 CFR 220.2 (l) and (q)(6).

SMALL BUSINESS ADMINISTRATION

Region IX Regional Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11 a.m. on Thursday, September 26, 1991, at the Verdugo Club, 400 West Glenoaks Boulevard, Glendale, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, telephone (213) 894–2977.

Dated: August 8, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–19547 Filed 8–15–91; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical areas of Jacksonville and Miami, will hold a public meeting from 10 a.m. to 3 p.m. on Tuesday, September 10, 1991, at the Guest Quarters Suite Hotel, 2670 E. Sunrise Boulevard, Fort Lauderdale, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Thomas M. Short, District Director, U.S. Small Business Administration, Jacksonville District Office, 7825 Baymeadows Way, suite 100–B, Jacksonville, Florida 32256–7504, telphone (904) 443–1970.

Dated: August 8, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–19544 Filed 8–15–91; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Kansas City, will hold a public meeting from 1 p.m. to 3:30 p.m. on Thursday, September 12, 1991, in the Executive Board Room of the United Kansas Bank, 8600 Shawnee Mission Parkway, Merriam, Kansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John Holtke, Advisory Board Chairperson, United Kansas Bank, 8600 Shawnee Mission Parkway, P.O. Box 638, Merriam, Kansas 66202, telephone (913) 362–5500, or Harold Nossaman, District Director, Kansas City District Office, U.S. Small Business Administration, Lucas Place, 323 West 8th Street, suite 501, Kansas City, Missouri 64105, telephone (816) 374–6760.

Dated: August 8, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-19545 Filed 8-15-91; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9:30 a.m. on Friday, September 13, 1991, at the Superconducting Super Collider Laboratory, 2550 Beckleymeade Avenue, MS 1060, Dallas, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, room 3C36, Dallas, Texas 75242, telephone (214) 767-0600.

Dated: August 8, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-19546 Filed 8-15-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91-042]

National Boating Safety Advisory Council; Applications for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as follows: Two (2) members from the recreational boat and associated equipment manufacturers; two (2) members from national recreational boating organizations and from the general public; and three (3) members from State officials responsible for State boating safety programs. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

DATES: Requests for application forms should be received no later than September 19, 1991.

ADDRESSES: Requests for application forms should be sent to Commandant (G-NAB), U.S. Coast Guard Headquarters, Washington, DC 20593-0001; telephone: (202) 267-0997.

FOR FURTHER INFORMATION CONTACT: Mr. A.J. Marmo, Executive Director, National Boating Safety Advisory Council (G-NAB), room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001; (202) 267-1077.

Dated: August 12, 1991.

J.W. Lockwood,

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

[FR Doc. 91-19601 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-91-39]

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 September 5, 1991.

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 Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

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 August 9, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 20369.

Petitioner: World Jet Corporation, dba Executive Jet New York.

Sections of the FAR Affected: 14 CFR 135.89(b)(3).

Description of Relief Sought: To allow World Jet Corporation dba Executive Jet New York to fly its aircraft below flight level 410 without at least one pilot at the controls wearing a secured and sealed oxygen mask.

Docket No.: 22441.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1) and Appendix F.

Description of Relief Sought: To renew Exemption 3451F which allows United Airlines to conduct a Federal Aviation Administration (FAA)-monitored program under which United pilots-in-command, seconds-in-command and flight engineers will be able to meet ground and flight recurrent training and proficiency check

requirements through a single annual visit to the training facility.

Docket No.: 25345.

Petitioner: National Business Aircraft Association, Inc.

Sections of the FAR Affected: 14 CFR 91.511(a)(2).

Description of Relief Sought: To extend Exemption No. 5127 from § 91.511(a)(2) of the Federal Aviation Regulations which would continue to allow National Business Aircraft Association, Inc. members to operate in certain specified areas of the western Atlantic, Caribbean, and Gulf of Mexico with a single long-range navigation device.

Docket No.: 26482.

Petitioner: United Parcel Service.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought: To allow United Parcel Service until June 30, 1995, to install windshear guidance systems in 18 DC8 aircraft.

Docket No.: 26547.

Petitioner: Florida West Airlines, Inc.

Sections of the FAR Affected: 14 CFR 145.35(a) and 145.37(b).

Description of Relief Sought: To permit Florida West Airlines, Inc. to perform overhaul, modification, and repair of aircraft without total and complete housing for the work.

Docket No.: 26577.

Petitioner: Jet Tech, Inc.

Sections of the FAR Affected: 14 CFR 61.63(d) (2) and (3) and 61.157(d) (1) and (2) and 121.407(a)(1)(i).

Description of Relief Sought: To allow Jet Tech to train applicants for B–737 type rating to be added to any grade of pilot certificate to complete a portion of the practical test in an airplane simulator.

Docket No.: 26598.

Petitioner: Mr. Robert A. Powers.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To allow Mr. Robert A. Powers to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 23477.

Petitioner: Experimental Aircraft Association.

Sections of the FAR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4).

Description of Relief Sought/ Disposition: To amend Exemption No. 3784 which allows members of the Experimental Aircraft Association (EAA) to operate powered ultralight vehicles at an empty weight of 496 pounds. EAA also requests that the maximum fuel capacity be increased to 10 gallons, the maximum power off stall speed be increased to 35 knots, and the maximum air speed be increased to 75 knots.

GRANT, July 26, 1991, Exemption No. 3784E.

Docket No.: 24427.

Petitioner: United States Ultralight Association.

Sections of the FAR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4).

Description of Relief Sought/ Disposition: To amend Exemption No. 4274 which allows members of the United States Ultralight Association (USUA) to operate powered ultralight vehicles at an empty weight of 496 pounds. USUA also requests that the maximum fuel capacity be increased to 10 gallons, the maximum power off stall speed be increased to 35 knots, and the maximum air speed be increased to 75 knots.

GRANT, July 26, 1991, Exemption No. 4274D.

Docket No.: 25638.

Petitioner: Midway Airlines dba Midway Commuter.

Sections of the FAR Affected: 14 CFR 135.429(a) and 135.435.

Description of Relief Sought/ Disposition: To extend Exemption No. 5083 which provides relief from §§ 135.429(a) and 135.435 of the Federal Aviation Regulations to the extent necessary to allow Midway Commuter to use components, parts, and accessories that have been repaired, overhauled, or otherwise maintained by their foreign original equipment manufacturers (OEM) on the German-built Dornier DO 228–202 aircraft operated by Midway Commuter. Exemption No. 5083 terminates on August 31, 1991.

GRANT, July 23, 1991, Exemption No. 5083A.

Docket No.: 26006.

Petitioner: Beech Aircraft Corporation.

Sections of the FAR Affected: 14 CFR 47.69(b).

Description of Relief Sought/ Disposition: By a grant of temporary exemption, the Federal Aviation Administration authorized Beech Aircraft Corporation to conduct flights outside the United States, exempt from the provisions of § 47.69(b) of the Federal Aviation Regulations. The exemption was granted for a period of two years to allow the agency to consider amending the regulations. That review is still being conducted, and an extension of the January 5, 1990, exemption is in order to prevent disruption of petitioner's operations being conducted under the authority of the exemption. The justification for the grant remains the same.

GRANT, July 26, 1991, Exemption No. 5125A.

Docket No.: 26176.

Petitioner: AMR Combs-Birmingham, Inc. dba AMR Combs (AMRC).

Sections of the FAR Affected: 14 CFR 135.165(a) (1) and (6); and (b) (6) and (7).

Description of Relief Sought/ Disposition: To exempt, permanently, from §§ 135.165(a) (1) and (6); and (b)(1), (6) and (7) of the Federal Aviation Regulations which would permit AMRC to operate certain airplanes equipped with one high frequency (HF) communications system in extended overwater operations.

PARTIAL GRANT, July 26, 1991, Exemption No. 5334.

Docket No.: 26237.

Petitioner: MCI Communications Corporation.

Sections of the FAR Affected: 14 CFR 91.611.

Description of Relief Sought/ Disposition: To exempt MCI Communications Corporation from § 91.611 (formerly § 91.45) of the Federal Aviation Regulations to the extent necessary to allow MCI to ferry its three-engine Falcon Trijet Models 50 and 900 aircraft with one engine inoperative to a maintenance facility for the purpose of repairs.

GRANT, July 30, 1991, Exemption No. 5332.

Docket No.: 26475.

Petitioner: Felts Field Aviation, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To exempt Felts Field Aviation, Inc. from § 43.3(g) of the Federal Aviation Regulations to the extent necessary to allow its appropriately trained crew members (certificated pilots) and line service personnel to change aircraft cabin configurations by removing and replacing aircraft passenger seats in order to facilitate the installation of stretcher racks, oxygen racks, and baby isolettes in its Cessna Model 400 series aircraft.

DENIAL, July 5, 1991, Exemption No. 5331.

Docket No.: 26546.

Petitioner: Precision Valley Aviation, Inc. (PVAI), dba Northwest Airlink.

Sections of the FAR Affected: 14 CFR 135.225(e)(1).

Description of Relief Sought/ Disposition: To exempt PVAI from § 135.225(e)(1) of the Federal Aviation Regulations which would permit PVAI to take off under instrument flight rules

(IFR) from any Canadian civil airport when the weather visibility minimum at those airports is less than 1-mile visibility, but not less than the minimums prescribed by Transport Canada, which is the Canadian Government Agency responsible for establishing such weather visibility minimums.

GRANT, July 25, 1991, Exemption No. 5333.

Good Cause

Docket No.: 25892.

Petitioner: British Aerospace, Inc.

Sections of the FAR Affected: 14 CFR part 61.

Description of Relief Sought: To extend Exemption No. 5110 which allows British Aerospace, Inc. to continue to allow those persons who contract with BAE to use Federal Aviation Administration (FAA)-approved Phase II simulators to meet certain experience, training, and checking requirements of part 61, Exemption No. 5110 expires November 30, 1991.

Docket No.: 26609.

Petitioner: Jet Exam.

Sections of the FAR Affected: 14 CFR 61.57 and 61.157 and appendix H of part 121.

Description of Relief Sought/ Disposition: To allow Jet Exam to provide recency of experience, training, and certification tests in advance simulators.

[FR Doc. 91-19576 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Emergency Order No. 15, Notice No. 2]

Petition To Review Emergency Order 15

On August 6, 1991, the Federal Railroad Administration (FRA) received a petition from the City of Hollywood, Florida, requesting review of this agency's Emergency Order No. 15. That Order, issued July 26, and published in the Federal Register on July 31, requires that trains operated by the Florida East Coast Railway Company sound train-borne audible warning devices when approaching public highway-rail grade crossings.

FRA is providing notice of receipt of this petition to potentially interested parties to expedite the administrative proceedings required by federal law. To avoid the duplication of cost, logistic burden, and delay that would be caused by separately adjudicating each petition, and in recognition of the similarity of the facts and issues in dispute, all petitions received by August 30, 1991, requesting modification or withdrawal of the Emergency Order will be merged for decision in a single administrative proceeding.

Petitions for modification or withdrawal of the Order based on facts in existence at the time the Order was issued, shall be filed by August 30. Any subsequent petition based on such facts will be denied as untimely unless the petitioner demonstrates good cause for the delay.

Petitions should be filed with the FRA Docket Clerk, 400 Seventh Street, SW., room 8201, Washington, DC 20590.

By agreement of FRA and the petitioner, City of Hollywood, the conference provided for in 49 CFR 211.47 is tentatively scheduled for September 13, 1991, to be held at a Federal facility in Florida. That conference is among counsel and is closed to the public and the press. Informal procedures for conducting the conference will be issued after August 30.

By agreement of FRA and the City of Hollywood, the three-month period for decision of the petition will begin to accrue on the first date of the conference.

Issued in Washington, DC, on August 13, 1991.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 91-19606 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. 88-06; Notice 12]

Federal Motor Vehicle Safety Standards; Side Impact Protection; Laboratory Test Procedure

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

ACTION: Notice of public availability and request for comment.

SUMMARY: On October 30, 1990, NHTSA published in the Federal Register a final rule adding dynamic test procedures and performance requirements to Federal Motor Vehicle Safety Standard No. 214 (55 FR 45722). The dynamic requirements will be phased-in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier (MDB) to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phase-in of the new requirements (55 FR 45768)

NHTSA anticipates contracting with laboratories to obtain test data to determine whether particular motor vehicles or items of motor vehicle equipment comply with the side impact dynamic requirements just as it does with the agency's other standards. NHTSA has prepared a draft Laboratory Test Procedure for use by contractors in testing vehicles for compliance with the side impact dynamic performance requirements. Because of the unusual complexity of and public interest in issues associated with the test procedure, NHTSA is making the draft available to the public and requesting comment on it. NHTSA will consider any public comments before adopting a final Laboratory Test Procedure.

DATES: Comment closing date: Comments on this notice must be received on or before October 15, 1991.

ADDRESSES: All comments on this notice should refer to the above docket and notice numbers and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The Docket is open from 9:30 a.m. to 4 p.m., Monday through Friday. The draft Laboratory Test Procedure is available in the docket.

FOR FURTHER INFORMATION CONTACT: Thomas Grubbs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5323).

SUPPLEMENTARY INFORMATION: On October 30, 1990, NHTSA published in the **Federal Register** a final rule adding dynamic test procedures and performance requirements to Federal Motor Vehicle Safety Standard No. 214, Side impact protection (55 FR 45722). The dynamic test requirements of Standard No. 214 are applicable to passenger cars and will be phased-in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and

recordkeeping requirements necessary for NHTSA to enforce the phasing-in of the new dynamic test procedure (55 FR 45768).

NHTSA anticipates that it will contract with laboratories to obtain compliance test data for the side impact dynamic requirements as it does for other agency standards. To aid the contracted laboratories in conducting compliance tests for the agency, NHTSA provides them with Laboratory Test Procedures which include a uniform testing and data recording format and suggestions for the use of specific equipment and procedures.

In keeping with that practice, NHTSA has prepared a draft Laboratory Test Procedure for the dynamic test procedures and performance requirements of Standard No. 214. Normally, the agency would simply proceed to prepare a final version of the Laboratory Test Procedure and make it public. NHTSA has not requested public comments on draft Laboratory Test Procedures for other standards in the past because (1) there is no legal requirement to do so since such a document it not a "rule" and (2) there was not so much public interest in prior test procedure documents.

However, because of the unusual complexity of and public interest in issues involved with the test procedure, NHTSA is departing from its normal practice and requesting comment from the public on the document. NHTSA will consider any public comments before adopting a final Laboratory Test Procedure. The agency wishes to emphasize that it does not intend, by issuing this notice, to signal a general change in its practice. NHTSA may choose to adopt or change any Laboratory Test Procedure without allowing an opportunity for public comment.

NHTSA invites interested persons to submit comments on the draft Laboratory Test Procedure for Standard No. 214. NHTSA requests, but does not require that persons submit 10 copies of comments.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered.

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

(15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50)

Issued August 13, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-19574 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Development of the 1992 Overseas Educational Adviser Training Program, and Educational Consultation and Special Projects Service; Request for Proposals

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the U.S. Information Agency (USIA) invites non-profit organizations in the Washington, DC metropolitan area to submit proposals for the development and coordination of the 1992 Overseas Educational Adviser Training Program, and Educational Consultation and Professional Development Service.

The grantee organization will develop a training program for thirty (30) overseas educational advisers of foreign students and scholars. These advisers are the primary information source for those interested in opportunities in U.S. higher education, and may be found worldwide at offices operated either directly by or in close cooperation with the U.S. Information Service (USIS), including Fulbright Commissions, binational centers, and others. It is imperative that advisers be knowledgeable of the most current information available on U.S. higher education, and the foreign student application and admissions process of U.S. colleges and universities.

The grant request should include administrative costs to program thirty (30) participants. Direct program expenses for twenty (20) of these participants should also be included in the budget. Program costs for the remaining ten (10) will be transferred to the grantee organization by the Fulbright Commission, binational centers, and other organizations offering overseas student counseling services. Agency funded participants are selected for this program from nominations by USIS overseas posts based on Agency priorities and training requirements.

At the Agency's request, the organization will also coordinate and arrange for consultations to evaluate advising services, and to provide specially tailored U.S., regional or in-country training for overseas advising personnel. The organization will also designate, at the Agency's request, appropriate representatives of the U.S. academic community to attend international meetings and conferences related to international student mobility.

The Agency anticipates awarding an amount up to $230,000 for the development of the training program and consultation service.

The projects under this grant are developed through the combined efforts of both the grantee organization and the Advising and Student Services Branch (E/ASA), which is the monitoring office for this grant. Since constant contact between these two coordinating elements must be maintained, the Agency requires the grantee's office to be located in the Washington, DC area.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EDT on Tuesday, September 6, 1991. Faxed documents will not be accepted, nor will documents postmarked on September 6, 1991, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin on January 1, 1992, and end on December 31, 1992.

ADDRESSES: The original and 15 copies of the completed application, including forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Development of the 1992 Overseas Educational Adviser Training Program, and Educational Consultation and Professional Development Service,

Office of Executive Director, E/X, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Mr. Sheldon E. Austin or Ms. Robin Bradley at the U.S. Information Agency, 301 4th Street, SW., Advising and Student Services Branch (E/ASA), room 349, 202/619–5434, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines and scope of work for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

Training program and consultation service's objective is to strengthen or develop the skills of overseas educational advisers, enabling them to offer to foreign students and scholars efficient services, and accurate, current information about U.S. higher education. The participants are provided the opportunity to observe the diversity of U.S. higher education by visiting college and university campuses, talking with educators about a variety of subjects and programs germane to study in the U.S., meeting with Agency and other government officials, and other professionals involved in international education. This training program also serves as the key project in the professional development of educational advisers through training sessions, discussion and interaction with other overseas advisers.

Application Procedures

Issuance of this RFP does not constitute an award commitment on the part of the Government. The Government reserves the right to reject any or all applications received. Final award cannot be made until funds have been fully appropriated, allocated and committed through internal Agency procedures. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

Guidelines

Training Program: The first component, the training program, should commence in Washington, DC, on or about May 3, 1992, and conclude in Chicago, Illinois, on or about May 28, 1992. The ideal program would increase the professional development of overseas educational advisers by strengthening or introducing new skills in the advising process, enabling the advisers to offer efficient services and accurate, current information about U.S. postsecondary institutions, curricula, specialized fields of study, financial aid, English language programs, standardized testing, American life and culture, and visa regulations. The program should allow for substantive contact with Agency officials, campus faculty and administrators, standardized testing representatives, foreign students, and specialists in international education.

The program should involve the advisers' participation in the annual NAFSA: Association of International Educators conference, scheduled to be held in Chicago, May 24–27, 1992, and briefings on how to participate effectively in the conference. The program should also consist of site visits, workshop and skills development sessions, and include training in the utilization of computerized programs and other technologies to promote efficient delivery of advising services. Sub-group visits to cities having access to various types of educational institutions and special programs for foreign students should be programmed as well.

Educational Consultation and Professional Development Service: In the consultation service, the grantee organization would respond to Agency requests to invite or identify appropriate individuals from the U.S. academic community to travel on behalf of the Agency for the purpose of providing training or consultations on overseas educational advising, or to represent the U.S. academic community at international meetings and conferences relating to international student mobility. In addition, the grantee would develop Washington based and nation wide programs for overseas advisers visiting the U.S. outside of the normal training cycle. Administration of this project would require the following services: Identification of consultants, scheduling of appointments and visits, arrangement for medical insurance if necessary, international and domestic airline ticketing, honorarium and/or per diem payments, and submission of consultation or program reports by the consultant or participant.

Proposed budget—Organization should include a comprehensive line item budget with proposal. Specific details are available in the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Organizations must have a minimum of four years' experience in conducting international exchange programs. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Completed applications will be reviewed and judged according to the following criteria:

1. Quality/responsiveness—Quality of program plan and adherence of the proposed activity to the criteria and conditions described above.

2. Feasibility—Program and service's objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet these objectives.

3. Multiplier effect/impact—Proposed program should strengthen long-term mutual understanding, to include maximum sharing of information, resulting in the strengthening of the educational advising network worldwide.

4. Cost-effectiveness—The overhead and administrative components of this project, as well as salaries and honoraria, should be kept as low as possible. All other items should be clearly defined in the budget as well.

5. Cost sharing—Proposals should reflect any private sector support as well as institutional direct funding contributions.

6. Track record/potential—Institutional recipients should demonstrate potential for program excellence and/or track record of previous successful programs in the field of international education. Relevant evaluations of previous projects are part of this assessment.

7. Follow-up activities—Proposals should provide a plan for follow-up activities and reporting that would reflect evidence of effectiveness of advisers' participation in the training program.

8. Recruitment—Organization must demonstrate the ability to recruit recognized experts on U.S. higher education to participate as presenters, lecturers, or speakers in training program or consultation activities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published languages will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 1, 1991. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 8, 1991.

Warren Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-19520 Filed 8-15-91; 8:45 am]

BILLING CODE 8230-01-M

Educational Advising Program for International Students from the Middle East and North Africa; Request for Proposals

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations willing to establish and maintain eleven educational advising centers in the following locations in the Middle East and North Africa: Cairo and Alexandria, Egypt; Amman and Irbid, Jordan; Antelias and Ras Beirut, Lebanon; Rabat, Morocco; Damascus, Syria; Tunis, Tunisia; Sana'a, Yemen; and East Jerusalem. These centers will facilitate international educational exchange through overseas educational advising, orientation, and information services for foreign students and scholars seeking information on opportunities in U.S. higher education.

USIA anticipates awarding up to $675,000 for the implementation and coordination of this program. An additional $75,000 of grant support may be offered by the Agency for the establishment of a regional Gulf advising center (see addendum).

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EDT, on September 6, 1991. Faxed documents will not be accepted, nor will documents postmarked on September 6, 1991, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin no earlier than January 1, 1992, and end no later than December 31, 1992. No funds may be expended until the grant agreement is signed.

ADDRESSES: The original and fifteen copies of the completed application, including required forms, should be submitted to: U.S. Information Agency, Ref: Educational Advising Middle East/North Africa, Office of the Executive Director, E/X, 301 4th Street, SW room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should contact Mr. Sheldon E. Austin or Ms. Lydia Giles Taylor at the U.S. Information Agency, 301 4th Street SW., Advising and Student Services Branch (E/ASA), room 349, Washington, DC 20547, 202-619-5443 to request application packet which includes all necessary forms and specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *." Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Educational programs have long been vehicles of cooperative relations between nations. Through support of this program USIA seeks to strengthen mutual understanding by providing international students access to American higher education.

Guidelines

I. Proposals should be presented in three parts. The first should contain an overview of the organization, its history and purpose. Evidence of previous experience with advising or educational exchange of international students and scholars should also be included. The overview should indicate the total amount of funding requested and a justification for the request as well as a budget presentation outlining the total project costs.

A listing of names, titles, addresses, and telephone numbers of the executive officer(s) of the organization and of the person(s) ultimately responsible for the project must be included in the proposal. Resumes or vitae of key personnel must be provided. USIA also recommends the inclusion of brochures and general information concerning the organization, e.g. organizational charts, job descriptions, the names of board members (or similar group), the number of employees, etc.

II. The second part of the proposal should contain individual subsections that describe in detail each advising center, its proposed location and hours of operation, a proposed staffing pattern (including the percentage of time each employee will devote to advising activities and a description of their functions and responsibilities), an estimated budget for each office, and information delineating the services that will be provided by that center. A resume or brief narrative explaining the qualifications of the person or persons who would have primary responsibility for conducting advising and/or providing oversight of the advising center should also be included. Each appropriate subsection should describe any special language capability or area expertise possessed by potential advising center staff. Proposals should demonstrate each center's ability to provide the following educational advising services to international students and scholars:

1. Information and guidance on U.S. educational institutions, systems, tuition and related costs, fields-of-study, specialized training, etc.;

2. Information and advising on U.S. standardized tests, e.g., TOEFL, GRE, GMAT, FMGEMS, etc., to include the provision of registration application forms, maintenance of bulletins and testing schedules;

3. Information and research on short-term institutional training in technical and professional fields;

4. Information on English language training programs in the U.S.;

5. Group and individual advising sessions, pre-departure orientation and re-entry programs, as appropriate for the location.

Each center will also be required to monitor the status of educational systems in each of the countries and to share that information with USIA and

the U.S. Information Service (USIS) offices within each country. The organization should also be willing to assist and support educational outreach activities of USIS posts abroad by developing a network of contacts with local Ministries of Education, universities and other appropriate institutions.

III. USIA expects the headquarters organization to provide resource, research, and training support to its advisers and/or office directors in the field. The third part of the proposal should address the extent to which the headquarters office will support its advising centers abroad.

This support should include: The provision of educational advising resource materials, professional development activities and training, and research assistance (i.e. for difficult questions received from the field). Additionally, the organization should be willing to provide resource and research assistance for those countries not included in the network but serviced by USIS advising centers in the Gulf and Middle East region.

Student access to comprehensive university catalogs in print and/or microfiche and an extensive collection of current references on U.S. educational institutions and programs is an integral component of educational advising. The organization's ability to provide these advising resources to its centers should be made clear in this section.

Office equipment that expedites the processing of inquiries, such as electronic mail, facsimile machines and telexes, would be seen as an asset to the advising function, increasing communication between the headquarters organization and the field offices. Mention of such should be made in the proposal. Staff time should be allotted for personnel based at headquarters to research information that is not easily accessible to the field. In addition, the headquarters organization should have the capability to secure such information from sources available within the office as well as from other appropriate sources, e.g., academic institutions and professional organizations, etc.

The Agency expects each advising center to be equipped with certain available audio visual aids for the students' use. Videos on U.S. study complement the presentation and materials offered at group and individual advising sessions. Therefore, videotape recorders and monitors are necessary to each advising center.

The research and resource portion of the proposal should contain an estimated budget for these activities and should reflect the percentage of time headquarters staff will devote to this activity.

Proposed Budget: USIA grant assistance not to exceed $675,000, is expected to constitute only a portion of total project funding. Inasmuch as cost sharing is required, proposals should list other anticipated sources of support. All grant applications should demonstrate financial and in-kind support.

Proposals must include: (1) A budget outlining the total project costs; (2) a budget for each of the eleven centers; and (3) a budget reflecting the costs for headquarters "research and resource" support. Each budget should be presented in a multi-column format that clearly identifies the following categories: Line item, amount of USIA support, amount of in-kind support/amount provided by other funding sources. Any relevant budgetary notes or explanations should be included.

Addendum

In addition to the grant support offered by this announcement, USIA may provide partial support for the establishment of a regional educational advising center in Bahrain. Should funds become available for this purpose in FY 92 and FY 93, the Agency would contribute $75,000 per year start-up costs, for a two year period. Seventy-five thousand dollars may be offered the first year, renewable for a second year. This is a one-time only offer of support. The regional center would be expected to generate sufficient revenue thereafter to ensure its continued operation without contribution from the Agency.

The regional advising center would service countries throughout the Gulf and would provide the same services as those provided by the eleven other advising centers. This center would be expected to disseminate information and provide advising, research, and consultative services for U.S. Information Service advising offices in Bahrain, Kuwait, Oman, Qatar, the United Arab Emirates and Saudi Arabia.

Organizations are invited to submit an addendum to this proposal that details the concept of a regional advising center, its proposed scope of work and function. Guidance given in previous sections of this announcement, regarding Agency expectations for an educational advising center should be applied in the proposed design of this office, keeping in mind its regional focus. Interested organizations should submit a separate budget and plan of operation for this center.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Organizations must have a minimum of four years experience in conducting international exchange programs. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of the General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Overall Quality—quality of program plan and adherence of the proposed activity to the criteria and conditions described above.

2. Reasonable, feasible, and flexible objectives—proposals should clearly demonstrate how the organization and its centers will meet the program's objectives.

3. Multiplier effect/impact—proposed program should demonstrate its potential contribution to strengthening long-term mutual understanding, to include maximum sharing of information with their fellow countrymen by those who have benefitted from USIA supported advising and experienced the American higher education system.

4. Value to U.S.-Partner Country Relations—the assessment by USIA's geographic area desk, and overseas officers of the need, potential impact and significance in the partner countries.

5. Cost effectiveness—the overhead and administrative components of grants, as well as salaries should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional Capacity—proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

7. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The

Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. Follow-up Activities—proposals should provide a plan for follow-up activities with returning students (without USIA support) which insures that this advising program supported by USIA is not an isolated event. For example, the inclusion of tracking and reporting that would reflect evidence of the effectiveness of this advising program.

9. Proposals should provide a plan for evaluation of program activities by the grantee organization.

10. Demonstrated ability to work with foreign educational institutions and governmental entities, and other sponsors of education and training programs.

11. Ability of the organization to operate in each of the aforementioned countries as of the starting date of the grant. This includes demonstration of ability to acquire any and all legal documentation permitting the organization to function in countries mentioned above by starting date of the grant.

12. Demonstrated ability to interact with domestic educational institutions.

Technical Requirements

Proposals can only be accepted for review when they include the following documentation:

1. Bureau of Educational and Cultural Affairs Grant Application Coversheet (OMB #3116–0173);

2. Assurance of Compliance with U.S. Information Agency Regulations under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and title IX of the Education Amendments of 1972 (OMB #3116–0191);

3. Certification Regarding Drug-Free workplace Requirements for Grantees Other Than Individuals;

4. Certification Regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280;

5. Disclosure of Lobbying Activities;

6. Evidence of your organization's non-profit (tax-exempt) status and/or letters of incorporation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 1, 1991. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 8, 1991.

Warren Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–19519 Filed 8–15–91; 8:45 am]

BILLING CODE 8230–01–M

Airport Reception and Assistance Service based in New York City; Request for Proposals

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations to provide an airport reception and assistance service based in New York City. The service would assist U.S. government sponsored (i.e. Fulbright scholars, Hubert Humphrey fellows) and non-sponsored international students, scholars, exchange visitors, and participants in USIA's International Visitor Program, arriving in New York City.

The organization would provide a multilingual, trained staff to assist international visitors with the complex logistics and unexpected problems which occur when arriving in a foreign country.

USIA anticipates awarding up to $55,000 to an organization to provide these services. Up to $25,000 will be devoted to assisting with up to 225 USIA International Visitor meets (i.e., flights, including groups arriving on a single flight) from January 1—December 31, 1992. Up to $30,000 will be devoted to assisting the maximum number of U.S. government sponsored (i.e. Fulbright, Hubert Humphrey scholars) and non-sponsored international students, scholars, and exchange visitors from June 15 to September 30, 1992.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EDT on September 6, 1991. Taxed documents will not be accepted, nor will documents postmarked on September 6, 1991 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin on January 1, 1992 and end on December 31, 1992.

ADDRESSES: The original and fifteen copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Airport Reception and Assistance Service, Office of the Executive Director, E/X, room 336, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Mr. Sheldon Austin or Ms. Susan Borja at U.S. Information Agency, 301 4th St., SW., Office of Academic Programs, Advising and Student Services Branch, E/ASA, room 349 to request all necessary forms for preparing proposals.

SUPPLEMENTARY INFORMATION:

Overview

The Agency's long term goals for this program are to help increase mutual understanding; strengthen ties; and develop friendly, sympathetic, and peaceful relations between the people of the U.S. and the people of other countries. The Agency's short term goals are to enable as many international students, scholars, and visitors as possible to receive a positive and lasting first impression of the U.S. by facilitating a painless and smooth entry into this country. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life.

Guidelines

An ideal proposal would offer a comprehensive and flexible service which would provide a caring and knowledgeable staff to ensure that the initial arrival of international students, scholars, and visitors is problem free. USIA suggests that the proposal not exceed ten pages.

The reception and assistance service should include, but not necessarily be limited to, providing a multilingual, trained staff available to meet visitors inside the customs and immigration area and assist them with declaration forms, baggage claims, messages, phone calls, currency exchanges, connecting or missed flights, language problems, local transportation, and emergency overnight accommodations.

The organization would publicize the service to prospective foreign students worldwide through posters, arrival request forms, etc., to be mailed to visa offices, USIS-facilitated advising centers, Fulbright Commissions, NAFSA: Association of International Educators institutional members, and other appropriate venues. The organization would keep these recipients informed and updated as needed.

The service should be well equipped (computer, fax, telex, etc.) and well coordinated to be able to respond to requests from around the world in a timely and effective fashion. The organization should be able to receive incoming arrival requests and changes 365 days a year. Proposals should indicate the maximum possible number of days and hours that staff will be available to meet visitors.

Statistical data should be gathered and tabulated by month in the following categories—numbers of arrivals (individuals and meets or groups), arrival's sponsor (i.e. USIA International Visitor Program), arrivals the service missed, arrivals not on board flights, flights too late to meet, and other categories as agreed upon by USIA and grantee.

The organization would maintain a close working relationship with USIA's New York Reception Center and USIA's Washington Reception staff to coordinate requests for arrival assistance for Agency-sponsored International Visitors and inform USIA's centers of visitors' arrival status. The organization would be expected to communicate and respond effectively to sponsors (i.e. USIA's New York Reception Center) and visitors' requests worldwide.

The organization should indicate methods of evaluating the effectiveness of their service, such as periodic questionnaires for visitors and USIA's reception center staff.

The organization should show evidence of ability to recruit and train multilingual, professional staff (representing a wide range of languages) and demonstrate knowledge of the field of international education to be able to contact the greatest number of international visitors.

The organization should also demonstrate the ability to obtain access inside the customs and immigration areas and provide comprehensive services to the maximum number of international students, scholars, and visitors.

Proposals should include names, titles, addresses, and telephone numbers of the executive officers of the organization and the staff person directly responsible for the project. Resumes of key personnel should be provided.

USIA recommends including brochures and general information about the organization i.e. evidence of previous experience with international exchange participants, names of board members, number of employees, etc., in the proposal package.

USIA's grant assistance, not to exceed $55,000, is expected to constitute only a portion of the total project funding. Inasmuch as cost sharing is required, proposals should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support using a multicolumn budget format that clearly identifies the following categories: Line item, amount of USIA support, amount of in-kind support, and amount provided by other funding sources.

Proposed Budget

Organization is required to submit a comprehensive line item budget.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Ineligible proposals will not be considered. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area office, and the budget and contracts office. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Evidence of the institution's ability to adhere to the criteria and conditions described above and to meet program's objectives.

2. Comprehensiveness, flexibility, and feasibility of program objectives.

3. Demonstration of potential for program excellence and/or track record of successful programs. Relevant evaluation results of previous projects are part of this assessment.

4. Ability of organization to recruit and train qualified program staff who demonstrate fluency in a wide range of languages.

5. Ability of organization to publicize the service accurately and clearly to the maximum number of international visitors.

6. Ability of organization to gather and tabulate statistical data on visitors.

7. Ability of organization to evaluate the program and make appropriate adjustments.

8. Evidence of cost-effectiveness—ability of organization to keep costs of overhead, administration, salaries, honoraria, as low as possible and keep all other items necessary and appropriate.

9. Evidence of cost-sharing through private sector support and direct contributions from institutions such as universities and colleges whose present and future foreign students use or may use this service.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated, and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 15, 1991. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 8, 1991.

Warren Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-19521 Filed 8-15-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., 1521, will be held on September 9 and 10, 1991, from 9 a.m. to 4 p.m. and on September 11, 1991 from 9 a.m. to 12 noon in the Omar Bradley Room, room 1105, of the Department of Veterans Affairs at 801 I Street, NW., Washington, DC 20420. The purpose of the meeting will be to review the administration of veterans'

rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public up to the seating capacity of the conference room. Due to limited seating capacity, it will be necessary for those wishing to attend to contact Dianna Murphy at (202) 233–3935 prior to August 26, 1991.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3:30 p.m. on September 11, 1991.

Dated: August 9, 1991.

By direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–19559 Filed 8–15–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 159
Friday, August 16, 1991

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, August 21, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposal to modify and clarify the Federal Reserve Board's risk-based capital guidelines. (Proposed earlier for public comment; Docket No. R-0709.)
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: August 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19747 Filed 8-14-91; 12:41 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: Approximately 10:30 a.m., Wednesday, August 21, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 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: August 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19748 Filed 8-14-91; 12:41 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 56, No. 159
Friday, August 16, 1991

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 ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP91-2562-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

Correction

In notice document 91-18935 beginning on page 37905 in the issue of Friday, August 9, 1991, make the following corrections:

On page 37907, in the second column, the fifth and sixth lines should read "[Docket Nos. CP91-2618-000, CP91-2619-000, CP91-2620-000, CP91-2621-000]".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-1

[FTR Amendment 17]

RIN 3090-AE36

Federal Travel Regulation; Pre-employment Interview Travel Expenses and Relocation Expenses of New Appointees

Correction

In rule document 91-12252 beginning on page 23653 in the issue of Thursday, May 23, 1991, make the following correction:

§ 302-1.3 [Corrected]

On page 23656, in the second column, in amendatory instruction 30 for § 302-1.3, in the last line line "§ 302-1.102" should read "§ 301-1.102".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29497; File No. SR-CBOE-91-25]

Self-Regulatory Organizations; Chicago Board Options Exchange; Notice of Filing of Proposed Change Relating to Minor Rule Violation Fine Plan

Correction

In notice document 91-17584 beginning on page 37376 in the issue of Tuesday, August 6, 1991, the Release number should have appeared as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 90-020]

RIN 2115-AD56

National Vessel Traffic Services Regualtions

Correction

In proposed rule document 91-17984 beginning on page 36910 in the issue of Thursday, August 1, 1991, make the following corrections:

§ 161.904 [Corrected]

On page 36918, in the first column, in § 161.904, in the table:

1.In the second column, remove "Gros" from the first entry; the second entry in that column should read "Gros Cap Reefs Light.."; and in the third column, the first "Report" should be moved down opposite the second entry.

2.In the second column, the second and last entries from the bottom should read "Munuscong Lake Junction Lighted Buoy.." and "De Tour Reef Light." respectively.

BILLING CODE 1505-01-D

federal register

Friday
August 16, 1991

Part II

Environmental Protection Agency

40 CFR Part 122

NPDES General Permits and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL 3756-1]

RIN 2040-AA79

National Pollutant Discharge Elimination System General Permits and Reporting Requirements for Storm Water Discharges Associated With Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and Notice of draft general NPDES permits for Storm Water Discharges Associated with Industrial Activity.

SUMMARY: Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which requires the Environmental Protection Agency (EPA) to develop a phased approach to regulating storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on November 16, 1990, (55 FR 47990) establishing permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program.

This notice requests comments on a National NPDES permitting strategy to address the large number of storm water discharges associated with industrial activity. To assist in implementing the strategy, this notice requests comments on proposed regulatory changes to existing minimum requirements for NPDES permits with regard to annual monitoring reports and minimum requirements for filing notices of intent to be authorized to discharge under NPDES general permits.

This notice also requests comments on separate general permits for the majority of storm water discharges associated with industrial activity in 12 States (MA, ME, NH, FL, LA, TX, OK, NM, SD, AZ, AK, ID), and 6 Territories (District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) without authorized NPDES State programs; on Indian lands in AL, CA, GA, KY, MI, MN, MS, MT, NC, ND, NY, NV, SC, TN, UT, WI, and WY; located within Federal facilities and Indian lands in CO and WA; and located within Federal facilities in Delaware. Separate general permits are being noticed for each State.

DATES: Comments on this proposed rule and permits must be received on or before October 15, 1991. See Supplementary Information for information on hearings.

ADDRESSES: The public should also send an original and two copies of their comments addressing any aspect of this notice to Kevin Weiss, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments addressing factors or issues which are specific to one or several general permits (e.g., specific requirements for the general permit authorizing storm water discharges associated with industrial activity in MA), should clearly indicate the applicability of the comment to a particular State. The public record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rule and draft general permits contact the NPDES Storm Water Hotline at (703) 821-4823 or: Kevin Weiss, Office of Wastewater Enforcement and Compliance (EN-336), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202)-475-9518. The Fact Sheet accompanying this rule provides additional contacts for information regarding the issuance of general permits in specific States.

SUPPLEMENTARY INFORMATION:

Hearings

Public hearings to discuss general permits for the State in which the hearing is held are scheduled as follows:

(1) September 23, 1991, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Reunion Ballroom, Hyatt Regency Hotel, 300 Reunion Blvd., Dallas, TX 75207.

(2) September 20, 1991, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Lincoln Plaza Hotel, Gold Crown Room, 4445 North Lincoln Boulevard, Oklahoma City, OK 73105.

(3) September 24, 1991, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Ramada Hotel, 1480 Nicholson Drive, Baton Rouge, LA.

(4) September 25, 1991, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Hyatt Regency, Grand Pavilion Ballroom, 330 Tijeras NW., Albuquerque, NM 87102.

(5) September 26, 1991, 1 p.m. to 4 p.m., Parkplace Building, 1200 Sixth Avenue, 12A (12th Floor), Seattle, WA 98101.

(6) September 16, 1991, 1 p.m. to 4 p.m., Holiday Inn Convention Center, 3300 Vista Avenue, Boise, ID 83705.

(7) September 19, 1991, 1 p.m. to 4 p.m., Centennial Hall (Sheffield Ballroom #2), 101 Egan Drive, Juneau, AK 99801.

(8) September 30, 1991, 1 p.m. to 6 p.m., Best Western, Kings Inn, 220 South Pierre Street, Pierre, SD 54501. (Note: This hearing will address the general permit for SD as well as the general permit for Indian lands in MT, ND, UT and WY, and the general permit for Indian lands and Federal facilities in CO).

(9) September 18, 1991, two hearings will be held at the following times 10 a.m. to 12 noon, 1:30 p.m. to 5 p.m., a third hearing will start at 7 p.m. and continue as necessary, Phoenix Civic Plaza, Flagstaff Room, 225 East Adams Street, Phoenix, AZ 85004.

(10) September 10, 1991, public meeting from 1 p.m. to 4 p.m., public hearing from 7 p.m. to 10 p.m., Civic Convention Center, 9800 International Drive, Orlando, FL 32819.

(11) September 12, 1991, public meeting from 1 p.m. to 4 p.m., public hearing from 7 p.m. to 10 p.m., Tallahassee Leon County Civic Center, 505 West Pensacola, Tallahassee, FL.

(12) September 25, 1991, 1 p.m. to 4 p.m., University of Maine at Augusta, Jewitt Hall Auditorium, University Heights, Augusta, ME, 04330.

(13) September 24, 1991, 1 p.m. to 4 p.m., Federal Reserve Bank, Ground Floor Auditorium, 600 Atlantic Avenue, Boston, MA 02106.

(14) September 26, 1991, 7 p.m. to 10 p.m., Holiday Inn, Ballroom Area, 700 Elm Street, Manchester, NH 03101.

Persons wishing to make an oral presentation must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

I. Background

The 1972 amendments to the Federal Water Pollution Control Act (FWPCA, also referred to as the Clean Water Act or CWA), prohibited the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. Efforts to improve water quality under the NPDES program have focused traditionally on reducing pollutants in discharges of industrial process waste water and from municipal sewage treatment plants. This program emphasis has developed for a number of reasons. At the onset of the program in 1972, many sources of industrial process waste water and municipal sewage were not controlled adequately, and represented pressing environmental problems. In addition, sewage outfalls and industrial process discharges were easily identified as responsible for poor, often drastically degraded water quality conditions. However, as pollution control measures were developed initially for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as agricultural and urban runoff, were also major causes of water quality problems. Some diffuse sources of water pollution, such as agricultural storm water discharges and irrigation return flows, are exempted statutorily from the NPDES program. Controls for other diffuse sources have been slow to develop under the NPDES program.

Several National assessments have been conducted to evaluate impacts on receiving water quality. For the purpose of these assessments, urban runoff was considered to be a diffuse source or nonpoint source pollution, although legally, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA and subject to the NPDES program. The "National Water Quality Inventory, 1988 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under section 305(b) of the CWA. In preparing section 305(b) reports, the States were asked to indicate the fraction of the States' waters that were assessed, as well as the fraction of the States' waters that were fully supporting, partly supporting, or not supporting designated uses. The report indicates that of the rivers, lakes, and estuaries that were assessed by States (approximately one-fifth of stream miles, one-third of lake acres and one-half of esturine waters), roughly 70 percent to 75 percent are supporting the uses for which they are designated. For waters with use impairments, States were asked to determine impacts due to diffuse sources (agricultural and urban runoff and other categories of diffuse sources), municipal sewage, industrial (process) wastewaters, combined sewer overflows, and natural sources, then combine impacts to arrive at estimates of the relative percentage of State waters affected by each source. In this manner, the relative importance of the various sources of pollution causing use impairments was assessed and weighted national averages were calculated. Based on 37 States that provided information on sources of pollution, industrial process wastewaters were cited as the cause of use impairment for 7 percent of rivers and streams, 10 percent of lakes, 6 percent of estuaries, 41 percent of the Great Lakes shoreline and 6 percent of coastal waters. Municipal sewage was the cause of use impairment for 13 percent of rivers and streams, 5 percent of lakes, 48 percent of estuaries, 41 percent of the Great Lakes shoreline and 11 percent of coastal waters.

The Assessment also concluded that pollution from diffuse sources such as runoff from agricultural, urban areas, construction sites, land disposal activities, and resource extraction activities is cited by the States as the leading cause of water quality impairment.[1] Diffuse sources appear to be increasingly important contributors of use impairment as discharges of industrial process wastewaters and municipal sewage plants come under control and intensified data collection efforts provide additional information. Some examples where use impairments are cited as being caused by diffuse sources include: rivers and streams, where 9 percent are caused by separate storm sewers, 4 percent are caused by construction and 11 percent are caused by resource extraction; lakes where 8 percent are caused by separate storm sewers and 7 percent are caused by land disposal; the Great Lakes shoreline, where 35 percent are caused by separate storm sewers, 46 percent are caused by resource extraction, and 19 percent are caused by land disposal; for estuaries where, 41 percent are caused by separate storm sewers; and for coastal areas, where 20 percent are caused by separate storm sewers and 29 percent are caused by land disposal.

The States conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report "America's Clean Water—The States' Nonpoint Source Assessment, 1985" which indicated that 38 States reported urban runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

Studies conducted by the National Oceanic and Atmospheric Administration (NOAA) [2] indicate that urban runoff is a major pollutant source which adversely affects shellfish growing waters. The NOAA studies identified urban runoff as affecting over 578,000 acres of shellfish growing waters on the East Coast (39 percent of harvest-limited area); 2,000,000 acres of shellfish growing waters in the Gulf of Mexico (59% of the harvest-limited area); and 130,000 acres of shellfish growing waters on the West Coast (52% of harvest-limited areas).

A. NRDC v. *COSTLE* [3]

The appropriate means of regulating storm water point sources within the National Pollutant Discharge Elimination System (NPDES) program has been a matter of serious concern since implementing the NPDES program in 1972. In 1973, EPA promulgated its first storm water regulations exempting from permit requirements those point source conveyances carrying storm water runoff uncontaminated by industrial or commercial activity unless the particular storm water discharger had been identified by the NPDES Director as a significant contributor of pollution (38 FR 13530 (May 22, 1973)). The Agency maintained that, while these sources fell within the definition of

[1] Major classes of diffuse sources that include, in part, storm water point source discharges are: urban runoff conveyances, construction sites, agriculture (feedlots), resource extraction sites, and land disposal facilities.

[2] See "The Quality of Shellfish Growing Waters on the East Coast of the United States", NOAA, 1989; "The Quality of Shellfish Growing Waters in the Gulf of Mexico", NOAA, 1988; and "The Quality of Shellfish Growing Waters on the West Coast of the United States", NOAA, 1990.

[3] 568 F.2d 1369 (D.C. Cir. 1977).

a point source, they were nonetheless ill-suited to the traditional, end-of-pipe controls that are the basis of the NPDES program for process discharges and discharges from Publicly Owned Treatment Works [4] (POTWs). The Agency also justified its decision by noting that issuing individual NPDES permits for the hundreds of thousands of storm water point sources in the United States would create an overwhelming administrative burden and would divert resources away from control of industrial process waste water and municipal sewage, which at the time, were more pressing and identifiable environmental problems.

In a series of challenges to the storm water regulations, the Natural Resources Defense Council (NRDC) brought suit in the U.S. District Court for the District of Columbia, challenging the Agency's authority to exempt selectively categories of point sources from permit requirements, *NRDC* v. *Train*. 396 F. Supp. 1393 (D.D.C. 1975), *aff'd, NRDC* v. *Costle*, 568 F.2d 1369 (D.C. Cir. 1977). The District Court held that EPA could not exempt discharges identified as point sources from regulation under the NPDES permit program. The District Court was convinced that the permit program would be manageable even without the exemptions sought by EPA. The court recognized two alternatives for reducing the permit workload:

(1) Discretion to define what constitutes a point source; and

(2) Discretion to use certain administrative devices, such as general permits, to help manage the workload.

With respect to the appropriate administrative mechanisms, the Court recognized that EPA has wide latitude to rank categories and subcategories of point sources of different importance and treat them differently within a permit program. On review, the Court of Appeals stated that technological or administrative infeasibility was a reason for adjusting Court mandates to realize the general objectives of the Act and may result in adjustments in the permit program (568 F.2d 1369, 1679 (1977)). The Court of Appeals recognized that section 402 of the CWA gives EPA considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges. One area of flexibility is that permits may regulate industry practices to lessen point source pollution problems. The Court of Appeals noted that in certain cases, it may be appropriate for EPA to require a permittee simply to monitor and report effluent levels.

The Court of Appeals encouraged EPA to use its interpretation authority to mitigate burdens in establishing a practical regulatory scheme. Section 402 provides the Agency with flexibility in determining the appropriate scope and form of an NPDES permit. As a result, the Court suggested using area or general permits.

B. Water Quality Act of 1987

The Water Quality Act (WQA) of 1987 added section 402(p) to the CWA to provide a comprehensive framework for EPA to address storm water discharges. Section 402(p)(1) provides that EPA or NPDES States cannot require a permit for certain storm water discharges until October 1, 1992, except for storm water discharges listed under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are required to obtain a permit before October 1, 1992:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p)(4) establishes deadlines to implement the permit program for: Storm water discharges associated with industrial activity; discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more); and discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000). This section of the Act specifies deadlines for EPA to promulgate permit application requirements, applicants to submit permit applications, EPA and authorized NPDES States to issue NPDES permits, and for permit compliance for the identified storm water discharges.

NPDES permits for all other storm water discharges cannot be required until October 1, 1992, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is contributing to a violation of water quality standards.

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including BAT/BCT technology-based requirements and that permits for discharges from municipal separate storm sewer must meet a new statutory standard requiring controls to reduce the discharge of pollutants to the maximum extent practicable (MEP). As with all point source discharges under the CWA, storm water discharges are subject to applicable water quality-based standards.

EPA, in consultation with the States, is required to conduct two studies on storm water discharges that are in the class of discharges for which EPA and NPDES States cannot require permits prior to October 1, 1992. The first study will identify those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992 and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study is for the purpose of establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. Based on the two studies, EPA in consultation with State and local officials, is required to issue regulations by no later than October 1, 1992, which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. This program must establish, at a minimum, (A) priorities, (B) requirements for State storm water management programs, and (C) expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

II. Framework of NPDES System

Congress established the NPDES program with the 1972 Amendments to the FWPCA. Section 402 of the Act requires EPA to administer a national permit program to regulate point source discharges of pollutants to waters of the United States and sets out the basic elements of the program.

[4] Note that since 1975 the scope of NPDES permitting efforts, particularly for POTWs, has expanded significantly to address program-oriented pollution control approaches. Examples of program-oriented requirements in permits for POTWs are initiatives for pretreatment, sludge, and combined sewer overflows.

A. State Programs

The Act allows States to request EPA authorization to administer the NPDES program instead of EPA. Under section 402(b), EPA must approve a State's request to operate the permit program once it determines that the State has adequate legal authorities, procedures, and the ability to administer the program.

EPA is also directed by section 304(i) of the FWPCA to adopt procedural and programmatic requirements for State NPDES programs, including guidelines on monitoring, reporting, enforcement, personnel and funding, and to develop uniform national forms for use by both EPA and approved States. At all times following authorization, State NPDES programs must be consistent with minimum Federal requirements, although they may always be more stringent.

Upon authorization of a State program, the State is primarily responsible for issuing permits and administrating the NPDES program in that State. At the same time, EPA suspends the issuance of Federal permits for those activities subject to the approved State program.

State NPDES authority is divided into four parts: the core program (POTW and industrial permitting), Federal facilities, pretreatment, and general permitting. At this point in time, 39 States or Territories are authorized to, at a minimum, issue NPDES permits for municipal and industrial sources. Of these 39 States, 23 are currently authorized by EPA to issue NPDES general permits. In the 12 States (MA, ME, NH, FL, LA, TX, OK, NM, SD, AZ, AK, and ID) and 6 territories (District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) without NPDES authorized programs, EPA issues all NPDES permits. In 5 of the 39 States that are authorized to issue NPDES permits for municipal and industrial sources, EPA retains authority to issue permits for discharges from Federal facilities.

B. Requirements in NPDES Permits

The CWA establishes two types of standards for conditions in NPDES permits, technology-based standards and water quality-based standards. These standards are used to develop effluent limitations, special conditions, and monitoring requirements in NPDES permits. Numeric effluent limitations that establish pollutant concentration or mass limits for effluents at the point of discharge (end-of-pipe conditions) are generally at the heart of permits for discharges from POTWs and industrial process discharges. More recent permitting efforts have also addressed limiting the toxicity of effluents through specific toxicity limitations included in permits. Section 402(a)(1) authorizes the inclusion of other types of conditions that are determined to be necessary, known as special conditions, in NPDES permits. Special conditions include requirements for best management practices (BMPs).

1. Technology-Based Standards

Technology-based requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. Two technology-based requirements are appropriate for existing storm water discharges associated with industrial activity:

(1) Best conventional pollutant control technology (BCT); and

(2) Best available technology economically achievable (BAT). The BCT standard applies to the control of conventional pollutants, while the BAT standard applies to the control of all toxic pollutants and for all pollutants which are neither toxic nor conventional pollutants. Section 306 of the CWA provides for EPA to establish new source performance standards for new sources.

Technology-based requirements may be established through one of two methods:

(1) Application of national BAT/BCT effluent limitations guidelines promulgated by EPA under section 304 of the CWA and new source performance standards promulgated under section 306 of the CWA applicable to dischargers by category or subcategory; and

(2) On a case-by-case basis under section 402(a)(1) of the Act, using best professional judgement (BPJ), for pollutants or classes of discharges for which EPA has not promulgated national effluent limitations guidelines.

(Note: EPA only establishes new source performance standards under section 306 of the CWA when developing national effluent limitations guidelines, and not when establishing permit conditions on a case-by-case basis).

2. Water Quality-Based Standards for Controls

In addition to technology-based controls, section 301(b) of the CWA also requires that NPDES permits must include any conditions more stringent than technology-based controls necessary to meet State water quality standards. Water quality-based requirements are established under this provision on a case-by-case basis.

III. Prior Storm Water Permitting Efforts

Between 1976 and 1984, EPA regulations required that permit applications be submitted for a wide range of storm water discharges. Many facilities that were required to submit applications for storm water discharges did not apply. In addition, many of the permit applications received by EPA and authorized NPDES States were never acted upon for a number of reasons, including: Lack of resources for permitting, lack of technical understanding of the causes and controls for pollutants in storm water, reluctance of industrial dischargers to accept requirements for best management practices (BMPs) in NPDES permits, and a general perception that storm water discharges, when considered one at a time, were of low priority. In 1984, EPA again promulgated permit application requirements and deadlines for storm water discharges. However, these regulations were never implemented. The regulations were in litigation when Congress enacted the Water Quality Act (WQA) on February 4, 1987, which directly specified a new national strategy for storm water control.

Despite the lack of a comprehensive permitting program for all storm water discharges prior to the passage of the WQA of 1987, permitting efforts nonetheless proceeded in some areas. Between 1974 and 1982, EPA promulgated effluent limitations guidelines for storm water discharges from ten categories of industrial discharges:

- Cement Manufacturing.
- Feedlots.
- Fertilizer Manufacturing.
- Petroleum Refining.
- Phosphate Manufacturing.
- Steam Electric.
- Coal Mining.
- Ore Mining and Dressing.
- Mineral Mining and Processing.
- Asphalt Emulsion.

Permitting efforts for storm water discharges have focussed on industrial facilities subject to these effluent limitations guidelines. In addition, some EPA Regions and States with authorized State NPDES programs have, to varying degrees, written permits for storm water discharges from other industrial facilities. For example, in some States and Regions, storm water discharges from industrial facilities are often addressed when NPDES permits for process wastewaters of a facility are reissued.

IV. November 16, 1990 Permit Application Regulations

On November 16, 1990, (55 FR 47990), EPA published NPDES permit application requirements for: Storm water discharges associated with industrial activity; and discharges from municipal separate storm sewer systems serving a population of 100,000 or more. The rulemaking accomplished three major tasks:

(1) The rule defined the initial scope of the NPDES storm water program;

(2) The rule established a permitting scheme with respect to storm water discharges associated with industrial activity through municipal separate storm sewer systems; and

(3) The rule established permit application requirements for those storm water discharges which are initially subject to the program.

A. Scope of NPDES Storm Water Program

The initial scope of the NPDES storm water program is defined by two key regulatory definitions, "storm water discharges associated with industrial activity" and "large and medium municipal separate storm sewer systems". The term "storm water discharge associated with industrial activity" is defined at 40 CFR 122.26(b)(14) and addresses point source discharges of storm water from eleven major categories of facilities. (This definition is reprinted in the definition section of the draft general permits published in the appendix to today's notice).

The terms "large and medium municipal separate storm sewer systems" (systems serving a population of 100,000 or more) are defined at 40 CFR 122.26(b) (4) and (7) to include municipal separate storm sewers located in: 173 incorporated places (cities) with a population of 100,000 or more; unincorporated portions of 47 counties identified as having large populations in unincorporated, urbanized portions of the county; and other municipal storm sewers which are designated by the Director on a case-by-case basis.

The definitions of "storm water discharge associated with industrial activity" and "large and medium municipal separate storm sewer system" only address point source discharges. Section 502(14) of the CWA defines the term "point source" broadly to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, * * * from which pollutants are or may be discharged."

In most court cases, the term "point source" has been interpreted broadly. For example, the holding in *Sierra Club* v. *Abston Construction Co., Inc.*, 620 F.2d 41 (5th Cir., 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site ultimately is discharged to waters of the United States:

> Simple erosion over the material surface, resulting in the discharge of water and other materials into navigable waters, does not constitute a point source discharge, absent some effort to *change the surface*, to *direct* the water flow or otherwise impede its progress * * * Gravity flow, resulting in a discharge into a navigable body of water, may be part of a point source discharge if the (discharge) at least initially collected or channeled the water and other materials. A point source of pollution may also be present where (dischargers) design spoil piles from discarded overburden such that, during periods of precipitation, erosion of spoil pile walls results in discharges into a navigable body of water by means of ditches, gullies and similar conveyances, even if the (dischargers) have done nothing beyond the mere collection of rock and other materials * * * Nothing in the Act relieves [discharges] from liability simply because the operators did not actually construct those conveyances, so long as they are reasonably likely to be the means by which pollutants are ultimately deposited into a navigable body of water. Conveyances of pollution formed either as a result of natural erosion or by material means, and which constitute a component of a * * * drainage system, may fit the statutory definition and thereby subject the operators to liability under the Act. (emphasis added) 620 F.2d 41, 45 (1980).

Under this approach, point source discharges of storm water result from structures that increase the imperviousness of the ground that acts to collect runoff, with runoff being conveyed along the resulting drainage or grading patterns.

The Agency will embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the United States.

B. Industrial Storm Water Discharges Through Municipal Separate Storm Sewer Systems

The November 16, 1990 notice clarifies that storm water discharges associated with industrial activity to waters of the United States, including those through municipal separate storm sewers to waters of the United States, must obtain NPDES permit coverage. However, storm water discharges associated with industrial activity to municipal sanitary sewer systems (i.e. those systems which are part of a POTW collection system), including combined sewer systems, generally do not need to obtain NPDES permit coverage, although they may be subject to pretreatment requirements. (Note that municipalities which operate combined sewer overflows (CSOs) need NPDES permit coverage for the CSO discharge).

C. Permit Application Requirements

The November 16, 1990 rule established individual (40 CFR 122.26(c)(1)) and group (40 CFR 122.26(c)(2)) application requirements for storm water discharges associated with industrial activity. The requirements associated with individual application requirements for storm water discharges associated with industrial activity are incorporated into Forms 1 and 2F, which are generally to be submitted to the Director by November 18, 1991. In addition, operators of storm water discharges associated with industrial activity through large and medium municipal separate storm sewer systems are required to submit a notification of their discharge to the operator of the municipal separate storm sewer system receiving the discharge by no later than May 15, 1991 or 180 days prior to commencing such discharge (40 CFR 122.26(a)(4)).

The rule also established permit application requirements for discharges from large and medium municipal separate storm sewer systems at 40 CFR 122.26(d).

V. Burdens on Permitting Agencies

The focal issue in developing appropriate requirements for the NPDES storm water program continues to be addressing the resource burdens of implementing an effective regulatory program for the extremely large number of storm water discharges. Understanding the burdens of the program on permitting Agencies is a first step towards developing a workable regulatory program.

Implementing the NPDES permitting program is a complex process. Major steps to issue a permit include:

- *Training of Permit Writers.* Permit writers must acquire the appropriate expertise necessary for writing permits.
- *Permit Application Review.* Permit applications (or notices of intent to be covered under a general permit) that are received initially must be screened and reviewed for completeness. When this

review indicates that necessary information is not provided, the applicant must be notified and an explanation of the deficiency provided. Applications that are complete must be assigned to a permit writer and filed.

• *Preparing a Draft Permit.* Preparing a draft permit and fact sheet involves a technical evaluation of the discharge based on a review of the permit application or other appropriate information. The appropriate factors associated with technology-based or water quality-based standards must be evaluated. Appropriate effluent limitations, monitoring requirements, and any special conditions need to be developed.

• *Public Notice of the Draft Permit.* Draft permits must undergo appropriate public notice. In some cases public hearings must be held.

• *Permit Issuance.* Public comments must be received, evaluated, and responded to in developing a final permit. Any request for an evidentiary hearing must be addressed.

• *Compliance Monitoring/ Enforcement.* A number of compliance monitoring activities can be conducted including reviewing discharge monitoring reports, conducting site inspections, and evaluating other information. Enforcement actions include assessing penalties and issuing administrative orders. In some cases, enforcement actions lead to litigation.

In addition to these steps, a number of administrative functions, such as responding to public inquiries, can create burdens for permit issuing agencies. The number of such inquiries can be particularly high when a new regulation is involved.

As discussed earlier in this notice, efforts to permit point source discharges under the CWA have focussed primarily on industrial process discharges and discharges from POTWs. EPA and authorized NPDES States have issued more than 48,600 NPDES permits for industrial process discharges, 15,600 NPDES permits for POTWs, and approximately 59 general permits have been issued covering at least 7,200 facilities. The Agency estimates that over 100,000 facilities (not including oil and gas exploration and production operations) discharge storm water associated with industrial activity. Most of the facilities that discharge storm water associated with industrial activity have not been addressed under the NPDES program in the past. Today's notice incorporates several elements of EPA's initial attempts to establish a workable NPDES program that reflects the realities of these administrative burdens.

VI. Today's Notice

Today's notice requests public comment on four major areas:

(1) EPA's long-term permitting strategy for storm water discharges associated with industrial activity;

(2) Proposed changes to 40 CFR 122.44(i)(2) addressing annual monitoring and reporting requirements;

(3) Proposed changes to 40 CFR 122.28(b)(2) addressing notice of intent requirements for general permits; and

(4) Proposed baseline general permits for storm water discharges associated with industrial activity in 12 States (MA, ME, NH, FL, LA, TX, OK, NM, SD, AZ, AK, ID), and 6 Territories (District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) without authorized NPDES State programs; on Indian lands in AL, CA, GA, KY, MI, MN, MS, MT, NC, ND, NY, NV, SC, TN, UT, WI, and WY; located within Federal facilities and Indian lands in CO and WA; and located within Federal facilities in Delaware.

A. Long-Term Permitting Strategy

Many of the comments received during the storm water NPDES permit application rulemaking focussed on the difficulties that EPA Regions and authorized NPDES States, with their finite resources, will have in implementing an effective permitting program for the large number of storm water discharges associated with industrial activity. Many commenters noted that problems with implementing a permit program are caused not only by the large number of industrial facilities subject to the program, but by the difficulties associated with identifying and assessing appropriate technologies and other measures for controlling storm water at various sites and the differences in the nature and extent of storm water discharges from different types of industrial facilities. The Agency recognizes these concerns, and is developing an approach to serve as a foundation for future program development.

Based on a consideration of comments from authorized NPDES States, municipalities, industrial facilities and environmental groups on the permitting framework and permit application requirements for storm water discharges associated with industrial activity, EPA is developing a strategy for permitting storm water discharges associated with industrial activity. In developing this strategy, the Agency recognizes that the CWA provides flexibility in the manner in which NPDES permits are issued.[5] The Agency intends to use this flexibility in designing a workable and reasonable permitting system. In accordance with these considerations, in today's notice the Agency is publishing and requesting comments on a discussion of its draft strategy for implementing the NPDES storm water program. The Strategy establishes two major components, a framework for developing permitting priorities and a framework for the development of State Storm Water Permitting Plans.

1. Permitting Priorities

The Agency believes that most permitting activities can be described in terms of the following four classes of activities:

• *Tier I—Baseline Permitting:* One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity;

• *Tier II—Watershed Permitting:* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.

• *Tier III—Industry-Specific Permitting:* Specific industry categories will be targeted for individual or industry-specific general permits; and

• *Tier IV—Facility-Specific Permitting:* A variety of factors will be used to target specific facilities for individual permits.

These four classes of activities will be implemented over time and will reflect priorities within given States. In most States, Tier I activities, issuance of baseline permits, will be the initial starting point. As priorities and risks within the State are evaluated, classes of storm water discharges or individual storm water discharges will be identified for Tier II, III or IV permitting activities. Usually a storm water discharge or a class of discharges will not go through a sequence that involves all four of the Tiers associated with the strategy, but may for example, go from initial coverage under a Tier I baseline

[5] As discussed earlier in this notice, the Court in *NRDC* v *Train*, 396 F.Supp. 1393 (D.D.C. 1975) *aff'd, NRDC* v *Costle*, 568 F.2d 1369 (D.C.Cir. 1977), has acknowledged the administrative burden placed on the Agency by requiring individual permits for a large number of storm water discharges. These courts have recognized EPA's discretion to use certain administrative devices, such as area permits or general permits to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that are established, including requirements for best management practices.

permit to coverage under a Tier III industry specific general permit.

a. *Tier I—Baseline permitting.* The Agency intends to issue general permits that initially cover the majority of storm water discharges associated with industrial activity in States without authorized NPDES programs. These permits also will serve as models for States with authorized NPDES programs.

Consolidating many sources under one permit will greatly reduce the administrative burden of permitting storm water discharges associated with industrial activity. This approach will allow:

- Pollution prevention and control requirements to be established for discharges covered by the permit;
- Facilities whose discharges are covered by the permit to be certain of their legal responsibilities and have an opportunity to comply with the CWA;
- EPA and authorized NPDES States will begin to collect and review data on storm water discharges from priority industries, thereby supporting subsequent permitting activities;
- The public, including municipal operators of municipal separate storm sewers which may receive storm water discharges associated with industrial activity, to have access under section 308(b) of the CWA to monitoring data and certain other information developed by the permittee;
- Applicable requirements of municipal storm water management programs established in permits for discharges from municipal separate storm sewer systems to be enforceable directly against noncomplying industrial facilities that generate the discharges where the permit for the storm water discharge includes a condition requiring compliance with the municipal storm water management program;
- The public to have the opportunity to review data and reports developed by industrial permittees and to be given an opportunity to comment on permitting activities;
- The baseline permits will provide a basis for bringing selected enforcement actions by eliminating many issues which might otherwise arise in an enforcement proceeding; and
- The baseline permit, along with the State storm water permitting plans (discussed below), will provide a focus for public comment on subsequent phases of the permitting strategy for storm water discharges.

Initially, the coverage of the baseline permits will be broad. However, the coverage will shrink as other permits are issued for storm water discharges associated with industrial activity pursuant to Tier II through Tier IV activities. The Agency believes that Tier I permits can establish the appropriate balance between monitoring requirements and implementable controls that will initiate facility-specific controls and provide sufficient data for compliance monitoring and future program development. Baseline general permits are flexible enough to allow the introduction of Tier II, III or IV types of activities, such as industry specific monitoring or control conditions. (See the draft general permits in this notice for examples of how this balance may be achieved). The Agency requests comments on the appropriate role of sampling requirements and on facility-specific controls in Tier I permits.

b. *Tier II—Watershed permitting.* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual and general permitting activities. This process can be initiated by identifying receiving waters (or segments of receiving waters) where storm water discharges associated with industrial activity have been identified as a source of use impairment or are suspected to be contributing to use impairment. Information developed under sections 304(l), 305(b), and 319(a) of the CWA, along with information from other sources (including information developed under the baseline general permits for storm water discharges), can be used in evaluating impacts on receiving waters. This information may identify classes of storm water discharges that are of particular concern and portions of watersheds where the sources of concern are located. Appropriate classes of storm water discharges in these locations can be targeted for additional permit conditions which may provide additional information to characterize the discharge (e.g., additional monitoring and reporting requirements) or where appropriate for more stringent controls.

Information gathered under initial permits for storm water discharges as well as information from other sources can be used to upgrade lists of impacted receiving waters and reassess water quality-based controls. As discussed in more detail below, State storm water permitting strategies are expected to have a major role in this process.

c. *Tier III—Industry-Specific Permitting.* Specific industry categories will be targeted for individual or industry-specific general permits. These permits will allow permitting authorities to focus attention and resources on industry categories of particular concern and/or industry categories where tailored requirements are appropriate. The Agency will work with the States to develop model permits for selected classes of industrial storm water discharges. EPA is also working to identify priority industrial categories in the two Reports to Congress required under section 402(p)(5) of the CWA. In addition, the group application process adopted in the final regulation published on November 16, 1990, (55 FR 47990) will provide an additional mechanism for developing industry-specific general permits. Group applications that are received can be used to develop model permits for the appropriate industries.

d. *Tier IV—Facility-specific permitting.* Individual permits will be appropriate for some storm water discharges in addition to those identified under Tier II and Tier III activities. Individual permits should be issued where warranted by: The pollution potential of the discharge, the need for individual control mechanisms, and where reduced administrative burdens exist. For example, individual NPDES permits for facilities with process discharges should be expanded during the normal process of permit reissuance to cover storm water discharges from the facility. This provides an opportunity to develop individual controls where the incremental administrative burden is not greatly increased.

2. Relationship of Strategy to Permit Application Requirements

The long-term permitting Strategy described above identifies several permit approaches that the Agency anticipates will be used in addressing storm water discharges associated with industrial activity. One issue that arises with this Strategy is determining the appropriate information needed to develop and issue permits for these discharges. The NPDES regulatory scheme provides three potential routes for applying for permit coverage for storm water discharges associated with industrial activity:

(1) Individual permit applications;

(2) Group applications; and

(3) Case-by-case requirements developed for general permit coverage.

Individual Permit Application Requirements

Individual permit application requirements are applicable to all storm water discharges associated with industrial activity except where the operator of the discharge is participating in a group application, or a general permit is issued to cover the discharge

and the general permit provides alternative means to obtain permit coverage.

The requirements for an individual permit application are reflected in Form 1 and Form 2F. These forms require the development and submission of relatively detailed site-specific information, including: A drainage site map, an estimate of the area of impervious surfaces and the total area drained by each outfall, a narrative description of specified features that may impact the pollution potential of a discharge, a list of significant spills and leaks of toxic or hazardous pollutants that occurred at the facility after the effective date of the permit, a certification that the discharge has been tested for the presence of non-storm water discharges, and sampling data from a representative storm event. This information is intended to be used to develop the site-specific conditions generally associated with individual permits.

Individual permit applications will play an important role in all tiers of the Strategy, even where general permits are used. Although general permits may provide for notification requirements that operate instead of the requirement to submit individual permit applications, the individual permit applications may be needed under several circumstances. Examples include: general permits requiring the submission of a permit application as the notice of intent to be covered by the permit; where the owner or operator of a discharge authorized by a general permit requesting to be excluded from the coverage of the general permit by applying for a permit (see 40 CFR 122.28(b)(2)(iii) for EPA-issued general permits); and a Director requiring an owner or operator of a discharge authorized by a general permit to apply for an individual permit (see 40 CFR 122.23(b)(2)(ii) for EPA-issued general permits).

Group Applications

On November 16, 1990, (55 FR 47990), EPA promulgated requirements for group applications for storm water discharges associated with industrial activity. These applications provide participants of groups with sufficiently similar storm water discharges an alternative mechanism for applying for permit coverage.

The group application requirements provide information for developing industry-specific general permits. (Group applications can also be used to issue individual permits in authorized NPDES States without general permit authority or where otherwise appropriate). As such, group application requirements correlate with the Tier III permitting activities identified in the long-term permitting Strategy.

Requirements in General Permits

40 CFR 122.21(a) excludes persons covered by general permits from requirements to submit individual permit applications. In section VI.C of this preamble, the Agency is proposing minimum requirements for filing notices of intent (NOI) to be authorized to discharge under general permits. NOI requirements established in general permits operate instead of individual permit application requirements for the discharges covered by the general permit. (NOI requirements are discussed in more detail below).

3. State Storm Water Permitting Plans

The CWA provides a framework for the long-term development of the NPDES program to address storm water discharges. Section 402(p)(2) of the CWA identifies those storm water discharges, including storm water discharges associated with industrial activity, which are the initial priorities for permitting. Section 402(p)(5) of the CWA requires the Agency to study other storm water discharges. Section 402(p)(6) of the CWA requires EPA, in consultation with State and local officials, to issue regulations by no later than October 1, 1992 which designates additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. The Act provides that this regulatory program include requirements for State Storm Water Management Programs.

Although section 402(p)(6) contemplates that State Storm Water Management Programs address Phase II storm water discharges identified in section 402(p)(5) studies (e.g., a subset of storm water discharges other than storm water discharges associated with industrial activity, and discharges from large and medium municipal separate storm sewer systems), the Agency believes that permitting activities for storm water discharges associated with industrial activity and for discharges from large and medium municipal separate storm sewer systems under Phase I should also be considered and evaluated when developing the scope of comprehensive State Storm Water Management Programs.

As EPA and NPDES authorized States implement efforts to permit storm water discharges, it is necessary to ensure adequate public input, evaluate program activities and provide for program oversight. The Agency believes that State Storm Water Management Programs can provide an appropriate basis for these activities, particularly during the earlier stages of program development. EPA has outlined below a number of the components and elements of a State Storm Water Permitting Plan which it believes are essential to assure successful implementation of the storm water initiative called for in section 402(p) of the CWA, and which can serve as a foundation for subsequent development of State Storm Water Management Programs. These plans will provide an effective coordination and tracking mechanism for evaluating the initial permitting activities for storm water discharges required under section 402(p) of the CWA. In addition, these plans will facilitate the technology transfer among the States.

State Storm Water Permitting Plans should include a description of a strategy to issue NPDES permits for discharges from large and medium municipal separate storm sewer systems; storm water discharges associated with industrial activity; and case-by-case designations of storm water discharges needing a permit. Plans should be developed for each State. EPA will request that the Director of the NPDES program provide a copy of the draft State Storm Water Permitting Plan to the Office of Wastewater Enforcement and Compliance within 12 months after the date of publication of this final regulation. EPA anticipates that States will update these plans on a regular basis. EPA intends to continue to review these plans while evaluating the manner in which Phase II storm water discharges are addressed in State Storm Water Management Programs developed under section 402(p)(6) of the CWA. These plans will assist EPA in technology transfer activities, evaluating the progress of States in implementing storm water permitting activities, and identifying problems with program implementation.

EPA believes that at a minimum, the initial State Storm Water Permitting Plans should address permitting of large and medium municipal separate storm sewer systems; storm water discharges associated with industrial activity; and case-by-case designations of storm water discharges needing a permit. Much of the information in the first phase of the plan will be generated from storm water applications required by the November 16, 1990 application rule and the industry specific analysis required by the rule. The basic framework for the Plan should address on a State-wide basis:

Municipal Separate Storm Sewer Systems

- A list of municipal separate storm sewer systems serving a population of 100,000 or more within the State;
- For systems identified, a summary of the estimated pollutant loadings as provided in the permit application for such discharges, or as otherwise updated; and
- The status of permitting activities for discharges from municipal separate storm sewer systems serving a population of 100,000 or more, including any NPDES permit number for such discharges.

Storm Water Discharges Associated with Industrial Activity

- A description of the status and objectives of activities to issue and implement a baseline general permit, including a copy of any final general permit for storm water discharges associated with industrial activity; [6]
- A list of categories of industrial facilities that have storm water discharges associated with industrial activity that are being considered for industry-specific general permits for their storm water discharges associated with industrial activity;
- A description of procedures, including activities conducted under any general permit (such as inspections, review of notices of intent or review of monitoring reports) to identify specific storm water discharges associated with industrial activity that are appropriate for individual permits;
- A description of how permits for discharges from municipal separate storm sewer systems require the development of municipal storm water management programs addressing the control of pollutants in storm water discharges associated with industrial activity.

Impacted Waters

- A description of procedures to identify receiving waters where discharges from municipal separate storm sewers, storm water discharges associated with industrial activity, or any other class of storm water discharges are, or have the potential to, cause or contribute to a violation of a water quality standard, including a list of waters identified by these procedures.

Case-by-Case Designations

- A description of procedures to identify storm water discharges (other than those currently subject to requirements for obtaining a permit) that contribute to a violation of a water quality standard or significantly contribute pollutants to the waters of the United States.
- A list of storm water discharges considered for designation or designated under section 402(p)(2)(E) as needing a permit.

EPA strongly encourages public participation and comment at the State level during the development of these plans.

These initial State storm water permitting components will ensure that permitting efforts are implemented adequately for storm water discharges associated with industrial activity and other priority storm water discharges by creating a framework for planning State storm water permitting activities, and providing EPA information for technology transfer purposes and evaluating State permit issuance efforts. The State Storm Water Permitting Plans will provide a framework for implementing the tiered long-term strategy for permitting storm water discharges associated with industrial activity. Provisions for State Storm Water Management Programs will be expanded in the future to address other storm water discharges in accordance with section 402(p)(6) of the CWA. EPA requests comments on the appropriate scope and content of State Storm Water Permitting Plans. The Agency also requests comments on whether the guidelines for Plans should be made requirements that are incorporated into EPA regulations, or remain non-binding recommendations for States. EPA notes that it may require preparation of such Plans pursuant to sections 304(i)(2) and 402(p)(6) of the CWA.

4. States without NPDES General Permit Authority

As noted, the issuance of general permits is a very important component in the recommended permit issuing strategy. Presently 38 States (and 1 territory) have been authorized to implement the NPDES permit program. However, only 23 of these States have been authorized to issue general permits. If NPDES authority is not obtained for any of the remaining 15 States, storm water controls will have to be implementation based on the submission of individual or group permit applications, and the development of individual permits. Under the CWA, EPA cannot issue general permits in States that have been authorized to administer the NPDES program.

EPA strongly recommends that States with authorized State NPDES programs, but without general permit authority, consider obtaining general permit authority as soon as possible. EPA is currently working with States to expedite the authorization process.

B. Proposed Changes To Annual Monitoring and Reporting Requirements

Section 308 of the CWA authorizes EPA to require information, monitoring, and recordkeeping to carry out the objectives of the Act including but not limited to: (1) Characterization of discharges to assist in the development of permit conditions and controls; and (2) compliance monitoring to determine whether a discharger is in violation of a permit condition. The authority to collect information under section 308 is broad and can include requirements for record keeping, making reports, effluent monitoring, and other information reasonably required. EPA and authorized NPDES States implement this authority in a number of ways, including permit application requirements, permit monitoring and reporting requirements, and specific information requests under section 308 (section 308 letters). In addition, section 402(a)(2) of the CWA provides that NPDES permits shall prescribe requirements to assure compliance with permit conditions, including requirements on data and information collection, reporting, and such other requirements deemed appropriate.

Monitoring data serves a number of functions under the NPDES program. Discharge monitoring data can be used to assist in the evaluation of the risk of the discharge by indicating the types and the concentrations of pollutant parameters in the discharge. Monitoring of storm water from an industrial site can assist in evaluating sources of pollutants. Discharge monitoring data can be used in evaluating the potential of the discharge to cause or contribute to water quality impacts and water quality standards violations.

Discharge monitoring data can also be used to evaluate the effectiveness of controls on reducing pollutants in discharges. This function of monitoring can be important in evaluating the effectiveness of source control or pollution prevention measures as well as evaluating the operation of end-of-pipe treatment units. Where numeric or toxicity effluent limits are incorporated into permits, discharge monitoring data plays a critical role by providing EPA and authorized NPDES States with data

[6] EPA is not requesting permits in as part of these Plans for the purpose of commenting on the adequacy of the permit. Rather the Agency is requesting the copies of the permit to coordinate technology transfer regarding permitting approaches and classes of storm water discharges addressed, and to provide a general evaluation of the status of National permitting activities.

to evaluate compliance with effluent limits. The use of discharge monitoring data to determine permit compliance greatly enhances the ability of EPA and authorized NPDES States to enforce permit conditions.

As part of efforts to obtain sufficient information to run the program effectively, the existing regulations at 40 CFR 122.44(i) specify factors to consider in developing monitoring requirements in permits. These regulations indicate that permit monitoring requirements are to be established on a case-by-case basis to ensure, as noted above, compliance with permit limitations. In addition, 40 CFR 122.44(i)(2) provides that requirements to report monitoring results to the permitting authority shall in no case be less than once a year.

To date, the minimum requirement that permittees submit an annual discharge monitoring report (DMR) has proved to be a valuable baseline for NPDES permitting efforts for POTWs and industrial process discharges. Among the most important functions of DMRs is to assess compliance with numeric effluent limits contained in permits. However, some important administrative, technical, and policy concerns regarding DMRs arise as the Agency begins to fully implement permit requirements for storm water discharges. The Agency is considering the following factors in addressing this issue:

Administrative Burdens on Permitting Agencies. Requiring annual DMRs from each facility that discharges storm water associated with industrial activity would result in an enormous increase in the number of DMRs received by EPA Regions and authorized NPDES States. The Agency estimates that nationwide, over 100,000 facilities (not including oil and gas exploration and production operations) discharge storm water associated with industrial activity. Receiving annual DMRs containing complex technical information from each of these facilities would demand a large amount of permitting resources dedicated to reviewing and filing these reports. The Agency believes that such an increase in information would overwhelm permitting agencies who would have limited opportunities to review or otherwise analyze the information.

Difficulties in Sample Collection. Where storm water is not collected in a retention pond, the collection of storm water samples may pose a number of difficulties. These difficulties include determining when a discharge will occur, safety considerations, the potential for a large number of discharge points at a given facility, the limited duration of the event, the limited number of events that occur in some parts of the country, and variability in flow rates.

Variability of Data. The types and concentrations of pollutants in storm water discharges associated with industrial activity depend on a number of factors, including the nature of industrial activities occurring at the site, the nature of the precipitation event generating the discharge, and the time period from the last storm. Variations in these parameters at a site may result in variation from event to event in the concentrations and types of pollutants in a given discharge.

Types of Permit Conditions. Permits for industrial process discharges and discharges from POTWs traditionally have incorporated numeric and/or toxicity effluent limitations as conditions. Monitoring reports for these discharges provide a direct indication whether the discharge complies with permit conditions. However, it is anticipated that permits for storm water discharges will contain a variety of types of controls. While numeric or toxicity limitations are expected to be appropriate for some storm water discharges, permits for other storm water discharges are expected to contain requirements to implement best management or pollution prevention practices. In these cases, monitoring information may not provide as direct a link to compliance with permit conditions. However, monitoring data can still play an important role in identifying priority facilities, providing information on sources and types of pollutants which can be evaluated when designing or modifying best management or pollution prevention practices, and evaluating the effectiveness of best management practices and pollutant prevention measures.

Focussed Permitting Efforts

The long-term permitting strategy discussed earlier in today's notice provides for a flexible system for conducting permit issuance and reissuance activities. Flexibility has been incorporated into the strategy to facilitate EPA and authorized NPDES States permit issuance activities which reflect Regional and State prioritization of storm water impacts on particular watersheds and specific receiving waters, and on specific classes of facilities. In most States, the issuance of baseline permits (Tier I activities), will be the initial starting point. As priorities and risks within a State are evaluated, classes of facilities will be identified for more specific permit issuance activities (Tiers II, III and IV of the strategy). Storm water discharge monitoring data will have an important role, along with other information, in identifying facilities or classes of facilities where Tier II, III and IV permit issuance activities are appropriate. In addition, monitoring data will play an important role in developing appropriate permit conditions.

1. Options for Regulatory Modifications

EPA requests comments on five options (plus a no change option) for modifying the existing regulatory provision that NPDES permits at a minimum require the submittal of DMRs annually for permits for storm water discharges associated with industrial activity. It should be clarified that these options only address *minimum* requirements for discharge monitoring in NPDES permits. All options for modifying these regulations would retain authority to require more stringent monitoring requirements where appropriate. The six options [7] are as follows:

No Change Option: Case-by-case monitoring conditions in permits for storm water discharges, with a minimum requirement to report monitoring results at least annually.

Under this approach, EPA would not change its existing regulations which provide that monitoring conditions in NPDES permits be established on a case-by-case basis, but at a minimum, must contain requirements to report monitoring results at least annually.

Option 1: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement to report monitoring results at least twice per permit term.

This option would change the minimum requirement for reporting monitoring results at least annually to reporting monitoring at a different frequency, such as twice during a five year period (during the term of a permit). This approach would provide permit writers with additional flexibility to develop monitoring requirements in

[7] EPA will consider developing a final regulation which combines aspects of several of the options articulated below. For example, the Agency may determine that it is appropriate to issue a final regulation which provides that, at a minimum, NPDES permits will require annual monitoring (without reporting) for all storm water discharges associated with industrial activity except for permits for targeted storm water discharges associated with industrial activity located in the watershed of receiving waters that are sensitive to or impacted by storm water discharges which at a minimum would be required to sample quarterly and be required to report information to the permitting authority.

permits that were less burdensome to the permittee. Reducing monitoring and reporting requirements would also be less burdensome to the entity that reviewed the monitoring report.

The Agency also requests comments on providing permit writers with flexibility to establish requirements for conducting biological surveys of receiving waters as part of efforts to comply with minimum monitoring requirements. Under this approach, permittees could be required to conduct a survey of the biological health of the receiving water, to provide information on existing conditions. (See, "Biological Criteria, National Program Guidance for Surface Waters," Office of Water Regulations and Standards (WH–585), EPA–440/5–90–004 and "A Survey of the Status of Biomonitoring in State NPDES and Nonpoint Source Monitoring Programs," 1989, Office of Policy, Planning and Evaluation, U.S. EPA, RTO/7839/02–03F).

Data from a biological survey can be used by a permitting authority when assessing biological criteria to evaluate surface water quality. In this manner, the biological survey data can identify locations where water quality impacts are thought to be occurring. Where such impacts occur, additional monitoring or control requirements could be pursued.

Chemical specific monitoring, toxicity monitoring and biosurveys have unique as well as overlapping attributes, sensitivities, and program applications. No single approach for detecting impact should be considered uniformly superior to any other approach. EPA is encouraging States to implement and integrate all three approaches into their water quality programs, while applying them in combination or independently as site-specific conditions and assessment objectives dictate (See draft Final "Policy on the Use of Biological Assessments and Criteria in the Water Quality Program", EPA, January 1990).

Option 2: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement that facilities conduct annual sampling. Facilities would not be required to report monitoring information unless the information was requested in a permit or by the Director, but would be required to retain information.

Under this approach, permits for storm water discharges associated with industrial activity will, at a minimum, require the discharger to sample storm water discharges at least annually. However, permits would not have to require dischargers to submit monitoring reports. Facilities could use this data to review the effectiveness of BMPs or storm water pollution prevention practices conducted at the site. Monitoring data would be available to the Director or the public upon request. In addition, dischargers could be required to submit a summary of their monitoring results they had collected during the previous permit term every five years when they resubmit permit applications or notices of intent to be covered under a general permit.

This approach could provide additional flexibility to permit writers for developing reasonable and workable permit conditions which can limit the administrative burdens associated with receiving and reviewing monitoring results from a large number of facilities. Facilities would still be required to conduct discharge monitoring at least annually even where permits require the development of pollution prevention or best management practices instead of numeric or toxicity effluent limits. The permittee would evaluate discharge monitoring data as part of efforts to identify pollutant sources, evaluate risks, and evaluate the effectiveness of its pollution prevention/best management practices program. In addition, requiring monitoring data would ensure that the permitting authority would be able to request information from the facility either during the term of the permit, or when the discharger is reapplying for permit coverage. This would allow the permit writer to identify pollutant sources, evaluate priorities based on the nature of pollutants in the discharge and the potential for the discharge to contribute to a water quality standard violation, and to evaluate the effectiveness of controls at the facility.

The Agency remains concerned about the ability of permitting authorities to adequately review annual monitoring reports from all facilities that discharge storm water associated with industrial activity. EPA requests comments on whether providing permit writers with the flexibility to require permittees to retain monitoring information until the information is requested or until a permit is reissued is an adequate and appropriate manner in which to address this problem.

Option 2 could be modified to provide minimum requirements to establish reporting of monitoring results in permits in specified situations. One approach would be to provide that permits for storm water discharges associated with industrial activity to receiving waters that are sensitive to or impacted by storm water discharges must require dischargers to report monitoring results at least annually (or at a higher minimum frequency). This approach would assist permitting agencies in evaluating causes of water quality impairment. The discussion accompanying Option 4 describes how receiving waters that are sensitive to or impacted by storm water discharges may be identified.

The second approach would be to provide that permits for storm water discharges associated with industrial activity must require dischargers to report monitoring results where pollutants are detected above specified threshold concentrations. Maximum pollutant threshold concentrations which would trigger reporting requirements could be established by regulation. These concentrations would apply to all storm water discharges associated with industrial activity nationally. (For example, values which could be established at the high end of the range of pollutant concentrations typically found in urban runoff. The NURP data base indicates that high values within the typical range for urban runoff may include concentrations such as 50 mg/l five-day biochemical oxygen demand, 30 mg/l oil and grease, 400 mg/l total suspended solids. Alternatively, for parameters with water quality standards, EPA could require that concentrations in excess of the numeric water quality criteria be reported). Alternatively, pollutant threshold concentrations could be established on a State-by-State basis, with different sets of pollutant threshold concentrations for different classes of receiving waters. The Agency requests comments on appropriate pollutant threshold concentrations under this approach. As stated above, dischargers could be required to submit summaries of all of the monitoring information that they collected during the previous permit term when they resubmit applications or notices of intent for permit coverage.

Option 3: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement that facilities (other than those from oil and gas exploration or production operations and inactive mining operations where a past or present mine operator cannot be identified) conduct annual sampling. Facilities would not be required to report information unless the information was requested in a permit or by the Director, but would be required to retain information. For contaminated storm water discharges from oil and gas exploration or production operations or from inactive mining operations where a past or present mine operator cannot be identified, either case-by-case monitoring conditions in permits for

storm water discharges with a minimum requirement of annual sampling (without reporting) or, instead of sampling, a Professional Engineer's certification attesting that good engineering practices were being employed to meet appropriate permit conditions.

This option is identical to Option 2 for storm water discharges associated with industrial activity from facilities other than: oil and gas exploration or production operations; and inactive mining operations where a past or present mine operator cannot be identified. However, for contaminated storm water discharges associated industrial activity from oil and gas exploration or production operations (e.g. drilling or well operations) or from inactive mining operations where a past or present mine operator cannot be identified, this option would provide permit writers with flexibility to require, at a minimum, either annual monitoring or, instead of monitoring, a certification by a Professional Engineer (PE) attesting that good engineering practices were being employed to meet appropriate permit conditions.

Under this approach, permit writers would be provided with two options for developing minimum monitoring requirements for storm water discharges from oil and gas exploration and production operations. The first option satisfying the minimum requirement would be to require owners or operators of storm water discharges from oil and gas exploration and production operations to conduct annual monitoring of representative storm water discharges. Where dischargers are not required to report monitoring results to the Director, permits must require that monitoring results be retained by the discharger for at least the term of the permit and be made available to the Director upon request. In such cases, results of any monitoring conducted during the term of the permit should be submitted as part of a permit application or NOI requirement prior to permit reissuance.

A second option for minimum requirements for permits for storm water discharges from oil and gas exploration and production operations or from inactive mine sites where a past or present mine operator cannot be identified would be available where a permit requires the facility owner or operator to develop and implement a storm water pollution prevention plan or a storm water best management practices plan. In such a case, the permit writer could require the discharger to obtain a Registered Professional Engineer's certification that the plan had been prepared and is being implemented in accordance with good engineering practices. Such certification would be obtained at a minimum of once every three years. The Agency believes that a minimum requirement of once every three years is necessary to evaluate changing site conditions and practices. Of course permit writers would retain discretion to, where appropriate, establish monitoring and certification requirements in excess of these minimum requirements.

EPA is proposing this option to address some of the specific concerns associated with storm water from oil and gas operations and from inactive mining operations where a past or present operator cannot be identified.

Information from sources such as nonpoint source assessments developed pursuant to section 319(a) of the CWA indicate that significant water quality impacts can be caused by wet-weather failure of on-site waste disposal systems at oil and gas exploration and production operations (such as storm induced overflows of reserve pits used to hold spent drilling muds and cuttings). Periodic sampling of discharges may not be sufficient to identify or predict these events. Rather, a PE certification may provide a more appropriate link for evaluating the potential for and preventing these types of events. Further, many oil and gas exploration and production with contaminated storm water discharges are already required to obtain similar PE certifications for Spill Prevention Control and Countermeasure (SPCC) Plans for discharges of oil under 40 CFR part 112. The Agency believes that developing an approach under the NPDES program for storm water discharges from oil and gas operations that is consistent with existing regulatory programs (e.g. the SPCC program) will potentially reduce industry burdens and provide for a greater degree of industry compliance. EPA is also considering other factors in evaluating requirements for oil and gas exploration and production operations, including the potentially large number [8] of facilities subject to the program and that such facilities are typically found at remote locations and may have a limited operating staff.

Monitoring contaminated storm water discharges associated with industrial activity from inactive mining operations where a past or present mine operator cannot be identified can pose unique problems, particularly on Federal lands which have many thousands of inactive mines without identifiable mine operators. The Agency will be developing draft general permits in several States for inactive mining operations on Federal lands where a past or present mine operator cannot be identified and where EPA retains NPDES permit issuance responsibilities (these discharges are excluded from the draft general permits noticed elsewhere in today's **Federal Register**). The Agency believes that requiring the appropriate Federal land manager to monitor discharges from every one of the thousands of inactive mines on their lands is not appropriate. Rather, the Agency is evaluating the appropriate combination of discharge monitoring requirements for selected inactive mining operations and requirements to assess water quality impacts, such as biosurveys, instream sampling and sediment sampling. Further, the Agency recognizes that many of the methods used to control pollutant discharges and reclaim inactive mining operations can be evaluated from site inspections, and that unique resource problems may arise where a past or present operator cannot be identified. (Note that SMCRA regulations applicable to coal mining operations incorporate PE certifications (see 30 CFR 816.133(d)(5) and 30 CFR 817.133(d)(5).)

EPA requests comments on whether providing that NPDES permits for contaminated storm water discharges associated with industrial activity from oil and gas exploration and production operations and from inactive mining operations where a past or present mine operator cannot be identified, a PE certification instead of annual monitoring is an effective mechanism to ensure compliance with permit conditions.

EPA requests comments on other classes of industries where a PE certification may be an appropriate alternative to discharge sampling (e.g. construction activities where conditions change dramatically and frequently; portions of active mining operations which are not subject to effluent limitations guidelines, inactive industrial operations where an operator is not identifiable and which are not expected

[8] The American Petroleum Institute (API) estimates that there are about 850,000 active oil and gas wells, 219,000 tank batteries and 150,000 injection wells in the United States. API also estimates that SPCC plans have been developed for about 130,000 of these facilities. The Agency anticipates that many sites are composed of multiple components (e.g. active wells, a tank battery, and injection wells). The Agency also anticipates that not all sites discharge 'contaminated' runoff. EPA requests comments on the number of sites with oil and gas exploration and production operations that discharge contaminated storm water to waters of the United States, and hence would be subject to NPDES storm water requirements.

to undergo extensive changes; and small businesses [9] which may not have the expertise to monitor). In addition, the Agency requests comment on portions of industrial facilities, such as haul roads, where a PE certification may be an appropriate alternative to discharge sampling.

EPA also requests comments on the costs of obtaining Professional Engineer's certification for two scenarios: (1) Where the engineer is a company employee and (2) where the company does not have an appropriate Professional Engineer on staff and must hire a consultant. In addition, EPA requests comments on the appropriate minimum frequency for obtaining such a certification.

The proposed changes to the language of 40 CFR 122.44(i) found in the back of today's notice reflects this option.

Option 4: Case-by-case monitoring conditions in permits for storm water discharges with a minimum requirement that monitoring reports be submitted at least annually for targeted classes of storm water discharges associated with industrial activity located in the watershed of receiving waters that are sensitive to or impacted by storm water discharges.

Option 4 differs from the other options presented in this notice in that it establishes a minimum requirement for DMRs in NPDES permits for storm water discharges associated with industrial activity based on receiving water concerns. This approach would focus permitting resources and controls on discharges to receiving waters that are sensitive to or impacted by storm water discharges. This option would establish a minimum requirement that facilities report monitoring results at least annually for those storm water discharges associated with industrial activity that are located within the watershed of any receiving water (or receiving water segment) that is determined by an NPDES State or EPA to be impacted by or sensitive to storm water discharges. Monitoring requirements in permits for storm water discharges associated with industrial activity which are not located within such watersheds would be established on a case-by-case basis. These storm water discharges would not be subject to a minimum requirement to submit or otherwise collect discharge monitoring information, although monitoring and reporting requirements could still be established in permits on a case-by-case basis.

A key aspect of this approach would be developing a list of waters that are either impacted by or sensitive to storm water discharges associated with industrial activity. All States would be required to submit lists for their State for the review and approval or disapproval by EPA. EPA would develop the list of waters for States that fail to develop approved lists.

The Agency anticipates that such lists could be based on existing and readily available data. The CWA provides a number of mechanisms for identifying impacted surface waters which could be useful in developing lists of waters impacted by or sensitive to storm water discharges, including the identification of lists of receiving waters under Sections 304(l), [10] 305(b), [11] 314(a), [12] 319(a), [13] and 320. [14] Additional sources of information which may be appropriate for identifying impacted or sensitive surface waters include the waters identified by the International Joint Commission, [15] the Chesapeake Bay program, and other EPA and State programs.

Several of the lists of receiving waters developed under the CWA also identify sources of water quality impairment and classes of pollutants associated with the water quality impairment. For example, the general classes of sources of water quality impairment addressed in section 305(b) reports which would be of particular interest when addressing storm water discharges associated with industrial activity, include separate storm sewers/urban runoff, construction, waste disposal, and resource extraction. [16] Sources of pollutants identified in section 305(b) reports include nutrients, organic enrichment, pathogens, siltation, and metals. [17] Under this option, these

[9] For the purposes of developing permit application requirements, EPA defines small businesses at 40 CFR 122.21(g)(8) as coal mines with a probable total annual production of less than 100,000 tons per year, and for all other applicants, businesses with gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars or approximately $150,000 in 1990 dollars). This provision exempts small businesses from permit application monitoring requirements for certain organic chemicals.

[10] Section 304(1) of the CWA requires States to develop three lists of waters in the State. Section 304(l)(1)(A)(i) requires the development of a list of all waters which after the application of effluent limitations required under the CWA cannot reasonably be anticipated to attain or maintain newly adopted numeric water quality standards due to toxic pollutants. Section 304(l)(1)(A)(ii) requires the development of a list of all waters which, after the application of effluent limitations required under the CWA, cannot reasonably be anticipated to attain or maintain water quality that assures protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water. Section 304(l)(1)(B) requires the development of a list of all waters for which the State does not expect the applicable standard under section 303 of the CWA will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources or any toxic pollutants listed pursuant to section 307(a) of the CWA.

[11] Section 305(b) of the CWA provides that every two years States shall submit to the EPA a report describing the water quality of all navigable waters in a State during the preceding year. The report shall also include, among other things, an analysis of the extent to which those waters protect and support shellfish, fish and wildlife and allow recreational use, the basis for the assessment (evaluated or monitored), and causes of nonsupport of designated uses.

[12] Section 314(a) requires States to submit biennial reports that identify and classify publicly owned lakes according to their eutrophic condition. In addition, Section 314(a) reports should describe those publicly owned lakes for which uses are known to be impaired; procedures, processes, and methods to control sources of pollutants on such lakes; and methods and procedures to restore the quality of such lakes.

[13] Section 319(a) of the CWA provides for States to submit to EPA a report that identifies those navigable waters which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the CWA, and to identify those categories and subcategories of nonpoint sources that add significant pollution to each portion of the navigable waters identified.

[14] Section 320 of the CWA provides for EPA to designate estuaries of national significance based on a nomination of the Governor of any State in which the estuary lies in whole or in part and convene a management conference to develop a comprehensive management plan for the estuary.

[15] The International Joint Commission has identified areas of concern in the Great Lakes.

[16] EPA has issued a number of guidance materials to assist States in the section 305(b) process to identify sources of pollution that impact water quality. "The Water Body System User's Guide" provides a detailed list of subcategories of sources to develop section 305(b) reports. The list includes: separate storm sewers: discharges from separate storm sewers; construction; resource extraction: Runoff and process fluids from mining, petroleum drilling, and mine tailing sites; and land disposal: Runoff and leachate from landfills, septic tanks, and hazardous waste disposal sites.

[17] The "National Water Quality Inventory, 1988 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under section 305(b) of the CWA. The National Water Quality Inventory summarizes sources of water quality impairment identified under section 305(b) in terms of the following classes: industrial, POTWs, combined sewer overflows, separate storm sewers/urban runoff, agriculture, silviculture, construction, resource extraction, land disposal, and hydro modification/habitat modification. The Agency believes the classes of separate storm sewers/urban runoff, construction, resource extraction, and land disposal correlate well with certain classes of storm water discharges associated with industrial activity.

additional parameters could be used to develop minimum monitoring requirements for those general classes of storm water discharges associated with industrial activity that are specifically identified as causing water quality impairment.

The Agency is concerned that Option 4 would place large burdens on permitting Agencies and the regulated community during the initial phases of developing the storm water program. The Agency is also concerned that significant storm water discharges would not be addressed by this option because the discharge is to waters which were not assessed or to waters that were impacted by storm water but not identified for the purpose of this regulation. The Agency also recognizes that as storm water permitting programs develop, they must focus on controlling pollutant discharges located with watersheds of impacted and sensitive waters. The Agency is requesting comments on addressing these concerns by modifying the DMR regulation such that minimum DMR requirements would not be established for the initial set of permits to be issued under the new storm water permitting initiative (e.g., the minimum DMR requirements for storm water discharges in impacted or sensitive watershed would not be effective until three years after the date of promulgation of this regulation). However, after a specified time, at a minimum, annual DMRs for storm water discharges associated with industrial activity in watersheds that are impaired by or sensitive to storm water discharges would be required.

This approach would provide permit issuing agencies with an opportunity to initiate storm water permitting efforts and to identify those watersheds impacted by storm water discharges. In addition, this approach would also ensure that storm water discharges in watersheds of sensitive or impacted waters were appropriately evaluated and addressed.

Option 5: Case-by-case monitoring conditions in permits for storm water discharges with no minimum requirement to report monitoring results.

Under this approach, the existing regulations at 40 CFR 122.44(i)(2) would be modified to allow permit writers to require discharge monitoring and reporting on a case-by-case basis. However, under this option, there would be no minimum requirement to submit or otherwise collect discharge monitoring information for most storm water discharges, except for certain facilities, such as those with effluent limitation guidelines for storm water discharges. The existing regulations would be modified to provide minimum requirements for annual monitoring only for certain facilities, such as those with storm water discharges that are subject to national effluent limitation guidelines, those within specified industrial categories, or those that have a storm water discharge that is subject to a numeric or toxicity limitation in a permit that has been established on a case-by-case basis.

Under this option, some facilities may not be required to sample their storm water discharges associated with industrial activity. However, the broad authorities of sections 308 and 402(a)(2) provide other means, such as information collection and reporting, that can ensure compliance with permit conditions. Even under this approach, monitoring programs would play an important role for some facilities in determining compliance with numeric limitations and/or the effectiveness of requirements in a storm water pollution prevention plan that the facility is required to develop under a NPDES permit. However, in other cases, limited storm water sampling data may not provide adequate information regarding the effectiveness of the controls in the storm water pollution prevention plan. (For example, the primary focus of a storm water pollution prevention plan at a facility may be directed towards preventing a catastrophic event like a spill. Where no spill has occurred at the facility, sampling of the storm water discharge would convey little information regarding the effectiveness of the spill controls.)

Option 5 would provide permit writers with the discretion to require the submission of DMRs while limiting burdens on permittees and permit issuing agencies. This option would provide permit writers with the maximum flexibility to adopt a wide range of permit monitoring strategies (including strategies consistent with other options addressed in this notice) on a case-by-case basis. The flexibility in establishing monitoring requirements in permits could significantly reduce the burden that monitoring samples annually would place on permittees.

The Agency also requests comments on whether a minimum regulatory monitoring reporting requirement should be established for storm water discharges from industrial categories that have a high pollutant potential (such as landfills, wood preserving facilities, airports, facilities subject to SARA title III, primary metal manufactures, etc.). Conversely, the Agency requests comments on whether minimum annual monitoring requirements should be developed for all but specified industry groups or for small businesses, and the appropriate basis for excluding such groups from minimum monitoring requirements. For example, small businesses may lack the expertise to conduct sampling or sampling costs may be too high.

Option 6: Case-by-case monitoring conditions in permits for storm water discharges, with a minimum requirement for the first permit for the discharge that monitoring results be reported at least once a year. After a facility has submitted five years of data, monitoring conditions for storm water would be established on a case-by-case basis with no minimum requirement to conduct annual sampling.

Under this approach, the minimum monitoring requirement for permits for storm water discharges associated with industrial activity would change with time. This approach would allow permit writers to evaluate a minimum of five years of storm water monitoring data. This data would assist permit writers in determining appropriate monitoring conditions when reissuing permits. In addition, data collection activities required under the first set of NPDES permits for storm water discharges associated with industrial activity can be used to develop priorities for implementing Tiers II through IV of the long term permitting strategy for storm water discharges.

C. Application Requirements for General Permits

As discussed above, EPA intends to increase its use of general permits to address the expansion of the scope of the NPDES program to address storm water discharges associated with industrial activity as well as other classes of discharges other than storm water, and encourages States with general permit authority to do so as well. The Agency intends to increase the use of general permits to address other sources as well. General permits are an important tool for assuring adequate environmental safeguards for large numbers of similar facilities without the administrative and resource burdens involved in individual permit issuance. In order to improve administration and operation of the general permits program, the Agency is proposing to facilitate and clarify general permit requirements and procedures.

EPA wants to emphasize that, except for the procedural differences set out at § 122.28 in the NPDES regulations, general permits are analogous to individual permits in every respect. General permits are still subject to the same reporting and monitoring

requirements, limitations, enforcement provisions, penalties, and other substantive requirements as individual permits. General permits should be viewed as an administrative tool enabling the issuance of one permit to authorize a group of dischargers.

Although the general permit program has been available to authorized NPDES States since its inception in 1979, some States have been reluctant to seek and use general permit authority. This has created an administrative dilemma. Even in circumstances where a general permit is appropriate, EPA is unable to issue a general permit in an authorized NPDES State. Of the 39 States with NPDES authorization, 23 have been authorized to issue general permits. In the other 16 authorized NPDES States neither EPA nor the State has the authority to issue general permits.

As discussed above in the storm water context, full individual permit applications (e.g., Form 2C for process discharges or Form 2F for storm water discharges associated with industrial activity) containing a significant amount of site-specific information from each discharger may not be necessary for developing general permits. 40 CFR 122.21(a) excludes persons covered by general permits from requirements to submit individual permit applications. Existing general permit regulations at 40 CFR 122.28, however, do not address the issue of how a potential permittee is to apply to be covered under a general permit. Rather, conditions for filing an application to be covered by a general permit (typically called a Notice of Intent (NOI)) are established on a case-by-case basis.

Under existing practice, general permit coverage is by two methods. First, as applied under federal law and where authorized under State law, the Director may issue a general permit covering a particular class of dischargers (or treatment works treating domestic sewage) informing potential permittees of their coverage by public notice. Second, the Director may issue a general permit where eligible dischargers (or treatment works treating domestic sewage) are not authorized to discharge under the permit until they have submitted a NOI to be covered by the general permit. The public notice for a general permit specifies whether an NOI is required prior to coverage. In almost all cases, general permits require the submittal of NOIs containing basic information such as the name and address of the facility and a brief description of the discharge and receiving water.

NOIs serve a number of functions. NOI requirements in general permits can establish a clear accounting of the number of permittees covered by the general permit, the nature of operations at the facility generating the discharge, and their identity and location. NOIs can be used to develop a data base of facility-specific information. NOIs can be used as a screening tool to identify discharges where individual permits are appropriate. For example, the identification of discharges to impacted receiving waters can be used in the development of water quality-based permit conditions. Also, the NOI can be used to identify classes of discharges appropriate for more specific general permits covering a more limited set of discharges. The NOI can provide information needed by the Director to notify dischargers that a more specific general permit was issued. The NOI also can identify the permittee to provide a basis to develop and implement enforcement and compliance monitoring strategies and priorities. In addition, the administrative burdens on the permitting issuing agency and the costs to dischargers can be reduced by replacing more complicated permit application requirements with simplified requirements.

To encourage the use of general permits, to provide for more consistent NOI requirements, and to ensure that dischargers covered by general permits provide appropriate information, the Agency is proposing to modify the regulatory framework for general permits to provide minimum requirements for NOIs. (These proposed changes would apply to a number of other classes of general permits for non-storm water discharges as well as storm water discharges.)

Proposed § 122.28(b)(2) would require that, at a minimum, NOIs include the legal name and address of the owner or operator, the facility name and address, the number and type of facilities or discharges, the receiving stream(s), and other information necessary to ascertain whether the discharger should be included under the terms of the general permit as specified in the final general permit. This provision would be a minimum requirement. Permits may require additional information where appropriate.

The proposal also provides guidelines for deadlines to submit NOIs. The guidelines recommend that general permits be written to require dischargers to submit NOIs 60 days before the date of intended permit coverage. Under the proposal, the Director may specify different time periods in the general permit for these submissions.

Under the proposal, unless otherwise provided in the permit, dischargers would automatically be authorized to discharge under the general permit by submitting an NOI in accordance with the terms of the permit. This provision would still allow general permits to specify that the permittee must receive notification of coverage under the general permit from the Director before discharges would be authorized.

The proposal provides for two situations where an NOI would not have to be submitted to authorize discharges under a general permit. The first situation is where the Director notifies the discharger that its discharge is covered by the permit. The second situation is where the Director decides that an NOI is inappropriate for a general permit. To make the latter decision, the Director would consider the type of discharge, the expected nature of the discharge, the potential for toxic and conventional pollutants in the discharges, the expected volume of the discharges, other means of identifying discharges covered by the permit, and the estimated number of discharges to be covered by the permit. Also, if this approach is pursued, the Director would be required to describe the reasons for not requiring an NOI in the fact sheet of the general permit. This notice proposes that such a finding could only be made for discharges other than discharges from POTWs, combined sewer overflows (CSOs), primary industrial facilities, contaminated runoff from mining operations or oil and gas operations and other storm water discharges associated with industrial activity. The Agency believes that, given the potential environmental significance and NPDES program priorities associated with discharges from POTWs, CSOs, primary industrial facilities, contaminated runoff from mining operations or oil and gas operations and other storm water discharges associated with industrial activity, it is appropriate to require NOIs in all general permits for these discharges. However, the Agency requests comments on whether general permits without NOI requirements are appropriate for the large number of storm water discharges associated with industrial activity from oil and gas exploration or production operations. Oil and gas exploration or production operations that discharge storm water associated with industrial activity are typically subject to Spill Prevention Control and Countermeasure (SPCC) program requirements at 40 CFR part 112, which may provide an alternative means for tracking these facilities.

Public accessibility to this information would be enhanced by proposed

§ 122.28(d), which provides that such lists would be available to the public.

D. Fact Sheet for Draft General Permit

The following portion of this notice provides notice for draft NPDES general permits and accompanying fact sheets for storm water discharges associated with industrial activity in AK, AZ, FL, ID, LA, MA, ME, NH, NM, OK, SD, TX, District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; on Indian lands in AL, CA, GA, KY, MI, MN, MS, MT, NC, ND, NY, NV, SC, TN, UT, WI and WY; located within Federal facilities and Indian lands in CO and WA; and located within Federal facilities in Delaware. Separate general permits are being noticed for each State. These draft general permits are intended to cover storm water discharges associated with industrial activity to waters of the United States, including discharges through large and medium municipal separate storm sewer systems, and through other municipal separate storm sewer systems. Publication of this draft general permit and fact sheet is designed to comply with the requirements of 40 CFR 124.10 simultaneously for all 35 draft general permits being noticed today. Public hearings on selected permits will be held as indicated at the beginning of this notice.

The language of the draft general permits is provided as an appendix to the preamble of this notice. In general, most conditions of the draft general permits are intended to apply to all of the general permits indicated above. Where conditions in different permits vary, these differences are indicated in the draft general permit in the appendix.

1. Background

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, except if the discharge is in compliance with an National Pollutant Discharge Elimination System (NPDES) permit.

For a number of reasons, EPA and authorized NPDES States have failed to issue NPDES permits for the majority of point source discharges of storm water. Recognizing this, Congress added section 402(p) to the CWA in 1987 to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term "storm water discharge associated with industrial activity". The final regulations also establish requirements for submitting individual permit applications and group applications.

EPA estimates that about 100,000 facilities nationwide discharge storm water associated with industrial activity (not including oil and gas exploration and production operations). The large number of facilities addressed by the regulatory definition of "storm water discharge associated with industrial activity" will place correspondingly large administrative burdens on EPA and States with authorized NPDES programs to issue and administer permits for these discharges.

To provide a reasonable and rational approach to addressing this permitting task, the Agency is developing a Strategy for issuing permits for storm water discharges associated with industrial activity. In developing this Strategy, the Agency recognizes that the CWA provides flexibility in the manner in which NPDES permits are issued,[18] and will use this flexibility to design a workable permitting system. In accordance with these considerations, the draft permitting Strategy (described in more detail earlier in today's notice) describes a four-tier set of priorities for issuing permits for these discharges. The four-tier set of priorities for issuing permits under the policy are:

- *Tier I—Baseline Permitting:* One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity;
- *Tier II—Watershed Permitting:* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.
- *Tier III—Industry-Specific Permitting:* Specific industry categories will be targeted for individual or industry-specific general permits; and
- *Tier IV—Facility-Specific Permitting:* A variety of factors will be used to target specific facilities for individual permits.

The draft general permits accompanying this fact sheet will initiate Tier I activities for storm water discharges associated with industrial activity in Alaska, Arizona, Idaho, Louisiana, Massachusetts, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, Texas, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; for Federal facilities and Indian lands in Colorado and Washington, and for Indian lands in Alabama, California, Georgia, Kentucky, Michigan, Minnesota, Mississippi, Montana, New York, Nevada, North Carolina, North Dakota, New York, Nevada, South Carolina, Tennessee, Utah, Wisconsin, and Wyoming, and for Federal facilities in Delaware [19] by proposing baseline general permits for the majority of storm water discharges in these States.

In addition to establishing baseline requirements for the majority of storm water discharges associated with industrial activity in these States, the draft general permits have some of the features of Tier III permitting activities in that they establish requirements for specific industries.

Consolidation of many sources under one permit will greatly reduce the otherwise overwhelming administrative burden associated with storm water discharges associated with industrial activity. This approach has a number of additional advantages:

- General requirements will be established for discharges covered by the permit;
- Facilities whose discharges are covered by the permit will have an opportunity to comply with the CWA;
- The Agency will have the opportunity to collect and review data on storm water discharges for priority industries;
- The public will have the opportunity to review data and reports and to comment on permitting activities;
- Applicable requirements of municipal storm water management programs established in permits for

[18] The court in *NRDC* v. *Train*, 396 F.Supp. 1393 (D.D.C. 1975) *aff'd. NRDC* v. *Costle*, 568 F.2d 1369 (D.C.Cir. 1977), has acknowledged the administrative burden placed on the Agency by requiring permits for a large number of storm water discharges. The courts have recognized EPA's discretion to use certain administrative devices, such as area permits or general permits, to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that can be established, including the use of requirements for best management practices.

[19] In 6 of the 39 States that are authorized to issue NPDES permits for municipal and industrial sources, EPA issues permits for discharges from Federal facilities. State programs do not generally address permitting of discharges from Indian lands, as EPA retains this responsibility. However, this fact sheet only addresses general permits as indicated above. Where EPA is the permit issuing authority for other storm water discharges, either individual permits or a different general permit will be issued.

discharges from municipal separate storm sewer systems will be enforceable directly against noncomplying industrial facilities that generate the discharge;

• The baseline permits will provide a basis for bringing selected enforcement actions by eliminating many issues which might otherwise arise in an enforcement proceeding (e.g., clarifying requirement to obtain NPDES permit coverage); and

• Finally, the baseline permit will provide a focus for public comment on developing subsequent phases of the permitting strategy for storm water discharges, including the priorities for State storm water management programs developed under section 402(p)(6) of the CWA.

Initially, the coverage of the baseline permits will be broad, but will decrease as other permits are issued for storm water discharges associated with industrial activities pursuant to Tier II through IV activities.

2. Types of Discharges Covered

On November 16, 1990, (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with industrial activity" which addresses point source discharges of storm water from eleven major categories of facilities. (This definition is reprinted in the definition section of the draft general permits found in the Appendix of today's notice).

The draft general permits do not cover storm water discharges associated with industrial activity from inactive mining or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified. Given the long history of mining activity on the extensive tracts of Federal lands, and the relationship of the Federal land management Agencies to prior operators of these sites, the Agency believes that a distinct set of permits are generally appropriate to control pollutants in storm water discharges from these sites. EPA is currently working with a number of Federal land management Agencies, including the Bureau of Land Management and the Forest Service, to develop permits to address the unique circumstances associated with these sites in an appropriate manner.

3. Description of Discharges Covered

The volume and quality of storm water discharges associated with industrial activity will depend on a number of factors, including the industrial activities occurring at the facility, the nature of precipitation, and the degree of surface imperviousness. Rain water may pick up pollutants from structures and other surfaces as it drains from the land. In addition, sources of pollutants other than storm water, such as illicit connections,[20] spills, and other improperly dumped materials may increase the pollutant loads discharged from separate storm sewers. The sources which contribute pollutants to storm water discharges differ with the type of industry operation and facility-specific features. For example, air emissions may be a significant source of pollutants at some facilities, material storage operations may be important at different operations, while other facilities may discharge storm water associated with industrial activity with relatively low levels of pollutants.

The most extensively studied storm water discharges have been those from residential and commercial areas (urban runoff). Evaluating these discharges will provide a starting point for understanding the pollutants that can be expected in storm water discharges associated with industrial activity. Many storm water discharges are expected to contain the pollutants typically associated with urban runoff, along with additional pollutants that result from the specific industrial operations of the facility.

From 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP) to study the nature of runoff from commercial and residential areas. The NURP program included 28 projects across the Nation, conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP program was to characterize the water quality of discharges from separate storm sewers which drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in the NURP study were analyzed for seven conventional pollutants and three metals. Table 1 summarizes the pollutant concentrations from the NURP data base is presented in Table 1 for these 10 constituents and fecal coliform. Data collected in NURP indicated that on an annual loading basis, suspended solids in discharges from separate storm sewers draining runoff from residential, commercial and light industrial areas are around an order of magnitude or more greater than effluent from sewage treatment plants receiving secondary treatment. The study also indicated that annual loadings of chemical oxygen demand (COD) are comparable to effluent from sewage treatment plants receiving secondary treatment. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent, and that the short-term loadings associated with individual events will be high and may have shock loading effects on receiving water such as sag in dissolved oxygen levels.

[20] Illicit connections are point source discharges of pollutants that are not composed entirely of storm water, that are not covered by an existing NPDES permit, and which are discharged through separate storm sewers to waters of the United States.

TABLE 1.—QUALITY CHARACTERISTICS OF RUNOFF FROM RESIDENTIAL AND COMMERCIAL AREAS

Constituent	Average residential or commercial site concentration	Weighted mean residential or commercial site concentration	NURP recommendations for load estimates
TSS	239 mg/l	180 mg/l	180–548 mg/l
BOD	12 mg/l	12 mg/l	12–19 mg/l
COD	94 mg/l	82 mg/l	82–178 mg/l
Total phosphorus	0.5 mg/l	0.42 mg/l	0.42–0.88 mg/l
Soluble phosphorus	0.15 mg/l	0.15 mg/l	0.15–0.28 mg/l
Total Kjeldahl nitrogen	2.3 mg/l	1.90 mg/l	1.90–4.18 mg/l
Nitrate-nitrite	1.37 mg/l	0.86 mg/l	0.86–2.21 mg/l
Total copper	53 µg/l	43 µg/l	43–118 µg/l
Total lead	238 µg/l	182 µg/l	182–443 µg/l
Total zinc	353 µg/l	202 µg/l	202–633 µg/l
Fecal coliform:			
Warm weather	50,240 counts/100 ml	27,605 counts/100 ml	
Cold weather	22,918 counts/100 ml	7,057 counts/100 ml	

Source: Developed from *Results of the Nationwide Urban Runoff Program, Vol. 1—Final Report*, EPA 1983.

The NURP program also involved monitoring 120 priority pollutants. Seventy-seven priority pollutants were detected in samples of storm water discharges from residential, commercial, and light industrial lands taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table 2 shows the priority pollutants that were detected in at least ten percent of the discharge samples that were sampled for priority pollutants. The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria.

Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely important source of oil pollution to receiving waters, with hydrocarbon levels in urban runoff typically being reported at a range of 2 mg/l to 10 mg/l. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time, and exert adverse impacts on benthic organisms.

TABLE 2.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES

	Frequency of detection (percent)
Metals and inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated aliphatics: Methane, dichloro-	11
Phenols and cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate esters: Phthalate, bis(2-ethylhexyl)	22
Polycyclic aromatic hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

Other studies have shown that many storm sewers contain illicit discharges of non-storm water, and that large amounts of wastes are disposed improperly in storm sewers. Removal of these discharges present opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain, in addition to illicit connections and improperly disposed wastes, toxics and conventional pollutants when material management practices allow exposure to storm water.

In some municipalities, illicit connections of sanitary, commercial, and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not characterize illicit connections to storm sewers other than to ensure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health.

Studies have shown that illicit connections to storm sewers can create severe, widespread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes, and other buildings located in Washtenaw County, Michigan. The program identified that 14 percent of the buildings had improper storm drain connections. Illicit discharges were detected at a higher rate of 60 percent for automobile-related businesses, including service stations, automobile dealerships, car washes, body shops, and light industrial facilities. While some of the problems discovered in this study were due to improper plumbing or illegal connections, a majority were approved connections at the time they were built, but have since become unlawful discharges.

Intensive construction activities may result in severe localized impacts on water quality because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus and nitrogen from fertilizer, pesticides, petroleum products, construction chemicals, and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment runoff rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and typically 1,000 to 2,000 times that of forest lands. Even a small amount of construction may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was deposited previously over several decades.

The NURP study and other studies of urban runoff provide insight on what can be considered background levels of pollutants for urban runoff, as these studies have focused primarily on monitoring runoff from residential, commercial, and light industrial areas. However, NURP concluded that the quality of urban runoff can be impacted adversely by several sources of pollutants that were not evaluated directly in the study and which are generally not reflected in the NURP data, such as illicit connections, construction site runoff, industrial site runoff and illegal dumping.

For some industrial facilities, the types and concentrations of pollutants in storm water discharges will be similar to the types and concentrations of pollutants generally found in storm water discharges from residential and commercial areas. However, storm water discharges from other industrial facilities will have a significant potential for higher pollutant levels. In addition, pollutant loadings per unit area from some industrial facilities may be high because of a high degree of imperviousness.

Six activities can be identified as major potential sources of pollutants in storm water discharges associated with industrial activity: (1) Loading or unloading of dry bulk materials or liquids; (2) outdoor storage of raw materials or products; (3) outdoor process activities; (4) dust or particulate generating processes; (5) illicit connections or management practices; and (6) waste disposal practices. The potential for pollution from many of these activities may be influenced by the use and presence of toxic chemicals. These activities are discussed in more detail below.

(1) Loading and unloading operations typically are performed along facility access roads, railways, and at loading/unloading docks and terminals. These operations include pumping of liquids or gases from truck or rail car to a storage facility or vice versa, pneumatic transfer of dry chemicals to or from the loading or unloading vehicle, transfer by mechanical conveyor systems, and transfer of bags, boxes, drums, or other containers from vehicle by forklift trucks or other materials handling equipment. Material spills or losses in areas can

discharge directly to the storm drainage systems, or may accumulate in soils or on surfaces, and be washed away during a storm event or facility washdowns.

(2) Outdoor storage activities include the storage of fuels, raw materials, byproducts, intermediates, final products, and process residuals. Storage can be accomplished in various ways, for example, using storage containers (e.g., drums or tanks), platforms or pads, bins, silos, boxes, or piles. Materials, containers, and material storage areas that are exposed to rainfall and/or runoff can contribute pollutants to storm water when solid materials wash off or materials dissolve into solution.

(3) Other outdoor activities include certain types of manufacturing and commercial operations and land-disturbing operations. Although many manufacturing activities are performed indoors, some activities, such as timber processing, rock crushing, and concrete mixing, typically occur outdoors. Processing operations can result in liquid spillage and losses of material solids to the drainage system or surrounding surfaces, or creation of dusts or aerosols, which can be deposited locally. Some outdoor industrial activities cause substantial physical disturbance of land surfaces that result in soil erosion by storm water.

Examples where disturbed land occurs include construction and mining. Disturbed land can result in soil losses and other pollutant loadings associated with increased runoff rates. Facilities whose major process activities are conducted indoors may still apply chemicals such as herbicides, pesticides, and fertilizer outdoors for a variety of purposes.

(4) Dust or particulate generating processes include industrial activities with stack emissions or process dusts that settle on plant surfaces. Localized atmospheric deposition is a particular concern with heavy manufacturing industries. For example, monitoring of areas surrounding smelting industries has shown much higher levels of metals at sites nearest the smelter (Bearington 1977). Other industrial sites, such as mines, cement manufacturing, and refractories, will generate significant levels of dusts.

(5) Illicit connections or inappropriate management practices result in improper non-storm water discharges to storm sewer systems. The likelihood of illicit discharges to storm water collection systems is expected to increase for older facilities as well as for those facilities that use high volumes of process water or that dispose of significant amounts of liquid wastes, including process waste waters, cooling waters, and rinse waters.

Pollutants from non-storm water discharges to the storm sewer system of individual facilities are caused typically by a combination of improper connections, spills, improper dumping, and a belief that the absence of visible solids in a discharge is equivalent to the absence of pollution. Illicit connections are often associated with floor drains that are connected to separate storm sewers. Rinse waters used to clean or cool objects discharge to floor drains that may be connected to separate storm sewers. Large amounts of rinse waters may originate from industries that use regular wash down procedures; for example, bottling plants use rinse waters for removing waste products, debris, and labels. Rinse waters can be used to cool materials by dipping, washing, or spraying objects with cool water, for example, rinse water is sometimes sprayed over the final products of a metal plating facility for cooling purposes. Condensate return lines of heat exchangers often discharge to floor drains. Heat exchangers, particularly those used under stressed conditions such as in the metal finishing and electroplating industry, typically develop pin-hole leaks, which may result in contamination of condensate by process wastes. These and other non-storm water discharges to a storm sewer may be intentional, based on the belief that the discharge (condensate in the example previously discussed), does not contain pollutants, or it may be inadvertent, as the operator may be unaware that a floor drain is connected to the storm sewer.

(6) Waste management practices include operating landfills, waste piles, and land application sites that involve land disposal. Outdoor waste treatment operations also include waste water and solid waste treatment and disposal processes, such as waste pumping, additions of treatment chemicals, mixing, aeration, clarification, and solids dewatering. Facilities often conduct some waste management on site.

Coal pile runoff. The following description of coal pile runoff is summarized from the "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category", (EPA–440/1–82/029), EPA, November 1982. A more complete description of coal pile runoff can be found in the Development Document.

The pollutants in coal pile runoff can be classified into specific types according to chemical characteristics. The type relates to pH of the coal pile drainage. The pH tends to be of an acidic nature, primarily as a result of the oxidation of iron sulfide in the presence of oxygen and water. The potential influence of pH on the behavior of toxic and heavy metals is of particular concern. Many of the metals are amphoteric with regard to their solubility behavior. The factors affecting acidity, pH and the subsequent leaching of trace metals are:

- Concentration and form of pyritic sulfur in coal;
- Size of the coal pile;
- Method of coal preparation and clearing prior to storage;
- Climatic conditions, including rainfall and temperature;
- Concentrations of CaCO3 and other neutralizing substances in the coal;
- Concentration and form of trace metals in the coal; and
- The residence time in the coal pile.

Table 3 shows data of selected pollutants in coal pile runoff at two steam electric plants. Both facilities generated runoff with low pH values, with the acid values being quite variable in both cases. The suspended solids levels observed went up to 2,500 mg/l. The metals present in the greatest concentrations were copper, iron, aluminum, nickel and zinc. Others present in trace amounts include chromium, cadmium, mercury, arsenic, selenium, and beryllium.

TABLE 3.—POLLUTANTS IN COAL PILE RUNOFF

Plant	pH	Acidity (mg/l CaCO)	Sulfate (mg/l)	Dissolved solids (mg/l)	Total suspended solids (mg/l)	Mn (mg/l)
1 Range	2.3–3.1	300–7100	1800–9600	2500–16000	8–2300	8.9–45
Mean	2.8	3400	5160	7900	470	28.7
N	19	18	18	18	18	19

TABLE 3.—POLLUTANTS IN COAL PILE RUNOFF—Continued

Plant	pH	Acidity (mg/l CaCO)	Sulfate (mg/l)	Dissolved solids (mg/l)	Total suspended solids (mg/l)	Mn (mg/l)
2 Range	2.5–3.1	860–2100	1900–4000	2900–5000	38–270	2.4–10
Mean	2.7	1360	2780	3600	190	4.1
N	6	6	6	6	6	6
2 [1] Range	2.5–2.7	300–1400	870–5500	1200–7500	69–2500	0.9–5.4
Mean	2.6	710	2300	2700	650	2.3
N	14	14	14	14	14	14
	Cu (mg/l)	Zn (mg/l)	Al (mg/l)	Ni (mg/l)	Fe (mg/l)	As (mg/l)
1 Range	0.43–1.4	2.3–16	66–440	0.74–04.5	240–1800	.005–0.6
Mean	0.86	6.68	260	2.59	940	0.17
N	19	19	19	19	19	19
2 Range	0.01–0.46	1.1–3.7	22–60	0.24–0.46	280–480	.0006–0.046
Mean	0.23	2.16	43.3	0.33	360	0.02
N	6	6	6	6	6	4
	Cr (mg/l)	Hg (mg/l)	Se (mg/l)	Be (mg/l)	Cd (mg/l)	
1 Range	<0.005–.011	<.0002–.0025	<.001–.03	<.001–.03	<.001	
Mean	.007	.0004	0.006	0.044	<.001	
N	17	20	16	16	19	
ND	11	12	4	0	19	
2 Range	<0.005–.011	<.001–.001	<.01–.03	<.001–.003	<0.001–.003	
Mean	0.007	0.001	0.014	0.002	0.002	
N	6	4	4	6	6	
ND	3	3	3	2	2	

N=Number of samples.
ND=Below detection levels.

Source: Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category, (EPA–440/1–82/029), EPA, November 1962.

[1] Discrete Storm.

4. Summary of Options for Controlling Pollutants

Options for controlling pollutants in storm water discharges associated with industrial activities (other than from construction activities) will be discussed in terms of two major pollutant sources: (1) Materials discharged to separate storm sewers via illicit connections, improper dumping, and spills; and (2) pollutants associated with runoff collected by separate storm sewers. Options for controlling pollutants in storm water discharges associated with industrial activities from construction activities are addressed separately.

a. *Non-storm woter dischorges to seporote storm sewers.* As discussed earlier, in some cases, a substantial portion of the pollutant load from separate storm sewers which discharge storm water associated with industrial activity is associated with non-storm water discharges. Non-storm water discharges to separate storm sewers include a wide variety of sources, including illicit connections, improper dumping, spills, or leakage from storage tanks and transfer areas. Measures to control spills and visible leakage can be incorporated into storm water pollution prevention plans (see below).

In many cases, operators of industrial facilities may be unaware of illicit discharges or leakage from underground storage tanks or other non-visible systems. In some cases, illicit connections to storm sewers were installed before their legal prohibition, and forgotten about. For example, illicit connections are often associated with floor drains that are connected to separate storm sewers. Rinse waters used to clean or cool objects, and other process wastewaters may be discharged to the separate storm sewer by an improperly connected floor drain. These non-storm water discharges to a storm sewer may be inadvertent with the operator unaware that the floor drain is connected to the storm sewer. In this case, the key to controlling these discharges is to identify them.

Methods to identify non-storm woter discharges to seporate storm sewers. Several methods for identifying the presence of non-storm water discharges are discussed below.[21] [22] A comprehensive evaluation of the storm sewers at a facility may incorporate several methods.

[21] [22] A more complete discussion of methods to identify illicit connections can be found in the draft "Manual of Practice: Identification of Illicit Connections", U.S. EPA, Sept. 1990.

• *Schemotics.* Where they exist, accurate piping schematics can be inspected as a first step in evaluating the integrity of the separate storm sewer system. The use of schematics is limited because schematics usually reflect the design of the piping system and may not reflect the actual configuration constructed. Schematics should be updated or corrected based on additional information found during inspections.

• *Evoluotion of drainage mop ond inspections.* Drainage maps should identify the key features of the drainage system: each of the inlet and discharge structures, the drainage area of each inlet structure, and units such as storage or disposal units or material loading areas, which may be the source of an illicit discharge or improper dumping. In addition, floor drains and other water disposal inlets that are thought to be connected to the sanitary sewer can be identified. A site inspection can be used to augment and verify map development. These inspections, along with the use of the drainage map, can be coordinated with other best management practices discussed below.

• *End-of-pipe screening.* Discharge points or other access points such as manhole covers can be inspected for the

presence of dry weather discharges and other signs of non-storm water discharges. Dry weather flows can be screened by a variety of methods. Inexpensive onsite tests include measuring pH; observing for oil sheens, scums and discoloration of pipes and other structures; as well as colormetric detection tests for chlorine, detergents, metals and other parameters. In some cases, it may be appropriate to collect samples for more expensive analysis in a laboratory for fecal coliform, fecal streptococcus, conventional pollutants, volatile organic carbon, or other appropriate parameters.

• *Water balance.* Many sewage treatment plants require that industrial discharges measure the volume of effluent discharged to the sanitary sewer system. Similarly, the volume of water supplied to a facility is generally measured. A significantly higher volume of water supplied to the facility relative to that discharged to the sanitary sewer and other consumptive uses may be an indication of illicit connections. This method is limited by the accuracy of the flow meters used.

• *Dry weather testing.* Where storm sewers do not discharge during dry weather conditions, water can be introduced into floor drains, toilets and other points where non-storm water discharges are collected. Storm drain outlets are then observed for possible discharges.

• *Dye testing.* Dry weather discharges from storm sewers can occur for a number of legitimate reasons including ground water infiltration or the presence of a continuous discharge subject to an NPDES permit. Where storm sewers do have a discharge during dry weather conditions, dye testing for illicit connections can be used. Dye testing involves introducing fluorometric or other types of dyes into floor drains, toilets and other points where non-storm water discharges are collected. Storm drain outlets are then observed for possible discharges.

• *Manhole and Internal TV Inspection.* Physical inspection of manholes and internal inspection of storm sewers either physically or by television are used to identify potential entry points for illicit connections. Dry weather flows, material deposits, and stains are often indicators of illicit connections. TV inspections are relatively expensive and generally should be used only after a storm sewer has been identified as having illicit connections.

b. *Options for preventing pollutants in storm water.* The following five categories describe options for reducing pollutants in storm water discharges from industrial plants:

(i) Providing end-of-pipe treatment;

(ii) Implementing Best Management Practices to prevent pollution;

(iii) Diverting storm water discharge to municipal sewage treatment plants;

(iv) Using traditional storm water management practices; and

(v) Eliminating pollution sources.

A comprehensive storm water management program for a given plant may include controls from each of these categories. Development of comprehensive control strategies should be based on a consideration of plant characteristics.

i. *End-of-pipe treatment.* End-of-pipe treatment requirements are typically imposed through numeric effluent limitations, which provide the discharger with flexibility to design the most cost effective type of treatment for the given facility.

At many types of industrial facilities, it may be appropriate to collect and treat the runoff from targeted areas of the facility. This approach was taken with 10 industrial categories with national effluent guideline limitations for storm water discharges. There are several basic similarities among the national effluent guideline limitations for storm water discharges:

• To meet the numeric effluent limitation, most, if not all, facilities must collect and temporarily store onsite runoff from targeted areas of the plant;

• The effluent guideline limitations do not apply to discharges whenever rainfall events, either chronic or catastrophic, cause an overflow of storage devices designed, constructed, and operated to contain a design storm. The 10-year, 24-hour storm, or the 25-year, 24-hour storm commonly are used as the design storm in the effluent guideline limitations; and

• Most technology-based treatment standards are based on relatively simple technologies such as settling of solids, neutralization, and drum filtration. Potential ground water impacts should also be considered by operators when designing storage devices.

ii. *Best management practices.* The term best management practices (BMPs) can describe a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include operating procedures, treatment requirements and practices to control plant site runoff, drainage from raw materials storage, spills or leaks. BMPs can be established in two ways: BMP plans and site or pollutant-specific BMPs.

BMP plans. EPA has worked with industry to identify the generic BMPs which most well-operated facilities use for pollution control, fire prevention, occupational safety and health, or product loss prevention. EPA often establishes NPDES permit conditions that require generic BMPs to be identified and implemented through BMP plans. Many of the BMPs in a typical BMP plan involve planning, reporting, training, preventive maintenance, and good housekeeping.

Many industrial facilities currently employ BMPs as part of normal plant operation. For example, preventive maintenance and good housekeeping are routinely used in the chemical and related industries to reduce equipment downtime and to promote a safe work environment for employees. Good housekeeping BMPs generally are aimed at preventing spills and similar environmental incidents by stressing the importance of proper management and employee awareness. Experience has shown that many spills of hazardous chemicals can be attributed, in one way or another, to human error. Improper procedures, lack of training, and poor engineering are among the major causes of spills. Experience has shown that BMPs can be used appropriately and BMP plans can effectively reduce pollutant discharges in a cost-effective manner. BMP plans should reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans required under section 311 of the CWA, and many incorporate any part of the SPCC plan into the BMP plan by reference. BMP plans should also ensure that solid and hazardous waste is managed in accordance with requirements established under the Resource Conservation and Recovery Act (RCRA). Management practices required under RCRA should be expressly incorporated into the BMP plan.

In addition, each of the following nine specific requirements should be addressed in the BMP plan to reduce pollutants in runoff from the plant:

- Statement of policy;
- Spill Control Committee;
- Material inventory;
- Material compatibility;
- Employee training;
- Visual Inspections;
- Preventive maintenance;
- Reporting and notification procedures;
- Housekeeping;
- Security.

Additional technical information on BMPs and the elements of a BMP plan is contained in the publication entitled "NPDES Best Management Practices Guidance Document," U.S. EPA, June 1981.

Site or pollutant-specific best management practices. In addition to the requirements of BMP plans discussed above, more advance site or pollutant-specific BMP requirements can be developed. The following four categories described these site or pollutant-specific BMPs:

- Prevention;
- Containment;
- Mitigation;
- Ultimate Disposition.

Table 4 lists BMPs associated with each category. Requirements for SPCC plans for oil pollution prevention (see 40 CFR part 112) illustrate how pollutant-specific BMPs can be implemented.

TABLE 4.—ADVANCED BMP ALTERNATIVES

Prevention	Containment	Mitigation		Waste disposal
		Cleanup	Treatment	
Monitoring	Secondary containment	Physical	Liquid-solids separation	Landfill.
Nondestructive	Flow diversion to secondary containment.	Mechanical	Volatilization	Land treatment.
Labeling	Vapor control	Chemical	Coagulation/precipitation	Reclamation.
Covering	Dust control		Neutralization	Discharge to surface water.
Pneumatic and vacuum conveying.	Sealing		Ion exchange	Deep well injection.
Vehicle positioning			Chemical oxidation	Discharge to POTW.
Dry cleanup			Biological treatment	Offsite disposal.
			Thermal oxidation	

iii. *Diversion of discharge to sewage treatment plant.* Where storm water discharges contain significant amounts of pollutants that can be removed by a sewage treatment plant, the storm water discharge can be discharged to the sanitary sewage system. Such diversions must be coordinated with the operators of the sewage treatment plant and the collection system to avoid worsening problems with either combined sewer overflows (CSOs), basement flooding or wet weather operation of the treatment plant. Where CSO discharges, flooding or plant operation problems can result, onsite storage followed by a controlled release during dry weather conditions may be considered.

iv. *Traditional storm water management practices.* In some situations, traditional storm water management practices such as grass swales, catch basin design and maintenance, infiltration devices, unlined retention or detention basins, water reuse, and oil and grit separators can be applied to an industrial setting. However, care must be taken to evaluate the potential of many of these traditional devices for ground water contamination. In some cases, it is appropriate to limit traditional storm water management practices to those areas of the drainage system that generate storm water with relatively low levels of pollutants (e.g., many rooftops, parking lots, etc.). At facilities located in northern areas of the country, snow removal activities may play an important role in a storm water management program. In addition, other types of controls such as spill prevention measures can be considered to prevent catastrophic events that can lead to surface or ground water contamination.

v. *Elimination of pollution sources.* In some cases, the elimination of pollution source may be the most cost-effective way to control pollutants in storm water discharges associated with industrial activity. Options for eliminating pollution sources include reducing onsite air emissions affecting runoff quality, changing chemicals used at the facility, and modification of material management practices such as moving storage areas into buildings.

c. Options for Controlling Pollutants in Storm Water Discharges Associated With Industrial Activity From Construction Activities.

Most controls for construction activities can be broken into two groups: (1) Sediment and erosion controls; and (2) storm water controls. Sediment and erosion controls are generally those controls which address pollutants in storm water generated from the site during the time when construction activities are occurring. Storm water controls are generally those controls which are installed during the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures can be classified as housekeeping best management practices.

(i) *Sediment and erosion controls.* Erosion controls provide the first line of defense in preventing off-site sediment movement and are designed to prevent erosion by protecting soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: vegetative practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is described in "Draft—Sediment and Erosion Control, An Inventory of Current Practices", U.S. EPA, OWEC, April 20, 1990.

(A) *Sediment and erosion controls: vegetative practices.* Vegetation, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be grass, trees, vines, shrubs, bark, mulch or straw. The establishment and maintenance of vegetation are one of the most important factors in minimizing erosion while construction activities are occurring. A vegetation cover reduces the erosion potential of a site by: Absorbing the kinetic energy of raindrops which would otherwise impact soil; intercepting water so it can infiltrate into the ground instead of running off carrying surface soils; and by slowing the velocity of runoff promoting deposition of sediment in the runoff. Vegetative controls are often the most important measures taken to prevent off-site sediment movement, and can provide a six-fold

reduction in discharge suspended sediment levels.[23]

Temporary seeding. Temporary seeding provides for temporary stabilization by establishing vegetation of areas of the site which will be disturbed at some time during the construction operation, and where work (other than the initial disturbance) is not conducted until some time later in the project. Soils at these areas may be exposed to precipitation for an extended time period, even though work is not occurring on these areas. In most climates, temporary seeding is typically appropriate for areas exposed by grading or clearing for more than seven to fourteen days. Temporary seeding practices have been found to be up to 95% effective in reducing erosion.[24]

Permanent seeding. Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site. Permanent seeding is typically required at most sites for aesthetic reasons.

Mulching. Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching, by itself, does provide some erosion control. Mulching in conjunction with seeding practices provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding practices, providing a higher likelihood of their success. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

Sod stabilization. Sod stabilization involves establishing long-term stands of grass with sod in sediment producing areas. When installed and maintained properly, sodding can be 99% effective in reducing erosion,[25] making it the most effective vegetation practice available. The higher cost of sod stabilization relative to other vegetative controls typically limits its use to exposed soils where a quick vegetative cover is desired and on sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilizing.

Vegetative buffer strips. Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

Protection of trees. This practice involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

(B) *Sediment and erosion controls: structural practices.* Structural practices involve the installation of devices to divert flow, store flow or limit runoff. Structural practices can have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed upslopes areas by use of earth dikes, temporary swales, perimeter dike/swales, or diversions that outlet in stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Several approaches to removing sediment from site runoff include diverting flows to a trapping or storage device, or filtering diffuse flow through straw bale dikes, silt fences, or brush barriers before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

Earth dike. Earth dikes are temporary berms or ridges of compacted soil which channel water to a desired location. Earth dikes should be stabilized with vegetation.

Straw bale dikes. Straw bales are temporary barriers of straw or similar material used to intercept sediment in runoff from small drainage areas of disturbed soil. When installed and maintained properly, straw bale dikes can remove approximately 67% of the sediment in runoff.[26] This optimum efficiency can only be achieved through careful maintenance with special attention to replacing rotted or broken bales.

Silt fence. Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. Care must be taken in maintaining silt fences with an emphasis on maintaining the structural stability of the silt fence and removal of excessive sedimentation.

Brush barriers. Brush barriers are sediment barriers composed of tree limbs, weeds, vines, root mat, soil, rock and other cleared materials placed at the toe of a slope.

Drainage swales. A drainage swale is a drainage way with a lining of grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

Check dams. Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff. Materials which can be used to install a check dam include rock, logs and covered straw bales.

Level spreader. Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

Subsurface drain. Subsurface drains transport water to an area where it can be managed effectively. Drains can be made of tile, pipe or tubing.

Pipe slope drain. A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of a slope to convey surface runoff down slopes without causing erosion.

Temporary storm drain diversion. Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

Storm drain inlet protection. Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

Rock outlet protection. Rock protection placed at the outlet end of culverts or channels can reduce the

[23] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January 1990, Metropolitan Washington Council of Governments.

[24] "Guides for Erosion and Sediment Control in California", USDA—Soil Conservation Service, Davis CA, Revised 1985.

[25] "Guides for Erosion and Sediment Control in California", USDA—Soil Conservation Service, Davis, CA, Revised 1985.

[26] "Draft—Sediment and Erosion Control, An Inventory of Current Practices", U.S. EPA, OWEC, April 20, 1990.

depth, velocity and energy of water such that the flow will not erode the receiving downstream reach.

Sediment traps. Sediment traps can be installed in a drainageway, at a storm drain inlet, or other points of discharge from a disturbed area.

Other controls. Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

(ii) *Storm water management controls.* Storm water controls are generally those controls which are installed during the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in a significant change in land use. These changes in land use typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount of runoff from a site increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in runoff then preconstruction levels. Traditional storm water management controls do not influence the change in land use associated with construction. Rather, traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management controls include: Infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in "Draft—Construction Site Storm Water Discharge Control—An Inventory of Practices", EPA, OWEC, 1991.

(A) *Infiltration of runoff onsite.* A variety of infiltration technologies can be used to reduce the volume and pollutant loadings of storm water discharges from a site, including infiltration trenches and infiltration basins. Infiltration devises tend to mitigate changes to pre-development hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide groundwater recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction.[27] Infiltration trenches can be more easily placed into under utilized areas of a development, and can be used for small sites and infill developments. However trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

(B) *Flow attenuation by vegetation or natural depressions.* Flow attenuation provided by vegetation or natural depressions can provide pollutant removal, infiltration, and lower the erosive potential of flows.[28] In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devises include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are small relative to other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.[29] Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should typically be used in combination with other storm water devices.

Grass swales are typically used in low or medium residential development and highway medians as an alternative to curb and gutter drainage systems.[30]

(C) *Outfall velocity dissipation devices.* Outfall velocity dissipation devises include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen the amount of erosion caused by the discharge.

(D) *Storm water retention structures.* Properly designed and maintained storm water retention structures, also referred to as wet ponds, can achieve a high removal rate of sediment, BOD, organic nutrients and metals. Retention basins are most cost-effective in larger, more intensively developed sites. Retention ponds can also create wildlife habitat, recreation, and landscape amenities, and corresponding higher property values.

(E) *Retention structures/artificial wetlands.* Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Property installed and maintained retention structures (also known as wet ponds) and artificial wetlands [31, 32] can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.[33] These devises rely on settling and biological processes to remove pollutants.

(F) *Water quality detention structures.* Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.[34] Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.[35]

iii. *Housekeeping BMPs.* Pollutants that may enter water from construction sites due to poor housekeeping include oils, grease, paints, gasoline, concrete truck washdown, concrete raw materials used in the manufacture of concrete, including sand, aggregate, and cement, solvents, litter, debris and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;

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[27] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs," July, 1987, Metropolitan Washington Council of Governments.

[28] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[29] "Standards and Specifications for Infiltration Practices", 1984, Maryland Water Resources Administration

[30] "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, July 1987.

[31] "Wetland basins for Storm Water Treatment: Discussion and Background", Maryland Sediment and Stormwater Division, 1987.

[32] "The Value of Wetlands for Nonpoint Source Control—Literature Summary", Strecker, E., et.al., 1990.

[33] "Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs", Metropolitan Washington Council of Governments, 1987.

[34] "Urban Targeting and BMP Selection", United States EPA, Region V, November 1990.

[35] "Urban Surface Water Management", Walesh, S.G., Wiley, 1989.

• Locate equipment washdown areas on site, and provide appropriate control of washwaters;

• Provide protected storage areas for chemicals, paints, solvents, fertilizers and other potentially toxic materials; and

• Provide adequately maintained sanitary facilities.

d. *Coal pile runoff treatment technology.* The primary technology options for treating coal pile runoff considered in the final "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category", (EPA–440/182/029), November 1982, EPA, were:

(1) Equalization, pH adjustment, settling; and

(2) Equalization, chemical precipitation treatment, settling, pH adjustment.

Metals may be removed from wastewater by raising the pH of the wastewater to precipitate them out as hydroxides. Typically, wastewater pH's of 9 to 12 are required to achieve the desired precipitation levels. Lime is frequently used for pH adjustment. Wastewaters which have a pH greater than 9 after lime addition will require acid addition to reduce the pH before final discharge. Polymer addition may be required to enhance the settling characteristics of the metal hydroxide precipitate. Typical polymer feed concentrations in the wastewater are 1 to 4 ppm. The metal hydroxide precipitate is separated from the wastewater in a clarifier or a gravity thickener. Unlike settling ponds, these units continually collect and remove the sludge formed. Filters are typically used for effluent polishing and can reduce suspended solids levels below 10 mg/1. Sand or coal are the most common filter media. Vacuum filtration is a common technique for dewatering sludge to produce a cake that has good handling properties and minimum volume.

The major equipment requirements for such a system include a lime feed system, mix tank polymer feed system, flocculator/ clarifier, deep bed filter, and acid feed system. For wastewaters which have a pH of less than 6, mixers and mixing tanks are made of special materials of construction (stainless steel or lined-carbon steel). For wastewaters with pH's greater than 6, concrete tanks are typically used. The underflow from the clarifier may require additional treatment with a gravity thickener and a vacuum filter to provide sludge which can be transported economically for landfill disposal.

5. The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewer Systems

A key issue in developing a workable regulatory program for controlling pollutants in storm water discharges associated with industrial activity is the proper use and coordination of limited regulatory resources. This is especially important when addressing the appropriate role of municipal operators of large and medium municipal separate storm sewer systems in the control of pollutants in storm water associated with industrial activity which discharge through municipal separate storm sewer systems.

Several key policy factors arise when considering the appropriate strategy for regulating storm water discharges associated with industrial activity through municipal separate storm sewer systems. These factors include the following:

• The role and responsibilities of municipalities to control pollutants from nonmunicipal facilities which are discharged through a storm sewer owned or operated by the municipality;

• The large number of storm water discharges through municipal systems (the Agency anticipates that the majority of storm water discharges associated with industrial activity from many industrial classes discharge through municipal separate storm sewer systems);

• The ability of municipalities to recognize and represent local concerns and considerations;

• The ability of municipal operators to assist EPA and authorized NPDES States in identifying local priorities for controlling storm water discharges associated with industrial activity through specific municipal systems;

• The ability of municipal operators to assist EPA and authorized NPDES States to oversee effectively the development of appropriate site-specific controls for storm water discharges associated with industrial activity through municipal systems and to effectively require compliance with such controls;

• The authorities provides by the CWA (including those provided to the public) to review information developed under the NPDES program and to enforce NPDES permits; and

• The requirements of the CWA to develop and implement the NPDES permit program.

On November 16, 1990 (55 FR 47990), EPA promulgated a permitting scheme where controls for storm water discharges associated with industrial activity through large and medium municipal separate storm sewer systems may be addressed by two permits issued in a coordinated manner. This complementary permit approach envisions cooperative efforts by the permit issuing agency and municipal operators of large and medium municipal separate storm sewer systems to develop programs that will result in controls on pollutants in storm water discharges associated with industrial activity which discharge through municipal systems.

Under the complementary permit approach, storm water discharges associated with industrial activity which discharge through large and medium municipal separate storm sewer systems are required to obtain permit coverage. Permits for these discharges will establish requirements (such as controls or monitoring) for industrial operators of the discharge into the municipal system. In addition, these permits provide a basis for enforcement actions directly against the owner or operator of storm water discharges associated with industrial activity.

A second permit, issued to the operator of the large or medium municipal separate storm sewer, establishes the responsibilities of the municipal operators in controlling pollutants from storm water associated with industrial activity which discharges through their system. The framework for permits for discharges from large and medium municipal separate storm sewer systems has been developed to establish the responsibilities of the municipal operator to control pollutants discharged through these municipal systems. At the heart of the permit program for discharges from municipal separate storm sewer systems serving a population of 100,000 or more are requirements that municipal applicants develop and implement municipal storm water management programs. The municipal storm water management programs that will be incorporated into NPDES permits for discharges from municipal separate storm sewer systems will generally address (in addition to other possible requirements) the following three major components:

• Reducing pollutants in storm water discharges from municipal landfills; hazardous waste treatment, storage and disposal facilities; facilities subject to SARA Title III, Section 313; and other priority industrial facilities through municipal separate storm sewers;

• Reducing pollutants in construction site runoff through municipal separate storm sewers; and

• Identifying and controlling non-storm water discharges to municipal separate storm sewer systems.

These components of a municipal program can initiate the role of the municipality in assisting EPA and authorized NPDES States in implementing controls to reduce pollutants in storm water discharges associated with industrial activity which discharge into large and medium municipal separate storm sewer systems. Municipal programs to reduce pollutants in industrial site runoff and construction site runoff through municipal separate storm sewer systems specifically will address municipal responsibilities in controlling pollutants from industrial facilities. In addition, programs to identify and control non-storm water discharges to municipal separate storm sewer systems will in many cases focus on industrial areas because these areas often have a high potential for illicit connections, spills or improper dumping.

Consistent with the final permit applications regulations published on November 16, 1990 (55 FR 47990), the general permits accompanying this fact sheet have been developed to assist in establishing a cooperative approach between EPA and municipal operators of large and medium municipal separate storm sewer systems for controlling pollutants from storm water discharges associated with industrial activity which discharge through large and medium municipal separate storm sewer systems. These requirements will be coordinated with requirements in permits for discharges from large and medium municipal separate storm sewer systems. Major features of the draft general permits which establish the framework for this cooperative approach include:

• Operators of storm water discharges associated with industrial activity which discharge through a large or medium municipal separate storm sewer system may be required to submit a copy of the notice of intent to the municipal operators of large or medium municipal system receiving the discharge;

• Requirements to monitor and reduce pollutants in discharges will be established for storm water discharges associated with industrial activity which discharge through large and medium municipal separate storm sewer systems (as well as other storm water discharges associated with industrial activity). Any records, reports, or information obtained by the Director as part of the permit implementation process, including site-specific storm water pollution prevention programs that are developed pursuant to the draft general permit, are available to municipalities under section 308(b) of the CWA. This will assist municipalities in reviewing the adequacy of such requirements and developing priorities among industrial storm water sources; and

• Industrial permittees with discharges through large and medium municipal systems may be required to submit discharge monitoring reports to municipal operators of these systems (as well as to the permitting issuing agency) or other monitoring results as required by the operator of the municipal separate storm sewer to assist the municipal operator in identifying priorities.

These permit conditions, along with appropriate conditions in permits for discharges from large and medium municipal separate storm sewer systems, will allow municipal operators of these systems to:

• Assist EPA in identifying priority storm water discharges associated with industrial activity to their system;

• Assist EPA in reviewing and evaluating storm water pollution prevention plans that industrial facilities are required to develop under the draft general permit; and

• Assist EPA in compliance efforts regarding storm water discharges associated with industrial activity to their municipal systems.

6. Notification Requirements

EPA's regulations at 40 CFR 122.21(a) exclude persons covered by general permits from requirements to submit individual permit applications. Under these existing regulations, conditions for NOIs to be covered by the general permit are established in the permits on a case-by-case basis. Elsewhere in today's notice, EPA is proposing to amend the general permit regulations at 40 CFR 122.28 to establish minimum requirements for NOIs in general permits.

The draft general permits associated with this fact sheet would establish limited NOI requirements that would operate instead of individual permit application requirements and that are consistent with the minimum regulatory requirements for NOIs proposed in this notice.

These draft general permits have the following NOI requirements for discharges covered by each permit:

• Name, mailing address, and location of the facility for which the notification is submitted;

• Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or activities provided by the facility;

• The operator's name, address, telephone number, ownership status and status as Federal, State, private, public, or other entity;

• The latitude and longitude of the approximate center of the facility to the nearest 15 seconds, or the nearest quarter section (if the section, township, or range is provided) that the facility is located in;

• The name of the receiving water(s), or if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s); and

• Existing quantitative data describing the concentration of pollutants in discharges.

The permits in AZ, Guam and American Somoa will, in addition to the information described above, require that an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage are (e.g. low under 40%), medium (40% to 65%) or high (above 65%)) be provided. This information will be used to estimate the volume of storm water discharged from the facility, which will assist in evaluating pollutant loads.

The proposed NOI requirements for storm water discharges associated with industrial activity from a construction site include, in addition to the information required above, a brief description of the project, estimated timetable for major activities, and estimates of the number of acres of the site that will be disturbed.

The NOI requirements of the draft general permits are intended to establish a mechanism that will provide a clear accounting of the number of permittees covered by the general permit, the nature of operations at the facility generating the discharge, their identity and location. In addition, the NOI can identify the permittee to provide a basis for enforcement and compliance monitoring strategies. The NOI can be used as an initial screening tool to determine discharges where individual permits are appropriate. Also, the NOI can be used to identify classes of discharges appropriate for general permits with more specific requirements, as well as provide information needed to notify such dischargers of the issuance of a more specific general permit.

The NOI requirements in the draft general permit have been designated to provide much of the information needed for these purposes, and will be supplemented by other information obtained through processes such as section 308 information requests.

EPA is considering developing a central address for receiving all NOIs required under these general permits. This would assist the Regional Offices in handling and filing NOIs. EPA is also considering developing a form for NOIs that can be read by automatic data processing equipment. Operations of storm water discharges associated with industrial activity which discharge through a large or medium municipal separate storm sewer system must, in addition to submitting an NOI to the Director, submit a copy of the NOI to the municipal operator of the system receiving the discharge. This additional notice will assist municipal operators in developing inventories of industrial facilities which discharge to their municipal separate storm sewer systems. This will be an initial step in implementing municipal storm water management programs to reduce pollutants from runoff from industrial facilities. This also will assist municipal operators in overseeing the implementation of permit conditions.

Individuals who intend to obtain coverage under the general permit must notify their intent within 180 days of the effective date of this general permit or at least 30 days prior to the commencement of construction of a new storm water discharge associated with industrial activity.

The deadlines for submitting NOIs under the draft general permit differ from the deadlines for submitting individual permit applications under 40 CFR 122.26(e) in several respects. First, the deadline for submitting NOIs for existing storm water discharges associated with industrial activity is 180 days from issuance of the general permits rather than the November 18, 1991, deadline for submitting individual permit applications.[36] The Agency believes that it is appropriate to base the NOI submittal date on the issuance date of the final general permit establishing the NOI requirement. The Agency also believes that 180 days provides the discharger with adequate opportunity to prepare and submit an NOI, particularly because dischargers are not required to conduct sampling activities to submit a complete NOI. Second, the draft permits provide that NOIs be submitted at least 30 days before construction of a new storm water discharge associated with industrial activity begins. This time is less than the 60 days prior to commencement of construction that 40 CFR 122.26(e) provides for submitting permit applications for individual permits for new storm water discharges associated with industrial activity. The Agency believes that under these general permits, less time is necessary to review NOIs than to review individual permit applications and to issue permits for new storm water discharges associated with industrial activity. In addition, reducing the minimum time to a 30 day period to submit NOIs before beginning construction will assist dischargers in complying with the permit.

7. Description of Draft Permit Conditions

The conditions of these draft permits have been designed to comply with the technology-based standards of the CWA (BAT/BCT). Based on a consideration of the appropriate factors for BAT and BCT requirements, and a consideration of the factors and options discussed in this fact sheet for controlling pollutants in storm water discharges associated with industrial activity, the draft general permits proposes two prohibitions, a set of tailored requirements for developing and implementing storm water pollution prevention plans, and for selected discharges, two effluent limitations.[37]

Part 4 of this fact sheet summarizes the options for controlling pollutants in storm water discharges associated with industrial activity. The draft general permit proposes numeric effluent limitations for two classes of discharges, coal pile runoff, and runoff that comes into contact with certain chemical storage or handling facilities at SARA title III, section 313 facilities.

For other discharges covered by the permit, the draft permit conditions reflect EPA's decision to select a number of best management practices and traditional storm water management practices which prevent pollution in storm water discharges as the BAT/BCT level of control for the majority of storm water discharges covered by these permits. The draft permit conditions applicable to these discharges are not numeric effluent limitations, but rather are flexible requirements for developing and implementing site specific plans to minimize and control pollutants in storm water discharges associated with industrial activity.

EPA is authorized under 40 CFR 122.44(k)(2) to impose BMPs in lieu of numeric effluent limitations in NPDES permits when the Agency finds numeric effluent limitations to be infeasible. EPA may also impose BMPs which are "reasonably necessary * * * to carry out the purposes of the Act" under 40 CFR 122.44(k)(3). Both of these standards for imposing BMPs were recognized in *NRDC* v. *Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977). The conditions in the draft general permits are proposed under the authority of both of these regulatory provisions. The pollution prevention or BMP requirements in these permits operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of source control technologies which, in the context of these general permits, are the best available of the technologies economically achievable (or the equivalent BCT finding). See, e.g. *NRDC* v. *EPA*, 822 F.2d 104, 122–23 (D.C. Cir. 1987) (EPA has substantial discretion to impose non-quantitative permit requirements pursuant to section 402(a)(1)).

a. *Prohibitions.* The draft general permits prohibit non-storm water discharges as a component of discharges authorized by this permit. This permit is intended to authorize discharges composed entirely of storm water associated with industrial activity. The prohibition on non-storm water discharges in these permits ensures that non-storm water discharges are not inadvertently authorized by these permits. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharger should submit the appropriate application forms to obtain permit coverage. The Agency believes that these mixed discharges are addressed more appropriately through individual NPDES permits or other general permits as individual or other general permits will allow development of more tailored and specific permit conditions appropriate for such discharges.

The draft general permits also prohibit discharges that contain a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4, and clarifies that where such a discharge occurs, the permit does not relieve the permittee of the reporting

[36] EPA has proposed to extend this deadline to May 18, 1992. (56 FR 12101, March 21, 1991).

[37] Part I.C.2 of the draft general permits provide that facilities with storm water discharges associated with industrial activity which, based on an evaluation of site specific conditions, believe that the appropriate conditions of these permits do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by either submitting to the Director an individual application (Form 1 and Form 2F) with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate, or participating in a group application (see 40 CFR 112.26(c)).

requirements of 40 CFR part 117 and 40 CFR part 302. The Agency believes that the vast majority of discharges that contain a hazardous substance in excess of reporting quantities will be associated with non-storm water sources (e.g. chemical spill events). Where a discharge composed entirely of storm water associated with industrial activity containing a hazardous substance in excess of reporting quantities occurs or is expected to occur, the Agency believes that the potential risks associated with the discharge are such that it is more appropriate to address the discharge with an individual permit which contains more specific permit conditions based on industry specific or site specific factors and a consideration of receiving water characteristics. Since discharges containing a hazardous substance in excess of reporting quantities are not authorized by these permits, such releases are not exempted from reporting requirements by 40 CFR 117.12(a)(1), and hence the permits do not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302.

EPA anticipates that storm water discharges that contain oil in excess of reporting quantities established under 40 CFR 110.6 (e.g. exhibit an oil sheen) will be more common. For example, many storm water discharges from parking lots or roads, as well as from industrial facilities, contain an oil sheen. Although discharges composed entirely of storm water associated with industrial activity are authorized by these permits where the discharge complies with the other applicable requirements of the permit and 40 CFR part 110, it should be noted that where a discharge of oil in excess of reporting quantities is caused by a nonstorm water discharge (e.g. a spill of oil into a separate storm sewer), the spill is not authorized by this permit, and the discharger is not relieved of their obligation to report the spill under 40 CFR part 110. In this regard, the requirements of section 311 of the CWA and otherwise applicable provisions of sections 301 and 402 of the CWA continue to apply.

b. *Tailored pollution prevention plan requirements.* All facilities covered by the storm water general permits must prepare, retain and implement a storm water pollution prevention plan. The storm water permits address tiered sets of pollution prevention plan requirements for a number of categories of industries: Construction activities; baseline requirements for all industries except construction activities; special requirements for certain facilities subject to SARA title III, section 313; special requirements for storm water discharges associated with industrial activity to large and medium municipal separate storm sewer systems; and special requirements for facilities with outdoor salt storage piles. These tailored requirements have been developed to allow the implementation of site-specific measures that address features, activities, or priorities for control associated with the identified storm water discharges.

The Agency is using the term "pollution prevention" in the context of these plans because the term emphasizes that requirements in the plans provide a flexible basis for developing site-specific measures to minimize and control the amounts of pollutants that would otherwise enter storm water. The term 'pollution prevention' distinguishes this source reduction approach from traditional pollution control measures that typically rely on end-of-pipe treatment to remove pollutants in the discharges. The plan requirements are based primarily on traditional storm water management, pollution prevention and BMP concepts which have been tailored to pollutants in storm water discharges associated with industrial activity.

The pollution prevention approach adopted in the storm water pollution prevention plans in the draft general permits focuses on two major objectives:

(1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from the facility; and

(2) Describe and ensure that practices are implemented to minimize and control pollutants in storm water discharges associated with industrial activity from the facility and to ensure compliance with the terms and conditions of this permit.

The Agency believes that it is not appropriate, at this time, to require a single set of effluent guidelines or a single design or operational standard for all facilities which discharge storm water associated with industrial activity. Rather, this permit establishes a framework for the development and implementation of site-specific storm water pollution prevention plans. This framework provides the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with the different types of industrial activity that are addressed by these permits, while ensuring procedures to prevent storm water pollution at a given facility are appropriate given the processes employed, engineering aspects, functions, costs of controls, location, and age of facility (as contemplated by 40 CFR 125.3). The approach taken allows flexibility to establish controls which can appropriately address different sources of pollutants at different facilities.

i. *Plan requirements for construction activities.* The requirements for storm water pollution prevention plans for operations that discharge storm water associated with industrial activity from construction activities differ from the requirements for other types of facilities.

In developing these draft permits, the Agency has reviewed a significant number of existing State and local requirements for sediment and erosion controls, and storm water management controls for construction activities/new development addressing a wide range of climates and types of construction activities.

(A) *Source Identification.* Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The source identification components for pollution prevention plans for construction activities proposed in these permits include, at a minimum, a description of the following:

- A description of the nature of the construction activity;
- Estimates of total area of the site and the area of the site that is expected to undergo excavation or grading;
- An estimate of the runoff coefficient of the site and existing data describing the soil or the quality of any discharge from the site. Estimates of the runoff coefficient can be based on estimates of the site size, the increase in impervious area after the construction is completed, and the location of structures that will be built on the site;
- A site map indicating, at a minimum, drainage patterns and approximate slopes anticipated after major grading activities, areas used for the storage of soils or wastes, the location of major control structures identified in the plan, and surface waters; and
- The name of the receiving water(s), or if the discharge is to a municipal separate storm sewer, and the ultimate receiving water(s).

EPA requests comments on whether the permits should require information describing other major features which may provide a better understanding of site runoff or other major pollutant sources, such as identification of areas

intended to be used for the storage of soils or wastes, be included in plans.

(B) *Controls to reduce pollutants.* Many municipalities and States have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States have also developed storm water management controls. This permit requires that facilities which discharge storm water associated with industrial activity from construction activities must reflect in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or storm water management plans approved by State or local officials. Applicable requirements specified in sediment and erosion plans or storm water management plans approved by State or local officials are, upon submittal of an NOI to be authorized to discharge under this permit, incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit.[38]

The sediment and erosion controls for construction activities proposed in this permit have three goals: 1) to divert upslope water around disturbed areas of the site; 2) to limit the exposure of disturbed areas to the shortest duration possible; and 3) to remove sediment from storm water before it leaves the site.

Each construction operation covered by the permit is required to develop a description of three classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address erosion and sediment controls, storm water management and a specified set of other controls.

Erosion and sediment controls include both vegetative practices and structural practices. Vegetative practices are the first line of defense for preventing erosion. These controls are to be based on a consideration of temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer strips, and protection of trees. Temporary seeding practices are often cited as the single most important factor in reducing erosion at construction sites.[39]

Since vegetative practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. The draft permits provide that the operator shall initiate appropriate vegetative practices on all disturbed areas within 7 calendars days of the last activity at that area. Appropriate vegetative practices may include temporary seeding, permanent seeding, mulching or sod stabilization procedures, or equivalent measures that protect exposed soils. EPA requests comments on the application of this criterion or other appropriate criteria (such as criterion that would only be applicable during specified seasons) for initiating appropriate vegetative practices in arid areas (areas with less than 10 inches average annual rainfall) and semi-arid areas (areas with between 10 and 20 inches average annual rainfall) with well defined seasonal rainfall patterns. For example, it may be appropriate to only apply the requirement to initiate appropriate vegetative practices within 7 days of the last activity in a given area during seasons or months which have a reasonable probability of a rain event occurring. However, EPA has concerns about its ability to define appropriate dry weather periods, and requests comments on this approach.

Structural controls provide a second line of defense by capturing pollutants before they leave the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site which are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Structural practices selected for incorporation into a plan are to be based on a consideration of the attainability at a given site of implementing particular controls. Options for such controls include straw bale dikes, silt fences, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, pipe slope drain, level spreaders storm drain inlet protection, rock outlet protection, sediment traps, and temporary sediment basins. For sites with more than 10 disturbed acres at one time which are served by a common drainage location, a detention basin providing storage for runoff from disturbed areas from a 24 hour, 10 year storm or equivalent controls (such as suitably sized dry wells or infiltration structures), shall be provided where sufficient space and other factors allow these controls to be attained. For drainage locations with more than 10 disturbed acres at one time which are served by a common drainage location where a detention basin providing storage or equivalent controls for runoff from disturbed areas from a 10 year, 24-hour storm is not attainable, silt fences, straw bale dikes, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

For drainage locations serving 10 or less acres, at a minimum, silt fences, straw bale dikes, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area or a detention basin providing storage for runoff from disturbed areas.

EPA requests comment on the use of the 10 acre limit and the 24 hour, 10 year storm for this requirement.[40] Although sediment basins are generally viewed as being more effective than other structural controls, flexibility has been added to the proposed requirements for drainage locations serving 10 or less acres since these smaller sites may have more difficulty finding an appropriate location for a basin.

"Storm water management" controls [41] are to include a description of measures or controls to minimize pollutants in storm water discharges that will be installed during construction, but that will continue to control pollutants in storm water discharges after the construction operations have been completed. Options for "storm water management" controls that are to be evaluated in the development of plans include: infiltration of runoff onsite; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures. Often it is appropriate to incorporate several of these measures at a site.

Developing land often significantly increases peak discharge volumes and velocities. These increased discharge velocities can greatly accelerate erosion near the outlet of on-site structural controls. To mitigate these effects, the

[38] Facilities with storm water discharges associated with industrial activity related to construction activities which, based on an evaluation of site specific conditions, believe that State and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

[39] "New York Guidelines for Urban Erosion and Sediment Control", USDA—Soil Conservation Service, March, 1988.

[40] This control is a BCT control, and hence the design storm differs from design storms used elsewhere in this permit as BAT controls. (See "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" (EPA, 1991).)

[41] For the purpose of the special requirements for construction activities, the term "storm water management controls" refers to controls that will primarily reduce the discharge of pollutants in storm water from sites after construction activities have been completed.

draft permits require velocity dissipation devices to be placed at the outfall of detention or retention structures and along the length of outfall channels to provide a non-erosive velocity flow from the structure to a water course needed to ensure that erosion is prevented or minimized.

These permits do not establish specific standards for "storm water management" (e.g. controls to reduce pollutants in storm water discharges from a site after construction is completed) (other than requirements in approved State and local storm water site plans and requirements for velocity dissipation devices). However, the permittee must evaluate the appropriateness of various options for storm water measures at the site when developing their plan and provide a summary of the evaluation and justification for not selecting a given practice. The Agency requests comment on the appropriateness of establishing performance standards,[42] or design standards.[43] While the Agency recognizes that such requirements will often be appropriate in individual permits or in other permit issuing efforts, the Agency has concerns about the extensive use of such standards in this Tier I general permit. The Agency will continue to evaluate appropriate standards for storm water management applicable to new developments along with the need to provide flexibility in allowing for site-specific modifications of the standard based on project constraints, local conditions and the location of the discharge within the watershed.

Other controls to be addressed in storm water pollution prevention plans for construction activities require that no non-storm water wastes, including building material wastes shall be discharged at the site, unless the facility is licensed for such disposal.

The draft permit proposes that off-site vehicle tracking of sediments shall be minimized. This can be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g. more than 25 vehicles per day). These measures, along with other appropriate measures, can limit erosion and the transport of sediment offsite from these areas.

In addition, the plan shall ensure and demonstrate compliance with applicable State or local sanitary sewer, septic [44] system and waste disposal regulations.

Erosion and sediment controls can become ineffective if they are inappropriately disturbed or otherwise damaged. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans are required to provide a description of procedures to maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, dams and structures, vegetation, erosion and sediment control measures and other protective measures identified in the site plan At a minimum, procedures in a plan must provide that all erosion controls on the site are inspected at a minimum of once every seven calendar days and at other suitable times (e.g. within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period). Diligent inspections are necessary to assure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.[45]

ii. Plan requirements for facilities other than construction activities. In 1979, EPA completed a technical survey of industry best management practices (BMPs) which was based on a review of practices used by industry to control the non-routine discharge of pollutants from non-continuous sources including runoff, drainage from raw material storage area, spills, leaks, and sludge or waste disposal. This review included analysis and assessment of published articles and reports, technical bulletins, and discussions with industry representatives through telephone contacts, written questionnaires and site visits.

The review identified two classes of pollution control measures. The first class of controls are those management practices which are generally considered to be essential to a good BMP program, low in cost, and applicable to broad categories of industry and types of substances. These practices are independent of the type of industry, ancillary sources, specific chemicals, group of chemicals, or plant-site locations. The survey concluded that these controls were broadly applicable to all industry types and activities, and should be viewed as minimum requirements in any effective BMP program. The second class of controls are management practices controls which provide a second line of defense against the release of pollutants and included prevention measures, containment measures, mitigation and cleanup measures, and treatment methods.[46]

Since that time, EPA has, on a case-by-case basis, imposed BMP requirements in NPDES permits. The Agency has also continued to review and evaluate case studies involving the use of BMPs [47] and the use of pollution prevention measures associated with spill prevention and containment measures for oil.[48] During the development of NPDES permit application requirements for storm water discharges associated with industrial activity, the Agency evaluated appropriate means for identifying and evaluating the potential risk of pollutants in storm water from industrial sites. Public comments received during the rulemaking provided additional insight regarding storm water risk assessment, as well as appropriate

[42] One approach to performance standards commonly adopted in State or local controls is to require no increase in the rate and volume of runoff from predevelopment conditions. Another common approach is to require on-site control for a specified storm event (e.g. the first inch of runoff from a site).

[43] Design standards are commonly used by State and local governments as part of the plan approval process. Such requirements can address a wide range of requirements, such as providing infiltration for runoff from roofs or paved areas exceeding a specified area, or requiring that residential driveways slope toward adjacent landscaped areas.

[44] In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes forces untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

[45] "Performance of Current Sediment Control Measures at Maryland Construction Sites", January, 1990, Metropolitan Washington Council of Governments.

[46] For a complete description of the BMP survey, see "NPDES Best Management Practices Guidance Document", U.S. EPA, December 1979, EPA–600/9–79–045. See also the 1981 document of the same name, "NPDES Best Management Practices Guidance Document" which provides a more complete discussion of baseline BMPs.

[47] For example, see: "Best Management Practices: Useful Tools for Cleaning Up", Thron, H., Rogoshewski, P., 1982, Proceedings of the 1982 Hazardous Material Spills Conference; "The Chemical Industries' Approach to Spill Prevention" Thompson, C., Goodier, J., 1980, Proceedings of the 1980 National Conference on Control of Hazardous Material Spills; and a series of EPA memorandum entitled "Best Management Practices in NPDES Permits—Information Memorandum", 1983, 1985, 1986, 1987, 1988.

[48] See Oil Pollution Prevention requirements, including Spill Prevention, Control, and Countermeasure Plan requirements, at 40 CFR part 112.

pollution prevention and control measures and strategies. During this time, the Agency again reviewed storm water control practices and measures.[49] These experiences have shown the Agency that pollution prevention measures such as BMPs can be appropriately used and that permits containing BMP requirements can effectively reduce pollutant discharges in a cost-effective manner. EPA again indicates that BMP requirements are being imposed in this general permit in lieu of numeric effluent limitations pursuant to 40 CFR 122.44(k)(2).

(A) *Source identification.* Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific industrial site. The permit proposes that the source identification components of the plan identify all activities and significant materials which may potentially be significant pollutant sources. Plans shall include:

- A drainage site map and a topographic map;
- A list of significant spills and leaks of toxic or hazardous pollutants that occurred at the facility after the effective date of the permit;
- A narrative description of significant materials that have been treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method of on-site storage or disposal; materials management practices employed to minimize contact of these materials with precipitation and storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; materials loading and access areas; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives;
- For each area of the plant that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an estimate of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity; and
- A summary of existing sampling data describing pollutants in storm water discharges.

Activities associated with (1) loading and unloading of dry bulk materials or liquids, (2) outdoor storage of raw materials, intermediary products or products, (3) outdoor process activities, (4) dust or particulate generating processes, (5) illicit connections or management practices, and (6) waste disposal practices should be evaluated to see if they are likely to be significant sources of pollutants to storm water discharges.

The prediction of the direction of flow and the rate of flow will typically be based on an evaluation of the area of impervious surfaces and total area drained by each outfall, along with estimates of appropriate representative rainfall events, or actual measurements of discharge volumes. Impervious surfaces include paved areas and buildings within the drainage area of each discharge point.

Estimates of the total quantity of pollutants that are likely to be present in storm water discharges associated with industrial activity should be made from assessments of sampling data, and other information describing significant materials that are used or otherwise found at the site, and that, because of potential exposure to storm water may be significant pollutant sources. Although the monitoring requirements of this permit are limited to conventional pollutants for most discharges, the estimates of the types of pollutants that may be present in storm water required as part of the source identification information should address all types of pollutants (conventional and toxic) that may be present. Examples of information that should be evaluated when estimating pollutants in storm water discharges include information describing of significant materials that have been treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method of on-site storage or disposal; materials management practices employed to minimize contact of these materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; materials loading and access areas; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives. Other information to consider, if applicable, include the manner and frequency in which pesticides, herbicides, fertilizers or soil enhancers are applied at the site and an evaluation of significant spills or leaks of conventional, toxic and hazardous pollutants based on a description of the materials released, an estimate of the volume of the release, the location of the release, and any remediation or cleanup measures taken. Information and data used for these predictions and estimates must be clearly identified in the storm water pollution prevention plan.

The Agency requests comments on what other types of information may be appropriate for source identification purposes.

(B) *Practices and program elements to control pollutants.* The second major section of the storm water pollution prevention plan addresses practices and program elements to reduce pollutants in areas identified as being potential pollutant sources for storm water discharges associated with industrial activity. In developing these requirements, the Agency has selected those practices identified in studies of BMPs which are widely used by industrial facilities with storm water discharges associated with industrial activity which it believes to be best available technology for the purpose of this permit.[50] In addition, the Agency has also addressed widely-used pollution prevention measures for storm water discharges (traditional storm water management and sediment and erosion prevention) and a requirement for facilities to certify that storm water discharges have been tested for the presence of non-storm water pollution sources.[51]

(1) pollution prevention committee;
(2) risk identification and assessment/material inventory;
(3) preventive maintenance;
(4) good housekeeping;
(5) spill prevention and response procedures;
(6) traditional storm water management:
(7) sediment and erosion prevention:
(8) employee training:
(9) visual inspections; and

[49] "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" (EPA, 1991).

[50] See "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" EPA, 1991)

[51] The certification requirement that storm water discharges associated with industrial activity have been tested for the presence of non-storm water pollution sources is similar to the certification requirement in the Form 2F application for storm water discharges associated with industrial activity (see November 16, 1990 (55 FR 47990). EPA is including this certification provision in these general permits since dischargers may obtain coverage under these permits without the submittal of Form 2F.

(10) recordkeeping and internal reporting procedures; and

(11) certification that storm water discharges have been tested for the presence of non-storm water pollution sources.

These permits establish the framework and the basic elements for storm water pollution prevention measures. However, the plan requirements provide flexibility to allow the development of site-specific measures. At a given site, specific measures incorporated into the pollution prevention plan will reflect the sources of pollutants that have been identified at the site. For example, a facility that has identified dust and particulate generating processes as potential sources of storm water pollution will incorporate appropriate good housekeeping and traditional storm water management practices to address these sources. However, a facility without dust and particulate generating processes would not have to incorporate measures to address dust and particulate generating processes into their plan.

Pollution Prevention Committee. The Storm Water Pollution Prevention Committee identifies specific individuals within the plant organization who are responsible for developing the storm water pollution prevention plan and assisting the plant manager in its implementation, maintenance, and revision. The activities and responsibilities of the committee should address all aspects of the facility's storm water pollution prevention plan. However, EPA prefers that plant management, not the committee, have overall responsibility and accountability for the quality of the storm water pollution prevention plan, to ensure adequate implementation of the plan.

Risk identification and assessment/ material inventory. The storm water pollution prevention plan is to assess the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity. These activities should assist in assessing the pollution potential of runoff from specific areas of the plant. The plan must contain an inventory the types of materials handled, the location of material management activities, and types of material management activities. Facilities subject to SARA title III, section 313 must include in the plan a description of releases to land or water of SARA title III water priority chemicals that have occurred at any time after the date of three years prior to the issuance of this permit.

The layout and activities at the plant identified as high-priority areas with a significant potential for contributing pollutants to the drainage system must be assessed. Factors to consider when evaluating the reasonable pollution potential of runoff from various portions of an industrial plant include:

- Loading and unloading operations;
- Outdoor storage activities;
- Outdoor manufacturing or processing activities;
- Significant dust or particulate generating processes; and
- On-site waste management and disposal practices.

Other factors that are to be considered include the toxicity of chemicals; quantity of chemicals used, produced, or discharged; the likelihood of these materials coming into contact with storm water, and the history of significant leaks or spills of toxic or hazardous pollutants.

Chemicals should be compatible with the materials used in storage and process equipment, including the piping, valves and pumps. Incompatibility of materials can cause equipment failure resulting from corrosion, fire, or explosion. Equipment failure can be prevented by ensuring that the materials of construction for containers handling hazardous substances or toxic pollutants are compatible with the container's contents and surrounding environment.

Preventive maintenance. A preventive maintenance program involves inspection and maintenance of storm water management devices (cleaning oil/water separators, catch basins) as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters. A good preventive maintenance program includes identifying equipment or systems used in the program; periodically inspecting or testing equipment and systems; adjusting, repairing, or replacing items; and maintaining complete records on the equipment and systems.

Good housekeeping. Good housekeeping requires the maintenance of a clean, orderly facility. Good housekeeping includes establishing housekeeping protocols to reduce the possibility of mishandling chemicals or equipment and training of employees in housekeeping techniques. These measures also ensure that discharges of wash waters to separate storm sewers are avoided.

Spill prevention and response procedures. Areas where potential spills can occur, and their accompanying drainage points should be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures and storage requirements in the plan should be considered. Procedures for cleaning up spills should be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel. Spill response procedures should avoid discharging to separate storm sewers unless necessary because of immediate safety considerations.

Appropriate storm water management. Based on an assessment of the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity, the plan shall provide that traditional storm water management measures determined to be reasonable and appropriate shall be implemented and maintained.

For the purposes of these permits, traditional storm water management practices are measures which reduce pollutant discharges by reducing the volume of storm water discharges associated with industrial activity, such as directing storm water to vegetative swales, or preventing storm water to run onto areas of the site which conduct industrial activity. Low-cost measures that can be applied to an industrial setting may include diverting rooftop or other drainage across grass swales, cleaning catch basins, and installing and maintaining oil and grit separators. Other measures that may be appropriate include infiltration devices and unlined retention and detention basins. Traditional storm water management practices can include water reuse activities, such as the collection of storm water for later uses such as irrigation or dust control. Appropriate snow removal activities may be considered, such as selecting a site for removed snow and selecting and using deicing chemicals. The Agency requests comment on whether a facility that reuses substantially all of its storm water (for example, a facility that provides for storage and reuse of storm water from a 24 hour, 25 year storm) should be exempt from certain other storm water pollution prevention plan requirements. Such facilities would have already minimized their discharge in manner that may provide equivalent pollution removal benefits to other measures in a storm water pollution prevention plan.

However, care must be taken to evaluate whether these traditional devices cause ground water

contamination. In some cases, it is appropriate to limit traditional storm water management practices to those areas of the drainage system that generate storm water with relatively low levels of pollutants (e.g., many rooftops, parking lots, etc.).

Sediment and erosion prevention. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for soil erosion, and identify and ensure the implementation of measures to limit erosion.

Employee training. Employee training programs are necessary to inform personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan should identify periodic dates for such training.

Visual inspection and records. Qualified plant personnel should be identified to inspect designated equipment and plant areas. Typical inspections should include examination of pipes, pumps, tanks, supports, foundations, dikes, and drainage ditches. Material handling areas should be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or followup procedure must be used to ensure that appropriate and adequate response and corrective actions have been taken. Records of inspections are required to be maintained.

Recordkeeping and reporting procedures. A recordkeeping system ensures adequate implementation of the storm water pollution prevention plan. Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of storm water discharges should be included in the records. Inspections and maintenance activities such as cleaning oil and grit separators or catch basins should be documented and recorded.

Records of releases of a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4 describing each release that has occurred at any time after the date of three years prior to the issuance of this permit, measures taken in response to the release, and measures taken to prevent recurrence must be included in plans.

Non-storm discharges. Plans shall include a certification that the discharge has been tested for the presence of non-storm water discharges. The certification shall include a description of the results of any test for the presence of non-storm water discharges, the method used, the date of any testing, and the on-site drainage points that were directly observed during the test. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible.

iii. *Special requirements for storm water discharges associated with industrial activity from facilities subject to SARA title III, section 313 requirements.* The Superfund Amendments and Reauthorization Act (SARA) of 1986 resulted in the enactment of title III of SARA, the Emergency Planning and Community-Right-to-Know Act. Section 313 of title III of SARA requires operators of certain facilities that manufacture, import, process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to any environmental media. Listed toxic chemicals include 329 chemicals listed at 40 CFR part 372.

Facilities that meet all of the following criterion for a calendar year are subject to title III reporting requirements for that calendar year and must report under 40 CFR 372.30:

- The facility has 10 or more full-time employees;
- The facility is a multi-establishment complex where all establishments have a primary SIC code of 20 through 39;
- The facility is a multi-establishment complex in which one of the following is true:

—The sum of the value of products shipped and/or produced from those establishments that have a primary SIC code of 20 through 39 is greater than 50 percent of the total value of all products shipped and/or produced from all establishments at the facility;

—One establishment has a primary SIC code of 20 through 39 and contributes more in terms of value of products shipped and/or produced than any other establishment within the facility;

- The facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 CFR 372.25.

After 1989, the threshold quantity of listed chemicals that the facility must manufacture, import or process in order to be required to submit a release report is 25,000 pounds per year. The threshold for a use other than manufacturing, importing or processing of listed toxic chemicals is 10,000 pounds per year. EPA estimates that 22,000 facilities nationwide will be subject to SARA title III reporting requirements after 1990. EPA promulgated a final regulation clarifying these reporting requirements on February 16, 1988 (53 FR 4500). EPA believes that the information received through reporting is a "front end" of the toxics program to which EPA is already committed and ultimately will assist in better controls for routine toxics releases and improved industrial practices to prevent and respond to accidents involving toxics.

Of the 329 toxic chemicals listed at 40 CFR 372 which are used to define the scope of SARA title III, section 313 requirements, the Agency has identified approximately 175 chemicals which it is classifying, for the purposes of this general permit, as 'section 313 water priority chemicals'. For the purposes of this general permit, "section 313 water priority chemicals" are defined as chemicals or chemical categories which also:

(1) Are listed at 40 CFR 372.65 pursuant to SARA title, section 313;

(2) Are present at or above threshold levels at a facility subject to SARA title III, section 313 reporting requirements; and

(3) That meet at least one of the following criteria:

(i) Are listed in appendix D of 40 CFR part 122 on either table II (organic priority pollutants), table III (certain metals, cyanides, and phenols) or table V (certain toxic pollutants and hazardous substances);

(ii) Are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or

(iii) Are pollutants for which EPA has published an acute or a chronic toxicity criteria.

The Agency estimates that about 9,000 facilities with storm water discharges associated with industrial activity nationwide have section 313 water priority chemicals in threshold amounts.

The large amounts of toxic chemicals at facilities with section 313 water priority chemicals raises concerns regarding the potential of material handling and storage operations to add pollutants to storm water discharges associated with industrial activity. As discussed earlier in this fact sheet, the material management practices associated with the storage and use of toxic chemicals is a major potential source of pollutants in storm water

discharges associated with industrial activity. The Agency believes that the threshold criteria established in SARA title III, section 313, along with the regulatory definition of storm water discharge associated with industrial activity, which for many facilities in SIC codes 20–39, only includes storm water from areas where material handling equipment or activities, materials or industrial machinery are exposed to storm water (see 40 CFR 122.26(b)(14)), identify potential risks in a manner that is appropriate for use in developing priorities for establishing the applicability of specialized monitoring and pollution prevention measures for facilities which use and manage toxic chemicals.

In evaluating risks and establishing regulatory priorities for facilities with storm water discharges associated with industrial activity, the Agency believes that the large amounts of toxic chemicals found at facilities with section 313 water priority chemicals pose sufficient risk to warrant special permit conditions for these facilities. The Agency is requesting comments on two primary options for developing special permit conditions for these facilities.

Under Option A, the permit would provide for:

(1) In addition to baseline requirements for storm water pollution prevention plans, special pollution prevention measures, including spill prevention and containment requirements for areas of the facility used for material management of these chemicals;

(2) An acute WET limit for storm water associated with industrial activity that comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals; and for truck and rail car loading and unloading areas for liquid section 313 water priority chemicals; and

(3) Biannual (twice a year) monitoring and reporting requirements for a number of parameters including acute whole effluent toxicity.

Under Option B, the general permits would provide for:

(1) An acute WET limit for storm water associated with industrial activity that comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals; and for truck and rail car loading and unloading areas for liquid section 313 water priority chemicals; and

(2) Monitoring and reporting requirements at a higher frequency [52] than biannual (twice a year) monitoring for acute whole effluent toxicity for discharges of storm water that comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals. Under Option B, the Agency is considering and requests comment on a range of monitoring options for the WET limitation, including monitoring biannually, quarterly, or every discharge event. Under Option B, facilities would remain subject to the baseline requirements for storm water pollution prevention plans, but would not be subject to the technology-based spill prevention and containment requirements outlined in Option A.

Option B would provide dischargers with more flexibility than Option A for complying with the permit. By providing additional flexibility by not requiring spill prevention and containment requirements, Option B may reduce compliance costs at facilities whose storm water discharges are not toxic. In addition, by not prescribing the specific method for controlling toxic storm water discharges, facilities can better take into account local factors in designing an appropriate cost-effective approach for meeting the WET test performance standard. Establishing a performance standard also encourages the development of new innovative and more cost-effective approaches for controlling toxic storm water discharges.

EPA requests comments on whether the criteria used for identifying priority facilities subject to specialized containment provisions and the WET effluent limitation are appropriate or whether these requirements should address a smaller or larger set of facilities including whether any set of facilities should be subject to the provisions of Option A or B.

One alternative on which EPA specifically requests comments would be to impose the requirements of Options A or B only on facilities (including facilities that are not subject to SARA title III, section 313) that have had a discharge of a hazardous substance in excess of reporting quantities established at 40 CFR 117.3 or 40 CFR 302.4 at any time after the date of three years prior to the issuance of these general permits which either discharge through a separate storm sewer systems or that otherwise comes into contact with storm water.

The Agency also requests comment on alternative approaches, including either alternative design standards or performance standards,[53] to establishing permit requirements which target containment requirements for chemical storage and handling activities where aquatically toxic chemicals are likely to be exposed to, or otherwise come into contact with, storm water. Comments addressing alternative approaches should also provide a description of the alternative performance standards or design standards. The Agency requests comments on the advantages and disadvantages of using design standards or performance standards for controlling storm water discharges associated with industrial activity. Comments can also address other regulatory or market incentives that can assure sufficient spill control and material managing practices that would make the imposition of containment requirements unnecessary.

Under Option A, the general permit would provide that storm water pollution prevention plans for facilities with section 313 water priority chemicals must, in addition to the requirements associated with the baseline pollution prevention plans, provide for spill prevention and containment-oriented controls.[54]

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[52] Under Option A, the draft permit proposes biannual monitoring for storm water discharges from containment areas. The Agency believes that if the final permit follows Option B (e.g. provides for an effluent limitation but does not require containment), then a higher frequency of monitoring may be appropriate for a number of reasons. First, where containment is required, such controls may provide the operator with a better opportunity to evaluate and correct periodic releases of chemicals which may influence the toxicity of the discharge prior to discharge. Second, facilities with containment systems are expected to discharge storm water less frequently than facilities without containment systems, thereby reducing the variability of system discharges. Third, discharges from containment systems may exhibit less variability due to mixing occurring in the containment unit, thereby requiring less frequent monitoring to characterize the discharge. EPA requests comment on the appropriate monitoring frequency for these discharges if the permit does not require containment.

[53] The most commonly used performance standards under the CWA are numeric effluent limitations and whole effluent toxicity limitations.

[54] The spill prevention and containment provisions for hazardous substances were analyzed in the 1979 survey of BMPs (see "NPDES Best Management Practice Guidance Document", U.S. EPA, December 1979, EPA–600/9–79–045); and the draft "Analysis of Implementing Permitting Activities for Storm Water Discharges Associated With Industrial Activity", EPA, 1991. EPA has also analyzed similar pollution prevention requirements for oil in the Spill Prevention, Control, and Countermeasure (SPCC) plan requirements at 40 CFR part 112, (see "The Oil Spill Prevention, Control, and Countermeasures Program Task Force Report", EPA, May 1988).

Containment involves the use of physical structures or collection/drainage equipment used to confine a release of material after it escapes from its physical location or containment. Dikes, berms, retaining walls, impounding basins, diversion ponds, and retention ponds surrounding material storage tanks are the most common examples of containment. Containment systems must be sufficiently impervious to contain spilled Section 313 water priority chemicals. The spill prevention and containment provision of these general permits are designed to mitigate the discharge of toxic chemicals to waters of the United States from both significant spill events and from more routine material management practices and leaks.

Under Option A, the spill prevention and containment control requirements would only apply to priority areas of facilities with section 313 water priority chemicals (e.g. portions of the facility where section 313 water priority chemicals are stored or managed and which generate storm water discharges associated with industrial activity).[55] Secondary containment requirements would only be required for liquid storage areas where storm water comes into contact with equipment, tank, container, or other vessel used for section 313 water priority chemicals; and truck and rail car loading and unloading areas for liquid section 313 water priority chemicals. In developing the containment-oriented provisions of Option A, the Agency has provided flexibility to allow facilities to use or modify appropriate existing containment approaches that facilities currently employ.

EPA believes that where, economically achievable, containment structures for storm water associated with industrial activity that comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals; and for truck and rail car loading and unloading areas for liquid section 313 water priority chemicals can prevent discharges of toxic chemicals after releases associated with spills, chronic leaks, and other material management practices occur.

Option B can also result in the implementation of measures to prevent discharges of toxic chemicals associated with spills, chronic leaks, and other material management practices.

Option A provides that if the installation of secondary containment structures or equipment is not economically achievable at a given facility, the facility operator must develop and implement a spill contingency and integrity testing plan which provides, as an alternative to secondary containment, a description of measures to ensure that discharges of toxic amounts of section 313 water priority chemicals do not occur. In these situations, a spill contingency and integrity plan must include:

- A detailed description which demonstrates that secondary containment requirements are not economically achievable based on the appropriate factors described at 40 CFR 125.3(d)(3);
- A spill contingency plan must include, at a minimum; a description of response plans, personnel needs, and methods of mechanical containment (such as the use of sorbants, booms, collection devices, etc.); steps to be taken for removal of spilled section 313 water priority chemicals; access to and availability of sorbents and other equipment; and such other information as required by the Director;
- The testing component of the plan must provide for conducting integrity testing of storage tanks at least once every five years, and conducting integrity and leak testing of values and piping a minimum of at least once every year; and
- A written and actual commitment of manpower, equipment and materials required to comply with the permit and to expeditiously control and remove any quantity of section 313 water priority chemicals that may result in a toxic discharge.

Spill contingency and integrity plans can prevent discharges of toxic chemicals by minimizing the potential for spills or leaks of toxic chemicals to occur or for material management practices to release toxic chemicals. In addition, where such releases occur, this approach can minimize the potential for contact of storm water with toxic chemicals. Option A requires secondary containment where achievable because of the degree of certainty that such containment will prevent toxic discharges. Nonetheless, where effectively implemented, a spill contingency and integrity testing plan may result in a level of control similar to that of installing containment structures, (e.g. the prevention of discharges of toxic amounts of section 313 water priority chemicals). Thus, spill contingency and integrity plans constitute an acceptable alternative set of requirements for some facilities based on the appropriate factors at 40 CFR 125.3(d)(3) (iii) and (v). Option B would also result in actions which would prevent toxic discharges.

EPA requests comment on the frequency and cost of integrity testing for tanks, valves, or pipes and whether integrity testing is an appropriate alternative to containment provisions where secondary containment is not economically achievable.

The Agency also notes that under both Options A and B, facilities with storm water discharges associated with industrial activity which, based on an evaluation of site specific conditions, believe that the appropriate conditions of these permits do not adequately represent BAT and BCT requirements for the facility may request an individual permit by submitting to the Director an individual application (Form 1 and Form 2F). Under Option A, the storm water pollution prevention plans at facilities with section 313 water priority chemicals and with storm water discharges associated with industrial activity must be reviewed and certified by a Registered Professional Engineer. With the certification, the Engineer must attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practice. Such certifications will in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such a plan.

The spill prevention and containment provision of Option A are designed to mitigate the discharge of toxic chemicals to waters of the United States from both significant spill events and from more routine material management practices and leaks. The Agency requests comment on a number of other approaches to meet these objectives. EPA requests comments on providing permittees with the option of Professional Engineer's certification that material management practices and controls provide equivalent control as the design specifications in the draft

[55] It should be noted that many facilities which are subject to SARA title III, section 313 reporting requirements because they manage section 313 water priority chemicals do not generate storm water discharges associated with industrial activity. The regulatory definition of "storm water associated with industrial activity" (40 CFR 122.26(b)(14)) addresses facilities in all Standard Industrial Classification (SIC) codes between 20 and 39 (as well as additional classes of facilities). However, facilities under SIC codes 20, 21, 22, 23, 2424, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39 which ere not otherwise addressed in other parts of the regulatory definition only generate storm water associated with industrial activity where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. Such facilities which do not generate storm water discharges associated with industrial activity are not subject to these permits (see (40 CFR 122.26(b)(14)(xi))).

permit. The Agency requests comment on what level of assurance is appropriate to determine that material management practices and controls are sufficient to provide equivalent control as the design specifications in the draft permit.

Storm water collected in containment areas can pick up significant levels of pollutants where material management practices result in leaks, spills or other exposure to chemicals. Rather than attempt to establish specific numeric limits of each type of pollutant subject to section 313, the Agency believes that it is more appropriate to establish acute whole-effluent toxicity limits for these discharges. For this reason, under both Options A and B, the general permit would establish an acute whole-effluent toxicity effluent limitation applied as a technology-based performance standard for discharges of storm water that comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals, and for storm water discharged from truck and rail car loading and unloading areas for liquid section 313 water priority chemicals.

Toxicity monitoring and WET limits have been used in the NPDES program to address a wide range of discharges, including intermittent discharges. Applying numeric or toxicity limits on a technology-basis to intermittent discharges such as storm water protects against periodic releases of high levels of pollutants. Establishing limits for intermittent discharges is consistent with the approach taken in the NPDES program which does not allow for periodic exceedances of limits by continuous discharges.

For the purpose of this permit, EPA is defining toxicity for use as a technology-based limit as not being lethal to 20% or more of the more sensitive of either appropriate fish or invertebrate test organisms. EPA is requesting comment as whether this is the appropriate definition of the toxicity parameter as a technology-based limit for the purposes of this permit.

Since these discharges are generated from limited-sized, specific storage and material handling areas, a wide range of technologies are available to reduce the toxicity of the limited volume of storm water that is subject to the WET effluent limitation. The Agency anticipates that most storm water discharges from these areas at well-maintained facilities with good housekeeping practices will not exhibit acute toxicity. For the majority of storm water discharges that do exhibit acute toxicity, the toxicity can be reduced by improving storage or material handling procedures, practices or equipment. Other classes of discharges may require various types of end-of-pipe treatment or various offsite disposal options such as discharging to a POTW.[56]

EPA requests comments on possible alternatives to the WET effluent limitation for storm water discharges that come into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals, or from truck and rail car loading and unloading areas for liquid section 313 water priority chemicals, including: (1) Establishing an effluent limitation that provides for zero discharge (compliance determinations based on the level of detection) for the specific Section 313 water priority chemicals used at the site, along with the containment provisions of the draft general permits. (Any untreated overflow from containment facilities properly designed, constructed and operated to treat the volume of runoff associated with a 25 year, 24 hour rainfall event would not be subject to the effluent limitation). This approach would be based on the showing that the best available technology for these facilities would include containment requirements and material management practices and other measures that ensured that storm water did not come into contact with SARA title III, section 313 chemicals; (2) establishing a zero discharge effluent limitation (compliance determinations based on the level of detection) without the containment provision of the draft general permit, and requiring discharge sampling at a higher frequency (such as quarterly or at every storm event) to ensure permit compliance. This approach is similar to approach 1, but would not rely on containment provisions to ensure and assist in meeting the zero discharge effluent limitation; (3) modifying approach 1 and 2 by establishing a non-zero effluent limitation for specific section 313 water priority chemicals based on BAT/BCT criteria (the Agency requests comment on which chemicals this approach would be appropriate for); (4) using an alternative indicator parameter other than toxicity for establishing limitations (the Agency requests comments on what indicator parameters would be appropriate for this purpose); and (5) instead of the WET effluent limitation, require facilities that detect a statistical difference in acute toxicity between the control and 100% effluent to submit a toxicity reduction evaluation (TRE) to the Director within one year.[57] Under this last approach, a TRE could be used in issuing an individual permit containing technology or water quality-based requirements based on an evaluation of site-specific conditions.

The Agency believes that the increased use of toxicity testing in the NPDES program has resulted in the development of adequate laboratory capacity to conduct the toxicity testing required by these permits. The Agency requests comment on any anticipated problems with inadequate laboratory capacity to conduct toxicity testing in the States addressed by these permits.

The draft general permits provide that any untreated overflow from containment facilities properly designed, constructed and operated to treat the volume of runoff associated with a 24 hour, 25 year rainfall event is not subject to the WET limitation. The 24 hour, 25 year rainfall event is the most commonly used design storm for BAT national effluent limitations guidelines which address storm water. The 24 hour, 25 year rainfall event provides a reasonable margin of safety when sizing secondary containment units.[58] EPA requests comments on the use of alternative storm events to a 25 year, 24 hour rainfall event in association with both the WET effluent limitation and containment provisions of the general permits.

iv. *Special requirements for storm water discharges associated with industrial activity from salt storage facilities.* The draft permits provide that storm water pollution prevention plans for facilities with storage piles of salt used for deicing or other commercial or industrial purposes must, in addition to the requirements associated with the baseline pollution prevention plans, enclose or cover their salt storage to prevent exposure to precipitation.[59]

v. *Special requirements for storm water discharges associated with industrial activity through large and medium municipal separate storm sewer systems.* Facilities covered by these

[56] See "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" EPA, 1991.

[57] EPA has developed the following guidance documents which describe methods and procedures for conducting TREs and Toxicity Identification Evaluations: (1) "Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations" (EPA/600/2-88/070); (2) "Methods for Aquatic Toxicity Identification Evaluations:" Phase 1 Toxicity Characterization Procedures (EPA/600/3-88/034), Phase 2 Toxicity Identification Procedures (EPA/600/3-88/035), Phase 3 Toxicity Confirmation Procedures (EPA/600/3-88/036).

[58] "NPDES Best Management Practices Guidance Document", EPA, 1979, (EPA-600/9-79-045).

[59] See "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" (EPA, 1991).

permits must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions. Part 5 of this fact sheet discusses how permits for discharges from large and medium municipal separate storm sewer systems will typically require municipal permittees to develop storm water management programs which address storm water associated with industrial activity which discharges through their system.

vi. *Special requirements for storm water discharges associated with industrial activity composed of coal pile runoff.*

The draft general permits establish effluent limitations of 50 mg/1 total suspended solids (TSS) and a pH range of 6 to 9 for storm water discharges associated with industrial activity.[60] This effluent limitation is similar to the effluent guideline limitation for coal pile runoff from facilities in the steam electric power generating point source category (see 40 CFR 423.12(b)(9)).

The limitation does not apply to any untreated overflow from facilities properly designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 25 year, 24 hour rainfall event. Providing a limit to effluent guidelines for events that exceed a specified storm event provides operators with a basis for installing and operating a treatment system, as the design of the system, particularly the collection devices, will depend on the design storm chosen. The 25 year, 24 hour storm is most commonly used in the BAT national effluent limitations guideline that have been developed by EPA.[61] The effluent guideline limitation for coal pile runoff from facilities in the steam electric power generating point source category at 40 CFR 423.12(b)(9) incorporates a 10 year, 24 hour design storm into a best practicable control technology currently available (BPT) limit. BCT and BAT effluent limitation guidelines for coal pile runoff are currently reserved. The Agency believes that the appropriate design storm for coal pile runoff addressed by these permits is the more stringent 25 year, 24 hour design storm as these permits establish BAT/BCT limits (which are typically more stringent than BPT limits), and the 25 year, 24 hour storm is more commonly used in effluent guideline limitations based on the BAT or BCT standards. The Agency requests comments on the appropriate design storm (e.g. the 25 year, 24 hour, or the 10 year, 24 hour) for this limitation.

vii. *Public Availability.* The draft general permits clarify that all storm water pollution prevention plans required under the permit are considered reports that shall be available to the public under section 308(b) of the CWA. However, the permittee may claim any portion of a storm water pollution plan as confidential in accordance with 40 CFR part 2.

8. Monitoring and Reporting Requirements

a. *Monitoring requirements.* The draft permits have been developed to provide different monitoring requirements for certain classes of discharges. Monitoring and reporting requirements are established for storm water discharges associated with industrial activity from six classes of industries: SARA title III, section 313 facilities with water priority chemicals; primary metal facilities; land disposal units; wood treatment facilities (wood preservers) using chlorophenolic/creosote formulations; wood treatment facilities (wood preservers) using arsenic/chromium preservatives; and coal pile runoff. These categories and the associated monitoring and reporting requirements are discussed in more detail below. These categories of industrial facilities have been selected as priority sites in terms of monitoring requirements based on an evaluation of activities at these types of facilities which have the potential for contributing toxic pollutants to storm water discharges. EPA believes that requiring these facilities to submit monitoring reports will allow the Agency to continue to assess the nature of pollutants in storm water discharges from these types of facilities. EPA requests comments on the appropriateness of categories specific monitoring and reporting requirements for other categories of industrial facilities.

The draft general permit provides that operators of storm water discharges associated with industrial activity from oil and gas operations have the option of either monitoring their storm water discharges associated with industrial activity annually or, in lieu of the monitoring, a facility may have a Registered Professional Engineer certify that a storm water pollution plan has been prepared and is being implemented in accordance with the requirements of the permit.

Operators of other storm water discharges associated with industrial activity covered by the draft general permits which are not addressed by one of the industry-specific monitoring requirements are required to conduct annual monitoring of a set of specified parameters. Facilities subject to these 'baseline' monitoring requirements are subject to record keeping requirements, but generally do not have reporting requirements. Although EPA is proposing to not require the reporting of monitoring data for facilities without industry-specific monitoring requirements, the Agency believes that monitoring requirements remain appropriate as they will assist operators of storm water discharges in identifying sources of pollutants and in evaluating the effectiveness of the implementation of their storm water pollution prevention plans. In addition, EPA may review monitoring data during the term of the permit or during the permit reissuance process for the purposes of evaluating the effectiveness of a facility's storm water pollution prevention plan and for determining priorities for future permit issuance or modification.

i. *Monitoring requirements—Baseline monitoring requirements.* The following eight parameters have been identified as baseline parameters that generally form the foundation for different monitoring requirements in the permit: Oil and grease, pH, five-day biochemical oxygen demand (BOD5), chemical oxygen demand (COD), total suspended solids (TSS), total phosphorus, total Kjeldahl nitrogen (TKN), and nitrate plus nitrite nitrogen.

Oil and grease is a common industrial pollutant which can be indicative of material management, housekeeping and transportation activities. TSS is a common pollutant found in storm water discharges that reflects surface disturbances and material management practices, and can have significant impacts on receiving waters. Oxygen demand (COD and BOD5) will help the permitting authority evaluate the oxygen depletion potential of the discharge. BOD5 is the most commonly used indicator of oxygen demand. COD is considered a more inclusive indicator of oxygen demand, especially where metals interfere with the BOD5 test, and generally is better suited for comparing the oxygen demand of a storm water discharge with that of other discharges. The pH will provide important

[60] See "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" (EPA, 1991).

[61] BAT effluent limitations guidelines that incorporate a 25-year, 24-hour storm event include animal feedlots (40 CFR part 412), fertilizer manufacturing (40 CFR part 418), and phosphate manufacturing (40 CFR part 422).

information on the potential availability of metals to the receiving flora, fauna, and sediment. In some cases it will provide information regarding material management. Total phosphorus, TKN, nitrate plus nitrite nitrogen are measures of nutrients that can impact water quality. In addition, most of the monitoring requirements contain a requirement to monitor pollutants subject to effluent limitation guidelines. Effluent limitation guidelines can identify industry-specific pollutants which may be of concern.

SARA title III, section 313 Facilities. The large amounts of toxic chemicals stored and utilized at SARA title III, section 313 facilities with section 313 water priority chemicals raises concerns regarding the potential of material handling and storage operations to add pollutants to storm water discharges associated with industrial activity. Storm water discharges associated with industrial activity that comes into contact with any equipment, tank, container, or other vessel used for title III, section 313 water priority chemicals; and for truck and rail car loading and unloading areas for liquid title III, section 313 water priority chemicals must be monitored semiannually (2 times per year) for: Oil and grease; biochemical oxygen demand (BOD5), chemical oxygen demand (COD), total suspended solids, total Kjeldahl nitrogen (TKN), total phosphorus, pH, nitrate plus nitrite nitrogen, acute whole effluent toxicity, and any chemical constituent for which the operator is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986 for chemicals which are classified as "section 313 water priority chemicals".

The monitoring requirements for storm water discharges associated with industrial activity that comes into contact with any equipment, tank, container, or other vessel used for title III, section 313 water priority chemicals; and for truck and rail car loading and unloading areas for liquid title III, section 313 water priority chemicals modify the baseline parameters for other storm water discharges by adding the requirement to test for any chemical constituent for which the operator is subject to reporting requirements under section 313 and acute whole effluent toxicity. Acute whole effluent toxicity monitoring requirements are being established for two reasons: (1) Acute whole effluent toxicity is a non-chemical specific parameter suitable for characterizing the potential impacts of the wide range of chemicals and chemical formulations expected to be found at the wide variety of section 313 facilities; and (2) To support the acute whole effluent toxicity limitation proposed in the draft general permits. Requirements to test chronic toxicity have not been included in this permit because discharges from the containment areas are expected to be generally less frequent than other storm water discharges (e.g. containment system discharges are typically not expected to occur with each event) and relatively low volume where the area generating the storm water discharges associated with industrial activity subject to the containment requirements described in the pollution prevention plans developed under this permit is relatively small. Monitoring requirements for storm water discharges from containment areas are not applicable where there is not a discharge to a waters of the United States (including discharges through municipal separate storm sewer systems to waters of the United States), such as where the discharge is to a POTW.

Storm water discharges associated with industrial activity from other portions of SARA title III section 313 facilities (e.g. those storm water discharges associated with industrial activity that are not composed of storm water that comes into contact with any equipment, tank, container, or other vessel used for title III, section 313 water priority chemicals, or from truck and rail car loading and unloading areas for liquid title III, section 313 water priority chemicals) are subject to baseline monitoring requirements of the permit.

Primary Metal Facilities. Facilities classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) include steel works, blast furnaces, rolling and finishing mills, iron and steel foundries, primary and secondary smelting and refining of nonferrous metals, rolling, drawing and extruding of nonferrous metals, and nonferrous foundries. These facilities typically have significant dust or particulate generating processes, as well as other activities, which can contribute a wide range of pollutants, including metals, to storm water discharges associated with industrial activity.

Under the draft general permits facilities classified as SIC 33 must monitor semiannually (2 times per year) all storm water discharges associated with industrial activity that are discharged from the facility for: oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, any pollutant limited in an effluent guideline to which the facility is subject, acute whole effluent toxicity, total lead, total cadmium, total copper, total arsenic, and total chromium.

The monitoring requirements for storm water discharges associated with industrial activity from primary metal facilities modify the baseline monitoring requirements by adding requirements to monitor acute whole effluent toxicity, and five metals. The five metals selected are typically the most common toxic metals generally expected in storm water from primary metal facilities. However, dust or particulate generating processes or material management activities at primary metal facilities can result in a number of other metals and pollutants in storm water discharges associated with industrial activity from primary metal facilities. Acute whole effluent toxicity is a non-chemical specific parameter suitable for characterizing the potential impacts of these additional pollutants.

Land Disposal Units. Land disposal units with storm water discharges associated with industrial activity may receive a diverse range of industrial wastes. EPA has summarized case studies documenting surface water impacts and ground water contamination incidents of land disposal units (see August 30, 1988 (53 FR 33372)). Evaluation of 163 case studies revealed surface water impacts at 73 facilities. Elevated levels of organics, including pesticides, and metals have been found in ground water and/or surface water at many sites.

Facilities that discharge storm water associated with industrial activity from any active or inactive landfill, land application site, or open dump that received any industrial wastes are required to monitor semiannually (2 times per year) for: ammonia, bicarbonate, calcium, chloride, total iron, magnesium (total), magnesium (dissolved), nitrate plus nitrite nitrogen, potassium, sodium, sulfate, chemical oxygen demand (COD), total dissolved solids (TDS), total organic carbon (TOC), pH, total arsenic, total barium, total cadmium, total chromium, total cyanide, total lead, total mercury, total selenium, total silver, volatile organic carbon (VOC) acute whole effluent toxicity.

The parameters addressed by the monitoring requirements for storm water discharges associated with industrial activity from land disposal units is similar to the parameters addressed by proposed ground water monitoring requirements for municipal solid waste landfills established under subtitle D of RCRA (see August 30, 1988 (53 FR

33372)). The Agency believes that the pollutants identified for the purpose of evaluating ground water quality at land disposal units should also be considered when evaluating storm water discharges. Given the wide range of materials that may be disposed at land disposal units, many other pollutants may potentially be found in storm water discharges from land disposal units. For this reason, the draft permits require sampling of acute whole effluent toxicity. The toxicity parameter is particularly relevant in situation, since the evaluation of the toxicity parameter does not require specific chemical identification.

Wood Treatment (chlorophenolic/creosote formulations). Pollutants in storm water runoff from treated material storage yards at wood-preserving facilities were studied by EPA in 1981 in support of effluent guidelines development, and in support of a proposed hazardous waste listing in 1988 (December 30, 1988 (53 FR 53287)). Several organic pollutants were found at significant concentrations, including pentachlorophenol, fluoranthene, benzo(a)anthracene, chrysene, phenanthrene, and pyrene.

All storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities that currently use chlorophenolic formulations and/or creosote formulation shall be monitored semiannually (2 times per year) for: oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, acute whole effluent toxicity, and pentachlorophenol.

The monitoring requirements for storm water discharges associated with industrial activity from wood treatment facilities modify the baseline monitoring requirements by adding requirements to monitor pentachlorophenol, acute whole effluent toxicity. Pentachlorophenol is a major constituent of preservatives used at these facilities, and acute whole effluent toxicity testing will assist in assessing the presence of other toxics in these discharges.

Wood Treatment (arsenic/chromium preservatives). Arsenic/chromium preservatives consist of mixtures of bivalent copper, pentavalent arsenic, hexavalent chromium or fluorides. The three most widely used compounds for commercial wood treatment include chromatic copper arsenate (CCA); ammoniacal copper arsenate (ACA); and fluorochrome-arsenate phenol (FCAP). Pollutants in storm water runoff from treated material storage yards at wood-preserving facilities were studied by EPA in 1981 in support of effluent guidelines development, and in support of a proposed hazardous waste listing in 1988. Certain metals, including chromium, copper, and arsenic, were found at high levels in storm water from wood-preserving facilities using inorganic arsenical preservatives.

All storm water discharges associated with industrial activity from areas that are used for wood treatment or storage of treated wood at any wood preserving facilities that currently use inorganic preservatives containing arsenic or chromium shall be monitored semiannually (2 times per year) for: Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, total arsenic, total chromium, and total copper.

The monitoring requirements for storm water discharges associated with industrial activity from wood treatment or storage of treated wood at any wood preserving facilities that currently use inorganic preservatives containing arsenic or chromium modify the baseline monitoring requirements by adding requirements to monitor arsenic, chromium and copper, three major toxic constituents found in the preservatives used by these facilities.

Coal Pile Runoff. Coal pile runoff has been shown to contain significant levels of suspended solids, copper, iron, aluminum, nickel, zinc and other trace metals. (See "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category", (EPA–440/182/029)).

All storm water discharges associated with industrial activity from coal piles shall be monitored semiannually (2 times per year) for: Oil and grease, pH, TSS, total copper, total nickel and total zinc.

The monitoring requirements for storm water discharges associated with industrial activity from coal piles support the effluent limitations for pH and TSS in these permits. The three metals, total copper, total nickel, and total zinc have been shown to be at concentrations of concern in coal pile runoff (see Table 3 above). Oil and grease is a common industrial pollutant which can be indicative of material management, housekeeping and transportation activities.

Oil and gas exploration or production operations. Operators of storm water discharges associated with industrial activity from oil and gas exploration or production operations have the option of either monitoring their storm water discharges associated with industrial activity annually or, in lieu of the monitoring, a facility may have a Registered Professional Engineer certify that a storm water pollution plan has been prepared and is being implemented in accordance with the requirements of the permit.

Oil and Gas Exploration or Production Operations (Sampling Option). Operators of storm water discharges associated with industrial activity from oil and gas exploration and production operations which elect to conduct monitoring rather than obtain a Professional Engineer's certification are required to analyze samples annually (once a year) for the following parameters: Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any pollutant limited in an effluent guideline to which the facility is subject. The rationale for selecting these baseline parameters is discussed above.

Oil and Gas Exploration or Production Operations (Certification Option). Operators of storm water discharges associated with industrial activity from oil and gas exploration or production operations have the option of obtaining a Professional Engineer's certification that a storm water pollution plan has been prepared by the facility and is being implemented in accordance with the requirements of the permit. Dischargers pursuing this option are required to obtain recertification of the plan every three years. By means of certification, the Engineer shall attest that: The Engineer has visited and examined the facility and is familiar with the provisions of this part; the Plan has been prepared in accordance with good engineering practice; reserve pits used to hold spent drilling muds or cuttings have been designed and built to prevent storm induced overflows; and the Plan is adequate for the facility. Such certifications will in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

Information from sources such as non-point source assessments developed pursuant to section 319(a) of the CWA indicate that significant water quality impacts can be caused by wet-weather failure of on-site waste disposal systems at oil and gas exploration and production operations (such as storm induced overflows of reserve pits used to hold spent drilling muds and cuttings). Periodic sampling of discharges may not be sufficient to identify or predict these events. Rather, a PE certification may provide a more appropriate link for evaluating the

potential for and preventing these types of events.

Allowing this class of dischargers the option of obtaining Professional Engineer's certifications addresses a number of concerns. First, Professional Engineering certifications will provide a direct link to the implementation of the central provision of the general permits, the requirement to develop and implement storm water pollution prevention plans. Second, providing dischargers with the option of either conducting annual sampling or obtaining a Professional Engineer's certification will provide the discharger with flexibility to select the most cost-effective manner to comply with the draft permits. Third, this approach will reduce the administrative burdens on EPA while not limiting its ability to ensure permit compliance.

Storm Water Discharges Not Otherwise Addressed. Operators of storm water discharges covered by the draft general permits which are not subject to an industry specific monitoring requirement under the permits shall monitoring their storm water discharges associated with industrial activity annually (once a year) for the following baseline parameters: oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any pollutant limited in an effluent guideline to which the facility is subject. The rationale for selecting these baseline parameters is discussed above.

ii. *Volume estimates.* The draft general permits take two approaches for estimating volumes associated with storm water discharges. The first approach, which is applicable to two classes of facilities, discharges from SARA title III section 313 containment areas for chemicals which are classified as 'Section 313 water priority chemicals', and discharges from land disposal units, requires that an estimate of the total volume of the discharge monitored be provided. This approach is taken for these types of facilities because it is anticipated that some degree of retention will be provided for the storm water discharges associated with industrial activity from these facilities [62] and that providing volume estimates will be more practicable.

Other classes of storm water discharges covered by the general permits (wood preserving facilities, primary metal facilities, and other discharges without industry specific requirements) are required to provide an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)). This information assists in characterizing the magnitude of the volume of discharges that will occur for different magnitude storm events. In addition, this information will generally be easier for dischargers to provide.

iii. *Sampling waiver.* The draft general permits have an "adverse climatic conditions" provision allowing a discharger to submit a description of why samples could not be collected in lieu of sampling data when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

iv. *Sample type.* The requirements for the type of samples taken vary depending on the nature of the discharge. A minimum of one grab sample may be taken for discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge (or as soon thereafter as practicable). The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Only grab samples must be used for pH, cyanide, and oil and grease.

v. *Reporting requirements.* Dischargers addressed by the sampling requirements for the six classes of storm water discharges associated with industrial activity (SARA Title III, land disposal units, primary metal, wood preserving (chlorophenolic/creosote formulations), wood preserving (arsenic/chromium preservatives), and coal pile runoff) are required to submit signed discharge monitoring reports (DMRs) to the appropriate EPA Regional Office biannually.

Dischargers with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) in addition to filing copies of the DMR to the Regional Office, must submit signed copies to the operator of the municipal separate storm sewer system biannually.

Operators of storm water discharges associated with industrial activity from oil and gas exploration or production operations and that conduct sampling requirements rather than obtaining a Professional Engineer's certification, as well as operators of other storm water discharges that are not subject to industry specific monitoring requirements, are not required to submit monitoring reports unless specifically requested by the Director. These dischargers must maintain sampling data collected during the term of the permit. Upon reissuance of a new general permit, the permittee will be required to notify the Director of their intent to be covered by the new general permit. The Agency intends that NOI provisions for the reissued permits will require dischargers to summarize the quantitative data they had collected during the previous permit term. This approach will reduce the administrative burdens associated with reviewing annual DMRs for these discharges, while providing for an opportunity for Agency review at least every five years. Further, reviewing discharger data during the permit reissuance process will assist in efforts to implement the permitting strategy to address industry specific or individual permitting. The Agency requests comment as to whether facilities covered by these permits should be required to submit an annual certification that a pollution prevention plan has been developed for the site and is being implemented.

vi. *Relationship between permit requirements and proposed rule change.* These monitoring requirements of the draft general permits are consistent with the proposed regulatory modifications to 40 CFR 122.28(b)(2)(ii), discussed earlier in today's notice. The final permits will be consistent with the regulatory requirements regarding this provision that are in existence at the time of

[62] For example, EPA has proposed requirements for run-off control systems from the active portion of the municipal solid waste landfills to collect and control at the water volume resulting from a 24-hour, 25-year storm (see August 30, 1988 (53 FR 33408)).

permit issuance.[63] If EPA promulgates less stringent regulations specifying minimum monitoring requirements, the monitoring requirements in these permits may be limited to priority facilities. The Agency believes that classes of industrial facilities that may be considered priority facilities for monitoring include the classes of facilities for which industrial specific monitoring requirements are proposed in these draft permits, deicing activities at airports, steam electric facilities, pulp and paper facilities, and organic chemical facilities with storm water discharges associated with industrial activity. EPA requests comment on classes of facilities that should be considered a priority for retaining monitoring requirements in these permits.

B. *Other reporting requirements.* The draft general permits provide that any facility that is unable to provide the certification that separate storm sewer outfalls have been tested for illicit connections must notify the Director within 180 days of the effective date of the permit. Such notification shall describe: The procedure of any test conducted for the presence of non-storm water discharges, the results of such test or other relevant observations, potential sources of non-storm water discharges to the storm sewer, and why adequate tests for such storm sewers were not feasible.

C. *Retention of records.* The permittee is required to retain records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by the permit, for a period of at least three years from the date of the measurement, report, or application. This period may be extended by request of the Director.

9. Cost estimates

a. *Pollution prevention plan implementation.* Storm water pollution prevention plans for the majority of facilities will address relatively low cost baseline controls for the majority of industrial facilities. EPA's analysis of storm water pollution prevention plans indicates that the cost of developing and implementing the costs of these plans is variable and will depend on a number of factors, including: The size of the facility, chemicals stored or used at a facility, the nature of the plant operations and plant designs and the housekeeping measures employed. Table 5 provides estimates of the range of costs of preparing and implementing a storm water pollution prevention plan. It is expected that the low cost estimates provided in Table 5 is appropriate for the majority of smaller facilities. High cost estimates are also provided.

Additional information regarding the estimates of the costs required to comply with the conditions proposed in this permit are provided in "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" (EPA, 1991). The Agency requests comments on these cost estimates.

b. *SARA Title III Facilities.* Table 6 provides estimates of the range of costs of preparing and implementing a storm water pollution prevention plan for facilities which are subject to the special requirements for facilities subject to SARA title III section 313 reporting requirements for chemicals which are classified as "section 313 water priority chemicals". EPA anticipates that the majority of facilities are expected to have existing containment systems that will meet the majority of the requirements of these permits. High cost estimates correspond to facilities that are expected to be required to undertake some actions to upgrade existing containment systems to meet the requirements of these permits. Costs associated with meeting the toxicity limitation in this permit only apply to facilities whose discharges exhibit toxicity, and are based on an assumption that the toxicity of discharge can be reduced by: Modifying material handling practices; by modifying existing storage equipment to eliminate leaks and other sources of chemical exposure; or by discharging waters collected by a containment system to a POTW. Costs of treatment where the facility does not have existing treatment capacity or off site disposal is typically expected to be higher.

Additional information regarding the estimates of the costs required to comply with the conditions proposed in this permit are provided in "Staff Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity" (EPA, 1991). The Agency requests comments on these cost estimates.

[63] Elsewhere in today's notice, the Agency is requesting comments on six options for modifying the existing regulatory provisions addressing permit monitoring. EPA intends to issue final general permits based on the draft permits noticed here either at the same time or after the Agency has completed the permit monitoring rulemaking. The monitoring requirements in the final general permits may be modified from those appearing in the draft general permits to reflect the promulgated regulatory changes.

TABLE 5.—SUMMARY OF ESTIMATED COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS WITH BASELINE REQUIREMENTS

Control measure	Costs in 1988 dollars			
	Low costs		High costs	
	Capital costs (annualized)	Annual O & M Costs	Capital costs (annualized)	Annual O & M costs
Plan Preparation	2,000		75,000	19,650
Plan Revisions	200		7,500	1,965
Material Inventory/Risk Assessment		90		640
Spill prevention/response Procedures		90		700
Employee Training		100		1,115
Visual Inspections		100		1,025
Preventive Maintenance/Housekeeping				4,160
Storm Water Management			5,000	500
Sediment and Erosion Prevention		100	500	1,000
Recordkeeping		50	100	100
Non-storm water certification	200		14,000	
Total Fixed cost [1]	2,400		102,100	

TABLE 5.—SUMMARY OF ESTIMATED COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS WITH BASELINE REQUIREMENTS—Continued

Control measure	Costs in 1988 dollars			
	Low costs		High costs	
	Capital costs (annualized)	Annual O & M Costs	Capital costs (annualized)	Annual O & M costs
Total Annual costs		530		30,855

This table identifies estimated low and high costs to develop and implement storm water pollution prevention plans.
Low costs of implementing program components are zero where existing programs, procedures or security is assumed adequate.
Annualized costs are based upon a 5 year permit and 10% discount
[1] Total costs only address situation where storm water pollution plan needs to be developed and not the lower cost situation where a plan is existing and needs revision.

TABLE 6.—SUMMARY OF ESTIMATED COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS PER APPLICABLE UNIT OPERATION FOR FACILITIES SUBJECT TO SECTION 313 OF SARA TITLE III WITH WATER PRIORITY CHEMICALS

Control measure	Low costs		High costs	
	Capital costs (annualized)	Annual O & M Costs	Capital Costs (annualized)	Annual O & M costs
Liquid Storage Curbing	0		1,120	
Raw Material Storage Tarpaulin	0	0	400	160
Runon Diversion Trench	0	0	1,100	250
Collection System	0	0	15,000	3,000
Toxicity Reduction Evaluation/Remediation	0	0	25,000	500
Total Fixed Costs	0		42,620	
Total Annual Costs		0		3,910

This table identifies estimated additional low and high costs to develop and implement storm water pollution prevention plans for SARA Title III, Section 313 facilities subject to special conditions.
Low costs of implementing program components are zero where existing programs, procedures or security is assumed adequate.
Annualized costs are based upon a 5 year permit and 10% discount rate.

c. *Construction sites.* The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 7), and the costs of storm water management controls (see Table 8). The draft general permits provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all of the controls listed in Tables 7 and 8. In general, sites which disturb a larger area will incur higher pollution prevention costs.

TABLE 7.—SEDIMENT AND EROSION CONTROL COSTS

Vegetative practices	
Temporary seeding	$1.00 per square yard.
Permanent seeding	$1.00 per square yard.
Mulching	$1.25 per square yard.
Sod stabilization	$4.00 per square yard.
Vegetative buffer strips	$1.00 per square yard.
Protection of trees	$30.00 to $200 per tree set.
Earth dikes	$5.50 per linear foot.
Straw bale dikes	$5.00 per linear foot.
Silt fences	$6.00 per linear foot.

TABLE 7.—SEDIMENT AND EROSION CONTROL COSTS—Continued

Vegetative practices	
Brush barriers	
Drainage swales—grass	$3.00 per square yard.
Drainage swales—sod	$4.00 per square yard.
Drainage swales—riprap	$45.00 per square yard.
Drainage swales—asphalt	$35.00 per square yard.
Drainage swales—concrete	$65.00 per square yard.
Check dams—rock	$100 per dam.
Check dams—covered straw bales.	$50 per dam.
Level spreader—earthen	$4.00 per square yard.
Level spreader—concrete	$65.00 per square yard.
Subsurface drain	$2.25 per linear foot.
Pipe slope drain	$5.00 per linear foot.
Temporary storm drain diversion.	Variable.
Storm drain inlet protection	$300 per inlet.
Rock outlet protection	$45 per square yard.
Sediment traps	$500 to $7,000 per trap.
Temporary sediment basins	$5,000 to $50,000 per basin.
Sump pit	$500 to $7,000.
Entrance stabilization	$1,500 to $5,000 per entrance.
Entrance wash rack	$2,000 per rack.
Temporary waterway crossing.	$500 to $1,500.
Wind breaks	$2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.

TABLE 8.—COSTS OF STORM WATER MANAGEMENT FOR CONSTRUCTION SITES

	Cost for 5 acre developed area	Cost for 20 acre developed area
Wet ponds	$5,770	$16,300
Dry ponds	12,000	29,330
Dry ponds with extended detention	5,950	15,500
Infiltration trenches	8,500	34,100

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls", Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.

d. *Oil and gas production or exploration operations.* Facilities with contaminated storm water discharges associated with industrial activity, in addition to the baseline requirements for storm water pollution prevention plans, are required to obtain professional engineer certifications or monitor their discharges. The estimated cost of a professional engineer certification is

$200. Some oil and gas exploration or production facilities are expected to monitor their storm water discharges instead of obtaining professional engineer certifications. This additional cost is not applicable to such facilities.

e. *Salt storage facilities.* Salt pile covers or tarpaulins are anticipated to have a fixed cost of $400 and an annual cost of $160 for medium sized piles, and a fixed cost of $4,000 and an annual cost of $2,000 for very large piles. Structures such as salt domes are generally expected to have a fixed cost of between $30,000 for small piles ($70 to $80 per cubic yard) and $100,000 for larger piles ($18 per cubic yard) with costs depending on their size and other construction parameters.

f. *Coal pile runoff.* The effluent limitations for coal pile runoff in the draft permits can be achieved by two primary methods: by limiting exposure to coal by use of covers or tarpaulins; and by collecting and treating the runoff. In some cases, coal pile runoff may be in compliance with the effluent limitations without covering the pile or collecting or treating the runoff. In these cases, the operator of the discharge would not have a control cost.

The use of covers or tarpaulins to prevent or minimize exposure of the coal pile to storm water is generally expected to be practical only for relatively small piles. Coal pile covers or tarpaulins are anticipated to have a fixed cost of $400 and annual cost of $160.

Table 9 provides estimates of the cost of treating coal pile runoff.[64, 65] These costs are based on a consideration of a treatment train requiring equalization, pH adjustment and settling, including the costs for impoundment (for equalization), a lime feed system and mixing tanks for pH adjustment, and a clarifier for settling. The costs for the impoundment area include diking and containment around each coal pile and associated sumps and pumps and piping from runoff areas to impoundment area. The costs for land are not included. The lime feed system employed for pH adjustment includes a storage silo, shaker, feeder, and lime slurry storage tank, instrumentation, electrical connections, piping and controls.

[64, 65] The type and degree of treatment required to meet the effluent limitations of these permits will vary depending upon factors such as the amount of sulfur in the coal. This section describes a model treatment scheme for the purposes estimating costs for compliance with the proposed effluent limitations. Dischargers may implement other less expensive treatment approaches to enable them to discharge in accordance with these limits where appropriate.

Additional costs may be incurred if a polymer system is needed. In such a case, costs would include impoundment for equalization, a lime feed system, mixing tank, and polymer feed system for chemical precipitation, a clarifier for settling and an acid feeder and mixing tank to readjust the pH within the range of 6 to 9. The equipment and system design, with the exception of the polymer feeder, acid feeder and final mixing tank, is essentially the same as shown in Table 9. Two tanks are required for a treatment train with a polymer system, one for pecipitation and another for final pH adjustment with acid. The cost of mixing is therefore twice that shown in Table 9. The polymer feed system includes storage hoppers, chemical feeder, solution tanks, solution pumps, interconnecting piping, electrical connections and instrumentation. The costs of clarification is identical to that of Table 9. A treatment train with a polymer system requires the use of an acid additional system to readjust the pH within the range of 6 to 9. The components of this system include a lined acid storage tank, two feed pumps, an acid pH control loop, and associated piping, electrical connections and instrumentation.

Additional information regarding the cost of these technologies can be found in: "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category", ([EPA–440/182/029), November 1982, EPA).

TABLE 9.—SUMMARY OF ESTIMATED COSTS FOR TREATMENT OF COAL PIPE RUNOFF

	30,000 cubic meter coal pile	1,200,000 cubic meter coal pile
Impoundment:		
Installed Capital Cost (dollars).	6,300	12,600.
Operation and Maintenance (dollars/year).	negligible	negligible.
Lime feed system:		
Installed Capital Cost (dollars).	127,000	361,200.
Operation and Maintenance (dollars/year).	5,300	16,100.
Energy Requirements (kwh/yr).	3.6 × 10**4.	3.6 × 10**4.
Land Requirements (ft**2).	5,000	5,000.
Mixing Equipment:		
Installed Capital Cost (dollars).	60,500	107,500.
Operation and Maintenance (dollars/year).	2,100	2,400.
Energy Requirements (kwh/yr).	1.3 × 10**3.	1.3 × 10**3.
Land Requirements (ft**2).	2,000	2,000.
Clarification:		
Installed Capital Cost (dollars).	168,000	260,500.
Operation and Maintenance (dollars/year).	3,000	3,800.
Energy Requirements (kwh/yr).	1.3 × 10**3.	1.3 × 10**3.
Land Requirements (ft**2).	3,000	7,000.

Source: "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category", (EPA–440/182/029), November 1982, EPA). Costs estimates have been revised to account for inflation.

10. *Effective date requirements.* This permit shall be effective upon issuance.

11. *EPA contacts.*

MA, ME, NH

United States EPA, Region I, Water Management Division, (WCP–2109), John F. Kennedy Federal Building, Room 2209, Boston, MA 02203. Contact: Veronica Harrington, (617) 565–3525.

NY (Indian lands), Puerto Rico

United States EPA, Region II, Water Management Division, (WM–WPC), Jacob K. Javitz Federal Building, 26 Federal Plaza, New York, NY 10278. Contact: Jose Rivera (WM–WPC), (212) 264–1859.

District of Columbia, DE (Federal facilities)

United States EPA, Region III, Water Management Division, (3WM55), 841 Chestnut Building, Philadelphia, PA 19107. Contact: Kevin Magerr, (215) 597–1651.

AL (Indian lands), FL, GA (Indian lands), KY (Indian lands), MS (Indian lands), NC (Indian lands), SC (Indian lands), TN (Indian lands)

United States EPA, Region IV, Water Management Division, (FPB–3), 345 Courtland Street, NE, Atlanta, GA 30365. Contact: Chris Thomas, (404) 347–3021.

MI (Indian lands), MN (Indian lands), WI (Indian lands)

United States EPA, Region V, Water Quality Branch (5WQP), 230 South Dearborn Street, Chicago, IL 60604. Contact: Irving Dzikowski, (312) 355–2105.

LA, MN, OK, TX

United States EPA, Region VI, Water Management Division, (6W–PM), First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202. Contact: Craig Weeks, (214) 655–7180.

SD, CO (Federal facilities and Indian lands), MT (Indian lands), ND (Indian lands), UT (Indian lands), WY (Indian lands)

United States EPA, Region VIII, Water Management Division, Compliance Branch (8WM–C), 999 18th Street, Suite 500, Denver, CO 80202–2405. Contact: Vern Berry, (303) 293–1260.

AZ, CA (Indian lands), NV (Indian lands), Guam, American Samoa

United States EPA, Region IX, Water Management Division, (W–5–1), 75 Hawthorne Street, San Francisco, CA 94105. Contact: Eugene Bromley, (415) 744–1906.

AK, ID, WA (Federal facilities and Indian lands)

United States EPA, Region X, Water Management Division, (WD–134), 1200 Sixth Street, Seattle, WA 98101, Andrea Lindsay, (206) 553–8399.

12. *Proposed schedule for general permits issuance.*

Draft Permits Transmitted to State requesting section 401 certification: August 16, 1991.

Notice of Draft Permits in **Federal Register**: August 16, 1991.

Comment Period Closed: October 15, 1991.

Notice of Final Permit Expected in **Federal Register**: 12/91

VII. Economic Impact

EPA has prepared an Information Collection Request (ICR) for the purpose of estimating the information collection burden imposed on Federal, State and local governments and industry by proposed revisions to requirements to submit annual monitoring reports, minimum notice of intent (NOI) requirements for NPDES general permits, and for States to submit State Storm Water Permitting Plans. (A summary of the costs of compliance with the general permit notice herein is provided in the fact sheet presented earlier in today's notice).

The ICR evaluates five options for modifying the existing regulatory requirement that NPDES permits for storm water discharges associated with industrial activity must, at a minimum, require dischargers to report monitoring data annually. All options considered would lower the burdens on the Federal government, State governments and industry. The burden savings to the Federal and State governments range from a savings of 6,743 hours per year ($105,724 per year) for Option 4 to a savings of 14,848 hours per year ($232,817 per year) for Options 2, 3 and 5. Option 3 is currently favored by EPA. The burden savings to industry range from a savings of 66,300 hours per year (2.2 million per year) for Option 2 to a savings of 795,600 hours per year ($26 million per year) for Option 5. The option currently favored by EPA (Option 3) would result in a burden savings to industry of 231,300 hours/year ($7.5 million/year).

EPA believes that the regulatory modifications to the notice of intent requirements for general permits will codify existing practices. Therefore, this regulatory change, while ensuring national consistency, will not increase the burdens to the Federal government, State governments or industry.

The reporting burden for State Storm Water Permitting Plans is estimated to range from 340 hours ($5,350) per response to 1,500 hours ($23,500) per response. The national total burden for the 57 States (including 7 Territories), averaged over a three year period, is 14,794 hours per year or $231,965 per year. The Agency also estimates that the costs to the Federal Government 20 hours ($315) to review each State Storm Water Permitting Plan. The total burden of reviewing these plans, averaged over a three year period is 380 hours per year or $5,958 per year.

VIII. Executive Order 12291

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

IX. Paperwork Reduction Act

The information collection requirements associated with the proposed regulatory changes have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et. seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 0229.05) and a copy may be obtained from: Florice Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–2234); Washington, DC or by calling (202) 382–2740.

The ICR document estimates the information collection burdens imposed on the Federal Government, State governments and industry associated with the proposed revisions to requirements to: submit annual monitoring reports for storm water discharges under 40 CFR 122.44; establish minimum notice of intent requirements for general permits under 40 CFR 122.28. In addition, the ICR estimates the information collection burdens imposed on the Federal government and the States to submit State Storm Water permitting plans and the burden imposed on the Federal government to review these plans.

The ICR estimates that the reporting burdens on industry for collecting information associated with discharge monitoring reports (DMRs) typically ranges from 6 hours to 10.5 hours per response. The ICR estimates that the EPA or NPDES States will require 0.2 hours to review each DMR submitted.

The ICR estimates that the reporting burdens on industry for collecting information associated with a notice of intent (NOI) is one hour per response. The ICR estimates that the EPA or NPDES States will require 0.25 hours to review each NOI submitted.

The reporting burden for State Storm Water Management Programs is estimated to range from 340 hours per response for small States to 1,500 hours per response for large States. Estimates of reporting burden include reviewing guidance, planning activities, analyzing existing data, analyzing other data, developing the strategy, public review and comment and reviewing the strategy. The Agency also estimates the Federal Government will require 20 hours to review each State Storm Water Permitting Strategy.

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 St., SW., Washington, DC 20490; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to OMB or public comments on the information collection requirements contained in this proposal.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 USC 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed amendments to the regulations would generally make the NPDES regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments, if promulgated, and that these general permits, when issued, will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Environmental protection, Reporting and record keeping requirements. Water pollution control.

Dated: July 31, 1991.

William K. Reilly,

Administrator.

For the reasons stated in the preamble, part 122 of title 40 of the Code of Regulations is proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 is revised to read as follows:

Authority: 33 U.S.C. 1251 et seq.

Subpart C—Permit Conditions

2. Section 122.28 is amended by redesignating current paragraph (b)(2) as (b)(3) and by adding a new paragraph (b)(2) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Authorization to discharge, or to engage in sludge use and disposal practices.* (i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice, under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v) of this section, contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (b)(2)(vi) of this section. A complete and timely notice of intent to be covered constitutes a permit application for purposes of §§ 122.6, 122.21 and 122.26.

(ii) The notice of intent shall include, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facilities or discharges, the receiving stream(s), and such other information as is reasonably necessary to ascertain whether the discharger (or treatment works treating domestic sewage) should be included under the terms of the general permit as specified in the final general permit. General permits for storm water discharges associated with industrial activity from inactive mining or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements.

(iii) Unless the general permit specifies different time periods, the notice of intent to be covered (including notices of intent to be covered for new discharges) shall be submitted within 60 days before the date of intended coverage.

(iv) After a discharger (or treatment works treating domestic sewage) has filed its notice of intent to be covered, the discharger (or treatment works treating domestic sewage) shall be deemed covered on the date specified in the permit and may discharge or, in the case of a sludge disposal permit, engage in a sludge use or disposal practice under the general permit, unless the Director notifies the discharger (or treatment works treating domestic sewage) that it is not covered by the general permit and instead must obtain coverage under an individual permit or an alternative general permit. The Director may specify in the general permit that this paragraph shall not apply and that dischargers (or treatment works treating domestic sewage) submitting a notice of intent to be covered by the permit will not be authorized to discharge or, in the case of a sludge disposal permit, to engage in a sludge use or disposal practice until notified of their inclusion under the permit by the Director.

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, contaminated runoff from mining operations or oil and gas operations and other storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: The type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(vi) The Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph (b)(3)(iii) of this section.

* * * * *

3. Section 122.44 is amended by revising paragraph (i)(2) and adding paragraphs (i)(3) through (i)(6) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(i) * * *

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to monitor storm water discharges associated with industrial activity (other than those addressed in paragraphs (i)(3) and (i)(5) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, however, at a minimum, a permit for such a discharge must require annual monitoring of representative storm water discharges associated with industrial activity. Where dischargers are not required to report monitoring results to the Director, permits must require that the results of monitoring be retained for at least the term of the permit and be made available to the Director upon request. In such cases,

results of any monitoring conducted during the term of the permit shall be submitted as part of a permit application or notice of intent requirement prior to permit reissuance.

(5) Requirements to monitor contaminated storm water discharges associated with industrial activity from oil and gas exploration or production operations or from inactive mining operations where a past or present mine operator cannot be identified shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. However, at a minimum, a permit for such a discharge must require either:

(i) Annual monitoring of representative contaminated storm water discharges associated with industrial activity from oil and gas exploration or production operations or inactive mines where a past or present mine operator cannot be identified. Where dischargers are not required to report monitoring results to the Director, permits must require that the results of monitoring be retained for at least the term of the permit and be made available to the Director upon request. In such cases, results of any monitoring conducted during the term of the permit shall be submitted as part of a permit application or notice of intent requirement prior to permit reissuance; or

(ii) the facility owner or operator to develop and implement a storm water pollution prevention plan or a storm water best management plan which includes a Registered Professional Engineer's certification that the plan had been prepared and is being implemented in accordance with good engineering practices, with such certification being obtained at a minimum frequency of at least once every three years. Such certification shall in no way relieve the owner or operator of a storm water discharge associated with industrial activity of their duty to prepare and fully implement such plan in accordance with the requirements of their permit. Where dischargers are not required to report results of such certification to the Director, permits must require that the certification be retained for at least the term of the permit and be made available to the Director upon request. In such cases, an indication of whether the certification was received should be submitted as part of a permit application or notice of intent requirement prior to permit reissuance.

(6) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under paragraphs 122.41(l)(1), (4), (5), and (6) at least annually.

* * * * *

Appendix—Draft General Permits

Note: The following Appendix will not appear in the Code of Federal Regulations.

Draft General Permits

Table of Contents.

Part I. Coverage Under this Permit

A. *Permit Area.* The permit covers all areas of the State of _____.[1]

B. *Eligibility.*

1. Except for storm water discharges identified under paragraph I.B.2, this permit may cover all new and existing discharges composed entirely of storm water discharges associated with industrial activity.

2. *Limitations on Coverage.* The following storm water discharges associated with industrial activity are not covered by this permit:

a. Storm water discharges associated with industrial activity from facilities with existing effluent guideline limitations for storm water; [2]

b. Storm water discharges associated with industrial activity from facilities with an existing NPDES individual or general permit for the storm water discharges or which are issued a permit in accordance with paragraph I.C of this permit;

c. Storm water discharges associated with industrial activity that the Director has shown to be or may reasonably be expected to be contributing to a violation of a water quality standard; and

d. Storm water discharges associated with industrial activity from inactive mining or inactive oil and gas operations occurring on Federal lands where an operator cannot be identified.

C. *Requiring an individual permit or an alternative general permit.*

1. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES

[1] Note that the Agency is noticing distinct draft general permits in Alaska, Arizona, Florida, Idaho, Louisiana, Massachusetts, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, Texas, District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; on Indian lands in AL, CA, GA, KY, MI, MN, MS, MT, NC, ND, NY, NV, SC, TN, UT, WI, and WY; from Federal facilities and Indian lands in CO and WA; and from Federal facilities in Delaware.

[2] For the purpose of this permit, the following effluent guideline limitations address storm water: cement manufacturing (40 CFR part 411); feedlots (40 CFR part 412); fertilizer manufacturing (40 CFR part 418); petroleum refining (40 CFR part 419); phosphate manufacturing (40 CFR part 422); steam electric (40 CFR part 423); coal mining (40 CFR part 434); mineral mining and processing (40 CFR part 436); ore mining and dressing (40 CFR part 440); and asphalt emulsion (40 CFR part 443).

permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. The Director may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit or participating in an applicable group application. The owner or operator shall submit an individual application (Form 1 and Form 2F) with reasons supporting the request, or participate in a group application in accordance with the requirements of 40 CFR 122.26, to the Director. The request shall be granted by issuing of any individual permit or an alternative general permit if the reasons cited by the owner or operator are adequate to support the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

D. *Authorization.* Owners or operators of storm water discharges associated with industrial activity must submit a Notice of Intent (NOI) in accordance with the requirements of part II of this permit to be authorized to discharge under this general permit. Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit. Upon review of the NOI, the Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit.

Part II. Notice of Intent Requirements

A. *Deadlines for notification.* Individuals who intend to obtain coverage for an existing storm water discharge associated with industrial activity under this general permit shall submit a Notice of Intent (NOI) in accordance with the requirements of this part within 180 days of the date of issuance of this general permit or at least 30 days prior to the commencement of construction of a new storm water discharge associated with industrial activity.

B. *Failure to notify.* Owners (or operators when owners do not operate the facility), who fail to notify the Director of their intent to be covered, and discharge pollutants to waters of the United States without an NPDES permit, are in violation of the Clean Water Act.

C. *Contents of notice of intent.* The Notice of Intent shall include the following information:

1. Name, mailing address, and location of the facility for which the notification is submitted;

2. Up to four 4-digit SIC codes that best represent the principal products or activities provided by the facility;

3. The operator's name, address, telephone number, ownership status and status as Federal, State, private, public or other entity;

4. The latitude and longitude of the approximate center of the facility to the nearest 15 seconds, or the nearest quarter section (if the section, township and range is provided) that the facility is located in;

5. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s); and

6. Existing quantitative data describing the concentration of pollutants in storm water discharges.

7. *Additional requirements for construction activities.* The Notice of Intent for a storm water discharges associated with industrial activity from a construction site shall, in addition to the information required above, include a brief description of the project, estimated timetable for major activities, estimates of the number of acres of the site on which soil will be disturbed, and a certification that the storm water pollution prevention plan for the facility provides compliance with approved State or local sediment and erosion plans or storm water management plans in accordance with part III.C.5.b.(3) of this permit.

D. *Where to Submit.* Facilities which discharge storm water associated with industrial activity must submit signed copies of the Notice of Intent to the Director of the NPDES program at the following address:

Address of Central Receiving Office to be determined later

E. *Additional Notification.*

1. Except for facilities subject to part II.E.2, facilities which discharge storm water associated with industrial activity to a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must, in addition to filing copies of the Notice of Intent in accordance with paragraph II.D, shall submit signed copies of the Notice of Intent to the operator of the municipal separate storm sewer to which they discharge.

2. Facilities which discharge storm water associated with industrial activity from construction activities and are operating under approved State or local sediment and erosion or storm water management plans, in addition to filing copies of the Notice of Intent in accordance with paragraph II.D, shall submit signed copies of the Notice of Intent to the State or local agency approving such plans.

F. *Renotification.* Upon reissuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

Part III. Special conditions, management practices, and other non-numeric limitations

A. *Prohibition on non-storm water discharges.* All discharges covered by this permit shall be composed entirely of storm water. Discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

B. *Releases in excess of Reportable Quantities.* This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. The discharge of hazardous substances in the storm water discharge(s) from a facility shall be minimized in accordance with the applicable storm water pollution

prevention plan for the facility, and in no case, during any 24-hour period, shall the discharge(s) contain a hazardous substance equal to or in excess of reporting quantities.

C. *Storm water pollution prevention plans.* A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.

1. The plan shall be signed in accordance with part VI.G, and be retained on site in accordance with part V.A of this permit. It shall be completed within 180 days of the effective date of this permit (and updated as appropriate), or, in the case of new facilities, prior to submitting a NOI to be covered under this permit. Plans shall provide for compliance with the terms of the plan within 365 days of the effective date of this permit, or, in the case of new facilities, prior to submitting a NOI to be covered under this permit. The owner or operator of a facility with storm water discharges covered by this permit shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

2. If the plan is reviewed by the Director, or authorized representative, the Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. After such notification from the Director, or authorized representative, the permittee shall make changes to the plan and shall submit to the Director a written certification that the requested changes have been made. Unless otherwise provided by the Director, the permittee shall have 30 days after such notification to make the changes necessary.

3. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the storm water pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as part III.C.2 above.

4. Except for storm water discharges associated with industrial activity from construction activities, which are subject to the requirements of paragraph III.C.5, the plan shall include, at a minimum, the following items:

a. *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may be reasonably expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include:

(1). A site map indicating, an outline of the drainage area of each storm water outfall; each existing structural control measure to reduce pollutants in storm water runoff; and surface water bodies;

(2). A topographic map (or other map if a topographic map is unavailable), extending one-quarter of a mile beyond the property boundaries of the facility. The requirements of this paragraph may be included in the site map required under part III.C.4.a.(1) if appropriate.

(3). A narrative description of significant materials that have been treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method of on-site storage or disposal; materials management practices employed to minimize contact of these materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; materials loading and access areas; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives;

(4). A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at the facility after the effective date of this permit.

(5). For each area of the plant that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an estimate of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity; and

(6). A summary of existing sampling data describing pollutants in storm water discharges.

b. *Storm Water Management Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(1). *Pollution Prevention Committee.* The description of the storm water Pollution Prevention Committee shall identify specific individuals within the plant organization who are responsible for developing the storm water pollution prevention plan and assisting the plant manager in its implementation, maintenance, and revision. The activities and responsibilities of the committee should address all aspects of the facility's storm water pollution prevention plan.

(2). *Risk Identification and Assessment/Material Inventory.* The storm water pollution prevention plan shall assess the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity. The plan shall include an inventory of the types of materials handled. Facilities subject to SARA title III, section 313 shall include in the plan a description of releases to land or water of SARA Title III water priority chemicals that have occurred at any time after the date of three years prior to the issuance of this permit. Each of the following shall be evaluated for the reasonable potential for contributing pollutants to runoff: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. Factors to consider include the toxicity of chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants.

(3). *Preventive Maintenance.* A preventive maintenance program shall involve inspection and maintenance of

storm water management devices (cleaning oil/water separators, catch basins) as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

(4). *Good Housekeeping.* Good housekeeping requires the maintenance of a clean, orderly facility.

(5). *Spill Prevention and Response Procedures.* Areas where potential spills can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures and storage requirements in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(6). *Storm Water Management.* The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the source of pollutants). Based on an assessment of the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity (see Part III.C.4.b.(2) of this permit), the plan shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained.

(7). *Sediment and Erosion Prevention.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

(8). *Employee Training.* Employee training programs shall inform personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(9). *Visual Inspections.* Qualified plant personnel shall be identified to inspect designated equipment and plant areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or followup procedure shall be used to ensure that appropriate response has been taken in response to the inspection. Records of inspections shall be maintained.

(10). *Recordkeeping and Internal Reporting Procedures.* Incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the records. Inspections and maintenance activities shall be documented and recorded.

(11). *Non-Storm Discharges.* A certification that the discharge has been tested for the presence of non-storm water discharges. The certification shall include a description of the results of any test for the presence of non-storm water discharges, the method used, the date of any testing, and the on-site drainage points that were directly observed during the test. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible. A discharge that is unable to provide the certification required by this paragraph must notify in accordance with part V.A of this permit.

c. *Site inspection.* A site inspection shall be conducted annually by appropriate personnel named in the storm water pollution prevention plan to verify that the description of potential pollutant sources required under part III.C.4.a is accurate, the drainage map has been updated or otherwise modified to reflect current conditions; and the controls to reduce pollutants in storm water discharges associated with industrial activity identified in the storm water pollution prevention plan are being implemented and are adequate. Records documenting significant observation made during the site inspection shall be retained as part of the storm water pollution prevention plan for three years.

d. *Special requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.* Facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

e. *Consistency with other plans.* Storm water management programs may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit and may incorporate any part of such plans into the storm water pollution prevention plan by reference.

f. *Special requirements for storm water discharges associated with industrial activity from facilities subject to SARA title III, section 313 requirements.* (Option A would include part III.C.4.f. as shown below. See section 7.B of the Fact Sheet for a discussion of Option A and Option B.) Storm water pollution prevention plans for facilities subject to reporting requirements under SARA title III, section 313 for chemicals which are classified as ('Section 313 water priority chemicals') in accordance with the definition in Part VII of this permit are required to include, in addition to the information listed above, a discussion of the facility's conformance with the appropriate guidelines listed:

(1). In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(a) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(b) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water, and wind blowing.

(2) If the installation of structures or equipment listed in parts III.C.4.f.(3).(a).(ii), or III.C.4.f.(3).(c) of this permit is not economically achievable at a given facility, the facility operator shall develop and implement a spill contingency and integrity testing plan which provides a description of measures that ensure spills or other releases of toxic amounts of Section 313 water priority chemicals do not occur as an alternative to the requirements of parts III.C.4.f.(3).(a).(ii), or III.C.4.f.(3).(c) of this permit. A spill contingency and integrity plan developed under this paragraph shall comply with the minimum requirements listed in parts III.C.4.f.(2). (a) through (d).

(a) The plan shall include a detailed description which demonstrates that the requirements of Parts III.C.4.f.(3).(a).(ii) and III.C.4.f.(3).(c) of this permit are not economically achievable;

(b) A spill contingency plan must include, at a minimum; a description of response plans, personnel needs, and methods of mechanical containment; steps to be taken for removal of spilled Section 313 water priority chemicals;

access to and availability of sorbents and other equipment; and such other information as required by the Director;

(c) The testing component of the alternative plan must provide for conducting integrity testing of storage tanks at least once every five years, and conducting integrity and leak testing of values and piping a minimum every year; and

(d) A written and actual commitment of manpower, equipment and materials required to comply with the provisions of Part III.C.4.f.(2). (b) and (c) of this permit and to expeditiously control and remove quantity of Section 313 water priority chemicals that may result in a toxic discharge.

(3) In addition to the minimum standards listed under Part III.C.4.f.(1) of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable State rules, regulations and guidelines:

(a) *Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.*

(i) No tank or container shall be used for the storage of a Section 3l3 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(ii) Secondary containment, sufficient to contain the capacity of the largest single container or tank in a drainage system where section 313 water priority chemicals are stored shall be provided. If the secondary containment area and its upstream drainage system are subject to precipitation, an allowance for drainage from a 25-year, 24-hour precipitation event shall be provided over and above the volume necessary to contain the largest single tank or container. Secondary containment systems shall be sufficiently impervious to contain spilled section 313 water priority chemicals until they can be removed or treated. The plant treatment system may be used to provide secondary containment, provided it has sufficient excess holding capacity always available to hold the contents of the largest container in the drainage area plus an allowance for drainage from a 25-year, 24-hour precipitation event.

(b) *Material storage areas for section 313 water priority chemicals other than liquids.* Material storage areas for section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind blowing shall incorporate drainage or other control features which will minimize the discharge of section 313 water priority chemicals. Drainage control shall minimize storm water contact with section 313 water priority chemicals.

(c) *Truck and rail car loading and unloading areas for liquid section 313 water priority chemicals* shall contain sufficient secondary containment or treatment capacity to hold or treat the largest tank truck or rail car or the largest compartment of a tank truck or rail car if the tanks are compartmented, which is loaded or unloaded at the facility. If secondary containment is provided in the treatment system, it must be designed so that adequate hydraulic capacity always exists to contain a spill of the largest container from the loading and unloading areas, including an allowance for drainage from a 25-year, 24-hour precipitation event.

(d) *In plant areas where section 313 water priority chemicals are transferred, processed or otherwise handled,* piping, processing equipment and materials handling equipment shall be designed and operated so as to prevent discharges of section 313 chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall be designed as described in paragraphs (a), (b) and (c) of this section. Additional protection such as covers or guards to prevent wind blowing, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate.

(e) *Discharges from areas covered by paragraphs (a), (b), (c) or (d).*

(i) Drainage from areas covered by paragraphs (a), (b), (c) or (d) of this part shall be restrained by valves or other positive means to prevent a spill or other excessive leakage of section 313 water priority chemicals into the drainage system. Containment areas may be emptied by pumps or ejectors; however, these shall be manually activated.

(ii) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas shall, as far as is practical, be of manual, open-and-closed design.

(iii) If plant drainage is not engineered as above, the final discharge of all in-plant storm sewers should be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of section 313 water priority chemicals, return the spilled material to the facility.

(iv) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

(f) *Plant site runoff other than from areas covered by (a), (b), (c) or (d).* Other areas of the facility (those not addressed in paragraphs (a), (b), (c) or (d)), from which runoff which may contain section 313 water priority chemicals or spills of section 313 water priority chemicals could cause a discharge shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(g) *Preventive maintenance and housekeeping.* All areas of the facility shall be inspected at specific intervals for leaks or conditions that could lead to discharges of section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, plant piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage area shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of section 313 water priority chemicals to the drainage system, corrective action shall be immediately taken or the unit or process shut down until corrective action can be taken. When a leak or noncontainment of a section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with Federal, State, and local requirements and as described in the plan.

(h) *Facility security.* Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(i) *Training.* Facility employees and contractor personnel using the facility shall be trained in and informed of

preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of section 313 water priority chemicals can be isolated and contained before a discharge of a section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of plant operation and design features in order to prevent discharges or spills from occurring.

(j) *Engineering Certification.* No storm water pollution prevention plan for facilities subject to SARA title III, section 313 requirements for chemicals which are classified as "Section 313 water priority chemicals" shall be effective to satisfy the requirements of part III.C.4.g of this permit unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. A Registered Professional Engineer shall recertify the plan every three years thereafter. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

(Option B—Under option B, facilities subject to SARA title III, section 313 would not be subject to the requirements of part III.C.4.f. Such facilities would remain subject to other applicable requirements of parts III (baseline plan requirements) and IV (effluent limitations). In addition, under Option B, the monitoring frequencies for such facilities could be raised from biannually (2 times per year) (see part V.B.1 of this permit) to monitoring of discharges at a higher frequency (e.g. quarterly).)

g. *Salt storage.* Storage piles of salt used for deicing or other commercial or industrial purposes shall be enclosed or covered to prevent exposure to precipitation.

5. *Alternative requirements for construction activities.* Operations that discharge storm water associated with industrial activity from construction activities are not subject to the requirements of part III.C.4 of this permit, but are instead subject to the following requirements. The storm water pollution prevention plan shall include the following items:

a. *Site description.* Each plan shall provide a description of the following:

(1). A description of the nature of the construction activity;

(2). Estimates of the total area of the site and the area of the site that is expected to undergo excavation or grading;

(3). An estimate of the runoff coefficient of the site and existing data describing the soil or the quality of any discharge from the site;

(4). A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, the location of major control structures identified in the plan, and surface waters; and

(5). The name of the receiving water(s) and the ultimate receiving water(s).

b. *Controls.* Each construction operation covered by this permit shall develop a description of controls appropriate for the facility, and implement such controls. The description of controls shall address the following minimum components:

(1). *Erosion and sediment controls.*

(a). *Vegetotive practices.* A description of vegetative practices designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grading or construction. Such practices may include: temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer strips, and protection of trees. The operator shall initiate appropriate vegetative practices on all disturbed areas within 7 calendar days of the last activity at that area.

(b). *Structural practices.* A description of structural practices to the degree attainable divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site. Such practices may include straw bale dikes, silt fences, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, pipe slope drain, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, and temporary sediment basins.

(i) For sites with more than 10 disturbed acres at one time which are served by a common drainage location, a detention basin providing storage or equivalent controls for runoff from disturbed areas from a 10 year, 24-hour storm, shall be provided where attainable. For drainage locations with more than 10 disturbed acres at one time which are served by a common drainage location where a detention basin providing storage or equivalent controls for runoff from disturbed areas from a 10 year, 24-hour storm is not attainable, silt fences, straw bale dikes, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(ii) For drainage locations serving 10 or less acres, silt fences, straw bale dikes, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area or a detention basin providing storage for runoff from disturbed areas from a 10 year, 24-hour storm shall be provided.

(2). *Storm water management.* A description of measures to control pollutants in storm water discharges that will occur after construction operations have been completed. Such practices may include: infiltration of runoff onsite; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures. Where such controls are needed to prevent or minimize erosion, velocity dissipation devices shall be placed at the outfall of all detention or retention structures and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Justification shall be provided by the permittee for rejecting each practice based on site conditions.

(3). *Other controls.*

(a). *Waste disposal.* No solid waste, including building materials, shall be discharged.

(b) Off-site vehicle tracking of sediments shall be minimized.

(c). The plan shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.

(4). *Approved state or local plans.* Facilities which discharge storm water associated with industrial activity from construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or storm water management plans approved by State or local officials. Applicable requirements specified in sediment and erosion plans or storm water management plans approved by State or local officials are, upon submittal of an NOI to be

authorized to discharge under this permit, incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit. Operators of facilities seeking alternative permit requirements shall submit an individual permit application in accordance with part I.C.2 of the permit, along with a description of why requirements in approved State or local plans should not be applicable as a condition of an NPDES permit.

(5). *Maintenance.* A description of procedures to maintain in good and effective operating condition vegetation, erosion and sediment control measures and other protective measures identified in the site plan. Procedures in a plan shall provide that all erosion controls on the site are inspected at least once every seven calendar days.

(6). All storm water pollution prevention plans required under this permit are considered reports that shall be available to the public under section 308(b) of the CWA. The owner or operator of a facility with storm water discharges covered by this permit shall make plans available to members of the public upon request by the public. However, the permittee may claim any portion of a storm water pollution plan as confidential in accordance with 40 CFR part 2.

(7). No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

Part IV. Numeric Effluent Limitations

A. *SARA title III, section 313 Facilities.* The effluent (100%) composed in part or in whole of storm water associated with industrial activity from facilities subject to reporting requirements pursuant to SARA title III, section 313 for chemicals which are classified as "section 313 water priority chemicals" that comes into contact with any equipment, tank, container or other vessel used for storage of a section 313 chemical, or located at a truck or rail car loading or unloading area, shall not be lethal to 20% or more of the more sensitive of either appropriate fish or invertebrate test organisms (96 hour static replacement toxicity tests (96-hr. LC20 > 100% effluent) for fish test organisms and 48 hour static replacement toxicity tests (48-hr. LC20 > 100% effluent) for invertebrate test organisms). Failure to demonstrate compliance with the acute whole effluent toxicity requirement after the compliance date of three years after the date of issuance of this permit will constitute a violation of this permit (see part V.D of this permit). Any untreated overflow from facilities designed, constructed and operated to treat the volume of runoff from areas identified above which is associated with a 25 year, 24 hour rainfall event shall not be subject to the limitations of this part.

B. *Coal pile runoff.* Subject to the provisions of part IV.D, any composed in part or in whole of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/l total suspended solids. The pH of such discharges shall be within the range of 6.0–9.0. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 25 year, 24 hour rainfall event shall not be subject to the limitations of this part.

Part V. Monitoring and Reporting Requirements

A. Failure to Certify. Any facility that is unable to provide the certification required under paragraph III.C.4.b.(11) (testing for illicit connections), must notify the Director within 180 days of the effective date of this permit. Such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible.

B. Monitoring Requirements:

1. Section 313 of SARA title III facilities. During the period beginning on the effective date and lasting through the expiration date of this permit, facilities subject to requirements to report releases into the environment under section 313 of SARA title III for chemicals which are classified as "section 313 water priority chemicals" are subject to the following monitoring requirements for storm water discharges associated with industrial activity that are discharged from any containment area:

a. Parameters. The parameters to be measured include: Oil and Grease (mg/L); Five Day Biochemical Oxygen Demand (BOD5) (mg/L); Chemical Oxygen Demand (COD) (mg/L); Total Suspended Solids (mg/L); Total Kjeldahl Nitrogen (TKN) (mg/L); Total Phosphorus (mg/L); pH; acute whole effluent toxicity; and any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right to Know Act of 1986. In addition: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled shall be provided;

b. Frequency of Monitoring. Sampling shall be conducted at least semi-annually (2 times per year) except as provided by paragraph V.B.10, V.B.11 or V.C.1;

2. Primary metal industries. During the period beginning on the effective date and lasting through the expiration date of this permit, facilities classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) are subject to the following monitoring requirements for storm water discharges associated with industrial activity that are discharged from the facility:

a. Parameters. The parameters to be measured include: oil and grease (mg/L); five day biochemical oxygen demand (BOD5) (mg/L); chemical oxygen demand (COD) (mg/L); total suspended solids (mg/L); total Kjeldahl nitrogen (TKN) (mg/L); nitrate plus nitrite nitrogen (mg/L); total phosphorus (mg/L); pH; acute whole effluent toxicity; total lead (mg/L); total cadmium (mg/L); total copper (mg/L); total arsenic (mg/L); and total chromium (mg/L). In addition: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided;

b. Frequency of monitoring. Sampling shall be conducted at least semi-annually (2 times per year) except as provided by paragraph V.B.10, V.B.11 or V.C.1;

3. Land disposal units. During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from any active or inactive landfill, land application site, or open dump that received any industrial wastes are subject to the following monitoring requirements:

a. Parameters. The parameters to be measured include: Ammonia (mg/L),

Bicarbonate (mg/L), Calcium (mg/L), Chloride (mg/L), Total Iron (mg/L), Magnesium (total) (mg/L), Magnesium (dissolved) (mg/L), nitrate plus nitrite nitrogen (mg/L), Potassium (mg/L), Sodium (mg/L), Sulfate (mg/L), Chemical Oxygen Demand (COD) (mg/L), Total Dissolved Solids (TDS) (mg/L), Total Organic Carbon (TOC) (mg/L), oil and grease (mg/L), pH, Total Arsenic (mg/L), Total Barium (mg/L), Total Cadmium (mg/L), Total Chromium (mg/L), Total Cyanide (mg/L), Total Lead (mg/L), Total Mercury (mg/L), Total Selenium (mg/L), Total Silver (mg/L), acute whole effluent toxicity. In addition: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled shall be provided;

b. *Frequency of monitoring.* Sampling shall be conducted at least semi-annually (2 times per year) except as provided by paragraph V.B.10, V.B.11 or V.C.1;

4. *Wood treatment (chlorophenolic/creosote formulations).* During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities that currently use chlorophenolic formulations and/or creosote formulations are subject to the following monitoring requirements:

a. *Parameters.* The parameters to be measured include: oil and grease (mg/L), pH, BOD5 (mg/L), COD (mg/L), TSS (mg/L), total phosphorus (mg/L), total Kjeldahl nitrogen (mg/L), nitrate plus nitrite nitrogen (mg/L), acute whole effluent toxicity, and pentachlorophenol (mg/L). In addition: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided;

b. *Frequency of monitoring.* Sampling shall be conducted at least semi-annually (2 times per year) except as provided by paragraph V.B.10, V.B.11 or V.C.1;

5. *Wood treatment (arsenic or chromium preservatives).* During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from areas that are used for wood treatment or storage of treated wood at any wood preserving facilities that currently use inorganic preservatives containing arsenic or chromium are subject to the following monitoring requirements:

a. *Parameters.* The parameters to be measured include: oil and grease (mg/L), pH, BOD5 (mg/L), COD (mg/L), TSS (mg/L), total phosphorus (mg/L), total Kjeldahl nitrogen (mg/L), nitrate plus nitrite nitrogen (mg/L), total arsenic (mg/L), total chromium (mg/L), and total copper (mg/L). In addition: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided;

b. *Frequency of monitoring.* Sampling shall be conducted at least semi-annually (2 times per year) except as provided by paragraph V.B.10 or V.B.11;

6. *Coal pile runoff.* During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from coal pile runoff are subject to the following monitoring requirements:

a. *Parameters.* The parameters to be measured include: oil and grease (mg/L), pH, TSS (mg/L), copper, nickel and zinc. In addition: the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided;

b. *Frequency of monitoring.* Sampling shall be conducted at least semi-annually (2 times per year) except as provided by paragraph V.B.10 or V.B.11;

7. *Oil and gas exploration or production operations.* During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from oil and gas exploration or production operations are, except as provided in part V.B.7.c, subject to the following monitoring requirements:

a. *Parameters.* The parameters to be measured include: oil and grease (mg/L), pH, BOD5 (mg/L), COD (mg/L), TSS (mg/L), total phosphorus (mg/L), total Kjeldahl nitrogen (mg/L), nitrate plus nitrite nitrogen (mg/L), and any pollutant limited in an effluent guideline to which the facility is subject. In addition: The date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided;

b. *Frequency of monitoring.* Sampling shall be conducted at least annually (1 time per year) except as provided by paragraph V.B.10 or V.B.11;

c. *Engineering certification.* In lieu of the monitoring requirements specified in parts V.B.7.a and b, a facility may have a Registered Professional Engineer certify that a storm water pollution plan has been prepared and is being implemented in accordance with the requirements of part III.C. A Registered Professional Engineer shall recertify the plan every three years. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. *Other facilities.* During the period beginning on the effective date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity which are covered by this permit, but are not subject to sampling requirements under parts V.B.1 through V.B.7 are subject to the following monitoring requirements:

a. *Parameters.* The parameters to be measured include: oil and grease (mg/L),

pH, BOD5 (mg/L), COD (mg/L), TSS (mg/L), total phosphorus (mg/L), total Kjeldahl nitrogen (mg/L), nitrate plus nitrite nitrogen (mg/L), and any pollutant limited in an effluent guideline to which the facility is subject. In addition: The date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided;

b. *Frequency of monitoring.* Sampling shall be conducted at least annually (1 time per year) except as provided by paragraph V.B.10 or V.B.11.

9. *Sample type.* For discharges from holding ponds or other impoundments with a retention period greater than 24 hours (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected), a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Only grab samples must be collected and analyzed for the determination of pH, cyanide, and oil and grease.

10. *Sampling waiver.* When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

11. *Representative discharge.* When a facility has two or more outfalls that, based on a consideration of features and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided.

C. *Toxicity testing.* In accordance with Parts IV and V of this permit, permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 30 days after the commencement of a new discharge.

1. The permittee shall conduct an acute 48 hour static replacement toxicity test on an appropriate invertebrate test species (EPA/600/4–85/013, Table 1) and an acute 96 hour static replacement toxicity test using an appropriate fish test species (EPA/600/4–85/013, Table 1). (Recommendation: A Daphnidae species, and the fathead minnow (Pimephales promelas)). All test organisms, procedures and quality assurance criteria used shall be in accordance with Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms, EPA–600/4–85/013 (Rev. March 1985). EPA has proposed to establish regulations regarding these test methods (December 4, 1989, (53 FR 50216). Tests shall be conducted semiannually. Such tests shall be conducted on a grab sample of the discharge at 100% strength (no dilution). Compliance with the acute whole effluent toxicity limit of no significant difference from the control at the 95% confidence interval will be determined using the "t-test" statistical method described in Appendix H of Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (Second Edition, EPA/600/4–89/001, March 1989 and subsequent editions). Results of all tests conducted with any species shall be reported according to EPA/600/4–85/013, Section 13, Report Preparation and Data Utilization, or its latest revision, and shall be submitted to EPA with the quarterly discharge monitoring report. The permittee's monthly Discharge Monitoring Reports (DMR's) will report "0" if there is no statistical difference between the control mortality and the effluent mortality.[3]

2. If acute whole effluent toxicity is found in storm water discharges subject to the effluent limitation of Part IV.A in any samples collected after the compliance date of two years after the date of issuance of this permit, it will constitute a violation of this permit. The permittee will then be subject to the enforcement provisions of the Clean Water Act. In the event a violation of toxicity limits results in an enforcement action, any different or more stringent monitoring requirements imposed in that enforcement action shall apply in lieu of the requirements of this permit condition for whatever period of time is specified by EPA in the enforcement action.

3. If acute whole effluent toxicity is detected in storm water discharges subject to the effluent limitation of part IV.A before the compliance date of two years after the date of issuance of this permit, and it is determined by the permit issuing authority that a toxicity reduction evaluation (TRE) is necessary, the permittee shall be so notified and shall initiate a TRE immediately thereafter. The purpose of the TRE will be to establish the cause of the toxicity,

[3] In order to provide consistency with other permits written in Region VIII, the permits for discharges in CO, WY, MT, ND and UT would substitute the following language for Part V.C.1: "The permittee shall conduct an acute 48-hour static replacement toxicity test using *Ceriodaphnia* sp. and an acute 96-hour static replacement toxicity test using fathead minnows. The replacement static toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms", EPA–600/4–85–013 (Rev. March 1985) and the "Region VIII EPA NPDES Acute Test Conditions—Static Renewal Whole Effluent Toxicity Tests". Tests shall be conducted semiannually. Such tests shall be conducted on a grab sample of the discharge at 100% strength (no dilution). After four (4) sets of tests of two (2) species, the permittee may limit subsequent testing to the most sensitive of the two (2) species, based on the results of the previous tests. Results of all tests shall be reported in a format consistent with the latest revision of the "Region VIII Guidance for Acute Whole Effluent Reporting", and shall include all chemical and physical data as specified.

locate the source(s) of the toxicity, and control or provide treatment for the toxicity priority to the compliance date of two years after the date of issuance of this permit.

D. *Noncompliance reporting:*

1. *Anticipated noncompliance.* The permittee shall give advance notice, if possible, at least ten days before the date of any planned changes in the permitted facility or activity which may result in any bypass, upset, or other noncompliance with permit requirements.

2. *Unanticipated bypass or upset.* The permittee shall submit notice of an unanticipated bypass or upset. Any information regarding the unanticipated bypass or upset shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the bypass or upset and its cause; the period of the bypass or upset, including exact dates and times, and if the bypass or upset has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass or upset.

E. *Reporting: where to submit:*

1. a. Permittees which are required to conduct sampling pursuant to parts V.B.1, V.B.2, and V.B.3 must submit monitoring results obtained during the previous 6 months on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the month following the completed reporting period. The reports are due on the 28th day of January and July. The first report may include less than the 6 months of information.

b. Permittees which are required to conduct sampling pursuant to parts V.B.4, V.B.5, and V.B.6 must submit monitoring results obtained during the previous 6 months on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the month following the completed reporting period. The reports are due on the 28th day of April and October. The first report may include less than the 6 months of information.

c. Signed copies of discharge monitoring reports required under parts V.E.1.a and V.E.1.b, and all other reports required herein, shall be submitted to the Director of the NPDES program at the following address:

Regional Office

2. Except as provided in part V.E.1 of this permit, for discharges subject to sampling requirements pursuant to parts V.B.7 and V.B.8, permittees are not required to submit monitoring results pursuant to part V.E.1. However, such permittees must retain monitoring results in accordance with part V.F.

3. Additional Notification. Facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) in addition to filing copies of discharge monitoring reports in accordance with paragraph V.E.1, must submit signed copies to the operator of the municipal separate storm sewer system of monitoring results obtained during the previous 6 months on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the month following the completed reporting period. For permittees which are required to conduct sampling pursuant to parts V.B.1, V.B.2, and V.B.3 the reports are due on the 28th day of January and July. For permittees which are required to conduct sampling pursuant to parts V.B.4, V.B.5, and V.B.6 the reports are due on the 28th day of April and October. The first report may include less than the 6 months of information.

F. Retention of records:

1. The permittee shall retain records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date of the measurement, report, or application. This period may be explicitly modified by alternative provisions of this permit (see Part V.F.2 of this permit) or extended by request of the Director at any time.

2. For discharges subject to sampling requirements pursuant to part V.B., in addition to the requirements of part V.F.1, permittees are required to retain for a three-year period from the data of sample collection or for the term of this permit, which ever is greater, records of all monitoring information collected during the term of this permit. Permittees must submit such monitoring results to the Director upon the request of the Director, and submit a summary of such result as part of renotification requirements in accordance with part II.F.

Part VI. Standard Permit Conditions

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

1. Toxic pollutants. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Penalties for violations of permit conditions. Section 309 of the CWA provides significant penalties for any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any such sections in a permit issued under section 402. Any person who violates any permit condition of this permit is subject to a civil penalty not to exceed $25,000 per day of such violation, as well as any other appropriate sanction provided by section 309 of the CWA.

B. Continuation of the expired general permit. An expired general permit continues in force and effect until a new general permit is issued. Only those facilities authorized to discharge under the expiring general permit are covered by the continued permit.

C. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to provide information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director upon request copies of records required to be kept by this permit.

F. Other information. When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory requirements. All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or

medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed.

1. All Notices of Intent shall be signed as follows:

a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(2) The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

c. For a municipality: State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g. Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. Changes to authorization. If an authorization under paragraph IV.D.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph I.D.2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

H. *Certification.* Any person signing documents under this section shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I. *Penalties for falsification of reports.* Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

J. *Penalties for falsification of monitoring systems.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in section 309 of the CWA.

K. *Oil and hazardous substance liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA.

L. *Property rights.* The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

M. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

N. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require the operator to apply for and obtain an individual NPDES permit as stated in part I.C.

O. *State laws.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

P. *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

Q. *Monitoring and records:*

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3. *Records contents.* Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The time(s) analyses were initiated.

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument

readouts, computer disks or tapes, etc., used to determine these results.

4. Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit.

5. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

R. *Bypass of treatment facilities:*

1. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he or she shall submit prior notice, if possible, at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass. Any information regarding the unanticipated bypass shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee become aware of the circumstances. The written submission shall contain a description of the bypass and its cause; the period of the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

2. Prohibition of bypass:

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass. Unless:

(1). The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2). There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee should, in the exercise of reasonable engineering judgement, have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3). The permittee submitted notices as required under Part R.1 of this section.

b. The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed in part VIR.2.a. of this section.

S. *Upset conditions.*

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit limitations if the requirements of paragraph 2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset:

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part V; and

d. The permittee complied with any remedial measures required under III.F.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

T. *Inspection and entry.* The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

U. *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain individual permit or an alternative general permit in accordance with part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

Part VII. Definitions

Best Management Practices (*BMPs*) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility

Coal pile runoff means the rainfall runoff from or through any coal storage pile

CWA means Clean Water Act or the Federal Water Pollution Control Act.

Director means the Regional Administrator or an authorized representative.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Large and Medium municipal separate storm sewer system means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census; or

(ii) Located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see part II of this permit.)

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Section 313 water priority chemical means a chemical or chemical categories which are:

(1) Are listed at 40 CFR 372.65 pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986;

(2) Are present at or above threshold levels at a facility subject to SARA title III, section 313 reporting requirements; and

(3) That meet at least one of the following criteria:

(i) Are listed in appendix D of 40 CFR part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances);

(ii) Are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or

(iii) Are pollutants for which EPA has published acute or chronic water quality criteria.

Severe Property Damage means substantial physical damage to property damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Significant materials includes, but is not limited to: Raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in subparagraphs (i) through (x) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subparagraph (xi), the term includes only storm water discharges from all areas listed in the previous sentence (except access roads) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi)) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this paragraph);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28, 29, 30, 311, 32, 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44, and 45 which have vehicle maintenance shops equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance

(including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR part 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)-(x));

Time-weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

Waste pile means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

25-year, 24-hour precipitation event means the maximum 24-hour precipitation event with a probable reoccurrence interval of once in 25 years. This information is available in "Weather Bureau Technical Paper No. 40.", May 1961 and "NOAA Atlas 2," 1973 for the 11 Western States, and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

[FR Doc. 91–18825 Filed 8–15–91; 8:45 am]
BILLING CODE 6560–50–M

federal register

Friday
August 16, 1991

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 333

Topical Acne Drug Products for Over-the-Counter Human Use; Final Monograph; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 81N-0114]

RIN 0905-AA06

Topical Acne Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) topical acne drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC topical acne drug products that have come to the agency's attention. This final rule does not include final agency action on the OTC topical acne active ingredient benzoyl peroxide. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: August 16, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 23, 1982 (47 FR 12430), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC topical acne drug products, together with the recommendations of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products (Antimicrobial II Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by June 21, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by July 21, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC topical acne drug products was published in the Federal Register of January 15, 1985 (50 FR 2172). Interested persons were invited to file by May 15, 1985 written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 15, 1985. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC topical acne drug products (50 FR 2172), the agency advised that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the Federal Register. Therefore, on or after August 16, 1992, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC topical acne drug products, eight consumers, one drug manufacturers association, one cosmetic manufacturers association, and four drug manufacturers submitted comments. A request for oral hearing before the Commissioner was also received on one issue. Copies of the comments and the hearing request received are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

The Antimicrobial II Panel in its advance notice of proposed rulemaking (47 FR 12430 at 12475) and the agency in its tentative final monograph (50 FR 2172 at 2181) proposed monograph status for the ingredient benzoyl peroxide for OTC topical use in the treatment of acne. However, following this proposal the agency became aware of a study by Slaga, et al. (Ref. 1) that raised a safety concern regarding benzoyl peroxide as a tumor promoter in mice and a study by Kurokawa, et al. (Ref. 2) that reported benzoyl peroxide to have tumor initiation potential. Neither of these studies was discussed by the Panel or by the agency in the Federal Register publications identified above.

Subsequently, a drug manufacturers association submitted data and information in support of the safety of benzoyl peroxide (Refs. 3 through 6). FDA has evaluated these data and information and determined that the studies show that benzoyl peroxide is a skin tumor promoter in more than one strain of mice as well as in other laboratory animals tested. To date, topical studies (which have shown only tumor promotion) have been of short duration (about 52 weeks), which the agency considers insufficient to rule out the potential for carcinogenicity. Although extensive animal data and human epidemiology data are available, the agency is unable to state that benzoyl peroxide is generally recognized as safe at this time. In the Federal Register of August 7, 1991 (56 FR 37622), the agency published an amended tentative final monograph for OTC topical acne drug products in which it reclassified benzoyl peroxide from Category I (as proposed in the Federal Register of January 15, 1985) to Category III. Opportunities for public

comment and the submission of new data in response to this reclassification are discussed in that amended tentative final monograph.

This reclassificaton of benzoyl peroxide does not relate directly to the establishment of other acceptable ingredients, labeling, and other conditions for OTC topical acne drug products. Accordingly, in order to establish a final monograph for these other conditions without undue delay, at this time the agency is issuing a final monograph that addresses all other conditions. Final agency action on all aspects of the OTC topical acne drug product rulemaking except issues related to benzoyl peroxide occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC topical acne drug products.

In proceeding with this final monograph, the agency has considered all objections, the request for oral hearing, and the changes in the procedural regulations. Based on the discussion in comment 15 below, the agency considers the request for a hearing to be moot.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the Federal Register of December 16, 1972 (37 FR 26842) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

References

(1) Slaga, T. J., et al., Skin-Tumor Activity of Benzoyl Peroxide, A Widely Used Free Radical-Generating Compound, Science, 213:1023–025, 1981.

(2) Kurokawa, Y., et al., Studies on the Promoting and Complete Carcinogenic Activities of Some Oxidizing Chemicals in Skin Carcinogenesis, Cancer Letters, 24:299–304, 1984.

(3) Comment No. RPT, Docket No. 81N–0114, Dockets Management Branch.

(4) Comment No. RPT00002, Docket No. 81N–0114, Dockets Management Branch.

(5) Comment No. SUP00002, Docket No. 81N–0114, Dockets Management Branch.

(6) Comment No. SUP00003, Docket No. 81N–0114, Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments on OTC Topical Acne Drug Products

1. One comment stated its continuing position that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the Federal Register of May 11, 1972 (37 FR 9464 at 9471 to 9472); in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the Federal Register of November 12, 1973 (38 FR 31260); and in paragraph 1 of the preamble to the tentative final monograph in the present proceeding (50 FR 2172 at 2173). FDA reaffirms the conclusions stated in those documents. Court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–698 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

2. Several comments agreed with the agency's proposed rulemaking for OTC topical acne drug products. In particular, support was noted for (1) the proposed labeling in § 333.350, in which the agency consolidated the numerous claims recommended by the Panel into a few concise statements in order to improve clarity and reduce repetition; (2) the categorization of active ingredients in § 333.310, which would require each OTC acne drug product to contain one of the approved ingredients or the specific combination of sulfur and resorcinol included under permitted combinations in § 333.320; and (3) the proposed warning in § 333.350(c)(1)(ii) regarding the use of more than one topical acne medication at the same time, which the agency believed necessary in order to alert consumers using more than one acne product about the increased potential for dryness and irritation because all of the Category I acne ingredients are keratolytic and tend to dry out the skin. Another comment specifically stated its support for the agency's proposed Category I classification of the combination of 8 percent sulfur and 2 percent resorcinol. The comment pointed out that this combination has a long history of safe and effective use as an OTC topical acne drug product.

3. One comment disagreed with the Panel's decision not to classify adjunctive treatment products (i.e., wash-off medicated cleansers, soaps, and washes) in its review of topical acne drug products. The comment maintained that these adjunctive therapies are effective for their antiseborrheic and keratolytic properties in the self-treatment of acne. The comment stated that the usefulness of these cleansers has been widely accepted by dermatologists, and washing the skin with medicated acne cleansers or soap as an adjunct to other acne treatment has been highly recommended. The comment requested that these products be recognized as adjuncts to acne treatment for the purpose of "promoting drying and peeling," "alleviating oiliness," and "removing/reducing sebum."

Although the Panel discussed adjunct therapies in its review of ingredients for the treatment of acne (Ref. 1), it did not classify adjunct therapies for the treatment of acne because of the lack of specific information regarding such treatments (e.g., abrasive scrubs, cleansers, and soaps). The Panel did not consider an ingredient unless it actually treated acne, i.e., actually reduced lesion count. The Panel noted that some consumers may prefer acne products that are formulated as abrasive scrubs. For this reason, the Panel included a short discussion of abrasive scrubs (physical abradents) in its report (47 FR 12430 at 12441). The Panel did state its belief that it is unlikely that superficial epidermabrasion will remove the tightly adherent comedo. The Panel discussed a study by Mills and Kligman (Ref. 2) in which the authors concluded there was no evidence showing that abradents could effectively remove comedones.

The agency has not received any submissions of data regarding adjunct therapies in treating acne in response to either the Panel's report or the tentative final monograph for OTC topical acne drug products. The comment did not submit any data on the safety and efficacy of these therapies. Therefore, the agency has no basis upon which to grant the comment's request. Data on the safety and effectiveness of these products, from controlled clinical studies, are needed before such therapies can be considered generally recognized as safe and effective as an adjunct in the treatment of acne. In addition, the agency points out that products that contain only claims for cleansing of the skin or removing oil are considered cosmetic products and are not subject to this OTC drug monograph. For the above reasons, the agency is not including in this final monograph either adjunctive therapies or the labeling claims suggested by the comment.

References

(1) Minutes of the 49th Meeting of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products, March 21 and 22, 1980, pp. 46–56.

(2) Mills, O. H., Jr., and A. M. Kligman, Evaluation of Abrasives in Acne Therapy, *CUTIS; Cutaneous Medicine for the Practitioner*, 23:704–705, 1979.

B. Comments on OTC Topical Acne Ingredients

4. One comment contended that the agency's proposed classifications of various active drug ingredients do not establish requirements for the cosmetic uses of those ingredients. The comment gave several examples of ingredients that the Panel and agency have found lack effectiveness as active anti-acne drug ingredients, but which have other uses in cosmetic products (e.g., preservative, emulsifier, stabilizer, viscosifier, fragrance, and antioxidant) and could be used for these purposes in acne drug products. The comment requested that the agency include a statement in this final rule similar to statements that appeared in the tentative final monograph for OTC skin protectant drug products (48 FR 6820 at 6822 to 6823). These statements were that this monograph "covers only the drug use of the active ingredients listed therein," and "the concentration range, limitations, warnings, and directions established for these ingredients in the monograph do not apply to the use of the same ingredients in products intended solely as cosmetics."

As noted by the comment, the agency discussed this subject in the tentative final monograph for OTC skin protectant drug products. The same principles are applicable in this final monograph. Because this final rule covers only the drug use of the active ingredients listed herein, the concentration range, limitations, warnings, and directions established for these ingredients in the monograph do not apply to the use of the same ingredients for non-drug effects in products intended solely as cosmetics. Those products intended for both drug and cosmetic use must conform to the requirements of the final monograph, the cosmetic labeling requirements of section 602 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 362), and the provisions of 21 CFR part 701, especially 21 CFR 701.3(d) regarding label declarations where a cosmetic product is also a drug.

5. One comment objected to the agency's placement of borates (boric acid and sodium borate) in Category II in products used for the treatment of acne. The comment noted that it did not know the actual concentrations or functions of borates in the acne preparations evaluated because it did not have access to the proprietary formulations submitted to the rulemaking for OTC acne drug products. However, the comment maintained that because the ingredients were referred to as "active," their inclusion in the products must serve an efficacious purpose. The comment stated its belief that borax and/or boric acid were acting as pH control agents, preservative additives, or astringent and/or surface tension reducing additives, and that the concentration used in these products is relatively low—probably at a maximum of 5 percent by weight. The comment argued that, considering these functions, a Category II classification of borates based on efficacy was questionable.

Regarding safety, the comment maintained that the data bases used in evaluating borates were an inadequate series of literature reviews and did not include an evaluation of the only controlled clinical study on humans or long-term chronic animal studies. The comment stated that borax and boric acid have a long history of safe use in cosmetics, cleaning products, bath preparations, and pharmaceuticals. The comment added that a report by the Cosmetic Ingredient Review (CIR) Panel indicated that a level of borates up to 5 percent in cosmetics was safe for topical use. The comment included a summary of acute as well as chronic toxicity data, which had been generated over a period of years, to support the safety of borates. The comment stated that a closer examination of the criteria for classifying borates as Category II ingredients was justified considering the data cited as well as the long history of safety associated with borax and boric acid.

The Antimicrobial II Panel reviewed borates for safety and effectiveness in topical acne and topical antifungal drug products. The Panel concluded that borate preparations with a concentration of 5 percent or less were safe for topical application. However, there were very little data available for the Panel to evaluate the effectiveness of borates for the treatment of acne. There were no reports of clinical trials that showed definitive activity of borates in treating acne. The Panel found only one study that addressed borates as single ingredients in the treatment of acne. The study included 22 individuals treated with 50 percent sodium borate (present as small abrasive particles) in a vehicle of soapless cleansers. The rationale for the preparation's use was oil removal (the soapless cleansers) and gentle abrasion of the skin (the abrasive particles). The Panel noted that the study was neither controlled nor double-blind, lesion counts were not used as the method of evaluation, and concomitant therapy was administered. The Panel concluded that borates had not been conclusively shown to be effective in treating acne.

Regarding the comment's belief that borates were acting as pH control agents, preservative additives, or astringent and/or surface-tension reducing additives in topical acne drug products, the comment did not submit any data to support this position. If the borate were functioning as a pH control agent, preservative additive, or surface tension reducing additive, it would be an inactive ingredient as defined in 21 CFR 220.3(b)(7) and (8). Borates as active/inactive ingredients in OTC astringent drug products were discussed in an amendment of the notice of proposed rulemaking for OTC skin protectant drug products (54 FR 13490 at 13491 to 13492). The acceptability of boric acid as a buffering agent or stabilizer in OTC drug products was discussed there. However, neither the data submitted to the Panel, nor the information provided by the comment, are sufficient to alter the nonmonograph classification of borates as active ingredients for the treatment of acne.

C. Comments on Labeling of OTC Topical Acne Drug Products

6. One comment noted its continuing opposition to the agency's exclusivity policy. The comment contended that FDA should not prescribe exclusive lists of terms from which indications for use for OTC drugs must be drawn, thereby prohibiting alternative OTC drug labeling terminology which is truthful, not misleading, and intelligible to the consumer. The comment subsequently requested clarification whether the proposed modifications in FDA's exclusivity policy (published in the **Federal Register** of April 22, 1985; 50 FR 15810) were intended to supersede the labeling policy on indications proposed in the tentative final monograph for OTC topical acne drug products (published in the **Federal Register** of January 15, 1985; 50 FR 2172 at 2177).

The general labeling policy proposed in the tentative final monograph for OTC topical acne drug products has been superseded. In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a rule finalizing the April 22, 1985 proposal and changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated

APPROVED USES; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated APPROVED USES; or (3) the approved monograph language on indications, which may appear within a boxed area designated APPROVED USES, plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The indications (§ 333.350(b)) in this final monograph for OTC acne drug products specifically refer to the general labeling policy stated in 21 CFR 330.1(c)(2).

7. Three comments disagreed with the agency's not including an antibacterial labeling claim for any topical acne ingredient in the tentative final monograph (50 FR 2172 at 2177 to 2178). The comments requested that the agency place an antibacterial claim in Category I in the final monograph for OTC topical acne drug products. Two of the comments specifically requested that products containing either benzoyl peroxide or the combination of 8 percent sulfur and 2 percent resorcinol be allowed to use the antibacterial claim in their labeling. These comments stated that the agency was in error regarding the statement in the tentative final monograph that no in vivo data were submitted in support of an "antibacterial" claim following publication of the Panel's report. The comments mentioned the presentations (and submissions) of data and literature (Ref. 1) addressing the antibacterial effectiveness of benzoyl peroxide and the combination of sulfur and resorcinol that had been made to the Panel. The comments contended that because the Panel had classified the antibacterial claim in Category I at its final meeting and included the claim as an indication in the labeling in its recommended monograph (47 FR 12430 at 12474 to 12476), there appeared to be no need for additional data submissions following publication of the Panel's report. One comment urged the agency to require an active acne ingredient to meet the in vivo testing criteria of both the free fatty acid reduction, as well as the *Propionibacterium acnes* log-reduction tests, in order to use the antibacterial indication on the product labeling. The comment also suggested that the definitional testing methodologies be subject to modification or substitution by suitably equivalent test procedures.

One comment (Ref. 2) included two studies and selected literature previously presented to the Panel in support of the antibacterial effectiveness of benzoyl peroxide against the *P. acnes* organisms commonly associated with acne. Another comment (Ref. 3) included two studies that utilized the Panel's recommended *P. acnes* reduction technique and an optional free fatty acid reduction assay to determine in vivo antimicrobial activity of benzoyl peroxide. The comment also included an antibacterial study on *P. acnes* and fatty acid reduction previously provided to the Panel for the combination of 8 percent sulfur and 2 percent resorcinol (Ref. 1). The third comment (Ref. 4) included three clinical studies that assessed the effectiveness of benzoyl peroxide in reducing *P. acnes* and free fatty acids. The comment also resubmitted four presentations that had been made to the Panel on *P. acnes* and free fatty acid reduction by the combination of 8 percent sulfur and 2 percent resorcinol as well as several concentrations of benzoyl peroxide.

The agency has reviewed these studies and determined that no single study satisfies the Panel's in vivo testing criteria recommended in § 333.340 of its monograph (47 FR 12430 at 12475). One study (Ref. 5) was a 30-day, double-blind, half-face comparison of a 5-percent benzoyl peroxide wash with its vehicle in 20 subjects with facial acne. Nonblinded arms of the study consisted of Ivory soap washes compared with the 5-percent benzoyl peroxide wash or its vehicle in 40 subjects. During the first 15 days, subjects washed only with tap water. During the next 15 days, twice-daily washings of contralateral sides of the face were done by ancillary personnel using 2 of 3 treatments (5-percent benzoyl peroxide wash, the vehicle, or Ivory soap) in each subject to one or the other side of the face. Quantitative *P. acnes* cultures were performed using a modified Williamson scrub technique at baseline and on days 15, 22, and 29. Twenty subjects in the benzoyl peroxide-placebo group demonstrated a reduction in *P. acnes* counts of 16 percent on the benzoyl peroxide side and 2 percent on the placebo side ($p<0.01$). In the total of 40 subjects treated with benzoyl peroxide, there was a reduction in *P. acnes* counts of greater than 0.75 log ($p<0.01$) on the side of the face washed with benzoyl peroxide. Although the only apparent deviation in this study from the Panel's recommended guidelines (47 FR 12430 at 12473 to 12474) was the determination of a single (instead of the preferred three separate) *P. acnes* baseline count, insufficient information was provided regarding microbiological techniques, sample sites utilized, and individual *P. acnes* counts. The study satisfies a majority of the in vivo testing criteria set forth by the Panel in its recommended monograph; however, as presented, it does not support the antibacterial claim. The data that were provided could not be appropriately, statistically analyzed because the original data were not included with the submission.

In another study (Ref. 6), 15 subjects with a high facial density of *P. acnes* were treated with a 5-percent benzoyl peroxide lotion and assessed for the suppression of *P. acnes* over a 24-hour period. The test lotion was applied 3 times over a 12-hour period. A modified Williamson and Kligman procedure was used for test site preparation, sample collection, and culturing. Samples for quantitative cultures of *P. acnes* were taken from each subject at baseline and 12 and 24 hours after the last treatment. A statistically significant ($p=0.001$) reduction in *P. acnes* counts was reported at both 12 and 24 hours after treatment (34 percent and 22 percent, respectively). There was a greater than 0.75 log reduction in the *P. acnes* counts at both time periods. The agency finds that this study deviated from the Panel's recommended in vivo criteria for antibacterial activity in two key ways: The uncontrolled design and the very short duration of the study. In addition, appropriate statistical analysis was not possible because the original data were not provided with the submission.

In another study (Ref. 7), 20 subjects with Pillsbury Grades II and III acne were enrolled in this single blind, randomized, parallel group comparison of 10 percent benzoyl peroxide lotion (applied to the face twice daily) with oral tetracycline hydrochloride (250 milligrams (mg) three times per day) for 8 weeks. The Williamson and Kligman scrub technique was used to quantify the skin-surface bacteria at baseline, at 8 weeks at the end of treatment, and 4 weeks after treatment ended. Ten subjects in the test-lotion group and 7 subjects in the tetracycline group completed the treatment period. *P. acnes* Type I and Type II reductions occurred in 78 percent ($p=0.001$) and 100 percent ($p=0.12$), respectively, of the benzoyl peroxide subjects and in 43 percent and 83 percent, respectively, of the tetracycline subjects.

In another study (Ref. 8), 8 subjects with acne were involved in a double-blind, half-face comparison of a 10-percent benzoyl peroxide cream with 5 and 10 percent benzoyl peroxide lotions. Each subject received 2 applications per day of the cream to one side of the face, and the 5- or 10-percent lotion to the opposite side of the face, 6 days a week for 2 weeks. Beginning at day 1, a significant ($p<0.1$) reduction from baseline of *P. acnes* Type I and Type II counts was seen in both the cream and lotion groups. The median reduction in *P. acnes* Type I and Type II counts at day 11 was 99.8 and 93.3 percent, respectively, in the cream group.

The two studies (Refs. 7 and 8) differ significantly from the Panel's recommended in vivo criteria for antibacterial activity. Neither study included a vehicle control or the recommended number of subjects for a full-face (minimum of 30 subjects) or a half-face (minimum of 15 subjects) study design. It was not clear in either study whether the same skin site (in each subject) was sampled at each of the different time points. In addition, while the two baseline bacteria counts reported in one study (Ref. 8) appeared adequate, the other study (Ref. 7) reported only a single baseline count.

Finally, the preferred baseline *P. acnes* density (1×10^5 to 1×10^6 organisms per square centimeter) was not satisfied by all the subjects in one study (Ref. 7), and only the mean counts for the subjects in the other study (Ref. 8) were reported.

The agency notes that, although a dramatic reduction in organisms was reported in three of the four studies discussed above, these studies all have flaws. Although the results of these studies make it difficult to rule out the possibility of antimicrobial activity for benzoyl peroxide, these studies, because of their flaws, cannot be used to support general recognition of an antibacterial claim for topical acne drug products containing benzoyl peroxide.

Three clinical studies (Ref. 4) published after the Panel ceased its deliberations assessed the effectiveness of benzoyl peroxide in reducing *P. acnes* and free fatty acids. A study by Leyden et al. (Ref. 9) was a controlled, parallel-group comparison of gel and lotion formulations of benzoyl peroxide (2.5 percent, 5 percent, and 10 percent concentrations). A reduction in *P. acnes* counts of approximately 1.5 log was reported with all benzoyl peroxide formulations (with no significant difference between the formulations). An 8-week, double-blind study by Cunliffe and Holland (Ref. 10) compared 5-percent benzoyl peroxide gel and lotion in 48 subjects (paired according to sex, grade of acne, and lesion count). A reduction in both *P. acnes* counts and free fatty acids was shown throughout the treatment period. Nacht et al. (Ref. 11) compared a 3-percent hexachlorophene suspension with a 5-percent benzoyl peroxide lotion in a half-face study in 9 subjects with high-density *P. acnes* baseline counts. A reduction in mean *P. acnes* counts of 98 percent (1.6 log) and a 52-percent reduction in free fatty acid/triglyceride ratios was reported for benzoyl-peroxide treated areas.

The agency has determined that further information on the design and conduct of the Leyden et al. study (Ref. 9) would be needed to reach a definite conclusion regarding antibacterial activity. The details provided for the Cunliffe and Holland study (Ref. 10) and the Nacht et al. study (Ref. 11) were insufficient for appropriate evaluation; further, neither of these studies included vehicle control groups. Therefore, neither of these studies (Refs. 10 and 11) are adequate to establish general recognition of an antibacterial claim for OTC topical acne products containing benzoyl peroxide.

The agency has determined that all of the studies described above either differ significantly from the guidelines recommended by the Panel or do not provide sufficient detail of the study design, conduct, or data to allow for an appropriate evaluation. One critical deviation, in almost every study, was the lack of a vehicle control. The agency considers the vehicle control group essential in order to rule out any activity which might be attributable to the vehicle. In addition, inclusion of a vehicle control is necessary because the antimicrobial effectiveness of the acne drug product may be contingent upon the contact time permitted by the vehicle. Further, with one exception, it is impossible to determine whether the active ingredient produced the recommended minimum reduction of 0.75 log in *P. acnes* count from the baseline measurement, because the original data were not provided in the submissions.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (address above) (Ref. 12).

The submitted data do not support inclusion in this final monograph of the antibacterial labeling that the Panel proposed in § 333.350(b)(3). Therefore, the Panel's recommended testing criteria under § 333.340 of its proposed monograph, which support use of the antibacterial labeling proposed in § 333.350(b)(3), are not being included in this final monograph. However, the agency believes that an OTC topical acne ingredient should meet specific testing criteria in order to be allowed to make an antibacterial claim.

The Panel recommended an optional in vivo test in § 333.340(e)(2) of its monograph using a reduction in free fatty acids on the skin surface to confirm antibacterial activity (47 FR 12430 at 12475). Although one comment urged the agency to require an active acne ingredient to meet this test to use the antibacterial indication in labeling, the agency concludes that such a test should continue to be optional if, based on the studies submitted and other information, the following modification is made to the criterion for in vivo testing for antibacterial activity that was recommended by the Panel in § 333.340(e)(1):

> • • • A reduction of *P. acnes* counts of 0.75 log by the active ingredient must be demonstrated using an appropriate statistical test at an alpha error of less than or equal to 0.05. The *P. acnes* count in the active drug post treatment specimens must be at least 0.75 log lower than the corresponding baseline specimens and must be at least 0.75 log lower than the lesser of the vehicle baseline or vehicle post treatment *P. acnes* counts.

Regarding one comment's suggestion that the definitional testing methods be subject to modification or substitution by suitably equivalent test procedures, the agency notes that alternate methods would be acceptable so long as they have been evaluated and accepted by the agency. Such methods should be submitted to the agency for review. If found acceptable, they could be included in the monograph in the future as an alternate method. However, adequate data need to be submitted to the agency to support the testing procedures that would support antibacterial labeling for OTC acne drug products.

References

(1) OTC Volumes 070234, 070235, and 070236.

(2) Comment No. C00025, Docket No. 81N-0114, Dockets Management Branch.

(3) Comment No. C00021, Docket No. 81N-0114, Dockets Management Branch.

(4) Comment No. C00026, Docket No. 81N-0114, Dockets Management Branch.

(5) Unpublished Study, The Effect of Oxy Wash 5% on the Cutaneous Population of Propionibacterium Acnes, Report No. NTI-004, Comment No. C00025, Docket No. 81N-0114, Dockets Management Branch.

(6) Unpublished Study, Quantitative Determination of Suppression of Propionibacterium Acnes Over a 24 Hour Period by 5% Benzoyl Peroxide (Oxy 5), Report No. MA-00112, Comment No. C00025,

Docket No. 81N–0114, Dockets Management Branch.

(7) Unpublished protocol, IR Number 61–77, Comment No. C00021, Docket No. 81N–0114, Dockets Management Branch.

(8) Unpublished Protocol, IR Number 90–79, Comment No. C00021, Docket No. 81N–0114, Dockets Management Branch.

(9) Leyden, J., et al., Topical Antibiotics and Topical Antimicrobial Agents in Acne Therapy, *Acta Dermatavener*, Supplement 89:75–82, 1980.

(10) Cunliffe, W. J., and K. T. Holland, The Effect of Benzoyl Peroxide on Acne, *Acta Dermatavener*, 61(3):267–269, 1981.

(11) Nacht, S., et al., Comparative Activity of Benzoyl Peroxide and Hexachlorophene, *Archives of Dermatalogy*. 119:577–579, 1983.

(12) Letter from W. E. Gilbertson, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET11, Docket No. 81N–0114, Dockets Management Branch.

8. One comment contended that the proposed definition of acne in § 333.303(a) (i.e., "An inflammatory skin disease involving the oil glands and hair follicles of the skin") is incomplete because it fails to recognize the noninflammatory lesions that are also characteristic of acne. The comment cited three references (Refs. 1, 2, and 3) to support its position. The comment stated that mild acne can be caused by either noninflammatory or inflammatory lesions and recommended that the definition of acne be expanded as follows: "A skin disease, involving the oil glands and hair follicles of the skin. This disease includes noninflammatory lesions (comedones, whiteheads, and blackheads) as well as inflammatory lesions, also called pimples (papules and pustules)."

A standard medical dictionary defines acne as "an inflammatory disease of the pilosebaceous unit" (Ref. 4). However, other authors define acne based on the clinical manifestations of the disease. Moschella, Pillsbury, and Hurley (Ref. 3) note that the interaction of many factors leads to the production of clinical lesions which are either noninflammatory (i.e., open and closed comedones) or inflammatory. The closed comedones (whiteheads) are the first visible lesions of acne and suffer one of two fates, either they rupture and incite an inflammatory lesion or they transform into open comedones (blackheads) (Ref. 2). Although many clinicians regard blackheads as the hallmark of acne, their absence by no means negates the diagnosis, because many acne sufferers have few or no blackheads (Ref. 1). Hurwitz (Ref. 5) noted that acne usually appears as a variety of lesions with the comedones being characteristic of the disease. Gossell (Ref. 6) also described comedones as being the typical lesions of acne. In its mildest form, acne consists of open (blackheads) and closed (whiteheads) comedones. Tunnessen (Ref. 7) noted that while there exists great variation in the number and type of lesions in each person, comedones are usually the predominant lesions present in early adolescence. The comedones have been referred to as the noninflammatory lesions of acne (Refs. 8 and 9). Acne consisting primarily of blackheads and whiteheads has been designated as mild or noninflammatory acne (Refs. 10 through 13). Although individuals usually have a combination of noninflammatory and inflammatory lesions, one or the other type may predominate (Ref. 8).

The Panel designated the comedo the primary lesion of acne (47 FR 12430 at 12435). The comedo has been considered by many (as noted above) to be a sign or symptom on which a diagnosis of acne can be made. Because the comedo may be the predominant lesion of acne in some individuals, the agency agrees with the comment and concludes that it would be appropriate to include the noninflammatory lesions of acne in the monograph definition of acne. However, the definition section of the monograph only includes those terms that are necessary for the information that appears in the monograph. The agency does not believe that consumers differentiate between inflammatory or noninflammatory lesions, or use the terms inflammatory or noninflammatory to describe their lesions. Likewise, consumers do not use the terms comedo or comedones to describe their blackheads or whiteheads. Therefore, the agency is not including the terms inflammatory, noninflammatory, or comedones in the monograph definition of acne. Consumers do use the terms "blackheads," "whiteheads," "pimples," and "blemishes" to describe their acne. The terms "blackheads," "pimples," and "blemishes" were proposed in the tentative final monograph to appear in the indications for OTC acne drug products. These terms plus the term "whiteheads" describe the inflammatory and noninflammatory appearances of acne in consumer terms. (See discussion of definitions for these terms in comment 9 below.) Accordingly, the agency is revising the definition of acne in § 333.303(a) of this final monograph to read as follows: "Acne. A disease involving the oil glands and hair follicles of the skin which is manifested by blackheads, whiteheads, acne pimples, and acne blemishes."

References

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(3) Tolman, L. E., Acne and Acneiform Dermatoses, *in* Dermatology, Volume II, edited by S. L. Moschella, D. M. Pillsbury, and H. J. Hurley, Jr., W. B. Saunders Co., Philadelphia, p. 1130, 1975.

(4) Dorlands' Illustrated Medical Dictionary 27th Ed., W. B. Saunders Co., Philadelphia, 1988, s.v. acne.

(5) Hurwitz, S., Acne Vulgaris, *American Journal of Diseases of Children*, 133:536–544, 1979.

(6) Gossell, T. A., Acne: Myths, Facts and the Role of Benzoyl Peroxide, *U.S. Pharmacist*, 12:22–32, 1986.

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(8) Spector, R., The Topical and Systemic Treatment of Acne Vulgaris, *Iowa Medicine*, 76:280–283, 1986.

(9) Strauss, J. S., Update on Acne, *Primary Care*, 4:167–176, 1987.

(10) Billows, J. A., Acne Products, *in* Handbook of Nonprescription Drugs, 8th Ed., American Pharmaceutical Association, Washington, pp. 583–591, 1988.

(11) Quan, M. and R. A. Strick, Management of Acne Vulgaris, *American Family Physician*, 38:207–216, 1988.

(12) Commens, C., Management of Acne, *Australian Family Physician*, 15:893–894, 1986.

(13) Stubborn and Vexing, That's Acne, *FDA Consumer*, 14:14–17, 1980.

9. One comment requested that the following definitions, some of which the Panel adopted in the advance notice of proposed rulemaking (47 FR 12430 at 12435), be included in the final monograph for OTC acne drug products:

Comedo. The primary lesion of noninflammatory acne.

Whitehead. A noninflammatory acne lesion, also called a closed comedo, characterized by a small, whitish, firm nodule.

Blackhead. A noninflammatory acne lesion, also called open comedo, characterized by a black tip.

Pimples. A small prominent inflamed elevation of the skin, including papules and pustules.

Papules. A small inflammatory lesion that appears red and raised.

Pustules. A small, raised inflammatory lesion that is filled with pus and arises from a papule.

The comment maintained that the terms, as defined above, should be included in the definition section of the monograph because they would provide clarity and consistency in referring to

the lesions that characterize acne. In addition, the comment disagreed with the agency's deleting the terms "follicle" and "lesion" from the definition section of the proposed monograph. The comment stated that the definition section will frequently be used by professionals involved with OTC acne drug products. The comment requested the agency to reinstate the terms "follicle" and "lesion" in the final rule, because they are correct medical terms. Two comments urged the agency to allow the use of such terms as "comedones," "whiteheads," "papules," and "pustules" in addition to the proposed terms of "blackheads," "acne pimples," and "acne blemishes" in § 333.350(b)(2) "other allowable indications" for OTC topical acne drug products. One comment stated that the different types of acne lesions are often defined and/or discussed in articles and books written for the general public; thus, the public is well-advised and continually exposed to the meanings of these terms. Both comments believed that including these terms in the monograph would provide more accurate and meaningful descriptions of the various types of acne lesions and thus would be appropriate for use in the indications section and other parts of the labeling.

The Panel's definitions relating to the use of acne drug products included "comedo," "whitehead," "papule," and "pustule" (47 FR 12430 at 12435). However, the Panel did not include these terms in the definitions in § 333.350(b) of its recommended monograph (47 FR 12475). Further, in the tentative final monograph the agency did not propose any of these terms for use in the labeling of OTC acne drug products.

The Panel proposed the terms "blackhead," "pimple," and "lesion" in § 333.350(b) of its recommended monograph (47 FR 12475) because it considered these terms to be more meaningful to consumers. However, the Panel defined a lesion generally (i.e., a characteristic area of a skin condition), and stated that lesions in acne include blackheads and pimples. The agency considers the terms "blackheads" and "pimples" appropriate for the labeling of OTC acne drug products, but does not consider the terms "comedo," "papule," "pustule," "lesion," and "follicle" as being widely used or understood by the majority of consumers who use OTC acne drug products. As discussed in comment 8 above, none of these terms has been included in the definition of acne that appears in this final monograph. The agency agrees with the comment that allowing the term "whiteheads" in the indications for use is appropriate, because a whitehead is both the initial, and a primary, lesion of acne (see comment 8 above). In addition, the agency believes that consumers understand the meaning of the term and commonly use it to describe their acne lesions. However, the agency does not believe that many consumers use the terms "comedo" or "comedones" to refer to "whiteheads" or "blackheads" (closed and open comedones, respectively). Thus, the agency concludes that the terms "comedo" or "comedones" in the labeling of OTC acne drug products would be confusing to consumers.

Although a standard medical dictionary (Ref. 1) defines a pimple as a papule or pustule most often due to acne vulgaris, the agency does not believe that the terms "papule" or "pustule" are widely understood by consumers. The agency considers the term "acne pimples" to be more informative and less confusing to consumers. The terms "blackhead" and "pimple" were defined in the tentative final monograph. The term "acne blemish," which appeared in the labeling proposed in § 333.350(b)(2), was not. Therefore, the agency is clarifying the definition of the word "pimple" that was proposed in § 333.303(d) of the tentative final monograph by adding the word "acne" before "pimple" and by adding the words "resulting from acne" at the end of the definition. The agency is also adding a definition for "acne blemish" that reads: "A flaw in the skin resulting from acne." The agency is revising the definition for "blackhead" to read: "A condition of the skin that occurs in acne and is characterized by a black tip." Finally, the agency is adding a definition for "whitehead," which reads: "A condition of the skin that occurs in acne and is characterized by a small, firm, whitish elevation of the skin." The agency is not using the term "nodule" in defining a whitehead, as suggested by the comment, because this type of acne lesion is usually macular or papular but rarely nodular. The Panel defined a "nodule" as a deep-seated lesion that develops from the rupture of closed comedones (whiteheads) (47 FR 12430 at 12435). Nodular lesions are more characteristic of acne conglobata, while the whiteheads in acne vulgaris are a more superficial type lesion (i.e., papular) (Ref. 2).

The above changes and addenda to the definitions require some editing of the definition section proposed in the tentative final monograph. Also, based on the amended definitions appearing in this final monograph, the indications section of this final monograph (§ 333.350(b)) now includes the terms "acne blemishes," "acne pimples," "blackheads," and "whiteheads."

References

(1) Dorlands' Illustrated Medical Dictionary 27th Ed., W. B. Saunders Co., Philadelphia, 1988, s.v. pimple.

(2) Dorlands' Illustrated Medical Dictionary 27th Ed., W. B. Saunders Co., Philadelphia, 1988, s.v. papule.

10. One comment contended that the statement of identity (i.e., "acne medication") proposed in § 333.350(a), although accurate, was limiting as it did not distinguish between types of topical acne products. As an example, the comment cited a lack of distinction made between products intended to remain on the skin and those which are rinsed off after being applied. The comment suggested the agency allow other statements of identity which it felt would be appropriate for acne drug products, such as "acne treatment," "medicated acne cleanser," and "antibacterial acne medication (or cleanser or treatment)." The comment also asked that the product form, e.g., lotion, cream, gel, foam, etc., be allowed to be added, where appropriate, to more fully inform consumers.

The agency agrees with the comment that the term "acne treatment" would be an appropriate alternative statement of identity for OTC acne drug products because this term is as informative to consumers as the proposed statement of identity "acne medication." The agency also concurs with the comment's request to allow the dosage form to be added, following the product's statement of identity. Such information could be helpful to consumers in comparing and selecting topical acne drug products. The United States Pharmacopeia (U.S.P.) lists a number of dosage forms that might be used for OTC topical drug products, e.g., aerosol, cream, emulsion, gel, lotion, ointment, solution, or suspension (Ref. 1). The agency notes however that a foam, which the comment cited as an example, is not defined as a pharmaceutical dosage form in the U.S.P. (Ref. 1). In addition, although an aerosol is a defined pharmaceutical dosage form in the U.S.P., the agency determined from a marketplace survey of topical acne drug products (Refs. 2, 3, and 4) and from reviewing the submissions made to the Panel that there are only two aerosol drug products promoted as a "foam." However, neither product contains monograph ingredients. The agency is not aware of any topical acne

ingredients included in this final monograph having been marketed in an aerosol or foam dosage form. Therefore, the agency is not including "aerosol" or "foam" in the monograph as a part of the statement of identity.

The dosage forms listed in the monograph are examples only and are not intended to be all inclusive. Section 333.301(a) of the monograph states that an OTC acne drug product is in a form "suitable" for topical administration. The agency's marketplace survey shows that the most widely used dosage forms for OTC topical acne drug products are lotions, creams, and gels. Therefore, the agency is selecting these dosage forms to appear as examples in the statements of identity in § 333.350(a) of this final monograph as follows: "acne treatment," "acne medication," "acne treatment" (insert dosage form, e.g., "cream," "gel," or "lotion"), and "acne medication" (insert dosage form, e.g., "cream," "gel," or "lotion"). Other dosage forms would also be acceptable for OTC topical acne drug products based on their previous marketing history for this type of product. Examples include pads and ointments.

The agency believes that the other terms suggested by the comment, which included "antibacterial acne medication (or cleanser or treatment)" and "medicated acne cleanser," are not appropriate terms for the labeling of OTC acne drug products. Regarding the term "antibacterial," although several submissions were made in support of reinstating the "antibacterial claim" to Category I status, the agency has determined that the studies were not adequate; therefore, the term "antibacterial" is nonmonograph in this final rule (see comment 7 above). The agency considers the term "medicated" to be unnecessary because all OTC topical acne drug products contain medication. In addition, the agency notes that while "medicated acne cleanser" may be a term associated with adjunctive acne therapies, the agency is not including such products in this final monograph (see comment 3 above). Accordingly, the agency is not including these other terms in this final monograph.

References

(1) The United States Pharmacopeia XXII—The National Formulary XVII, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 1668–1697, 1989.

(2) Physicians Desk Reference for Nonprescription Drugs, 10th Ed., Medical Economics Co., Inc., Oradell, NJ, p. 209, 1989.

(3) Billows, J. A., Acne Products, *in* Handbook of Nonprescription Drugs, 8th Ed., American Pharmaceutical Association, Washington, pp. 583–591, 1986.

(4) Acne Products, *in* Facts and Comparisons, J. B. Lippincott Co., New York, pp. 544a–545a, 1989.

11. Two comments requested that the agency reinstate to Category I status the following labeling claims that had been recommended by the Panel: "loosens blackheads," "helps remove blackheads," and "unclogs (or unplugs) pores to help clear acne." The comments stated that the agency did not include these claims in the tentative final monograph because it believed that they were not clear or would be misleading to the consumer. The comments stated that Category I acne ingredients cause exfoliation of the stratum corneum, which causes an increased rate of turnover of the cells lining the duct walls of the comedo (blackhead). The comments added that peeling agents can also reduce the cohesiveness of these cells lining the duct. The comments stated that "the net effect of this topical treatment reduces the tendency of forming new comedones and loosens the structure of the formed comedones to help their extrusion" (Refs. 1, 2, and 3). The comments concluded that based on these mechanisms of action, the above claims are accurate, meaningful, and truthful statements that should be permitted in the monograph.

The agency does not agree with the comments that these statements should be included in the final monograph. In the tentative final monograph for OTC topical acne drug products (50 FR 2172 at 2179), the agency stated its belief that the Panel's recommended phrases "loosens blackheads," "helps remove blackheads," and "unclogs (or unplugs) pores to help clear acne," do not meaningfully or accurately describe the action of topical acne drug products. The agency has reviewed the three references cited by the comments and determined that they primarily describe the effectiveness of acne ingredients in terms of sebum removal and a mild peeling action. The agency notes that one of these references (Ref. 1) attributes some of the activities, as discussed by the comments, to topical acne ingredients which cause mild irritation and desquamation. However, a number of other sources in the literature (Refs. 4 through 9) present a different viewpoint. Accordingly, the agency concludes that there is insufficient basis to make the requested changes.

The agency considers the claims requested by the comments as accurately describing the action of comedolytic agents (i.e., agents which cause the unseating and expelling of comedones) (Refs. 4 and 10). A comedo (or blackhead, which is the term used in the labeling claims requested by the comment) is a plug of keratin and sebum within the dilated orifice of a hair follicle (Ref. 11). A comedolytic agent acts by preventing infrainfundibulum horny cells from sticking together and by causing an increased turnover of epithelial cells lining the pilosebaceous canal. This rapid turnover of loose horny cells causes the unseating and expulsion of existing comedones (Refs. 7, 8, and 9). The agency notes that benzoyl peroxide is the only OTC ingredient for the treatment of acne which has known comedolytic activity (Refs. 4 through 7). However, as discussed above, this final rule does not include final agency action on benzoyl peroxide.

As pointed out by the comments, certain Category I ingredients (i.e., sulfur and resorcinol) have exfoliating activity (i.e., agents which evoke a superficial peeling) (Refs. 4 and 10). The agency notes, however, that exfoliating agents do not necessarily function as a comedolytic. A comedolytic can be described as an exfoliant of the follicular infundibulum. However, an exfoliating agent, in general, is not specific for pilosebaceous epithelium. In addition, an exfoliating agent does not attack fibrous proteins (keratin) or cause loss of horny substance, does not dissolve comedones, and acts primarily on the epidermis (Refs. 4 and 5). Because most pustular acne lesions are quite superficial, an exfoliating agent (through its surface peeling action) can unroof these lesions and produce spontaneous drainage (Ref. 7). However, most of the agents that induce exfoliation, e.g., sulfur and resorcinol, are not a comedolytic. Although salicylic acid at concentrations of 5 to 10 percent is an effective comedolytic, the concentrations included in this final monograph (i.e., 0.5 to 2 percent) work primarily as a peeling agent, produce desquamation by hydrolyzing the intracellular substances of surface squames (exfoliants), and have less comedolytic activity (Refs. 7, 8, and 9). None of the active ingredients included in this portion of the final monograph are effective as a comedolytic agent at OTC concentrations (Refs. 4 and 5).

Accordingly, the agency concludes that the claims requested by the comments do not apply to the primary activity of the current monograph ingredients. The agency is not including these claims in the final monograph at this time.

References

(1) Hopponen, R. E., Acne Products, *in* "Handbook of Nonprescription Drugs," 5th

Ed., American Pharmaceutical Association, Washington, pp. 316–323, 1977.

(2) Montagna, W., and P. F. Parakkal, The Structure and Function of Skin, 3rd Ed., Academic Press, Inc., New York, pp. 321–331, 1974.

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(4) Schachner, L., The Treatment of Acne: A Contemporary Review, The Pediatric Clinics of North America, 30:501–510, 1983.

(5) Plewig, G., and A. M. Kligman, Acne. Morphogenesis and Treatment, Springer-Verlag, New York, pp. 277–311, 1975.

(6) Gossell, T. A., Acne: Myths, Facts and the Role of Benzoyl Peroxide, U.S. Pharmacist, 12:22–32, 1986.

(7) Reisner, R. M., Acne Vulgaris, *in* Current Dermatologic Therapy, W. B. Saunders Co., Philadelphia, pp. 3–6, 1982.

(8) Olsen, T. G., Therapy of Acne, The Medical Clinics of North America, 66:851–871, 1982.

(9) Quan, M., and R. A. Strick, Management of Acne Vulgaris, American Family Physician, 38:207–218, 1988.

(10) Melski, J. W., and K. A. Arndt, Current Concepts: Topical Therapy for Acne, New England Journal of Medicine, 302:503–506, 1980.

(11) Dorlands' Illustrated Medical Dictionary, 27th Ed., W. B. Saunders Co., Philadelphia, 1988, s.v. comedo.

12. One comment recommended that the agency delete the term "entire" from the proposed directions for using topical acne drug products in § 333.350(d)(1), which read: "Cleanse the skin thoroughly before applying medication. Cover the entire affected area with a thin layer one to three times daily * * *."

Believing that the term "entire" in these directions might encourage overuse of topical acne drug products, the comment provided an example how the directions could be misread by consumers. A person with pimples speckling the back or shoulders might cover the whole back or shoulder area with an acne medication one to three times daily. The comment maintained that such application could result in overdrying of large areas of the skin. Therefore, the comment recommended that the directions simply read "Apply to the affected area."

In the advance notice of proposed rulemaking for OTC topical acne drug products, the Panel stated that the aim of acne therapy is not only to clear up existing acne lesions but also to prevent the formation of new acne lesions (47 FR 12430 at 12438). Studies reviewed by the Panel used a conservative estimate of 4 weeks as the natural resolution time of acne pimples. A person who has not been treated for acne will have a natural cyclical rise and fall in the number of acne lesions over this time period. Using this estimate, the Panel concluded that any acne therapy that significantly reduced lesion counts over the first 4 weeks was effective in treating existing lesions. Also, any ingredient shown to be effective by reducing lesion counts beyond 4 weeks was also effective in preventing the development of new acne lesions.

The Panel discussed the fact that if individuals are instructed to cover the whole area where they have acne (i.e., the general area where they have the disease, rather than spot treatment), the medication will treat the existing acne lesions as well as prevent the development of new lesions (Refs. 1 and 2). Treating only the existing lesions will not provide successful long-term management of the disease due to its cyclical nature. Tunnessen (Ref. 3) emphasized the importance of covering all of the skin with the acne medication, not just the active lesions, to prevent new pimples from beginning. Quan and Strick (Ref. 4) recommended that patients using topical preparations be specifically instructed to apply the medication to all the affected areas (not just the individual lesions).

The agency believes, as did the Panel, that the purpose of acne therapy is to clear existing lesions and prevent the formation of new ones. In order to be as effective as possible, acne medications must be left on the skin for a finite period of time to penetrate into the follicle and dermis. Accordingly, they should be applied directly to areas of the skin with active lesions as well as to surrounding areas which have the potential for developing lesions. The directions to cover the entire affected area are intended to inform the user to apply the acne medication to all areas of the skin where existing lesions are visible as well as the surrounding areas where new acne lesions are likely to occur. Accordingly, the agency does not agree with the comment's recommendation that the term "entire" be deleted from the directions for use of topical acne drug products in § 333.350(d)(1).

References

(1) Minutes of the 41st Meeting of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products, April 27 and 28, 1979, pp. 165–168.

(2) Minutes of the 51st Meeting of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products, June 6 and 7, 1980 p. 74–75.

(3) Tunnessen, W. W., "Acne: An Approach to Therapy for the Pediatrician," Current Problems in Pediatrics. 14(5):1–36, 1984.

(4) Quan, M., and R. A. Strick, Management of Acne Vulgaris, American Family Physician, 38(2):207–218, 1988.

13. One comment objected to the proposed elimination of the term "caution(s)" in the labeling of OTC drug products. The comment asserted that while the terms "warning" and "caution" are both usually used to call attention to potential danger, there is a distinction between the terms that is important, especially when products contain long lists of warnings. The comment contended that the word "warning" is significantly harsher than "caution." A warning precludes the use of a product under certain conditions, e.g., "Warning: For external use only. Avoid contact with the eyes." The word "caution" on the other hand, does not preclude the use of the product but may alert the user to a potential problem, e.g., "Caution: If irritation develops discontinue use and consult a physician." Because the same phrases may be warnings with regard to one class of products and merely cautions with regard to another, the comment maintained that the flexibility of both terms is essential in order to prepare accurate and comprehensible labeling.

Section 502(f)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(f)(2)) states, in part, that a drug must bear in its labeling "* * * such adequate warnings * * * as are necessary for the protection of users." Section 330.10(a)(4)(v) of the OTC drug regulations provides that labeling of OTC drug products should include "* * * warnings against unsafe use, side effects, and adverse reactions * * *."

The agency notes that historically there has not been consistent usage of the signal words "warning" and "caution" in OTC drug labeling. For example, in §§ 369.20 and 369.21 (21 CFR 369.20 and 369.21), which list "warning" and "caution" statements for drugs, the signal words "warning" and "caution" are both used. In some instances, either of these signal words is used to convey the same or similar precautionary information.

FDA has considered which of these signal words would be most likely to attract consumers' attention to that information describing conditions under which the drug product should not be used or its use should be discontinued. The agency concludes that the signal word "warning" is more likely to flag potential dangers so that consumers will read the information being conveyed. The agency considers the word "warning" alone to be the simplest, clearest signal to consumers. Therefore, FDA has determined that the signal word "warning," rather than the word "caution," will be used routinely in OTC

drug labeling that is intended to alert consumers to potential safety problems.

14. One comment contended that the labeling statements included in a final monograph for OTC acne drug products can create no inferences for cosmetics or for the cosmetic aspects of acne drug products intended for both drug and cosmetic use. The comment stated that in other OTC drug rulemaking proceedings, such as in the tentative final monograph for OTC skin bleaching drug products (47 FR 39108 at 39115), the agency acknowledged that OTC drug monographs apply only to the active ingredients that fall within the statutory definition of "drugs." Maintaining that this same principle applies to OTC topical acne drug products, the comment requested that the agency include in the preamble to the final monograph the following statement: "The agency emphasizes that OTC drug monographs contain appropriate drug labeling claims to be used on OTC drug products and do not preclude the use of acceptable cosmetic claims if the product is both a drug and a cosmetic."

The agency agrees with the ideas expressed in this statement. While this monograph does not include any cosmetic labeling, such labeling may also appear on appropriate products along with the required drug labeling. (See comment 15 below for a discussion of where cosmetic labeling may appear.) Products labeled for both drug and cosmetic use must conform to the pertinent final OTC drug monograph(s), the cosmetic labeling requirements of section 602 of the act (21 U.S.C. 362), and 21 CFR 701.

15. One comment disagreed with the agency's position of prohibiting cosmetic claims from appearing in any portion of the labeling that is required by the monograph. The comment stated that so long as the labeling is truthful and not misleading, information about both the cosmetic and drug properties of a product should be permitted anywhere on the labeling. The comment contended that although acne is a medical condition treated with drug products, it is also a "cosmetic" problem because it "afflicts" the appearance. Therefore, the goal of therapy is a cosmetic one (i.e., to achieve a better appearance). Pointing out that the agency included the instructions "Cleanse the skin thoroughly before applying medication" in the directions proposed in § 333.350(d)(1), the comment argued that because the directions require an acne medication to be applied after the skin has been cleansed (a cosmetic claim), the agency should permit an acne product to bear unified, truthful cosmetic/drug claims. The comment requested that the agency reconsider its position regarding segregating cosmetic labeling information from monograph information, and requested a hearing on this policy before the Commissioner.

The agency does not agree with the comment that the directions for use for OTC topical acne drug products contain a cosmetic claim. The consumer is instructed to cleanse the skin before applying the topical acne drug product. The act of cleansing is not done with the topical acne drug product, and this cleansing is intended to enhance the effectiveness of the topical acne drug product. The agency also does not agree with the comment that a statement about cleansing in the directions of these products supports an integrated drug-cosmetic labeling approach.

A final OTC drug monograph covers only the drug use of the active ingredients listed therein. The concentration range limitations, statements of identity, indications, warnings, and directions established for these ingredients in the monograph do not apply to the use of the same ingredients in products intended solely as cosmetics. However, if a product is intended for both drug and cosmetic use, it must conform to the requirements of the final OTC drug monograph. In addition, such products may also bear appropriate labeling for cosmetic uses provided the labeling complies with section 602 of the act (21 U.S.C. 362) and the provisions of 21 CFR part 701.

The labeling requirements for products covered by OTC drug monographs were being revised at the time of publication of the OTC topical acne tentative final monograph. The revised regulations in § 330.1(c)(2) set out three alternatives for stating an OTC drug product's indications for use in OTC drug labeling, as discussed in comment 6 above. If the labeling uses the APPROVED USES and boxed area designations provided in the regulations, cosmetic labeling may not appear within the boxed area. Such terminology is not reviewed and approved by FDA and, therefore, cannot appropriately be included in the APPROVED USES boxed area. However, cosmetic claims may appear elsewhere in the labeling (but not in the box), should manufacturers choose the labeling alternative provided in § 330.1(c)(2) (i) or (iii). If the APPROVED USES and boxed area options are not used, drug and cosmetic labeling may be commingled. However, the drug labeling must contain the information set out in the monograph and be presented in such a manner that consumers will readily be able to differentiate the drug aspects from the cosmetic aspects of such labeling. Otherwise, commingled drug and cosmetic labeling claims may be confusing or misleading and thereby subject the product to regulatory action under the act.

Because drug and cosmetic labeling may appear together, in the circumstances described above, the request for a hearing on this issue is moot.

16. One comment stated that manufacturers should be allowed to use one or more of the three alternatives included in § 330.1(c)(2), provided that each labeling is complete and in compliance with all other labeling requirements. As an example, the comment stated that a manufacturer might wish to use the first alternative by listing APPROVED USES or FDA APPROVED USES in a boxed area on the outer container and also use the third alternative by presenting the same FDA approved indications under APPROVED USES or FDA APPROVED USES together with alternative truthful and nonmisleading terminology outside the boxed area on the immediate container. The comment requested that the final rule provide this labeling flexibility.

This comment was submitted before FDA issued a final rule in the Federal Register of May 1, 1986 (51 FR 16258) in which it changed its policy to allow such labeling. (See § 330.1(c)(2)(iv).) The indications (§ 333.350(b)) in this final rule contain a cross-reference to the labeling provisions in § 330.1(c)(2).

17. One comment recommended allowing manufacturers the option to include in the labeling under § 333.350(d) "Directions," an appropriate "directions for sensitivity test" to determine possible consumer sensitivity to the active ingredient(s) in topical acne drug products. The comment maintained that instructions on sensitivity testing would be informative as well as helpful in minimizing possible reactions for new users of acne medications. The comment proposed the following example for sensitivity test labeling:

SENSITIVITY TEST FOR NEW USER

1. Apply cream sparingly with finger-tips to one or two small affected areas during the first three days. If no discomfort occurs, apply up to two times daily, wherever pimples are a problem.

2. If bothersome dryness or peeling occurs, reduce dosage to one application per day or every other day.

The Panel, in its review of topical acne drug products, discussed whether

or not to include in the monograph labeling for a "sensitivity test" (Ref. 1). The directions for this test would advise individuals, especially those with unusually dry or sensitive skin, to pretest an acne medication on a small area of the skin before applying the product over a large area. The Panel believed that while it is common for mild irritation to occur with the use of OTC topical acne drug products, in particular products containing benzoyl peroxide, a greater degree of irritation is usually associated with excess use or improper application of the acne medication. The Panel considered the warning it recommended in § 333.350(c)(2), which advises consumers that there exists potential for irritation with the use of benzoyl peroxide, along with the directions for general use of topical acne drug products it recommended in § 333.350(d)(1), as including the information which would be conveyed to consumers in directions for a "sensitivity test." Although, the Panel did not propose to require such labeling in the monograph, the Panel had no objections to including a sensitivity test as optional labeling.

The agency notes that benzoyl peroxide is reported to be the most potentially irritating of OTC acne ingredients. However, as discussed above, benzoyl peroxide and labeling for products containing benzoyl peroxide are not included in this final rule. The active ingredients included in this final monograph act primarily as exfoliating agents (i.e., agents which evoke a superficial peeling) (Refs. 2 and 3) and thus their potential to cause irritation is greatly reduced. However, there are some individuals with sensitive skin who may benefit from labeling for a sensitivity test. Therefore, as requested by the comment, in this final monograph the agency is including "directions for a sensitivity test" as optional labeling. Manufacturers who believe this information is necessary can convey it to consumers in the labeling of their products. Section 333.350(d) is revised to include a new paragraph (3) to read as follows:

"*Optional directions.* In addition to the required directions in paragraphs (d)(1) and (2) above, the product may contain the following optional labeling: '*Sensitivity Test for a New User.* Apply product sparingly to one or two small affected areas during the first three days. If no discomfort occurs, follow the directions stated' (select one of the following: 'elsewhere on this label,' 'above,' or 'below.')"

The agency has determined that the second sentence of the sensitivity test suggested by the comment should be included as part of the regular directions for all OTC acne drug products. Accordingly, the directions in § 333.350(d)(1) are being revised to read as follows: "Cleanse the skin thoroughly before applying medication. Cover the entire affected area with a thin layer one to three times daily. Because excessive drying of the skin may occur, start with one application daily, then gradually increase to two or three times daily if needed or as directed by a doctor. If bothersome dryness or peeling occurs, reduce application to once a day or every other day."

References

(1) Minutes of the 51st Meeting of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products, June 6 and 7, 1980, pp. 93–96.

(2) Melski, J. W., and K. A. Arndt, Current Concepts: Topical Therapy for Acne, New England Journal of Medicine, 302:503–506, 1980.

(3) Schachner, L., The Treatment of Acne: A Contemporary Review, The Pediatric Clinics of North America, 30:501–510, 1983.

II. Summary of Significant Changes to the Proposed Rule

1. The definition of acne proposed in § 333.303(a) is being revised by adding the terms "blackheads," "whiteheads," "acne pimples," and "acne blemishes." These terms are commonly used by consumers in describing acne. In addition, the agency is deleting the term "inflammatory" because it believes that consumers do not differentiate between the "inflammatory" and "noninflammatory" types of lesions that occur in acne. Also, consumers do not use these terms to describe their lesions. Accordingly, the agency is including the following definition of acne in § 333.303(a): "Acne. A disease involving the oil glands and hair follicles of the skin which is manifested by blackheads, whiteheads, acne pimples, and acne blemishes." Likewise, the agency is revising the definition of "acne drug product" in § 333.303(b) (redesignated § 333.303(c)) to delete the term "lesions" at the end of the definition and replace it with the terms "acne blemishes," "acne pimples," "blackheads," and "whiteheads," as follows: "Acne drug product. A drug product used to reduce the number of acne blemishes, acne pimples, blackheads, and whiteheads." (See comment 8 above.)

2. Based on these definitions of acne and acne drug product, the agency is adding the term "whiteheads" to the proposed terms "blackheads," "acne pimples," and "acne blemishes" in the indications for use in § 333.350(b)(2). The agency believes that consumers understand these terms and commonly use them to describe their acne lesions. (See comment 9 above.)

3. The agency is including a definition of the term "whitehead" in § 333.303(f) as follows: "A condition of the skin that occurs in acne and is characterized by a small, firm, whitish elevation of the skin." (See comment 9 above.)

4. The agency is revising the definition of "blackhead" proposed in § 333.303(c) (redesignated § 333.303(e)) as follows: "A condition of the skin that occurs in acne and is characterized by a black tip." (See comment 9 above.)

5. The agency is clarifying the definition of the word "pimple" proposed in § 333.303(d) by adding the word "acne" before "pimple" and by adding the words "resulting from acne" at the end of the definition as follows: "Acne pimple. A small, prominent, inflamed elevation of the skin resulting from acne." (See comment 9 above.)

6. The term "acne blemish" which appeared in the labeling proposed in § 333.350(b)(2) was not defined in the tentative final monograph. Therefore, the agency is adding a definition for "acne blemish" in § 333.303(b) of this final monograph as follows: "Acne blemish. A flaw in the skin resulting from acne." (See comment 9 above.)

7. The agency is adding the term "acne treatment" as an alternate statement of identity in § 333.350(a). The agency is also including several representative examples of dosage forms that may appear in the statement of identity as follows: "acne treatment" (insert dosage form, e.g., "cream," "gel," "lotion," or "ointment") and "acne medication" (insert dosage form, e.g., "cream," "gel," "lotion," or "ointment"). (See comment 10 above.)

8. The agency is expanding the directions for use of all OTC acne drug products in § 333.350(d)(1) by adding an additional sentence at the end of the directions as follows: "Cleanse the skin thoroughly before applying medication. Cover the entire affected area with a thin layer one to three times daily. Because excessive drying of the skin may occur, start with one application daily, then gradually increase to two or three times daily if needed or as directed by a doctor. If bothersome dryness or peeling occurs, reduce application to once a day or every other day." (See comment 17 above.)

9. The agency is including "directions for a sensitivity test" as optional labeling. A new paragraph (3) in § 333.350(d) provides as follows: "*Optional directions.* In addition to the

required directions in paragraphs (d) (1) and (2) above, the product may contain the following optional labeling: 'Sensitivity Test for a New User. Apply product sparingly to one or two small affected areas during the first three days. If no discomfort occurs, follow the directions stated' (select one of the following: 'elsewhere on this label,' 'above,' or 'below.')" (See comment 17 above.)

10. Although the in vivo testing criterion for antibacterial activity (as recommended by the Panel in § 333.340(e)(1)) is not being included in this final monograph, the agency believes that the following standards should apply:

A reduction of *P. acnes* counts of 0.75 log by the active ingredient must be demonstrated using an appropriate statistical test at an alpha error of less than or equal to 0.05. The *P. acnes* count in the active drug post treatment specimens must be a least 0.75 log lower than the corresponding baseline specimens and must be at least 0.75 log lower than the lesser of the vehicle baseline or vehicle post treatment *P. acnes* counts. (See comment 7 above.)

III. The Agency's Final Conclusions on OTC Topical Acne Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC topical acne drug products are generally recognized as safe and effective and not misbranded. Specifically, the agency has determined that the only ingredients that meet monograph conditions are salicylic acid, sulfur, and resorcinol and resorcinol monoacetate (in combination products). With the exception of benzoyl peroxide (see amended tentative final monograph for OTC topical acne drug products published in the **Federal Register** of August 7, 1991 (56 FR 37622), all other ingredients considered in this rulemaking have been determined to be nonmonograph conditions for use in a topical acne drug product. These ingredients are: alcloxa, alkyl isoquinolinium bromide, aluminum chlorohydrex, aluminum hydroxide, benzocaine, benzoic acid, boric acid, calcium polysulfide, calcium thiosulfate, camphor, chlorhydroxyquinoline, chloroxylenol, coal tar, dibenzothiophene, estrone, magnesium aluminum silicate, magnesium sulfate, phenol, phenolate sodium, phenyl salicylate, povidone-iodine, pyrilamine maleate, resorcinol (as single ingredient), resorcinol monoacetate (as single ingredient), salicylic acid (over 2 up to 5 percent), sodium borate, sodium thiosulfate, tetracaine hydrochloride, thymol, vitamin E, zinc oxide, zinc stearate, and zinc sulfide. In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule included in § 310.545(a)(1) all of the OTC topical acne ingredients listed above and was effective on May 7, 1991. This final rule does not result in the addition of any other ingredients to those already listed in § 310.545(a)(1). Accordingly, any drug product labeled, represented, or promoted for use as an OTC topical acne drug product that contains any of the ingredients listed in § 310.545(a)(1) or that is not in conformance with the monograph (21 CFR part 333), except for benzoyl peroxide as discussed above, may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352) and may not be marketed for this use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314). An appropriate citizen petition to amend the monograph may also be submitted under 21 CFR 10.30 in lieu of an application. Any OTC topical acne drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule mentioned above or this final rule that is not in compliance with the regulation or the amended tentative final monograph for OTC topical acne drug products (56 FR 37622) is subject to regulatory action.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (50 FR 2172 at 2180 to 2181). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC topical acne drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC topical acne drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 333

Labeling, Over-the-counter drugs, Topical acne drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 333 of Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Subpart C is added and reserved, and Subpart D consisting of §§ 333.301 to 333.350 is added to read as follows:

Subpart C—[Reserved]

Subpart D—Topical Acne Drug Products

Sec.

Subpart D—Topical Acne Drug Products

§ 333.301 Scope.

(a) An over-the-counter acne drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this

subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 333.303 Definitions.

As used in this subpart:

(a) *Acne.* A disease involving the oil glands and hair follicles of the skin which is manifested by blackheads, whiteheads, acne pimples, and acne blemishes.

(b) *Acne blemish.* A flaw in the skin resulting from acne.

(c) *Acne drug product.* A drug product used to reduce the number of acne blemishes, acne pimples, blackheads, and whiteheads.

(d) *Acne pimple.* A small, prominent, inflamed elevation of the skin resulting from acne.

(e) *Blackhead.* A condition of the skin that occurs in acne and is characterized by a black tip.

(f) *Whitehead.* A condition of the skin that occurs in acne and is characterized by a small, firm, whitish elevation of the skin.

§ 333.310 Acne active ingredients.

The active ingredient of the product consists of any of the following when labeled according to § 333.350.

(a) Resorcinol 2 percent when combined in accordance with § 333.320(a).

(b) Resorcinol monoacetate 3 percent when combined in accordance with § 333.320(b).

(c) Salicylic acid 0.5 to 2 percent.

(d) Sulfur 3 to 10 percent.

(e) Sulfur 3 to 8 percent when combined in accordance with § 333.320.

§ 333.320 Permitted combinations of active ingredients.

(a) Resorcinol identified in § 333.310(a) when combined with sulfur identified in § 333.310(e) provided the product is labeled according to § 333.350.

(b) Resorcinol monoacetate identified in § 333.310(b) when combined with sulfur identified in § 333.310(e) provided the product is labeled according to § 333.350

§ 333.350 Labeling of acne drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "acne medication," "acne treatment," "acne medication" (insert dosage form, e.g., "cream," "gel," "lotion," or "ointment"), or "acne treatment" (insert dosage form, e.g., "cream," "gel," "lotion," or "ointment").

(b) *Indications.* The labeling of the product states, under the heading "Indications," the phrase listed in paragraph (b)(1) of this section and may contain any of the additional phrases listed in paragraph (b)(2) of this section. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in paragraph (b) of this section, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the" (select one of the following: "management" or "treatment") "of acne."

(2) In addition to the information identified in paragraph (b)(1) of this section, the labeling of the product may contain any one or more of the following statements:

(i) (Select one of the following: "Clears," "Clears up," "Clears up most," "Dries," "Dries up," "Dries and clears," "Helps clear," "Helps clear up," "Reduces the number of," or "Reduces the severity of") (select one or more of the following: "acne blemishes," "acne pimples," "blackheads," or "whiteheads") which may be followed by "and allows skin to heal."

(ii) "Penetrates pores to" (select one of the following: "eliminate most," "control," "clear most," or "reduce the number of") (select one or more of the following: "acne blemishes," "acne pimples," "blackheads," or "whiteheads").

(iii) "Helps keep skin clear of new" (select one or more of the following: "acne blemishes," "acne pimples," "blackheads," or "whiteheads").

(iv) "Helps prevent new" (select one or more of the following: "acne blemishes," "acne pimples," "blackheads," or "whiteheads") which may be followed by "from forming."

(v) "Helps prevent the development of new" (select one or more of the following: "acne blemishes," "acne pimples," "blackheads," or "whiteheads").

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 333.310.* (i) "For external use only."

(ii) "Using other topical acne medications at the same time or immediately following use of this product may increase dryness or irritation of the skin. If this occurs, only one medication should be used unless directed by a doctor."

(2) *For products containing sulfur identified in §§ 333.310 (d) and (e).* "Do not get into eyes. If excessive skin irritation develops or increases, discontinue use and consult a doctor."

(3) *For products containing any combination identified in § 333.320.* "Apply to affected areas only. Do not use on broken skin or apply to large areas of the body."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) "Cleanse the skin thoroughly before applying medication. Cover the entire affected area with a thin layer one to three times daily. Because excessive drying of the skin may occur, start with one application daily, then gradually increase to two or three times daily if needed or as directed by a doctor. If bothersome dryness or peeling occurs, reduce application to once a day or every other day."

(2) The directions described in paragraph (d)(1) of this section are intended for products that are applied and left on the skin. Other products, such as soaps or masks, may be applied and removed and should have appropriate directions.

(3) *Optional directions.* In addition to the required directions in paragraphs (d)(1) and (d)(2) of this section, the product may contain the following optional labeling: "*Sensitivity Test for a New User.* Apply product sparingly to one or two small affected areas during the first 3 days. If no discomfort occurs, follow the directions stated: (select one of the following: 'elsewhere on this label,' 'above,' or 'below.')"

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: June 4, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-19304 Filed 8-15-91; 8:45 am]

BILLING CODE 4160-01-M

federal register

Friday
August 16, 1991

Part IV

Department of Housing and Urban Development

1 CFR Part 462
12 CFR Chapter X
24 CFR Part 81

HUD Regulation of Federal National Mortgage Association and Federal Home Loan Mortgage Corporation; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

1 CFR Part 462, 12 CFR Chapter X, 24 CFR Part 81

[Docket No. R-91-1532; FR-2695-P-01]

RIN 2501-AA99

HUD Regulation of Federal National Mortgage Association and Federal Home Loan Mortgage Corporation

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of the reorganization of the savings and loan institutions, pursuant to section 303(b)(1) of the Emergency House Finance Act of 1970, Public Law 91-351, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Secretary acquired general regulatory power over the Federal Home Loan Mortgage Corporation (FHLMC). This proposed rule would be the first regulation promulgated by the Secretary of Housing and Urban Development (HUD) governing the FHLMC. The purposes of this proposed rule are: (1) To propose new provisions relating to the operations of the Federal Home Loan Mortgage Corporation (FHLMC), which essentially parallel the Federal National Mortgage Association (FNMA) regulations as proposed to be amended herein; and (2) to propose, for public comment, revisions to HUD's existing regulations relating to oversight of the Federal National Mortgage Association (FNMA). The proposed rules are intended to provide for the safety and soundness of FHLMC and FNMA, and for the detailed oversight of FHLMC by the Secretary.

DATES: Comment due date: October 15, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the Fax receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 708-2084.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, telephone (202) 708-3137 or Walter T. Cassidy, Senior Financial Institutions Regulation Attorney, telephone (202) 708-2088; Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A telecommunications device for deaf persons (TDD) is available at (202) 708-9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Federal Home Loan Mortgage Corporation

The Federal Home Loan Mortgage Corporation (FHLMC) was chartered in 1970 within the Federal Loan Bank System by the Emergency House Finance Act of 1970, Public Law 91-351. The Members of the Home Loan Bank Board served as the Board of Directors of FHLMC. FHLMC was limited to the purchase of conventional mortgages, and it was anticipated that those purchases would be from savings and loan institutions. As part of the reorganization of the savings and loan institutions, pursuant to section 303(b)(1) of the Act, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1939 (FIRREA), the Secretary acquired "general regulatory power over (FHLMC) and shall make such rules and regulations as shall be necessary and proper to insure that the purposes of this (FHLMC) Act are accomplished."

Discussion of Proposed FHLMC Regulations

Since the Secretary first acquired regulatory power over FHLMC with the enactment of FIRREA in 1989, the proposed regulations would be the first regulations promulgated by the Secretary of Housing and Urban Development governing FHLMC. In substance, the proposed rules parallel HUD's existing FNMA regulations, as those regulations are proposed to be amended in this same document. However, since book-entry regulations had been promulgated in connection with FHLMC's participation in the Federal Reserve Bank book-entry system at 1 CFR part 462, the text of these regulations is proposed, virtually unchanged, as 12 CFR part 1040. The existing book-entry regulations at 1 CFR part 462 are to be removed.

The proposed rules are intended to provide for the safety and soundness of FHLMC and for the detailed oversight of FHLMC by the Secretary.

The FHLMC regulations are to be included in title 12 of the Code of Federal Regulations as subchapter A of chapter X. This title includes codification of Banks and Banking, including those agencies created by FIRREA wherein the Secretary plays statutory roles, such as the Federal Housing Finance Board and the Oversight Board for the Resolution Trust Corporation. Putting the regulations in this title reflects FHLMC's original ties to the Federal Home Loan Bank system as well as the manifold roles of the Secretary under FIRREA.

The proposed regulations for FHLMC are designed to provide rules that are parallel, to the extent possible, to those applying to FNMA. Because there are no existing regulations promulgated by the Secretary for FHLMC, they are presented as one complete document.

Federal National Mortgage Association

The Federal National Mortgage Association (FNMA) was a Federal government corporation from its founding by the Reconstruction Finance Corporation in 1938 until 1968, when it was rechartered under private ownership. Under title III of the National Housing Act, 12 U.S.C. 1723(a) (Charter Act), FNMA became a stockholder-owned, privately managed corporation chartered to provide ongoing assistance and liquidity to the secondary market for home mortgages. Pursuant to section 309(h) of the Charter Act, the Secretary of Housing and Urban Development has "general regulatory power over (FNMA) and shall make such rules and regulations as shall be necessary and proper to insure that the purpose of this (Charter Act) are accomplished."

Regulations relating to the Secretary's FNMA oversight were added as part 81 of chapter 24 of the Code of Federal Regulations by a document published on September 6, 1968 at 33 FR 12648, effective September 1, 1968. These regulations were extensively revised in a rule published on August 15, 1978 at 43 FR 36200, effective September 14, 1978.

The Secretary has determined that, for several reasons, substantial revisions are required to the 24 CFR part 81 rules governing FNMA. The primary driving

force is the need to provide for the financial safety and soundness of FNMA. Some provisions have become outdated because of intervening statutory and programmatic changes; some no longer reflect FNMA's debt marketing practices; required reports no longer reflect current market practices, or provide adequate information to the Secretary.

Section-by-Section Discussion of Proposed Changes to FNMA Regulations

Subpart A—General Provisions

Section 81.1 Scope of part.

The short description of the rule is changed to include new subpart F dealing with safety and soundness.

Section 81.2 Definitions.

Deleted are definitions of: Single-family mortgage, unit mortgage, suburban, debt instrument, and obligational authority.

"Project mortgage" is renamed "multifamily mortgage."

The definition of "mortgage loan" is broadened to include additional security agreements creating liens on additional interests in real property including an ownership interest in either a manufactured home or a cooperative housing corporation. "Mortgage" is used synonymously with "mortgage loan."

The definition of "housing for low-and-moderate-income families" is broadened to include multifamily units within the section 221(d)(4) cost limits and units within the mortgage revenue bond price and income requirements. The rule does not include units receiving low income housing tax credits as FNMA had requested, because of the considerable economic benefit FNMA derives from such projects.

Subpart B—Operations of FNMA

Section 81.11 General.

Paragraph (a) is changed to recite that the Secretary's approval is required for issuance of debt instruments convertible into stock as well as for the issuance of stock.

Paragraph (b) is rewritten to provide a simpler and stronger statement of the Secretary's general regulatory authority.

Section 81.12 Issuance of common stock. (Retitled: Issuance of stock and debt or other obligations convertible into stock.)

The organization of paragraph (a) is changed in the following ways. Moved to the front of paragraph (a) is the authority of the Secretary (currently in paragraph (c)) to approve issuance of stock, now broadened to include debt or other obligations convertible into stock. The term "common stock" has been changed to "any stock." Recognition of the Secretary's right to approve any requirement for servicers to own a minimum amount of FNMA stock is moved into paragraph (a) from the current paragraph (b). Similar authority with regard to sellers of mortgages to FNMA is also recognized in paragraph (a) as currently done.

Sellers of mortgage loans to FNMA or mortgage servicers are no longer required to make a capital contribution to the corporation. With HUD approval, FNMA eliminated this requirement. References to these determinations are deleted.

HUD's review time for requests to issue stock or debt obligations convertible into stock has been reduced from 30 to 10 working days.

Oral requests are now allowed if followed by the required documentation within 10 days, including documentation of good cause for the oral request.

Section 81.13 Dividends on common stock.

Section 81.13 is a completely new section of the regulations and covers the payment of FNMA of dividends on its common stock. FNMA would have to submit a written request for the Secretary's approval of each annual dividend policy.

Section 81.14 Issuance of debt instruments and obligational authority. (Retitled: Issuance of debt instruments.)

Removed is paragraph (a) which distinguishes between HUD's authority over the issuance of stock and Treasury's authority over the issuance of debt instruments.

Notification of the Secretary when FNMA seeks approval from the Secretary of the Treasury to issue debt is transformed into a report requirement. The text also recognizes that into a report requirement. The text also recognizes that FNMA issues debt to refinance mortgage purchases as well as to finance mortgage purchases and deletes a longer discussion of refinancing.

Removed is paragraph (c) which discusses what information FNMA has to provide Treasury on proposed debt issuances. Congress had eliminated the need for this information prior to FIRREA.

Section 81.15 Debt-to-capital ratio. (Retitled: Purchase of stock or debt or other instrument convertible into stock.)

This section is new, requiring the Secretary's approval before FNMA may purchase any of its stock or debt or other obligation convertible into stock. The Secretary must be furnished with a general description of the proposed purchase and the source of the funds.

Section 81.16 Debt-to-capital ratio. (Formerly: § 81.15)

Paragraph (c) is changed so that the Secretary can lower the debt-to-capital ratio (but not below the 15- to 1-ratio in the Charter Act) without having first to determine whether the action will adversely affect the fiscal integrity of or limit the availability of credit to FNMA or impair FNMA's ability to discharge its obligations to the holder of FNMA's debt, including holders of subordinated debt.

Removed is paragraph (d) which automatically increases the debt-to-capital ratio for a reduction in FNMA's capital, capital surplus, general surplus, reserves, or undistributed earnings.

Section 81.17 Conventional mortgages.

This is a new section, derived in part from former section 81.16.

Paragraph (b) of former § 81.16 is changed to clarify the language authorizing FNMA to conduct previously approved programs as long as "the Secretary has granted specific programmatic authority."

Paragraph (c) is changed to formalize the 45 (60) day review process. The clock starts when the request for approval is received by the Financial Institutions Regulation Staff at HUD. If FNMA fails to submit requested information in a timely manner, FNMA may withdraw its request. If it chooses not to withdraw its request, the Secretary may deny the request based on FNMA's default and so report to Congress. This would not limit his ability to deny on other grounds.

Section 81.18 Conventional mortgages in central cities. (Formerly: § 81.16)

In paragraph (b), the date by which the Secretary may impose a central cities mortgages goal is changed from March 1 to April 1. Paragraph (b) is also changed to clarify that in calculating the goal HUD considers units in a multifamily property separately.

Paragraph (c) is modified to allow the Secretary to consider other activities of FNMA to support the goal of adequate housing for central cities families when setting the goal, presumably recognizing other activities as desirable by setting a lower goal.

Paragraph (c) is changed to give the Secretary 30 days instead of 15 days to respond to FNMA's plan to meet the required goal.

Instead, paragraph (c) has been changed to allow the Secretary to condition the payment of cash dividends upon FNMA's central cities performance.

Section 81.19 Conventional mortgage purchases related to housing for low- and moderate-income families. (Formerly § 81.17)

In paragraph (b), the date by which the Secretary may impose a low- and moderate-income goal is changed from March 1 to April 1. Paragraph (b) is also changed to clarify that in calculating the goal HUD considers units in a multifamily property separately.

Paragraph (c) is modified to allow the Secretary to consider other activities of FNMA to support the goal of adequate housing for low- and moderate-income families when setting the goal, presumably recognizing other activities as desirable by setting a lower goal.

Paragraph (c) is changed to give the Secretary 30 days instead of 15 days to respond to FNMA's plan to meet the required goal. Removed from paragraph (c) are two provisions to enforce the low- and moderate-income requirement which are no longer applicable because of changes in FNMA's Charter and business.

Instead, paragraph (c) has been changed to allow the Secretary to condition the payment of cash dividends upon FNMA's low- and moderate-income performance.

Section 81.20 Home mortgage underwriting guidelines. (Renumbered and retitled: Fair Housing.)

In this area the Secretary has broad statutory and regulatory responsibilities across the entire housing spectrum. The proposed rule updates and clarifies a detailed set of prohibitions against discrimination and redlining and strengthens requirements that FNMA shall comply with the fair housing laws and applicable rules and regulations published by the Secretary.

Section 81.21 Equal employment opportunity. (Formerly § 81.19)

Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1833e) requires that FNMA comply with sections 1 and 2 of Executive Order 11478, providing for the adoption and implementation of equal employment opportunity. The proposed rule replaces a more limited set of prohibitions with reference to the aforesaid more expansive requirement.

Subpart C—Reporting Requirements

Section 81.22 General. (Formerly: § 81.21)

An addition to this section gives the Secretary authority to require additional reports at any time. That addition was formerly § 81.25. Inasmuch as the Secretary regulates or supervises FNMA, reports prepared in accordance with this Subpart C or otherwise may be withheld from public disclosure in accordance with Exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

Section 81.23 Business activities reports. (Formerly § 81.22)

This section was completely rewritten. The Annual Business Activities Report is described in the text rather than in Appendix B as is currently done. Its content is changed to include first information which would be required by the SEC's 10–K and SAR Annual Report and then additional items. The proposed rule establishes a new Quarterly Business Activities Report based on the SEC's 10–Q report. Also listed are the data needed for HUD's stress test analysis and 5 new risk reports to be submitted quarterly.

Section 81.24 Estimates of amount of purchase commitments at FNMA Auctions. (Renumbered and retitled: Annual business plan.)

The text of this section was eliminated because FNMA no longer conducts auctions. This section now requires that FNMA submit to HUD its own business plans.

Section 81.25 Other Information. (Renumbered and retitled: Central cities housing finance reports.)

Former contents of this section now contained in § 81.11. The section now requires FNMA to submit an annual report on compliance with the central cities housing requirements to the Secretary.

Section 81.26 Low- and moderate-income housing finance reports.

This is a new section which requires FNMA to submit an annual report on compliance with the low- and moderate-income housing requirements to the Secretary.

Section 81.27 Other information. (Formerly § 81.25, renumbered and retitled: Fair housing reports.)

Material formerly contained in this section was added to § 81.21. The revised provision recites that the Secretary intends to utilize the Home Mortgage Disclosure Act (12 U.S.C. 2801–2810) data system developed by the Federal Financial Institutions Examination Council to assist in monitoring FNMA's compliance with the Fair Housing Act (42 U.S.C. 3600–3619). The Secretary will not require additional data from FNMA at this time. By so doing, the Secretary has avoided placing a substantial paperwork burden on FNMA and its lender/sellers.

Section 81.28 Periodic Reports.

This is a new provision which requires the Secretary to be provided with any proxy reports, any informative document released to the investment community, and any report of insider trading.

Section 81.29 Report of Intent to Terminate Program.

This is a new provision requiring 2 business days advance notice of FNMA's intent to terminate a mortgage program. FNMA must explain its reasons for terminating the program and furnish information on the anticipated impact of the termination.

Subpart D—Examinations and Audits

Section 81.31 General.

A provision is added that inasmuch as the Secretary regulates or supervises FNMA, reports prepared or examinations conducted by or for FNMA or the Secretary in accordance with this Subpart D or otherwise may be withheld from public disclosure in accordance with Exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

Section 81.32 Examination of books, records, and documents.

Section 81.33 Annual audit of FNMA.

Section 81.34 Special audits. (Retitled: Secretarial audits.)

Sections 81.33 and 81.34 significantly alter the auditing requirements. FNMA would be required to supply an audit of its own activities to the Secretary each year. The Secretary will conduct additional audits regularly and special audits as needed.

Current regulations allow the Secretary to conduct an annual audit. Alternatively, he can accept FNMA's audit if voluntarily submitted, and limit his audit to areas not covered by FNMA's audit. Current rules do allow the Secretary to conduct "special audits" at any time.

Subpart E—Book-Entry Procedures for FNMA Securities

Section 81.41 Definitions.

No change.

Section 81.42 Authority of Reserve Bank.

No change.

Section 81.43 Scope and effect of book-entry procedure.

No change.

Section 81.44 Transfer or pledge.

No change.

Section 81.45 Withdrawal of FNMA securities.

Paragraph (b) is changed to allow FNMA to issue non-book entry securities without having to come to HUD each time for approval.

Section 81.46 Delivery of FNMA securities.

No change.

Section 81.47 Registered bonds and notes.

No change.

Section 81.48 Servicing book-entry FNMA securities; payment of interest; payment at maturity or upon call.

No change.

Section 81.49 Treasury Department regulations; applicability to FNMA.

No change.

Subpart F—Safety and Soundness

Section 81.50 is a completely new section covering safety and soundness. These regulations cover the assessment of financial risks in FNMA's business activities and determine how much capital FNMA should hold. Under the regulations, the Secretary will have several ways to evaluate and control financial adequacy—the overall debt-to-capital ratio, capital adequacy as defined by stress tests and other analytical techniques and specific capital ratios or reserve requirements for different lines of business. The last two are important because the overall debt-to-capital ratio does not necessarily require FNMA to raise capital in response to the growth of the large MBS program. Consequently, even under the new § 81.15, the overall debt-to-capital ratio would fail to assure adequate capital to support the growth of this program.

This section also makes it explicit that the Secretary can review existing programs for financial risk and require changes in program design, increase reserve requirements or cause FNMA to reduce or stop a line of activity. Note also that for the purposes of this section, subordinated debt is not included in the definition of regulatory capital.

Appendix A—Central Cities

Removed. See §§ 81.2 and 81.16.

Appendix B—Business Activities Report

Removed. See § 81.22.

Appendix C—Regular Reports

Removed. See § 81.23.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This notice is a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. In accordance with the Executive Order, the Department will be developing a regulatory impact analysis in conjunction with its development of a final rule. Commenters are invited to submit comments to the Department on the costs and benefits of this rule for purposes of the Department's regulatory impact analysis.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this proposed rule is not subject to review under the order. The rule proposes amendments to the regulations governing the Secretary's oversight of FNMA and proposes new regulations to govern the Secretary's oversight of FHLMC, which oversight was acquired by the Secretary from the Federal Home Loan Bank Board with the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Both FNMA and FHLMC operate under substantially similar Federal statutory charters. These charters give the Secretary the responsibility for ensuring that these enterprises function in compliance with their statutory public purposes, and that they operate in a financially safe and sound manner. The proposed rules structure the relationship between the Secretary and these government-sponsored enterprises to enable the Secretary effectively to carry out the oversight responsibilities. Both enterprises retain their current authority to purchase mortgages, issue instruments backed by mortgages, and issue other debt instruments. Thus, the proposed regulations do not affect the current relationships between these institutions and units of State or local government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, because it will regulate FHLMC and FNMA, two government-sponsored entities each of which constitutes a large economic entity.

This proposed rule was listed as item 1221 in the Department's Semiannual Agenda of Regulations published at 56 FR 17360, 17370, on April 22, 1991, under Executive Order 12291 and the Regulatory Flexibility Act.

There are no Federal Domestic Assistance Catalog numbers.

List of Subjects

1 CFR Part 462

Book-entry, Federal Home Loan Mortgage Association, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Parts 1000, 1010, 1020, 1030, 1040, and 1050

Accounting, Federal Home Loan Mortgage Association, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

24 CFR Part 81

Accounting, Federal National Mortgage Association, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, in title 1 of the Code of Federal Regulations, part 462 is proposed to be removed; title 12 of the Code of Federal Regulations is proposed to be amended by adding a new chapter X; and in title 24 of the Code of Federal Regulations, part 81 is proposed to be amended as follows:

1. It is proposed to remove 1 CFR part 462.

2. Title 12 of the Code of Federal Regulations is proposed to be amended by adding a new chapter X consisting of subchapter A (parts 1000, 1010, 1020, 1030, 1040, and 1050), to read as follows:

CHAPTER X—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, (FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC))

SUBCHAPTER A—REGULATIONS GOVERNING THE SECONDARY MARKET OPERATIONS OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC)

Part
1000 General provisions.
1010 Operations of FHLMC.
1020 Reporting requirements.
1030 Examinations and audits.
1040 Book-entry procedures for FHLMC securities.
1050 Safety and soundness.

SUBCHAPTER A—REGULATIONS GOVERNING THE SECONDARY MARKET OPERATIONS OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC)

PART 1000—GENERAL PROVISIONS

Sec.
1000.0 Scope of chapter.
1000.1 Definitions.

Authority: 12 U.S.C. 1451, et seq.; 42 U.S.C. 3600–3619; 42 U.S.C. 3535(d).

§ 1000.0 Scope of chapter.

The purpose of the Federal Home Loan Mortgage Corporation (FHLMC) is: to provide stability in the secondary market for home mortgages; to respond appropriately to the private capital markets; and, to provide ongoing assistance to the secondary market for home mortgages (including mortgages securing housing for low- and moderate-income families involving a reasonable economic return to FHLMC) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for home mortgage financing (section 301(b) FHLMC Act). This chapter contains regulations providing for the safety and soundness of FHLMC and for the detailed oversight of FHLMC by the Secretary. Part 1000 contains definitions relating to this entire chapter. Part 1010 contains regulations governing the operations of FHLMC. Part 1020 contains regulations requiring FHLMC to prepare and submit reports on its activities on a regular basis. Part 1030 contains regulations governing examinations and audits of FHLMC by the Secretary and others. Part 1040 contains regulations governing book-entry procedures for FHLMC securities and related matters. Part 1050 contains regulations to insure the safety and soundness of FHLMC.

§ 1000.1 Definitions.

As used in this chapter, the term—

Central city means each of the political subdivisions designated as such from time to time by the Office of Management and Budget of the Executive Office of the President in the document entitled Metropolitan Statistical Areas (MSA) and published by the Department of Commerce.

Conventional mortgage means a mortgage loan not insured or guaranteed by the Untied States or by any agency or instrumentality of the United States.

Debt-to-capital ratio means the ratio of:

(1) The aggregate principal amount outstanding, at any one time, of obligations issued by FHLMC under section 306 of the Federal Home Loan mortgage Corporation Act (FHLMC Act); to

(2) The sum, at that same time, of FHLMC's capital, capital surplus, general surplus, reserves, undistributed earnings, and the outstanding total principal amount of obligations issued by FHLMC under section 306 of the FHLMC Act which are entirely subordinated to all other obligations of FHLMC issued or to be issued under section 306.

Dwelling unit means a single, unified combination of rooms designed for residential use by one family.

FHLMC means the Federal Home Loan Mortgage Corporation.

FHLMC Act means the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451, *et seq.*)

Home mortgage means a mortgage loan secured by real property upon which is located a structure containing not less than one nor more than four dwelling units.

Housing for low- and moderate-income families means:

(1) Any housing financed by a mortgage loan insured by FHA under section 221, 235, 236, or 237 of the National Housing Act (12 U.S.C. 17151, 1715z, 1715z–1, or 1715z–2);

(2) Any housing project with respect to which the owner has entered into a Housing Assistance Payment Contract, or an agreement to enter into such a contract, pursuant to which eligible families in not less than 25 percent of the dwelling units in the project will receive Housing Assistance Payments under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(3) Any single-family dwelling (including a dwelling unit in a condominium, cooperative or planned unit development project) purchased at a price not in excess of 2.5 times the median family income (as most recently determined by the Secretary) for the Metropolitan Statistical Area, or county not in such an Area, in which the dwelling is located, provided, however, the Secretary from time to time may fix such different multiplier as the Secretary, in his discretion, determines will more appropriately serve the needs of low- and moderate-income families, which changed multiplier will be effective upon 30 days written notice to FHLMC and notice of such action shall also be published in the **Federal Register**;

(4) Any multifamily housing whose cost does not exceed the per-dwelling-unit dollar cost limitations established by the Secretary under section 221(d)(4) of the National Housing Act (12 U.S.C. 17151(d)(4)); or

(5) Any housing that meets the purchase price and income requirements of the mortgage revenue bond provisions of section 143 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 143).

Mortgage or *mortgage loan* means a loan secured by a mortgage, a deed of trust or other security agreement, or an interest in such a loan, which creates a lien on one of the following interests in real property:

(1) An estate in fee simple;

(2) A leasehold or subleasehold extending or renewable (automatically or at the option of the leaseholder) for a period of at least 10 years beyond the maturity of the loan;

(3) A leasehold or subleasehold of any duration and the remaining estate in fee simple;

(4) An ownership interest in a manufactured home; or

(5) An ownership interest in a cooperative housing corporation and a right of occupancy in the property owned by that corporation.

Multifamily mortgage means a mortgage loan secured by real property upon which is located a structure containing five or more dwelling units.

New program means any proposal involving the purchase, servicing, sale, swap, lend on the security of or otherwise deal in mortgages or mortgage related instruments which differs significantly and materially from current FHLMC programs in terms of type of property, term of mortgage, nature of mortgage instrument, type or amount of mortgage insurance, nature of the lien, form of securitization, or other significant matter.

Purchase includes, when used in connection with the purchase of

mortgage loans, the purchase of such loans for portfolio and for securitization.

Regulatory capital means the sum of stockholder's equity, retained earnings, and loss reserves.

Secretary means the Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular function for the Secretary.

Single-family mortgage means a mortgage loan secured by real property upon which is located a structure containing a single dwelling unit.

Unit mortgage means a mortgage loan secured by:

(1) Real property consisting of a dwelling unit in a condominium or planned unit development project; and

(2) An undivided interest in the common areas and facilities of the project, or a stock interest in an association having title to the common areas and facilities of the project.

PART 1010—OPERATIONS OF FHLMC

Sec.

Authority: 12 U.S.C. 1451, et seq.; 42 U.S.C. 3600–3619; 42 U.S.C. 3535(d).

§ 1010.0 General.

(a) Specific provisions of the FHLMC Act require FHLMC to obtain the approval of the Secretary with respect to the following specific activities:

(1) The purchase, service, sale, or lending on the security of or otherwise dealing in conventional mortgages (section 303(b)(7) of the FHLMC Act); and

(2) Allowing the aggregate amount of FHLMC's securities outstanding at any one time to exceed 15 times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings (section 303(b)(5) of the FHLMC Act). In addition, specific provisions of the FHLMC Act authorize the Secretary to:

(i) Require that a reasonable portion of FHLMC's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to FHLMC;

(ii) Examine the books and financial transactions of FHLMC; and

(iii) Require FHLMC to make such reports on its activities as the Secretary considers to be necessary.

(b) The general provisions of section 303(b)(1) of the FHLMC Act provide that the Secretary shall have general regulatory power over FHLMC and shall make such rules and regulations as shall be necessary and proper to insure that the purposes of the FHLMC Act are accomplished.

(c) All official communications to the Secretary by FHLMC, including but not limited to: Requests for new program approval, requests for approval to issue stock or debt obligations convertible into stock, reports of intent to terminate programs and business activities reports shall be submitted to the Office of the Director, Financial Institutions Regulation Staff, room 8100, 451 Seventh Street, SW., Washington, DC 20410. The Secretary may change such recipient by written notice directed to the Chief Executive Officer or Chief Operating Officer of FHLMC, which notice shall be effective upon delivery to the normal place of business of either such officer of FHLMC.

§ 1010.1 Issuance of stock and debt or other obligations convertible into stock.

(a) The FHLMC may issue voting common stock in the manner and amount, and subject to any concentrations on ownership, as may be established by FHLMC (section 304(a)(1)(B) of the FHLMC Act).

(b)(1) The approval of the Secretary is required before the issuance, by FHLMC, of any stock or debt or other obligation convertible into stock (section 303(b)(6) of the FHLMC Act). Any request for the Secretary's approval shall be submitted to the Secretary in writing, unless the Secretary permits an oral submission for good cause shown, not less than 10 workdays before the date of the proposed offering. The request shall contain the following information:

(i) A general description of the proposed offering, including, if available, the proposed date and duration of the offering period for the shares or obligations, the proposed issue price for each share or obligation, and the number of shares or obligations proposed to be offered; and

(ii) The proposed use of the proceeds from the offering.

(2) Within 10 workdays after the submission of a request by FHLMC in accordance with paragraph (b)(1) of this section, the Secretary shall approve, reject, or request additional information concerning FHLMC's proposed offering.

(3) Whenever FHLMC makes an oral request under paragraph (b)(1) of this section, the oral request shall be followed within 10 days by complete documentation of the information required by paragraph (b)(1) of this section, including the good cause for the oral request.

§ 1010.2 Dividends on common stock.

(a) The aggregate amount of cash dividends paid by FHLMC to the holders of its common stock in any one fiscal year may not, cumulatively, exceed any rate which may be determined by the Secretary to be a fair rate of return considering the financial safety and soundness of FHLMC as measured by the current earnings and capital condition of FHLMC. After finding safety and soundness, the Secretary will consider FHLMC's activities in relationship to insuring that the purposes of the Charter Act are accomplished.

(b) After the FHLMC board of directors approves a proposed annual dividend policy, FHLMC shall submit a written request to the Secretary for approval, which request shall demonstrate that the dividend policy represents a fair rate of return in view of the current and projected earnings, capital condition, including, without limitation, other liabilities owed and benefits available to shareholders, and FHLMC's activities associated with insuring that the purposes of the Charter Act are being and are anticipated to be accomplished, including (but not by way of limitation), the purpose of providing low- and moderate-income housing. The Secretary shall use his best efforts to act on FHLMC's request within 15 days of receipt.

(c) During the course of the year, if the FHLMC board determines that there is a substantial change in current or projected earnings, capital condition, or its activities associated with insuring that the purposes of the Charter Act are being or are anticipated to be accomplished, the FHLMC board may approve an appropriate revised proposed annual dividend policy, if any, and if there is a proposed revised annual dividend, FHLMC shall submit a written request to the Secretary for approval, which request shall demonstrate that the revised dividend policy represents a fair rate of return taking into account the change in circumstances.

§ 1010.3 Issuance of debt instruments.

FHLMC is authorized, upon the approval of the Secretary of the Treasury, to issue its debt instruments from time to time in such amounts as may be necessary to finance or refinance its mortgage purchases and its obligations incurred in the conduct of its secondary market operations. FHLMC shall furnish as a report to the Secretary, at the same time the original is delivered to the Secretary of the Treasury, a copy of any written communication submitted by it to the Secretary of the Treasury concerning the issuance of its debt instruments (section 303(b)(1) of the FHLMC Act).

§ 1010.4 Purchase of stock or debt or other instrument convertible into stock.

(a) The approval of the Secretary is required before FHLMC may purchase any of its stock or debt or other obligation convertible into stock. Any request for approval shall be submitted to the Secretary in writing, unless the Secretary permits an oral submission for good cause shown, not less than 10 workdays before the date of the first proposed purchase. A request for approval must contain the following information:

(1) A general description of the proposed purchase, including, the proposed date and duration of the purchase period for shares or obligations, the proposed purchase price for each share or obligation, and the number of shares or obligations proposed to be purchased; and

(2) The proposed source of the funds for the purchase.

(b) Within 10 workdays after the submission of a request by FHLMC in accordance with this section, the Secretary will approve, reject, or request additional information concerning FHLMC's proposed offering.

(c) If FHLMC makes an oral request for approval as described in this section, the oral request must be followed, within ten days, by complete documentation of the information required herein, including documentation supporting the showing of good cause for the oral request.

§ 1010.5 Debt-to-capital ratio.

(a) Under section 303(b)(5) of the FHLMC Act, FHLMC's debt-to-capital ration may not exceed 15 to 1, unless a greater maximum is fixed by the Secretary. Upon request submitted in writing by FHLMC, including justification satisfactory to the Secretary and supporting financial debt, the Secretary from time to time may fix such greater maximum ratio as the Secretary, in his or her discretion, shall determine, which shall remain in effect as FHLMC's maximum debt-to-capital ratio unless otherwise specified by the Secretary. Upon fixing or changing a maximum ratio pursuant hereto, the Secretary shall cause notice of such action to be published in the **Federal Register**.

(b) FHLMC shall not issue any debt instrument if the instrument's issuance would cause FHLMC's debt-to-capital ratio to exceed the maximum ratio established by section 303(b)(5) of the FHLMC Act, or such other maximum ratio as has been fixed by the Secretary as provided in paragraph (a) of this section.

(c) The Secretary may decrease the maximum debt-to-capital ratio fixed under paragraph (a) of this section (but not below a ratio of 15 to 1), provided that FHLMC is given 30 days written notice that the Secretary is considering a decrease. During the 30-day period, FHLMC may submit written arguments in opposition to a decrease. Any decision to decrease the ratio shall be made in the Secretary's sole discretion. The Secretary shall provide FHLMC not less than 30 days written notice of the effective date of any decrease in the maximum debt-to-capital ratio.

§ 1010.6. Conventional mortgages.

(a) Section 305(a) of the FHLMC Act authorizes FHLMC, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional mortgages, subject to the approval of the Secretary (section 303(b)(7)(A) of the FHLMC Act).

(b) All conventional programs are subject to the limitations and requirements contained in this section. All conventional programs in which FHLMC has engaged or is engaging as of August 9, 1989, the enactment date of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e), are deemed approved by the Secretary (section 303(b)(7)(B) of the FHLMC Act). All such programs remain subject to all limitations or requirements under which they were being operated by FHLMC on or before August 9, 1989.

(c)(1) FHLMC shall submit to the Secretary a written request for approval before undertaking, under its secondary market operations, any new program with respect to conventional mortgages not approved by the Secretary under paragraph (b) of this section. A FHLMC request for approval under this paragraph shall set forth the full content of the new program with respect to conventional mortgages proposed, the FHLMC Act purposes to be furthered by the new program, and the anticipated effect of the new program on other programs being conducted by FHLMC under its secondary market operations The approval request must be accompanied by documentation set forth in § 1050.2 of this chapter. The FHLMC approval request shall be considered submitted upon its receipt by the Office of the Director, Financial Institutions Regulation Staff, room 8100, 451 7th Street, SW., Washington, DC 20410.

(2) Within 45 days following the date of the submission of a request by FHLMC under paragraph (c)(1) of this section, the Secretary, in the Secretary's discretion, shall approve, reject, or requests additional information concerning the program with respect to conventional mortgages which FHLMC proposes to undertake. The 45-day period may be extended for one additional 15-day period if the Secretary requests additional information from FHLMC. Before the expiration of the appropriate 45 (or 60) day period, the Secretary, in the Secretary's discretion, will approve the request by FHLMC or transmit a report to Congress explaining why the request has not been approved. If FHLMC fails to furnish the requested additional information to the Secretary in a timely manner, at the Secretary's option, FHLMC may withdraw its new program request. In the event that FHLMC neither furnishes the information nor withdraws the request, the Secretary shall deny the request based on FHLMC's default in furnishing the information and so report to Congress. If the Secretary has not approved the request, but has not submitted the report to Congress, the request by FHLMC will be deemed approved at the expiration of the period provided for the Secretary's review.

§ 1010.7 Conventional mortgages in central cities.

(a) Section 305(a) of the FHLMC Act authorizes FHLMC pursuant to commitments or otherwise to purchase, service, sell, lend on the security of, or otherwise deal in conventional residential mortgages, for the purposes set forth in section 301(b) of the FHLMC Act. Section 303(b)(2) of the FHLMC Act authorizes the Secretary to require that a reasonable portion of FHLMC's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to FHLMC.

(b)(1) On or before April 1 of any year following a year in which FHLMC's purchases of conventional mortgages secured by properties located in central

cities are less than 30 percent of FHLMC's aggregate number of purchases of conventional mortgages for the period, the Secretary may establish an annual goal for FHLMC's purchases of conventional mortgages secured by properties located in central cities. Whenever the real property securing a conventional mortgage contains more than one dwelling unit, for the purposes of the calculations and goals in this section, each such dwelling unit shall be counted as a separate purchase of a conventional mortgage.

(2) In establishing the annual goal with respect to FHLMC's purchases of conventional mortgages secured by properties located in central cities the Secretary shall consider:

(i) The total number of such purchases of conventional mortgages by FHLMC in the calendar year immediately preceding;

(ii) The ratio of the number of such purchases to the number of conventional mortgages purchased by FHLMC in that period;

(iii) The relationship of the average sales price of conventionally financed homes in the central cities to the median income of families in central cities;

(iv) The condition of the housing market;

(v) Other activities undertaken by FHLMC to support the goal of adequate housing for central cities; and

(vi) General economic factors.

(c)(1) In any year for which the Secretary has established and published as a Notice in the **Federal Register**, an annual goal for the purchase of conventional mortgages secured by properties in central cities, the Secretary shall, upon determining that FHLMC's regular reports covering its secondary market operations for the first two quarters of that year reveal that FHLMC's purchases of conventional mortgages secured by properties in central cities will fall below the annual goal established pursuant to paragraph (b)(1) of this section, require FHLMC to provide, within 30 work days after the Secretary's determination is communicated to FHLMC, a plan of special action proposed to be taken by FHLMC to increase its purchases of conventional mortgages secured by properties in central cities, or a statement of reasons why the annual goal should be altered or suspended.

(2) Within 30 days after receipt of the FHLMC plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by properties in central cities, or FHLMC's statement of reasons why the annual goal for such purchases should be altered or suspended, the Secretary shall approve, reject, or seek modification of the FHLMC plan of special actions proposed, or approve or reject its proposed alteration or suspension of the annual goal for the year. If the Secretary decides to retain the goal announced for the year, or rejects the special actions proposed by FHLMC to increase its purchases of conventional mortgages secured by properties in central cities, the Secretary may:

(i) Require FHLMC to hold open an offer to purchase newly originated conventional mortgages secured by properties in central cities; or

(ii) Condition the approval of payment of cash dividends to the holders of FHLMC's stock upon FHLMC's purchasing an adequate number of conventional mortgages secured by properties in central cities. FHLMC shall not be required to purchase conventional mortgages that:

(A) Fail to meet FHLMC's underwriting standards applicable to such mortgages; or

(B) Are not deemed by FHLMC to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors.

§ 1010.8 Conventional mortgage purchases related to housing for low- and moderate-income families.

(a) Section 305(a) of the FHLMC Act authorizes FHLMC pursuant to commitments or otherwise to purchase, service, sell, lend on the security of, or otherwise deal in conventional residential mortgages, for the purposes set forth in section 301(b) of the FHLMC Act. Section 303(b)(2) of the FHLMC Act authorizes the Secretary to require that a reasonable portion of FHLMC's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to FHLMC.

(b)(1) On or before April 1 of any year following a year in which FHLMC's purchases of conventional mortgages secured by housing for low- and moderate-income families are less than 30 percent of FHLMC's aggregate number of purchases of conventional mortgages for the period, the Secretary may establish an annual goal for FHLMC's purchases of conventional mortgages secured by housing for low- and moderate-income families. Whenever the real property securing a conventional mortgage contains more than one dwelling unit, for the purposes of the calculations and goals in this section, each such dwelling unit shall be counted as a separate purchase of a conventional mortgage.

(2) In establishing the annual goal with respect to FHLMC's purchases of conventional mortgages secured by housing for low- and moderate-income families the Secretary shall consider:

(i) The total number of such purchases of conventional mortgages by FHLMC in the calendar year immediately preceding;

(ii) The ratio of the number of such purchases to the number of conventional mortgages purchased by FHLMC in that period;

(iii) The relationship of the average sales price of conventionally financed homes in the various sections of the United States to the median income of families in these sections of the United States;

(iv) The condition of the housing market;

(v) Other activities undertaken by FHLMC to support the goal of adequate housing for low- and moderate-income families; and

(vi) General economic factors.

(c)(1) In any year for which the Secretary has established and published as a Notice in the **Federal Register**, an annual goal for the purchase of conventional mortgages secured by housing for low- and moderate-income families, the Secretary shall, upon determining that FHLMC's regular reports covering its secondary market operations for the first two quarters of that year reveal that FHLMC's purchases of conventional mortgages secured by housing for low- and moderate-income families will fall below the annual goal established pursuant to paragraph (b)(1) of this section, require FHLMC to provide, within 30 work days after the Secretary's determination is communicated to FHLMC, a plan of special action proposed to be taken by FHLMC to increase its purchase of conventional mortgages secured by housing for low- and moderate-income families, or a statement of reasons why the annual goal should be altered or suspended.

(2) Within 30 days after receipt of the FHLMC plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or FHLMC's statement of reasons why the annual goal for such purchases should be altered or suspended, the Secretary shall approve, reject, or seek modification of the FHLMC plan of special actions proposed, or approve or reject its proposed alteration or suspension of the

annual goal for the year. If the Secretary decides to retain the goal announced for the year, or rejects the special actions proposed by FHLMC to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, the Secretary may:

(i) Require FHLMC to hold open an offer to purchase newly originated conventional mortgages secured by housing for low- and moderate-income families; or

(ii) Condition the approval of payment of cash dividends to the holders of FHLMC's stock upon FHLMC's purchasing an adequate number of conventional mortgages secured by housing for low- and moderate-income families. FHLMC shall not be required to purchase conventional mortgages that:

(A) Fail to meet FHLMC's underwriting standards applicable to such mortgages; or

(B) Are not deemed by FHLMC to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors.

§ 1010.9 Fair housing.

(a) *Authority.* This section is promulgated pursuant to the Secretary's general authority to issue rules and regulations as set forth in section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*) and to implement the Fair Housing Act (42 U.S.C. 3600–3619).

(b) FHLMC shall not discourage, refuse to allow, receive, or consider any application, request or inquiry regarding the purchase of a mortgage; or decline to purchase any mortgage or make a commitment to purchase any such mortgage; or discriminate in the fixing of the amount or interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of any such mortgage:

(1) Because of the race, color, religion, sex, handicap, familial status, or national origin:

(i) Of the borrower or joint borrower, or applicant or joint applicant, (borrower);

(ii) Of any persons associated with the borrower in connection with such mortgage or the purposes thereof; or

(iii) Of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings securing such mortgage; or

(2) Because of:

(i) The racial, ethnic or religious composition of the area in which the property which secures the mortgage is located; or

(ii) Discriminatory consideration of the age or location of the dwelling securing the mortgage, or the age or location of the dwelling securing the mortgage, or the age of the area or the housing stock in such area, provided, however; it is recognized that there may be factors concerning the age and location of a dwelling which may properly be considered in an appraisal and guidelines concerning such exceptions are contained in paragraph (e) of this section.

(c) Any underwriting guidelines used or promulgated by or for FHLMC shall:

(1) Prohibit the use of a lending criterion or the exercise of a lending policy which discriminates on the basis of race, color, religion, sex, handicap, familial status, or national origin.

(2) Prohibit discriminatory consideration of the age or location of the dwelling, or the age of the area or of the housing stock in such area, provided, however; it is recognized that there may be factors concerning the age and location of a dwelling which may properly be considered in an appraisal and guidelines concerning such exceptions are contained in paragraph (e) of this section.

(3) Provide that each borrower's creditworthiness shall be evaluated on an individual basis, which requires that factors which are arbitrary and generally discriminatory be excluded from consideration, including:

(i) Presumptions about the borrower based on characteristics of a group of which the borrower is a member;

(ii) The zip code of a borrower's current residence;

(iii) The income level of the residents in the neighborhood of the dwelling which will secure the mortgage;

(iv) The fact that some or all of a borrower's income derives from public assistance, part-time employment, an annuity, a pension, or other retirement benefit;

(v) Previous home ownership, unless such consideration is in connection with a legislative or administrative mandate to foster first time home purchase, or is in connection with the consideration of the borrower's payment record on a home loan.

(4) On or before [180 DAYS FROM THE DATE THIS REGULATION BECOMES FINAL], FHLMC shall submit to the Secretary home mortgage and multifamily mortgage underwriting guidelines that assure full compliance with the Fair Housing Act (Act) and this part. The Secretary shall thereafter inform FHLMC of modifications required, if any, to be made to the underwriting guidelines to assure full compliance with the Act and this part.

(d) FHLMC shall not use or rely upon an appraisal of a dwelling which FHLMC knows, or reasonably should know:

(1) Is based upon consideration of or discriminates on the basis of race, color, religion, sex, handicap, familial status, or national origin;

(2) Is based upon discriminatory consideration of:

(i) The age or location of the dwelling;

(ii) The age or location of dwellings in the neighborhood of the dwelling; or

(iii) The income level of the residents in the neighborhood of the dwelling, provided, however; it is recognized that there may be factors concerning the age and location of a dwelling which may properly be considered in an appraisal and guidelines concerning such exceptions are contained in paragraph (e) of this section;

(3) Is discriminatory *per se* under the Act.

(e) Any appraisal used or in any way relied upon by FHLMC must comply with the following guidelines:

(1) The restrictions in paragraphs (b) through (d) of this section against the improper consideration of age or location factors are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Neither the legitimate consideration of the age of the dwelling nor the legitimate consideration of location factors is prohibited in an appraisal. Appraisals should be based upon the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan.

(2) The prohibition against discriminatory consideration of the age of the dwelling does not prohibit consideration of structural soundness in an appraisal. The age of the dwelling may be used by an appraiser as a basis for conducting more extensive inspections of structural aspects of the dwelling. Paragraph (d)(2) of this section does, however, prohibit an unsubstantiated determination that a dwelling over a certain age is not structurally sound.

(3) There are location factors which may have a negative effect on the value of a dwelling which may be properly considered in an appraisal. If any such factors are used they must be specifically documented in the appraisal. Locational factors which may properly be considered include, without

limitation, recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. Other appropriate factors include the condition and utility of streets, parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults.

(f) Should FHLMC have some reasonable basis to indicate noncompliance with the Act by an entity with which FHLMC does business, FHLMC shall refer that information to the Secretary.

(g) Any complaints against FHLMC alleging violations of the Act will be investigated in accordance with 24 CFR part 103.

§ 1010.10 Equal employment opportunity.

FHLMC shall comply with sections 1 and 2 of Executive Order 11478 (3 CFR, 1966–1970 Comp., p. 803), as amended by Executive Order 12106 (3 CFR, 1978 Comp., p. 263), providing for the adoption and implementation of equal employment opportunity, as required by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e).

PART 1020—REPORTING REQUIREMENTS

Sec.

Authority: 12 U.S.C. 1451, et seq.; 42 U.S.C. 3600, 3608; 42 U.S.C. 3535(d).

§ 1020.0 General.

Section 303(b)(4) of the FHLMC Act provides that the Secretary may require FHLMC to make reports on its activities as the Secretary deems advisable. This chapter contains a codification of the requirements of the Secretary as to the information on FHLMC's activities to be provided in reports submitted to the Secretary on a regularly recurring basis. Under section 303(b)(4) of the Act, however, the Secretary may require an additional report or reports from FHLMC at any time. Such report or reports must be furnished to the Secretary even though they are not specified in this part.

§ 1020.1 Business activities reports.

(a) *Annual business activities report.* On or before April 1 of each year, FHLMC shall submit to the Secretary a report covering the previous calendar year that contains the same information which would be required to be submitted to the Securities and Exchange Commission (SEC) in a Shareholders' Annual Report (SAR) and a 10–K, both of which are available from the SEC Publications Office, Ground Floor, 450 Fifth Street, NW., Washington, DC 20549, by an entity subject to SEC jurisdiction. This report shall include, but not by way of limitation, the following information for the previous calendar year:

(1) A description of major new initiatives undertaken and significant changes in business performance or market climate.

(2) A cash flow statement showing the components of revenue, including net interest income, float, and guarantee fees; and the components of operating costs and other major expenses such as default chargeoffs.

(3) A balance sheet statement showing portfolio assets, outstanding MBSs, outstanding debt instruments, and any other assets and liabilities. Information shall be provided on mortgages held and securitized indicating the aggregate dollar amount, the number, the number of dwelling units (for multifamily mortgages), tabulated by:

(i) Single family or multifamily; and

(ii) Conventional, VA guaranteed, or FHA insured (by program type).

(4) The volume of mortgage purchases and securities issued by maturity structure, categorized by single family/multifamily, conventional/FHA/VA, fixed-rate/ARMs, guarantor/cash, REMICs, strips, and other derivative securities.

(5) A breakdown of debt instruments issued and outstanding by maturity and cost.

(6) The interest rate spread between debt obligations and mortgage assets held in portfolio.

(b) *Quarterly business activities report.* Within 60 days following the end of each calendar quarter, FHLMC shall submit to the Secretary a report that contains the same information which would be required to be submitted to the SEC in a 10–Q by an entity subject to SEC jurisdiction. This report shall include, but not by way of limitation, the information described in paragraphs (a)(1) through (6) of this section, for such calendar quarter.

(c) *Stress model data.* FHLMC shall provide to the Secretary all data necessary to implement the Secretary's models of corporate performance in times of economic stress. Annually, or more frequently if required, the Secretary will provide FHLMC with a list of required data elements. Required data will include, at a minimum, the following items disaggregated by type of mortgage, year of origination, loan-to-value ratio at origination, and presence of credit enhancements such as mortgage insurance and recourse agreements, outstanding balance, foreclosure losses, prepayments, and geographical detail. Separate reports including this data will be required for mortgages and mortgage-backed securities (MBSs) held in portfolio, and for MBSs held by others. Such required data will also include detailed figures on mortgage sales, debt securities outstanding, and guaranty fees for pass-through securities.

(d) *Quarterly risk reports.* FHLMC shall furnish the following reports to the Secretary within 60 days of the end of each calendar quarter:

(1) *Present value of assets and liabilities.* A calculation of present net worth, based on a methodology approved by the Secretary. In addition, sensitivity analysis must be performed, showing the effect on such present net worth of changes in interest rates.

(2) *Duration report.* The duration of mortgage assets in FHLMC's retained portfolio, the duration of liabilities funding the mortgage assets, and the duration gap.

(3) *Geographic credit report.* The distribution of FHLMC's business transacted during the calendar quarter by state and major Census region, covering both the retained portfolio and MBSs held by others. Delinquencies, foreclosures, and real estate owned (REO) are to be reported on the above geographic bases.

(4) *National report.* The distribution of FHLMC's business, delinquencies and foreclosures by product type, LTV, and year of origination. The report is to provide information on REOs, including the beginning balance, number acquired, number disposed of, numerical and total dollar ending balance. Information should also be provided on additions to and chargeoffs against loss reserves and the remaining balance.

(5) *Management risk report.* FHLMC shall provide a description of any change in business practice that may affect risk. These include, but not by way of limitation, changes in: Mortgage products; eligibility standards for seller/servicers; servicing standards; policies for handling delinquencies, foreclosures, and REO; types of investments; outstanding stock; dividends and retained earnings; reserves; asset/liability interest rate spreads; guaranty fees; management information systems; and procedures used to evaluate risk.

§ 1020.2 Annual business plan.

Within 30 days after the approval by the Board of Directors of any strategic plan or revision thereto, any annual plan or revision thereto, and any other similar long-range business plans of FHLMC, FHLMC shall submit to the Secretary a report containing any such plan or revision.

§ 1020.3 Central cities housing finance report.

FHLMC shall submit to the Secretary an annual report on FHLMC's compliance with the central cities housing requirements within 60 days of the end of the calendar year. This report shall indicate the number of central cities housing units and the percentage of units meeting the central cities definitions with details by programs. The Secretary may request that the underlying data be provided or that additional analysis of the data be conducted.

§ 1020.4 Low- and moderate-income housing finance report.

FHLMC shall submit to the Secretary an annual report on FHLMC's compliance with the low- and moderate-income housing requirements within 60 days of the end of the calendar year. This report shall indicate the number of low- and moderate-income housing units and the percentage of units meeting the low- and moderate-income definitions with details by program. The Secretary may request that the underlying data be provided or that additional analysis of the data be conducted.

§ 1020.5 Fair housing reports.

In monitoring FHLMC's compliance with the Fair Housing Act (42 U.S.C. 3600–3619), the Secretary will not require data from FHLMC at the time unless the Secretary determines that additional data is necessary. The Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801–2810) data system was designed by the Federal Financial Institutions Examination Council (FFIEC) and is providing information on mortgages sold by secondary markets beginning with calendar year 1990. The FFIEC collects loan registers compiled by primary lenders showing loans made and loan applications received for each calendar year containing the data specified in the Federal Reserve Board's Regulation C (12 CFR part 203) which implements HMDA. The data system description may be obtained from the FFIEC, 1776 G Street, NW., Washington, DC 20006. The primary lenders required to participate are those that meet an asset threshold and have offices in Metropolitan Statistical Areas.

§ 1020.6 Periodic reports.

(a) Any proxy report shall be provided to the Secretary not later than simultaneously with its issuance to stockholders.

(b) Any report or other informative document intended for release to the investment community shall be provided to the Secretary not later than simultaneously with its issuance to the investment community.

(c) Any report of insider trading (SEC Form 4, which is available from the SEC Publications Office, Ground Floor, 450 Fifth Street, NW., Washington, DC 20549), shall be submitted to the Secretary not later than simultaneously with its submission to the SEC.

(d) Five days in advance of public disclosure, a report shall be made to the Secretary of any planned significant announcements to the mortgage lending community relating to FHLMC's lending activities.

§ 1020.7 Report of intent to terminate program.

At least 2 business days prior to terminating any mortgage program, FHLMC shall report its intent to terminate such program to the Secretary. Such report shall include:

(a) A full and complete explanation of FHLMC's reasons for terminating the program;

(b) The impact of the program termination on housing for low- and moderate income families;

(c) The impact of the program termination on housing for central cities;

(d) The impact of the program termination on FHLMC's fulfilling the purposes of the FHLMC Act; and

(e) A comprehensive narrative and statistical history of the program intended to be terminated.

PART 1030-EXAMINATIONS AND AUDITS

Sec.

Authority: 12 U.S.C. 1451, et seq.; 42 U.S.C. 3600–3619; 42 U.S.C. 3535(d).

§ 1030.0 General.

Section 303(b)(4) of the FHLMC Act provides that the Secretary may examine and audit the books and financial transactions of FHLMC. This part provides for such examinations and audits. Inasmuch as the Secretary regulates or supervises FHLMC, reports prepared or examinations conducted by or for FHLMC or the Secretary in accordance with this part 1030 or otherwise may be withheld from public disclosure in accordance with Exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

§ 1030.1 Examination of books, records, and documents.

(a) FHLMC shall, at all times during its regular business hours and at its several offices, make its books and financial transactions, available for examination by duly authorized representatives of the Secretary.

(b) FHLMC shall maintain a stenographic record of the minutes of each meeting of the Board of Directors of FHLMC available at its headquarters for examination by duly authorized representatives of the Secretary . Any particular matter included in such stenographic minutes which FHLMC determines contains information which might financially injure it or adversely affect the conduct of its business were it to be available outside FHLMC, will be available only for examination without copying by said duly authorized representatives at FHLMC headquarters.

§ 1030.2 Annual audits of FHLMC.

On or before April 1 of each year, FHLMC shall supply a certified audit of FHLMC's activities, books and transactions for the prior Calendar year to the Secretary's designated representative. The auditor's work papers and internal audit reports must be made available at the request of the Secretary's designated representative. The audit must be performed by certified public accountants acceptable to the Secretary in the Secretary's sole discretion.

§ 1030.3 Secretarial audits.

The Secretary will regularly, through duly authorized representatives who may be employees of any agency of the United States, independent accountants, or other private persons or firms retained by the Secretary , audit FHLMC's activities, books and financial transactions. The Secretary may also at any time conduct a special audit of FHLMIC's activities, books and financial transactions.

PART 1040—BOOK-ENTRY PROCEDURES FOR FHLMC SECURITIES

Sec.

Sec.

Authority: 12 U.S.C. 1451, et seq.; 42 U.S.C. 3600–3619; 42 U.S.C. 3535(d).

§ 1040.0 Definitions.

As used in this part, the term—

Book-entry FHLMC security means a FHLMC security in the form of an entry made as prescribed in this part on the records of a Reserve bank.

Date of call is the date fixed in the authorizing resolution of the Board of Directors of the FHLMC on which the FHLMC will make payment of the security in accordance with its terms.

Definitive FHLMC security means a FHLMC security in engraved or printed form.

FHLMC security means a bond, note, mortgage, obligation, or other security of or sold by FHLMC issued at a Reserve bank by FHLMC under title III of the Emergency Home Finance Act of 1970, as amended, in the form of a definitive FHLMC security or a book-entry FHLMC security.

Member bank means any National bank, State bank, or bank or trust company which is a member of a Reserve bank.

Pledge includes a pledge of, or any other security interest in, FHLMC securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.

Reserve bank means the Federal Reserve Bank of New York (and any other Federal Reserve bank which agrees to issue FHLMC securities in book-entry form) acting as fiscal agent of FHLMC and, when indicated, acting in its individual capacity or as Fiscal Agent of the United States.

§ 1040.1 Authority of Reserve banks.

Each Reserve bank is hereby authorized, in accordance with the provisions of this part, to:

(a) Issue book-entry FHLMC securities by means of entries on its records which shall include the name of the depositor, the amount, the series, and maturity date;

(b) Effect conversions between book-entry FHLMC securities and definitive FHLMC securities with respect to those securities as to which conversion rights are available pursuant to the applicable securities offering materials;

(c) Otherwise service and maintain book-entry FHLMC securities; and

(d) Issue confirmations of transactions in the form of written advices (serially numbered or otherwise) which specify the amount and description of any securities (that is, series and maturity date) sold or transferred and the date of the transaction.

§ 1040.2 Scope and effect of book-entry procedure.

(a) A Reserve bank as fiscal agent of FHLMC may apply the book-entry procedure provided for herein to any FHLMC securities which have been or hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph (a) is applicable, but not limited, to FHLMC securities deposited:

(1) As collateral pledged to a Reserve bank (in its individual capacity) for advances by it;

(2) By a member bank for its sole account;

(3) By a member bank held for the account of its customers;

(4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

The application of the book-entry procedure under this paragraph (a) shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve bank in its individual capacity and its depositors concerning any deposit under this paragraph. Whenever the book-entry procedure is applied to such FHLMC securities, the Reserve bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve bank in its individual capacity to perform its obligations as depository with respect to such FHLMC securities.

(b) A Reserve bank as fiscal agent of FHLMC may apply to FHLMC securities deposited as collateral pledged to the United States under Treasury Department Circular Nos. 92 (31 CFR part 203) and 176 (31 CFR part 202), both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other FHLMC securities deposited with a Reserve bank as fiscal agent of the United States.

(c) Any person having an interest in FHLMC securities which are deposited with a Reserve bank (in either its individual capacity or as fiscal agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry FHLMC securities pursuant to the provisions of this part, and in the manner and under the procedures prescribed by the Reserve bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the FHLMC securities.

§ 1040.3 Transfer or pledge.

(a) A transfer or pledge of book-entry FHLMC securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States), or to the United States, or to any transferee or pledge eligible to maintain an appropriate book-entry account in its name with a Reserve bank under these rules is effected and perfected, notwithstanding any provisions of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

(1) Have the effect of a delivery in bearer form of definitive FHLMC securities;

(2) Have the effect of taking delivery by the transferee or pledgee;

(3) Constitute the transferee or pledgee a holder; and

(4) If a pledge, effect a perfected security interest therein in favor of the pledgee.

A transfer or pledge of book-entry FHLMC securities effected under this paragraph (a) shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable FHLMC securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the United States) in a book-entry account under this part including securities under § 1040.2(a)(3) of this part, is effected, and a pledge is perfected, by any means that would be effective under applicable law or effect a transfer or to effect and perfect a pledge of FHLMC securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry FHLMC securities maintained by a Federal reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry FHLMC securities either in its individual capacity or as fiscal agent of the United

States is not a bailee for purposes of notification of pledges of those securities under this paragraph, or a third person in possession for purposes of acknowledgment of transfers thereof under this paragraph. Where transferable FHLMC securities are recorded on the books of a depository (a bank, banking institution, financial firm or similar party, which regularly accepts in the course of its business FHLMC securities as a custodial service for its customers, and maintains accounts in the name of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depository shall, for purposes of perfecting a pledge of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositors in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry FHLMC securities or any interest therein.

(d) A Reserve bank shall, as to book-entry securities having conversion rights and upon receipt of appropriate instructions, convert book-entry FHLMC securities into definitive FHLMC securities and deliver them in accordance with such instructions; no such conversions shall affect existing interests in such FHLMC securities.

(e) A tranfer to book-entry FHLMC securities within a Reserve bank shall be made in accordance with procedures established by the bank not inconsistent with this part. The transfer of book-entry FHLMC securities by a Reserve bank may be made through a telegraphic transfer procedure.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 1040.4 Withdrawal of FHLMC securities.

(a) A depositor of book-entry FHLMC securities may withdraw them from a Reserve bank by requesting delivery of like definitive FHLMC securities to itself or on its order to a transferee, provided that such securities provide for a right of conversion to definitive form pursuant to the offering materials applicable to such securities.

(b) FHLMC securities of a series which was originally issued in bearer form only and which are actually to be delivered upon withdrawal may be issued in bearer form only, until the date of first issue of such securities in registered form; FHLMC securities of a series which was originally issued in registered form only and are actually to be delivered upon withdrawal may be issued in registered form only, until the date of first issue of such securities in bearer form. After the date of first issue in registered form of a series of FHLMC securities originally issued in bearer form only or the date of first issue in bearer form of a series of FHLMC securities originally issued in registered form only, all securities of such series which are actually to be delivered upon withdrawal may be issued either in bearer or registered form. All FHLMC securities of a series which were originally issued in both registered and bearer form and which are actually to be delivered upon withdrawal may be issued either in bearer or registered form.

§ 1040.5 Delivery of FHLMC securities.

A Reserve bank which has received FHLMC securities and affected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve bank shall be fully discharged of its obligations under this part by the delivery of FHLMC securities in definitive form to its depositors or upon the order of such depositor. Customers of a member bank or other depositary (other than a Reserve bank) may obtain FHLMC securities in definitive form only by causing the depositor of the Reserve bank to order the withdrawal thereof from the Reserve bank.

§ 1040.6 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry FHLMC securities of registered FHLMC securities held by a Reserve bank (in either its individual capacity or as fiscal agent of the United States) on or after November 13, 1978 for any purpose specified in § 1040.2(a) of this part. Registered FHLMC securities deposited thereafter with a Reserve bank for any purpose specified in § 1040.2 of this part shall be assigned for conversion to book-entry FHLMC securities. The assignment, which shall be executed in accordance with the provisions of subpart F of 31 CFR part 306, so far as applicable, shall be to "Federal Reserve Bank of _____, as fiscal agent of the Federal Home Loan Mortgage Corporation for conversion to book-entry Federal Home Loan Mortgage Corporation securities."

§ 1040.7 Servicing book-entry FHLMC securities; payment of interest; payment at maturity or upon call.

Payments of principal and interest on FHLMC securities will be made by a Reserve bank on the interest due dates and dates of maturity or call and remitted or credited in accordance with the depositor's instructions.

§ 1040.8 Applicability of Treasury Department regulations to FHLMC.

The provisions of Treasury Department Circular No. 300, 31 CFR part 306 (other than subpart O), as amended from time to time, shall apply, insofar as appropriate, to obligations of FHLMC for which a Reserve bank shall act as fiscal agent of FHLMC and to the extent that such provisions are consistent with agreements between FHLMC and the Reserve banks acting as fiscal agents of FHLMC. Definitions and terms used in Treasury Department Circular No. 300 should be read as though modified to effectuate the applications of the regulations in 31 CFR part 306 to FHLMC.

PART 1050—SAFETY AND SOUNDNESS

Sec.
1050.0 General.
1050.1 Monitoring of financial risks.
1050.2 Program review.

Authority: 12 U.S.C. 1451, et seq.; 42 U.S.C. 3600–3619; 42 U.S.C. 3535(d).

§ 1050.0 General.

In order for the Secretary to carry out the mandate of section 303(b)(1) of the FHLMC Act, that the Secretary make such rules and regulations as shall be necessary and proper to insure that the purposes of the FHLMC Act are accomplished, adequate provision must be made herein to assure the fiscal safety and soundness of FHLMC.

§ 1050.1 Monitoring of financial risks.

The Secretary will assess and monitor

the financial risks of FHLMC's business activities and determine how much regulatory capital FHLMC's should have relative to those risks. Assessment of FHLMC regulatory capital adequacy will be done not less frequently than annually using stress tests and other analytic techniques deemed appropriate by the Secretary. If as a result of the analysis, the Secretary determines FHLMC's regulatory capital is inadequate, the Secretary will determine an appropriate period within which FHLMC is to reach regulatory capital adequacy. The Secretary may define regulatory capital adequacy in terms of an overall ratio of debt to regulatory capital, specific regulatory capital ratios for different lines of business, or in such other manner as may be appropriate. The Secretary's assessment of the appropriate level of FHLMC's regulatory capital must take into account the risks of FHLMC's business, with particular emphasis on credit risk and interest rate risk. To facilitate the Secretary's monitoring of regulatory capital adequacy, and safety and soundness, a detailed reporting system is established in part 1020 of this chapter. The reports which will have particular relevancy for such monitoring relate to interest rate risk, credit risk, and management risk.

§ 1050.2 Program review.

Any new program submitted for approval must include a detailed risk assessment analysis together with a certification to the Secretary that present or reasonably anticipated reserves for interest rate risk, credit and other risks are adequate to compensate for the risks involved. Any existing program is subject to review by the Secretary to determine that the program does not involve unreasonable risks and that present or reasonably anticipated reserves for interest rate risk, credit and other risks are adequate to compensate for the risks involved. If the Secretary finds that present or reasonably anticipated reserves are not adequate, the Secretary can require one or more of the following:

(a) Changes in program design to reduce risk;

(b) Increased reserve requirements, on new and existing business; or

(c) Reduction or cessation of activity in the program, either temporarily or permanently.

3. In title 24 of the Code of Federal Regulations, Part 81 is proposed to be amended as set forth below:

PART 81—REGULATIONS IMPLEMENTING THE AUTHORITY OF THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OVER THE CONDUCT OF THE SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA)

4. The authority citation for 24 CFR part 81 would be revised to read as follows:

Authority: Title III, National Housing Act (12 U.S.C. 1716–1723h:); Fair Housing Act (42 U.S.C. 3600–3619); and Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 81.1 would be amended by adding a new sentence at the beginning of the section and by adding a new sentence at the end of the section to read as follows:

§ 81.1 Scope of part.

The purpose of the Charter Act is: to provide stability in the secondary market for home mortgages; to respond appropriately to the private capital market; and, to provide ongoing assistance to the secondary market for home mortgages (including mortgages securing housing for low- and moderate-income families involving a reasonable economic return to FNMA) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for home mortgage financing (Charter Act, sec. 301). * * * subpart F of this part contains regulations providing for the safety and soundness of FNMA and for the detailed oversight thereof by the Secretary.

6. Section 81.2 would be revised to read as follows:

§ 81.2 Definitions.

As used in this part, the term—

Central city means each of the political subdivisions designated as such from time to time by the Office of Management and Budget of the Executive Office of the President in the document entitled Metropolitan Statistical Areas (MSA) and published by the Department of Commerce.

Charter Act means the Federal National Mortgage Association Charter Act (title III of the National Housing Act, 12 U.S.C. 1716, *et seq.*)

Conventional mortgage means a mortgage loan not insured or guaranteed by the United States or by any agency or instrumentality of the United States.

Debt-to-capital ratio means the ratio of:

(1) The aggregate principal amount outstanding, at any one time, of obligations issued by FNMA under section 304(b) of the Charter Act; to

(2) The sum, at that same time, of FNMA's capital, capital surplus, general surplus, reserves, undistributed earnings, and the outstanding total principal amount of obligations issued by FNMA under section 304(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 304(b).

Dwelling unit means a single, unified combination of rooms designed for residential use by one family.

FNMA means the Federal National Mortgage Association.

Home mortgage means a mortgage loan secured by real property upon which is located a structure containing not less than one nor more than four dwelling units.

Housing for low- and moderate-income families means:

(1) Any housing financed by a mortgage loan insured by FHA under section 221, 235, 236, or 237 of the National Housing Act (12 U.S.C. 17151, 1715z, 1715z–1, or 1715z–2);

(2) Any housing project with respect to which the owner has entered into a Housing Assistance Payment Contract, or an agreement to enter into such a contract, pursuant to which eligible families in not less than 25 percent of the dwelling units in the project will receive Housing Assistance Payments under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(3) Any single-family dwelling (including a dwelling unit in a condominium, cooperative or planned unit development project) purchased at a price not in excess of 2.5 times the median family income (as most recently determined by the Secretary) for the Metropolitan Statistical Area, or county not in such an Area, in which the dwelling is located, provided, however, the Secretary from time to time may fix such different multiplier as the Secretary, in his discretion, determines will more appropriately serve the needs of low- and moderate-income families, which changed multiplier will be effective upon 30 days written notice to FNMA and notice of such action shall also be published in the **Federal Register;**

(4) Any multifamily housing whose cost does not exceed the per-dwelling-unit dollar cost limitations established by the Secretary under section 221(d)(4) of the National Housing Act (12 U.S.C. 17151(d)(4)); or

(5) Any housing that meets the purchase price and income requirements of the mortgage revenue bond provisions

of section 143 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 143).

Mortgage or *mortgage loan* means a loan secured by a mortgage, a deed of trust or other security agreement, or an interest in such a loan, which creates a lien on one of the following interests in real property:

(1) An estate in fee simple;

(2) A leasehold or subleasehold extending or renewable (automatically or at the option of the leaseholder) for a period of at least 10 years beyond the maturity of the loan;

(3) A leasehold or subleasehold of any duration and the remaining estate in fee simple;

(4) An ownership interest in a manufactured home; or

(5) An ownership interest in a cooperative housing corporation and a right of occupancy in the property owned by that corporation.

Multifamily mortgage means a mortgage loan secured by real property upon which is located a structure containing five or more dwelling units.

New program means a proposal to purchase/securitize mortgages or mortgage related instruments which differs significantly and materially from those currently purchased/securitized in terms of type of property, term of mortgage, nature of mortgage instrument, type or amount of mortgage insurance, nature of the lien, form of securitization, or other significant matter.

Purchase includes, when used in connection with the purchase of mortgage loans, the purchase of such loans for portfolio and for securitization.

Regulatory capital means the sum of stockholder's equity, retained earnings, and loss reserves.

Secretary means the Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular function for the Secretary.

Single-family mortgage means a mortgage loan secured by real property upon which is located a structure containing a single dwelling unit.

Unit mortgage means a mortgage loan secured by:

(1) Real property consisting of a dwelling unit in a condominium or planned unit development project; and

(2) An undivided interest in the common areas and facilities of the project, or a stock interest in an association having title to the common areas and facilities of the project.

7. Subparts B and C of part 81 would be revised to read as follows:

Subpart B—Operations of FNMA

Subpart C—Reporting Requirements

Subpart B—Operations of FNMA

§ 81.11 General.

(a) Specific provisions of the Charter Act require FNMA to obtain the prior approval of the Secretary before it issues any stock, or debt obligation convertible into stock (section 311 of the Charter Act), and require FNMA to obtain the approval of the Secretary with respect to the following specific activities:

(1) The purchase, service, sale, or lending on the security of, or otherwise dealing in, conventional mortgages (section 302(b)(2) of the Charter Act);

(2) FNMA's determination of the amount of nonrefundable capital contributions required to be made by mortgage sellers (section 303(b) of the Charter Act);

(3) FNMA's determination of the level of stock retention requirements imposed on each service of its mortgages (section 303(c) of the Charter Act); and

(4) Allowing the aggregate amount of FNMA's obligations outstanding at any one time to exceed 15 times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings (section 304(b) of the Charter Act). In addition, specific provisions of the Charter Act authorize the Secretary to:

(i) Require that a reasonable portion of FNMA's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to FNMA;

(ii) Examine the books and financial transactions of FNMA; and

(iii) Require FNMA to make such reports on its activities as the Secretary determines to be advisable.

(b) The general provisions of section 309(h) of the Charter Act provide that the Secretary shall have general regulatory power over FNMA and shall make such rules and regulations as shall be necessary and proper to insure that the purposes of the Charter Act are accomplished.

(c) This subpart is promulgated under the Secretary's authority, as set forth in paragraph (b) of this section, to implement the cited provisions of the Charter Act; to insure, under the Secretary's general regulatory authority, that the purposes of the Charter Act are accomplished; and to implement requirements imposed on the Secretary by the Fair Housing Act (42 U.S.C. 3600–3619).

(d) All official communications to the Secretary by FNMA, including but not limited to: requests for new program approval, requests for approval to issue stock or debt obligations convertible into stock, reports of intent to terminate programs and business activities reports shall be submitted to the Office of the Director, Financial Institutions Regulation Staff, room 8100, 451 Seventh Street, SW., Washington, DC 20410. The Secretary may change such recipient by written notice directed to the Chief Executive Officer or Chief Operating Officer of FNMA, which notice shall be effective upon delivery to the normal place of business of either such officer of FNMA.

§ 81.12 Issuance of stock and debt or other obligations convertible into stock.

(a) The first sentence of section 303(c) of the Charter Act directs FNMA to issue shares of its common stock to each seller of mortgage loans who makes capital contributions to FNMA. Under section 303(b) of the Charter Act, such capital contributions may be required by FNMA in such amounts as may be determined from time to time by FNMA, with the approval of the Secretary. Section 303(c) of the Charter Act directs FNMA to require each servicer of its mortgage loans to own a minimum amount of FNMA common stock, as determined by FNMA from time to time with the approval of the Secretary. In addition, FNMA is authorized to issue common stock (section 303(c) of the Charter Act), preferred stock (section 303(a) of the Charter Act), and debt obligations convertible into stock, provided that the prior approval of the

Secretary has been obtained (section 311 of the Charter Act).

(b)(1) The approval of the Secretary is required before the issuance by FNMA of any common or preferred stock or debt or other obligation convertible into stock. Any request by FNMA for the Secretary's approval must be submitted to the Secretary in writing, unless the Secretary permits an oral submission for good cause shown, not less than 10 workdays before the date of the proposed offering. A request for approval must contain the following information:

(i) A general description of the proposed offering, including, if available, the proposed date and duration of the offering period for shares or obligation, the proposed issue price for each share or obligation and the number of shares or obligations proposed to be offered; and

(ii) The proposed use of the proceeds from the offering.

(2) Within 10 workdays after the submission of a request by FNMA in accordance with paragraph (b)(1) of this section, the Secretary will approve, reject, or request additional information concerning FNMA's proposed offering.

(3) If FNMA makes an oral request for approval as described in paragraph (b)(1) of this section, the oral request must be followed, within ten days, by complete documentation of the information required in paragraph (b)(1) of this section, including documentation supporting the showing of good cause for the oral request.

§ 81.13 Dividends on common stock.

(a) The aggregate amount of cash dividends paid by FNMA to the holders of its common stock in any one fiscal year may not, cumulatively, exceed any rate which may be determined by the Secretary to be a fair rate of return considering the financial safety and soundness of FNMA as measured by the current earnings and capital condition of FNMA. After finding safety and soundness, the Secretary will consider FNMA's activities in relationship to insuring that the purposes of the Charter Act are accomplished.

(b) After the FNMA board of directors approves a proposed annual dividend policy, FNMA shall submit a written request to the Secretary for approval, which request shall demonstrate that the dividend policy represents a fair rate of return in view of the current and projected earnings, capital condition, including, without limitation, other liabilities owed and benefits available to shareholders, and FNMA's activities associated with insuring that the purposes of the Charter Act are being and are anticipated to be accomplished, including (but not by way of limitation), the purpose of providing low- and moderate-income housing. The Secretary shall use his or her best efforts to act on FNMA's request within 15 days of receipt.

(c) During the course of the year, if the FNMA board determines that there is a substantial change in current or projected earnings, capital condition, or its activities associated with insuring that the purposes of the Charter Act are being or are anticipated to be accomplished, the FNMA board may approve an appropriate revised proposed annual dividend policy, if any, and if there is a proposed revised annual dividend, FNMA shall submit a written request to the Secretary for approval, which request shall demonstrate that the revised dividend policy represents a fair rate of return taking into account the change in circumstances.

§ 81.14 Issuance of debt instruments.

FNMA is authorized, upon the approval of the Secretary of the Treasury, to issue its debt instruments from time to time in such amounts as may be necessary to finance or refinance its mortgage purchases and its obligations incurred in the conduct of its secondary market operations. At the same time FNMA submits a request for approval of a debt issuance to the Secretary of Treasury, FNMA shall furnish a copy of such request to the Secretary as a report.

§ 81.15 Purchase of stock or debt or other instrument convertible into stock.

(a) The approval of the Secretary is required before FNMA may purchase any of its stock or debt or other obligation convertible into stock. Any request for approval shall be submitted to the Secretary in writing, unless the Secretary permits an oral submission for good cause shown, not less than 10 workdays before the date of the first proposed purchase. A request for approval must contain the following information:

(1) A general description of the proposed purchase, including, the proposed date and duration of the purchase period for shares or obligations, the proposed purchase price for each share or obligation, and the number of shares or obligations proposed to be purchased; and

(2) The proposed source of the funds for the purchase.

(b) Within 10 workdays after the submission of a request by FNMA in accordance with this section, the Secretary will approve, reject, or request additional information concerning FNMA's proposed offering.

(c) If FNMA makes an oral request for approval as described in this section, the oral request must be followed, within ten days, by complete documentation of the information required herein, including documentation supporting the showing of good cause for the oral request.

§ 81.16 Debt-to-capital ratio.

(a) Under section 304(b) of the Charter Act, FNMA's debt-to-capital ratio may not exceed 15 to 1, unless a greater maximum ratio is fixed by the Secretary. Upon request submitted in writing by FNMA including justification satisfactory to the Secretary and supporting financial data, the Secretary from time to time may fix such greater maximum ratio as the Secretary, in his or her discretion, shall determine, which shall remain in effect as FNMA's maximum debt-to-capital ratio until otherwise specified by the Secretary. Upon fixing or changing a maximum ratio pursuant hereto, the Secretary shall cause notice of such action to be published in the **Federal Register**.

(b) FNMA shall not issue any debt instrument if the instrument's issuance would cause FNMA's debt-to-capital ratio to exceed the maximum ratio established by section 304(b) of the Charter Act, or such other maximum ratio as has been fixed by the Secretary, as provided in paragraph (a) of this section.

(c) The Secretary may decrease the maximum debt-to-capital ratio fixed in accordance with paragraph (a) of this section (but not below a ratio of 15 to 1), but only if FNMA is given 30 days written notice that the Secretary is considering a decrease. During the 30-day period, FNMA may submit written arguments in opposition to the decrease. Any decision to decrease the ratio shall be made in the Secretary's sole discretion. The Secretary shall, in addition, provide FNMA not less than 30 days written notice of the effective date of any decrease in the maximum debt-to-capital ratio.

§ 81.17 Conventional mortgages.

(a) Section 302(b)(2) of the Charter Act authorizes FNMA, with the approval of the Secretary, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional mortgages, for the purposes set forth in 301(a) of the Charter Act.

(b) All conventional programs are subject to the limitations and requirements contained in this section,

and to limitations or requirements expressed in prior written approvals (as required by section 302(b)(2) of the Charter Act) by the Secretary of FNMA's entry into programs with respect to conventional home and multifamily mortgages, under its secondary market operations. Such approval of the Secretary is hereby given for FNMA, provided that the Secretary has granted written specific programmatic authority, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional home and multifamily mortgages.

(c)(1) FNMA shall submit to the Secretary a written request for approval before undertaking, under its secondary market operations, any new program with respect to conventional mortgages that has not been approved by the Secretary under paragraph (b) of this section. A FNMA request for approval under this paragraph shall set forth the full content of the new program with respect to conventional mortgages proposed, the Charter Act purposes to be furthered by the new program, and the anticipated effect of the new program on other programs being conducted by FNMA under its secondary market operations. The approval request must be accompanied by the documentation set forth in § 81.50(c).

(2) Within 45 days following the date of the submission of a request by FNMA under paragraph (c)(1) of this section, the Secretary, in the Secretary's discretion, shall approve, reject, or request additional information concerning the program with respect to conventional mortgages which FNMA proposes to undertake. The 45-day period may be extended for one additional 15-day period if the Secretary requests additional information from FNMA. Before the expiration of the 45 (or 60) day period, the Secretary, in the Secretary's discretion, will approve the request by FNMA, or will transmit a report to Congress explaining why the request has not been approved. If FNMA fails to furnish the requested additional information to the Secretary in a timely manner, at the Secretary's option, FNMA may withdraw its new program request. In the event that FNMA neither furnishes the information nor withdraws the request, the Secretary shall deny the request, based on FNMA's default in furnishing the information, and so report to Congress. If the Secretary has not approved the request, but has not submitted the report to Congress, the request by FNMA will be deemed approved at the expiration of the period provided for the Secretary's review.

§ 81.18 Conventional mortgages in central cities.

(a) Section 302(b)(2) of the FNMA Charter Act authorizes FNMA pursuant to commitments or otherwise to purchase, service, sell, lend on the security of, or otherwise deal in conventional residential mortgages, for the purposes set forth in section 301(b) of the FNMA Charter Act. Section 309(h) of the FNMA Charter Act authorizes the Secretary to require that a reasonable portion of FNMA's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to FNMA.

(b)(1) On or before April 1 of any year following a year in which FNMA's purchases of conventional mortgages secured by properties located in central cities are less than 30 percent of FNMA's aggregate number of purchases of conventional mortgages for the period, the Secretary may establish an annual goal for FNMA's purchases of conventional mortgages secured by properties located in central cities. Whenever the real property securing a conventional mortgage contains more than one dwelling unit, for the purposes of the calculations and goals in this section, each such dwelling unit shall be counted as a separate purchase of a conventional mortgage.

(2) In establishing the annual goal with respect to FNMA's purchases of conventional mortgages secured by properties located in central cities the Secretary shall consider:

(i) The total number of such purchases of conventional mortgages by FNMA in the calendar year immediately preceding;

(ii) The ratio of the number of such purchases to the number of conventional mortgages purchased by FNMA in that period;

(iii) The relationship of the average sales price of conventionally financed homes in the central cities to the median income of families in central cities;

(iv) The condition of the housing market;

(v) Other activities undertaken by FNMA to support the goal of adequate housing for central cities; and

(vi) General economic factors.

(c)(1) In any year for which the Secretary has established and published as a Notice in the Federal Register, an annual goal for the purchase of conventional mortgages secured by properties in central cities, the Secretary shall, upon determining that FNMA's regular reports covering its secondary market operations for the first two quarters of that year reveal that FNMA's purchases of conventional mortgages secured by properties in central cities will fall below the annual goal established pursuant to paragraph (b)(1) of this section, require FNMA to provide, within 30 work days after the Secretary's determination is communicated to FNMA, a plan of special action proposed to be taken by FNMA to increase its purchases of conventional mortgages secured by properties in central cities, or a statement of reasons why the annual goal should be altered or suspended.

(2) Within 30 days after receipt of the FNMA plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by properties in central cities, or FNMA's statement of reasons why the annual goal for such purchases should be altered or suspended, the Secretary shall approve, reject, or seek modification of the FNMA plan of special actions proposed, or approve or rejects its proposed alteration or suspension of the annual goal for the year. If the Secretary decides to retain the goal announced for the year, or rejects the special actions proposed by FNMA to increase its purchases of conventional mortgages secured by properties in central cities, the Secretary may:

(i) Require FNMA to hold open an offer to purchase newly originated conventional mortgages secured by properties in central cities; or

(ii) Condition the approval of payment of cash dividends to the holders of FNMA's stock upon FNMA's purchasing an adequate number of conventional mortgages secured by properties in central cities. FNMA shall not be required to purchase conventional mortgages that:

(A) Fail to meet FNMA's underwriting standards applicable to such mortgages; or

(B) Are not deemed by FNMA to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors.

§ 81.19 Conventional mortgage purchases related to housing for low- and moderate-income families.

(a) Section 302(b)(2) of the Charter Act authorizes FNMA, with the approval of the Secretary, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional mortgages, for the purposes set forth in section 301(a) of the Charter Act.

Section 309(h) of the Charter Act authorizes the Secretary to require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation.

(b)(1) On or before April 1 of any year following a year in which FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families are less than 30 percent of FNMA's aggregate number of purchases of conventional mortgages for the period, the Secretary may establish an annual goal for FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families. Whenever the real property securing a conventional mortgage contains more than one dwelling unit, for the purposes of the calculations and goals in this section, each such dwelling unit shall be counted as a separate purchase of a conventional mortgage.

(2) In establishing the annual goal with respect to FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families, the Secretary shall consider:

(i) The total number of such purchases of conventional mortgages by FNMA in the calendar year immediately preceding;

(ii) The ratio of the number of such purchases to the number of conventional mortgages purchased by FNMA in that period;

(iii) The relationship of the average sales price of conventionally financed homes in the various sections of the United States to the median income of families in these sections of the United States;

(iv) The condition of the housing market;

(v) Other activities undertaken by FNMA to support the goal of adequate housing for low- and moderate-income families; and

(vi) General economic factors.

(c)(1) In any year for which the Secretary has established and published as a Notice in the **Federal Register**, an annual goal for the purchase of conventional mortgages secured by housing for low- and moderate-income families, the Secretary shall, upon determining that FNMA's regular reports covering its secondary market operations for the first two quarters of that year reveal that FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families will fall below the annual goal established under paragraph (b)(1) of this section, require FNMA to provide, within 30 work days after the Secretary's determination is communicated to FNMA, a plan of special action proposed to be taken by FNMA to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or a statement of reasons why the annual goal should be altered or suspended.

(2) Within 30 days after receipt of the FNMA plan of special actions proposed to be taken to increase FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families, or FNMA's statement of reasons why the annual goal for such purchases should be altered or suspended, the Secretary shall approve, reject, or seek modification of the FNMA plan of special actions proposed, or approved or rejected FNMA's proposed alteration or suspension of the annual goal for the year. If the Secretary decides to retain the goal announced for the year, or rejects the special actions proposed by FNMA to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, the Secretary may:

(i) Require FNMA to hold open an offer to purchase newly originated conventional mortgages secured by housing for low- and moderate-income families; or

(ii) Condition the approval of payment of cash dividends to the holders of FNMA's common stock upon FNMA's purchasing an adequate number of conventional mortgages secured by housing for low- and moderate-income families. FNMA shall not be required to purchase conventional mortgages that:

(A) Fail to meet FNMA's underwriting standards applicable to such mortgages; or

(B) Are not considered by FNMA to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors.

(d) If in any calendar year the programs authorized to be conducted under paragraph (c)(2) of this section are implemented by FNMA and FNMA is nevertheless unable to accomplish the purchase of conventional mortgages secured by housing for low- and moderate-income families in such numbers as will enable it to meet the annual goal announced by the Secretary pursuant to paragraph (b)(1) of this section, the requirements of paragraph (b)(1) of this section shall be deemed satisfied for that calendar year.

§ 81.20 Fair housing.

(a) *Authority.* This section is promulgated pursuant to the Secretary's general authority to issue rules and regulations as set forth in section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*) and to implement the Fair Housing Act (42 U.S.C. 3600–3619).

(b) FNMA shall not discourage, refuse to allow, receive, or consider any application, request or inquiry regarding the purchase of a mortgage; or decline to purchase any mortgage or make a commitment to purchase any such mortgage; or discriminate in the fixing of the amount or interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of any such mortgage:

(1) Because of the race, color, religion, sex, handicap, familial status, or national origin:

(i) Of the borrower or joint borrower, or applicant or joint applicant, (borrower);

(ii) Of any persons associated with the borrower in connection with such mortgage or the purposes thereof; or

(iii) Of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings securing such mortgage; or

(2) Because of:

(i) The racial, ethnic or religious composition of the area in which the property which secures the mortgage is located; or

(ii) Discriminatory consideration of the age or location of the dwelling securing the mortgage, or the age of the area or the housing stock in such area, provided, however; it is recognized that there may be factors concerning the age and location of a dwelling which may properly be considered in an appraisal and guidelines concerning such exceptions are contained in paragraph (e) of this section.

(c) Any underwriting guidelines used or promulgated by or for FNMA shall:

(1) Prohibit the use of a lending criterion or the exercise of a lending policy which discriminates on the basis of race, color, religion, sex, handicap, familial status, or national origin.

(2) Prohibit discriminatory consideration of the age or location of the dwelling, or the age of the area or of the housing stock in such area, provided, however; it is recognized that there may be factors concerning the age and location of a dwelling which may properly be considered in an appraisal and guidelines concerning such exceptions are contained in paragraph (e) of this section.

(3) Provide that each borrower's creditworthiness shall be evaluated on an individual basis, which requires that factors which are arbitrary and generally discriminatory be excluded from consideration, including:

(i) Presumptions about the borrower based on characteristics of a group of which the borrower is a member;

(ii) The zip code of a borrower's current residence;

(iii) The income level of the residents in the neighborhood of the dwelling which will secure the mortgage;

(iv) The fact that some or all of a borrower's income derives from public assistance, part-time employment, an annuity, a pension, or other retirement benefit;

(v) Previous home ownership, unless such consideration is in connection with a legislative or administrative mandate to foster first time home purchase, or is in connection with the consideration of the borrower's payment record on a home loan.

(4) On or before [180 DAYS FROM THE DATE THIS REGULATION BECOMES FINAL], FNMA shall submit to the Secretary home mortgage and multifamily mortgage underwriting guidelines that assure full compliance with the Fair Housing Act (Act) (42 U.S.C. 3600–3619) and this part. The Secretary shall thereafter inform FNMA of modifications required, if any, to be made to the underwriting guidelines to assure full compliance with the Act and this part.

(d) FNMA shall not use or rely upon an appraisal of a dwelling which FNMA knows, or reasonably should know:

(1) Is based upon consideration of or discriminates on the basis of race, color, religion, sex, handicap, familial status, or national origin;

(2) Is based upon discriminatory consideration of:

(i) The age or location of the dwelling;

(ii) The age or location of dwellings in the neighborhood of the dwelling; or

(iii) The income level of the residents in the neighborhood of the dwelling, provided, however; it is recognized that there may be factors concerning the age and location of a dwelling which may properly be considered in an appraisal and guidelines concerning such exceptions are contained in paragraph (e) of this section;

(3) Is discriminatory *per se* under the Act.

(e) Any appraisal used or in any way relied upon by FNMA must comply with the following guidelines:

(1) The restrictions in paragraphs (b) and (d) of this section against the improper consideration of age or location factors are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Neither the legitimate consideration of the age of the dwelling nor the legitimate consideration of location factors is prohibited in an appraisal. Appraisals should be based upon the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan.

(2) The prohibition against discriminatory consideration of the age of the dwelling does not prohibit consideration of structural soundness in an appraisal. The age of the dwelling may be used by an appraiser as a basis for conducting more extensive inspections of structural aspects of the dwelling. Paragraph (d)(2) of this section does, however, prohibit an unsubstantiated determination that a dwelling over a certain age is not structurally sound.

(3) There are location factors which may have a negative effect on the value of a dwelling which may be properly considered in an appraisal. If any such factors are used they must be specifically documented in the appraisal. Locational factors which may be considered include, without limitation, recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. Other appropriate factors include the condition and utility of streets, parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults.

(f) Should FNMA have some reasonable basis to indicate noncompliance with the Act by an entity with which FNMA does business, FNMA shall refer that information to the Secretary.

(g) Any complaints against FNMA alleging violations of the Act will be investigated in accordance with 24 CFR Part 103.

§ 81.21 Equal employment opportunity.

FNMA shall comply with sections 1 and 2 of Executive Order 11478 (3 CFR, 1966–1970 Comp., p. 803), as amended by Executive Order 12106 (3 CFR, 1978 Comp., p. 263), providing for the adoption and implementation of equal employment opportunity, as required by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e).

Subpart C—Reporting Requirements

§ 81.22 General.

Section 309(h) of the Charter Act provides that the Secretary may require FNMA to make reports on its activities as the Secretary deems advisable. This subpart contains a codification of the requirements of the Secretary as to the information on FNMA's activities to be provided in reports submitted to the Secretary on a regular, recurring basis. Under section 309(h) of the Charter Act, however, the Secretary may require an additional report or reports from FNMA at any time. Any required report or reports must be furnished to the Secretary even though they are not specified in this subpart.

§ 81.23 FNMA business plans.

(a) *Annual business activities report.* On or before April 1 of each year, FNMA shall submit to the Secretary a report covering the previous calendar that contains the same information which would be required to be submitted to the Securities and Exchange Commission (SEC) in a Shareholders' Annual Report (SAR) and a 10–K, both of which are available from the SEC Publications Office, Ground Floor, 450 Fifth Street, NW., Washington, DC 20549, by an entity subject to SEC jurisdiction. This report shall include, but not by way of limitation, the following information for the previous calendar year:

(1) A description of major new initiatives undertaken and significant changes in business performance or market climate.

(2) A cash flow statement showing the components of revenue, including net interest income, float, and guarantee fees; and the components of operating costs and other major expenses such as default chargeoffs.

(3) A balance sheet statement showing portfolio assets, outstanding MBSs, outstanding debt instruments, and any other assets and liabilities. Information shall be provided on mortgages held and securitized indicating the aggregate dollar amount, the number, the number of dwelling units (for multifamily mortgages), tabulated by:

(i) Single family or multifamily; and

(ii) Conventional, VA guaranteed, or FHA insured (by program type).

(4) The volume of mortgage purchases and securities issued by maturity structure, categorized by single family/multifamily, conventional/FHA/VA, fixed-rate/ARMs, guarantor/cash, REMICs, strips, and other derivative securities.

(5) A breakdown of debt instruments issued and outstanding by maturity and cost.

(6) The interest rate spread between debt obligations and mortgage assets held in portfolio.

(b) *Quarterly business activities report.* Within 60 days following the end of each calendar quarter, FNMA shall submit to the Secretary a report that contains the same information which would be required to be submitted to the SEC in a 10–Q (available from the SEC Publications Office, Ground Floor, 450 Fifth Street, NW., Washington, DC 20549) by an entity subject to SEC jurisdiction. This report shall include, but not by way of limitation, the information described in paragraphs (a)(1) through (6) of this section, for the preceding calendar quarter.

(c) *Stress model data.* FNMA shall provide to the Secretary all data necessary to implement the Secretary's models of corporate performance in times of economic stress. Annually, or more frequently if required, the Secretary will provide FNMA with a list of required data elements. Required data will include, at a minimum, the following items disaggregated by type of mortgage, year of origination, loan-to-value ratio at origination, and presence of credit enhancements such as mortgage insurance and recourse agreements, outstanding balance, foreclosures, foreclosure losses, prepayments, and geographical detail. Separate reports including this data will be required for mortgages and mortgage-backed securities (MBSs) held in portfolio, and for MBSs held by others. Such required data will also include detailed figures on mortgage sales, debt securities outstanding, and guaranty fees for pass-through securities.

(d) *Quarterly risk reports.* FNMA shall furnish the following reports to the Secretary within 60 days of the end of each calendar quarter:

(1) *Present value of assets and liabilities.* A calculation of present net worth, based on a methodology approved by the Secretary. In addition, sensitivity analysis must be performed, showing the effect on such present net worth of changes in interest rates.

(2) *Duration report.* The duration of assets by type, the duration of liabilities by type, and the duration gap.

(3) *Geographic credit report.* The distribution of FNMA's business transacted during the calendar quarter by state and major Census region, covering both the retained portfolio and mortgage-backed securities. Delinquencies, foreclosures, and real estate owned (REO) are to be reported on a geographic basis by line of business.

(4) *National report.* The distribution of FNMA's business, delinquencies and foreclosures by product type, LTV, and year of origination. The report is to provide information on REOs, including the beginning balance, number acquired, number disposed of, numerical and total dollar ending balance. Information should also be provided on additions to and chargeoffs against loss reserves and the remaining balances.

(5) *Management risk report.* FNMA shall provide a description of any change in business practice that may affect risk. These include, but not by way of limitation, changes in: mortgage products; eligibility standards for seller/servicers; servicing standards; policies for handling delinquencies, foreclosures, and REO; types of investments; outstanding stock; dividends and retained earnings; reserves; asset/liability interest rate spreads; guaranty fees; management information systems; and procedures used to evaluate risk.

§ 81.24 Annual business plan.

Within 30 days after the approval by the Board of Directors of any strategic plan or revision thereto, any annual plan or revision thereto, and any other similar long-range business plans of FNMA, FNMA shall submit to the Secretary a report containing any such plan or revision.

§ 81.25 Central cities housing finance reports.

FNMA shall submit to the Secretary an annual report on FNMA's compliance with the central cities housing requirements within 60 days of the end of the calendar year. This report shall indicate the number of central cities housing units and the percentage of units meeting the central cities definitions with details be programs. The Secretary may request that the underlying data be provided or that additional analysis of the data be conducted.

§ 81.26 Low- and moderate-income housing reports.

FNMA shall submit to the Secretary an annual report on FNMA's compliance with the low- and moderate-income housing requirements within 60 days of the end of the calendar year. This report shall indicate the number of low- and moderate-income housing units and the percentage of units meeting the low- and moderate-income definitions with details be program. The Secretary may request that the underlying data be provided or that additional analysis of the data be conducted.

§ 81.27 Fair housing reports.

In monitoring FNMA's compliance with the Fair Housing Act (42 U.S.C. 3600–3619), the Secretary will not require data from FNMA at the time unless the Secretary determines that additional data is necessary. The newly developed Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801–2810) data system was designed by the Federal Financial Institutions Examination Council (FFIEC) and is providing information on mortgages sold to secondary markets beginning with calendar year 1990. The FFIEC collects loan registers compiled by primary lenders showing loans made and loan applications received for each calendar year containing the data specified in the Federal Reserve Board's Regulation C (12 CFR part 203) which implements HMDA. The data system description may be obtained from the FFIEC, 1776 G Street, NW., Washington, DC 20006. The primary lenders required to participate are those that meet an asset threshold and have offices in Metropolitan Statistical Areas.

§ 81.28 Periodic reports.

(a) Any proxy report shall be provided to the Secretary not later than simultaneously with its issuance to stockholders.

(b) Any report or other informative document intended for release to the investment community shall be provided to the Secretary not later than simultaneously with its issuance to the investment community.

(c) Any report of insider trading (SEC Form 4, available from the SEC Publications Office, Ground Floor, 450 Fifth Street, NW., Washington, DC 20549) shall be submitted to the Secretary not later than simultaneously with its submission to the SEC.

(d) Five days in advance of public disclosure, a report shall be made to the Secretary of any planned significant announcements to the mortgage lending community relating to FNMA's lending activities.

§ 81.29 Report of intent to terminate program.

At least two business days before terminating any mortgage program, FNMA shall report its intent to terminate such program to the Secretary. Such report shall include:

(a) A full and complete explanation of FNMA's reasons for terminating the program;

(b) The impact of the program termination on housing for low- and moderate-income families;

(c) The impact of the program termination on housing for central cities;

(d) The impact of the program termination on FNMA's fulfilling the purposes of the Charter Act; and

(e) A comprehensive narrative and statistical history of the program intended to be terminated.

8. Section 81.31 would be amended by adding a new sentence to the end of the section, to read as follows:

§ 81.31 General.

* * * Inasmuch as the Secretary regulates or supervises FNMA, reports prepared or examinations conducted by or for FNMA or the Secretary in accordance with subpart D of this part or otherwise may be withheld from public disclosure in accordance with Exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

9. In § 81.32, paragraph (b) would be revised to read as follows:

§ 81.32 Examination of books, records, and documents.

* * * * *

(b) FNMA shall maintain a stenographic record of the minutes of each meeting of the Board of Directors of FNMA available at its headquarters, for examination by duly authorized representatives of the Secretary. Any particular matter included in the stenographic minutes that FNMA determines contains information which might financially injure it or adversely affect the conduct of its business, were it to be available outside FNMA, will be available only for examination, without copying, by the Secretary's authorized representatives at FNMA headquarters.

10. Section 81.33 would be revised to read as follows:

§ 81.33 Annual audits of FNMA.

On or before April 1 of each year, FNMA shall supply a certified audit for the prior calendar year of FNMA's activities, books and transactions to the Secretary's designated representative. The auditor's work papers must be made available at the request of the Secretary's designated representative. The audit must be performed by certified public accountants acceptable to the Secretary in the Secretary's sole discretion.

11. Section 81.34 would be revised to read as follows:

§ 81.34 Secretarial audits.

The Secretary will regularly, through duly authorized representatives who may be employees of any agency of the United States, independent accountants, or other private persons or firms retained by the Secretary, audit FNMA's activities, books and financial transactions. The Secretary may also at any time conduct a special audit of FNMA's activities, books and financial transactions.

12. In § 81.45, paragraph (b) would be revised to read as follows:

§ 81.45 Withdrawal of FNMA securities.

* * * * *

(b) On or after March 10, 1978, FNMA securities will be issued in book-entry form, unless, by the terms of the offering notice of particular securities, FNMA makes provision for the issuance of definitive securities.

13. 24 CFR part 81 would be amended by adding a new subpart F, to read as follows:

Subpart F—Safety and Soundness

§ 81.50 Safety and soundness.

(a) In order for the Secretary to carry out the mandate of section 309(h) of the Charter Act that the Secretary make such rules and regulations as shall be necessary and proper to insure that the purposes of the Charter Act are accomplished, adequate provision must be made in this part to assure the fiscal safety and soundness of FNMA.

(b) The Secretary will assess and monitor the financial risks of FNMA's business activities and determine how much regulatory capital FNMA should have relative to those risks. Assessment of FNMA's regulatory capital adequacy will be done not less frequently than annually using stress tests and other analytic techniques deemed appropriate by the Secretary. If as a result of the analysis, the Secretary determines FNMA's regulatory capital is inadequate, the Secretary will determine an appropriate period within which FNMA is to reach regulatory capital adequacy. The Secretary may define regulatory capital adequacy in terms of an overall debt-to-risk capital ratio, specific risk regulatory capital ratios for different lines of business, or in such other manner as may be appropriate. The Secretary's assessment of FNMA's regulatory capital adequacy must take into account the risks of FNMA's business, with particular emphasis on credit risk and interest rate risk. To facilitate the Secretary's monitoring of regulatory capital adequacy, and safety and soundness, a detailed reporting system is established in subpart C of this part. The reports which will have particular relevance for such monitoring relate to interest rate risk, credit risk, and management risk.

(c) Any new FNMA program submitted for approval must include a detailed risk assessment analysis together with a certification to the Secretary that present or reasonably anticipated reserves for interest rate risk, credit and other risks are adequate to compensate for the risks involved. Any existing program is subject to review by the Secretary to determine that the program does not involve unreasonable risks and that present or reasonably anticipated reserves for interest rate risk, credit and other risks are adequate to compensate for the risks involved. If the Secretary finds that present or reasonably anticipated reserves are not adequate, the Secretary can require one or more of the following:

(1) Changes in program design to reduce risk;

(2) Increased reserve requirements, on new and existing business; or

(3) Reduction or cessation of activity in the program, either temporarily or permanently.

14. Appendices A through C to Part 81 are proposed to be removed.

Dated: June 10, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-19031 Filed 8-15-91; 8:45 am]

BILLING CODE 4210-32-M

federal register

Friday
August 16, 1991

Part V

Department of Education

Projects With Industry; Notice of Proposed Priorities for Fiscal Year 1992

DEPARTMENT OF EDUCATION

Projects With Industry

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1992.

SUMMARY: The Secretary proposes priorities for fiscal year 1992 under the Projects With Industry (PWI) program. The Secretary takes this action to focus Federal financial assistance on areas of identified need under this program. These priorities are intended—(1) To increase the number of individuals with handicaps placed in occupations that meet current and future employment trends and labor market needs; and (2) To improve the wage-earning power of individuals with handicaps.

DATES: Comments must be received on or before September 16, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Michael Morgan, U.S. Department of Education, 400 Maryland Avenue SW., room 3038 Switzer Building, Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue SW., room 3326 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 732–1347. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Grants under the Projects With Industry program are authorized by title VI, section 621, of the Rehabilitation Act of 1973, as amended. The purposes of this program are to provide grants to promote opportunities for competitive employment of individuals with handicaps, to provide appropriate placement resources, to engage the talent and leadership of private industry as partners in the rehabilitation process, to create practical settings for job readiness and training programs, and to secure the participation of private industry in identifying and providing job opportunities and the necessary skills and training to qualify individuals with handicaps for competitive employment.

The Secretary is proposing two priorities for fiscal year 1992 under the PWI program. The first priority seeks to increase the number of trained individuals with handicaps placed in occupations that reflect current and future employment trends and labor market needs. The second priority seeks to fund projects that will train and place individuals with handicaps into competitive employment in positions above the entry level or in positions that have promotion potential. Projects funded under the Projects With Industry program have demonstrated that full-time entry level employment for individuals with handicaps is possible. However, many of these projects have been unable to place individuals into competitive jobs that pay more than the minimum wage or have promotion potential. The Secretary is interested in funding projects that place individuals with handicaps in jobs above the entry level or in "career ladder" positions that will lead to better paying jobs in the same occupational category.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Projects to Increase Placements in Occupations that Reflect Current and Future Employment Trends and Labor Market Needs

Projects under this priority must provide on-the-job training in specific skills for occupations that respond to current and future employment trends and labor market needs and that lead to job placements at multiple worksites. Projects must provide job-skills training to individuals with handicaps at worksites where those individuals are expected to be subsequently employed, rather than training at simulated worksites. To the extent possible, this training must be integrated into existing skills training programs provided by the business or industry.

A project must direct training and placement activities to existing or projected employment needs in the area served by the project. The project must determine that the occupations for which individuals are trained and placed are or will be in demand in the area to be served and must also determine and provide the training and job skills needed for those occupations.

Projects must consult with the State Employment Security Office, conduct independent surveys, or use data from existing surveys and statistics of local businesses to determine the occupations in demand in the project area. In addition, projects must secure information from local businesses and industry, the Dictionary of Occupational Titles, or existing studies to determine the training and job skills needed for those occupations.

Projects under this priority may be local, State, multi-State, or national in scope.

In order to maximize the benefits of the Projects With Industry program to individuals with handicaps and to the basic vocational rehabilitation services program, all projects must include cooperative planning with the State vocational rehabilitation agency or agencies in the State of the applicant.

Proposed Priority 2—Projects to Increase the Wage-Earning Potential of Individuals with Handicaps

Projects under this priority must train and place individuals with handicaps who have completed their secondary or postsecondary level education into competitive employment in positions above the entry level or in career ladder positions that have potential for promotion and will lead to better paying jobs in the same occupational category.

To ensure that individuals will be placed in these positions, a project must determine employer policies for promotion and advancement and identify the jobs to be obtained and the expected salary ranges. The project must consider the anticipated earnings of the individuals with handicaps to be served in order to meet the compliance indicator in 34 CFR 379.53(g).

In order to maximize the benefits of the Projects With Industry program to individuals with handicaps and to the basic vocational rehabilitation services program, all projects must include cooperative planning with the State vocational rehabilitation agency or agencies in the State of the applicant.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 3326, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 369 and 379.

Program Authority: 29 U.S.C. 795g.

(Catalog of Federal Domestic Assistance Number 84.234, Projects With Industry)

Dated: June 10, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-19548 Filed 8-15-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
August 16, 1991

Part VI

Department of Transportation

Federal Aviation Administration

**14 CFR Parts 21, 27, 29, and 91
Airworthiness Standards; Shoulder Harnesses in Normal and Transport Category Rotorcraft; Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 27, 29, and 91

[Docket No. 26078; Amdts. 21-69, 27-28, 29-32, and 91-223]

RIN 2120-AC67

Airworthiness Standards; Shoulder Harnesses in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airworthiness and operating regulations to require installation and use of shoulder harnesses at all seats of rotorcraft manufactured after September 16, 1992. These amendments respond to a safety recommendation from the National Transportation Safety Board and are intended to enhance protection of occupants in rotorcraft.

DATES: *Effective date:* September 16, 1991.

Compliance date: September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Major, FAA, Rotorcraft Standards Staff, ASW-111, Fort Worth, Texas 76193-0111; telephone (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on notice of proposed rulemaking (NPRM) No. 89-32, which was published in the Federal Register on December 8, 1989 (54 FR 50688). The NPRM proposed to amend parts 21, 27, 29, and 91 of the Federal Aviation Regulations (FAR) to require mandatory installation and use of shoulder harnesses (also called upper torso restraints) at all seats of rotorcraft, regardless of the type certification basis or the seat orientation or location. In addition, the NPRM proposed that the standards would apply to all domestic rotorcraft and foreign rotorcraft imported into the United States that are manufactured after 1 year after publication of the amendments in the Federal Register. These amendments respond to National Transportation Safety Board (NTSB) Recommendation No. A-85-70 to enhance protection of rotorcraft occupants during a "minor crash landing," as specified in §§ 27.561 and 29.561 in effect prior to December 1989.

In the notice the FAA specified that the minor crash landing condition strength standards of the original rotorcraft type design certification basis, such as 4.0 g's forward, etc., for present helicopter designs would be applicable. The increased static strength standards and dynamic test standards of Amendments 27-25 and 29-29 (54 FR 47310, November 13, 1989) apply only to new rotorcraft type designs. In the notice, it was pointed out that § 91.107 applies to aircraft operations, including rotorcraft, and mandates the use of shoulder harnesses whenever installed in an aircraft. Also, the Technical Standard Order (TSO) system provides in TSO-C114 minimum performance standards for a safety belt and shoulder harness, also known as a Torso Restraint System. Inasmuch as the TSO contains strength standards that exceed the standards contained in these amendments, it is also acceptable for meeting the strength requirements of these amendments.

In addition, TSO-C22 contains minimum performance standards (e.g., 1500-pound) for a one-person safety belt. Combined safety belts and shoulder harnesses were previously approved under this earlier TSO and were installed as an optional feature for many rotorcraft designs. A combined safety belt and shoulder harness manufactured under a TSO-C22 approval may be eligible for installation in compliance with this rulemaking, provided the safety belt and shoulder harness otherwise comply with the applicable airworthiness standards.

All interested persons have been given an opportunity to participate in this rulemaking, and due consideration has been given to all matters presented. Seven commenters, representing rotorcraft manufacturers, an operator, industry groups, airworthiness authorities of other countries, and the NTSB, responded to the NPRM. All but one of the commenters agree with the proposal for mandatory installation and use of shoulder harnesses; however, they do express concerns and make recommendations for changes in the standards. The following discussion contains these recommendations and their disposition.

Discussion of Comments

Sections 21.17 and 21.101 Designation of Applicable Regulations

The notice proposed to amend these procedural rules by adding the new retroactive requirements of §§ 27.2 and 29.2. No comments were received. Therefore, the amendments are adopted as proposed.

Sections 27.2 and 29.2 Special Retroactive Requirements

The notice proposed to add these new standards requiring a shoulder harness (upper torso restraint) at each seat of U.S.-registered civil rotorcraft manufactured after 1 year after publication of the amendments in the Federal Register. The shoulder harness installation would have to comply with the original rotorcraft certification standards including § 27.785 (b) and (c) or § 29.785 (b) and (c).

An industry commenter supports this change. In addition, the NTSB supports the proposals but recommends that both manufacturers and operators install shoulder harnesses at all seats if the rotorcraft contains structural provisions that accept harnesses installation irrespective of the date of rotorcraft manufacture. The NTSB's suggestion to require a retrofit of existing rotorcraft structurally capable of the harness installation was not adopted because it would be technically impracticable and economically unreasonable for operators to determine which of their rotorcraft, without being modified, were structurally capable of accepting the shoulder harness installations. Also, an additional regulatory evaluation to assess the benefits and costs of such a retrofit requirement would be necessary. Additionally, the FAA determined that manufacturers should be permitted 1 year from the effective date of these amendments to incorporate the design, engineering, and production changes necessary to comply with them.

An international operator recommends that a better approach to accident prevention is improved rotorcraft designs and use of health and usage monitoring systems rather than improved injury prevention or occupant protection standards, as proposed. Nonetheless, the FAA contends that enhanced occupant protection is a viable means of improving occupant safety, since accidents will continue to occur because of operational errors even if all design faults are eliminated. For example, on page 216 of the "Helicopter Association International 1988 Helicopter Annual," the author stated, "The past 10 years of accident data show that 83% of the accidents (218 accidents annual average) are caused by errors in operational techniques and decision making (42.2% and 40.8% respectively)." Thus, fewer than 20 percent of the accidents may be attributed to rotorcraft designs or material faults, and improved occupant protection is warranted.

No comments were received on the proposed compliance date or the proposed effective date of these changes. However, consistent with FAA rulemaking practice, the compliance date has been extended approximately 30 days in the final rule by adopting a compliance date that is 1 year after the effective date, rather than the publication date, of the amendments.

Commenters requested clarification of the applicable strength standards to employ for this retroactive requirement. Accordingly, §§ 27.2 and 29.2 have been revised by including safety belt and harness design requirements and strength standards, and the paragraphs defining the date of rotorcraft manufacture have been relocated. Since §§ 27.2 and 29.2 are now self-contained, the references to § 27.785 (b) and (c) and § 29.785 (b) and (c) are unnecessary and have been removed. The proposals are, therefore, adopted with these editorial changes.

Section 91.205 Powered Civil Aircraft With Standard Category U.S. Airworthiness Certificates; Instrument and Equipment Requirements

The notice proposed a new paragraph to require installation of a shoulder harness for each seat as a condition for operation of rotorcraft manufactured after 1 year publication of the final rule in the **Federal Register**. The operating rule complements proposed §§ 27.2 and 29.2.

No comments were received on this proposal. However, as noted previously, the compliance date has been extended. In addition, rather than referring to §§ 27.785 (b) and (c) and 29.785 (b) and (c), the rule has been revised to refer to §§ 27.2 and 29.2, which contain the necessary safety belt and harness design standards for the reasons cited previously. Other than these changes, the amendment is adopted as proposed.

Strength Standards

The applicable strength standards for normal and transport category rotorcraft are referenced in §§ 27.785 and 29.785, respectively. In the preamble to the notice, the FAA stated that the strength standards of the particular rotorcraft certification basis would continue to apply to approval of the mandated combined safety belt and shoulder harness installation.

One commenter emphasizes that application or retention of the strength standards contained in the rotorcraft type certification basis is essential. The FAA agrees. The proposal and the economic analysis were based on retaining the original type certification strength standards, while at the same time applying retroactive shoulder harness design requirements. New §§ 27.2 and 29.2 are adopted as proposed with editorial changes for clarity as already discussed.

Another commenter believes that use of the design standards in the particular rotorcraft design type certification basis, such as 4.0 g's forward inertial factor, etc., is inadequate and that the inertial deceleration factors expected in a survivable crash should be adopted in this rulemaking. Since the proposals respond to a safety recommendation to enhance occupant protection for newly produced rotorcraft of older designs, the comment is beyond the scope of the notice. The standards adopted in Amendment 27–25 and 29–29 (54 FR 47310, November 13, 1989) significantly increase static strength requirements and add dynamic test requirements for improved occupant protection in a survivable landing impact for new rotorcraft designs. Those amendments respond to the commenter's objective for newly designed rotorcraft and, therefore, no changes are necessary.

A commenter also recommends an additional requirement to assure that any safety belt and shoulder harness would not be installed or otherwise constructed in a way that compromises occupant safety in a survivable crash. Since the installation of the belt and harness must not interfere with the occupant's rapid egress as stated in existing § 27.785(c) and § 29.785(c) and as newly adopted in §§ 27.2(a) and 29.2(a), the commenter's concern is addressed in the current standards.

Evacuation Provisions

A commenter states that interior clutter from items such as a shoulder harness impedes evacuation of a flooded cabin that may occur after a ditching in water. Sections 27.2(a) and 29.2(a), as adopted, require a single-point release and a means to secure the belt and harness, if necessary, to prevent interference with rapid egress in an emergency; therefore, the commenter's concerns are adequately covered by the new regulation.

Another commenter is concerned about the potential for unacceptable degradation of the emergency evacuation provisions with the use of shoulder harnesses and recommends guidance material to supplement the standards. The commenter further suggests that rotorcraft evacuation tests may be necessary for rotorcraft that hold 45 or more passengers whenever harnesses are installed. Section 29.803 (as amended by Amendment 29–30, 55 FR 7992, March 6, 1990) requires, for new rotorcraft designs, an evacuation demonstration for certain designs, including those that hold 45 or more passengers. An evacuation demonstration was not required before adoption of Amendment 29–30. The installation and use of harnesses for the larger rotorcraft designs should not appreciably degrade evacuation provisions because §§ 27.2(a) and 29.2(a), as adopted, require both a single-point release for the belt and harness and a means to secure the belt and harness, if needed, to prevent interference with rapid egress in an emergency. The FAA notes the commenter's concerns and will monitor initial installations of harnesses for the larger transport category rotorcraft designs. In addition, advisory material will be used, as needed.

Economic Concerns

An international operator, with experience in operating a fleet of rotorcraft, observed that in several fatal and serious injury accidents, shoulder harnesses would have been beneficial in only one of those accidents. The commenter contends that shoulder harnesses prevent passengers from assuming the head-on-knees (brace) position and that passengers are more susceptible to spinal injury in this upright position. According to data stated in the preamble of the notice, installation and use of a shoulder harness that restrains an occupant from potential secondary impact and that properly supports the upper torso for the vertical impact loads, when used in conjunction with a safety belt, will significantly enhance safety of the occupants in 52 to 68 percent of rotorcraft impacts.

The commenter further notes a potential inconsistency for those operators who operate new helicopters with shoulder harnesses while also operating the same, but older, model helicopters without any harnesses. With 1,600 seats in the commenter's fleet of helicopters, the commenter concludes that the cost of equipping these aircraft with harnesses should be included in the economic analysis. The commenter contends that the economic impact analysis should address the cost of retrofitting all older helicopters even though not mandated by the rule.

The FAA did not proposed mandatory installation of shoulder harnesses for the current fleet of helicopters because it is expected that the costs would exceed the safety benefits. The cost of voluntary "retrofit" of the older helicopters is not a "regulatory" cost of implementing the standards. That is an

optional consideration and decision for helicopter operators.

Regulatory Evaluation Summary

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA for this regulatory action. This summary outlines the estimated costs to the private sector, consumers, and Federal, State, and local governments, as well as the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to this rule has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a Regulatory Flexibility Determination required by the Regulatory Flexibility Act (Pub. L. 96–354) and an International Trade Impact Assessment. If more detailed economic information is desired, the reader may examine the regulatory evaluation contained in the docket.

Economic Evaluation

This analysis examines §§ 27.2 and 91.205 as if they were a single amendment affecting normal category rotorcraft manufacturers and operators and §§ 29.2 and 91.205 as if they were a single amendment affecting transport category rotorcraft manufacturers and operators. Normally, each amendment would be considered separately and a distinct economic impact analysis would accompany each one. In this instance, however, each group of amendments supports what is essentially a single change. Shoulder harnesses must be installed and available in all seats of all normal or transport category rotorcraft manufactured after September 16, 1991, and, thereafter, operated in the United States. Costs and benefits were analyzed separately because they were expected to differ.

Costs and benefits associated with the final rule were calculated on a per-seat basis in the analysis. The advantage of this approach is that it eliminates dependence on forecasts of the future size and activity of the helicopter fleet, which, in turn, depends on future economic activity. Thus, a positive net benefit per seat indicates a positive net benefit to society for this rule.

At the time the initial regulatory evaluation was prepared, some manufacturers equipped many of their part 27 rotorcraft seats with shoulder harnesses as standard equipment, which reduces the overall costs and benefits of the final rule. Using a per-seat cost/benefit analysis removes the necessity of reducing total costs and benefits by the estimated number of seats that would have harnesses even without the rule. Further, a positive net benefit per seat justifies the rule because: (1) Manufacturers may not install harnesses that are otherwise standard or optional equipment if the customer so requests; and (2) Manufacturers would be free to change their company policy in the future and no longer provide harnesses as standard equipment.

The final rule requiring newly manufactured rotorcraft to have shoulder harnesses in all seats reduces the number and severity of fatal and nonfatal injuries suffered in rotorcraft accidents. The benefit to be derived by society as a result of this rule is, therefore, the value of those expected injury reductions. The estimated benefits accruing from each seat manufactured pursuant to this final rule are based on accident rates, injury rates and the harness-related reductions in those rates, and benefits per accident over the life of the seat. These factors and associated results are discussed in the following sections. The data used in this analysis are based upon the Initial Regulatory Evaluation, Initial Regulatory Flexibility Determination, and International Trade Impact Assessment, which are contained in the docket, and upon computer printouts of more recent (1986–1989) rotorcraft accident information. Commenters provided little new or additional data on the proposed rule. Moreover, even though there has been a decline in rotorcraft usage in recent years, the benefits were calculated on a per-seat basis. Therefore, this decline would not have an impact on the final outcome. To provide the public and government officials with a bench mark comparison of the expected safety benefits of a rulemaking action over an extended period of time with estimated costs in dollars, the FAA currently uses a value of $1.5 million to statistically represent a human fatality avoided (in accordance with guidelines issued by the Office of the Secretary of Transportation, dated June 22, 1990). The cost of a serious injury is estimated to be $640,000, and the cost of a minor injury is estimated to be $2,300. On the basis of these cost estimates per type of casualty and using NTSB accident injury data from 1986 to 1989, the FAA estimates that the economic benefit to society of the harness-related injury reductions over the life cycle of a seat manufactured pursuant to this rule will be $1,150 per seat for part 27 rotorcraft and $1,240 per seat for part 29 rotorcraft. These estimates are lower than those presented in the initial regulatory evaluation.

The amendment requiring rotorcraft to be equipped and operated with harnesses for each occupant will have a cost impact on manufacturers and operators. The manufacturing and operating costs were summed and converted into expected lifetime costs per seat to get an estimate of cost impacts that could be compared with expected lifetime benefits per seat. The annual weight penalty and the replacement cost were discounted to the present, and both were calculated to account for the possibility that a rotorcraft might be involved in a destructive accident during its life cycle. Compliance with the final rule will impose life cycle costs of about $140 per seat for operators of part 27 rotorcraft and $350 per seat for operators of part 29 rotorcraft.

Based upon the costs and benefits discussed earlier, the expected benefits, net of costs, over the lifetime of a seat is $1,010 for each part 27 seat manufactured pursuant to this rule and $890 for each part 29 seat. Thus, given the potential economic benefits of lives saved and injuries prevented by using shoulder harnesses, the FAA finds that this rule is cost beneficial.

International Trade Impact Assessment

The rule changes will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. In the U.S. market, foreign manufacturers will have the option of producing helicopters that satisfy the new standards and, therefore, will not be at a competitive disadvantage with U.S. manufacturers. Because of the large U.S. market, foreign manufacturers are likely to certificate their rotorcraft to

U.S. standards, which will limit any competitive advantage U.S. manufacturers might gain in foreign markets. Furthermore, it is expected that added costs will be passed on to customers in both domestic and foreign markets.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act of 1980 and of the FAA small entity size criteria specified in FAA Order 2100.14A, the amendments to parts 21, 27, 29, and 91 will not have a significant economic impact on a substantial number of small entities. The final rule will directly affect two types of small entities: (1) Small rotorcraft manufacturers, and (2) small rotorcraft operators. Each entity is discussed separately.

A. Small Rotorcraft Manufacturers

According to FAA Order 2100.14A, the definition of a small aircraft and aircraft parts manufacturer is one with 75 or fewer employees. There is only one rotorcraft manufacturer (out of 10) in the United States that meets this definition. FAA Order 2100.14A defines a substantial number of small entities as more than one-third of the group but not fewer than 11. With only one small manufacturer in the United States, there is not a significant economic impact on a substantial number of small entities.

B. Small Rotorcraft Operators

The small operators affected by the final rule are commercial operators that are regulated under parts 91, 133, 135, and 137. The size standards criteria in FAA Order 2100.14A classify operators of aircraft for hire as small if they own, but not necessarily operate, nine or fewer aircraft. Estimates of the number of small operators in the United States and the average number of rotorcraft owned by small U.S. operators can be made based on membership data from the Helicopter Association International.

It is assumed for the purpose of this analysis that all small commercial operators in the United States will be affected by this final rule. This represents a worst-case scenario, since many part 27 helicopters are currently equipped with shoulder harnesses at all crew and passenger seats. The World Aviation Directory, Winter 1989, identified 214 firms as either helicopter scheduled air services or helicopter nonscheduled and specialty air services in the United States. At least 151 firms possessed 9 or fewer aircraft. Of the 32 firms who did not identify the number of aircraft that they possessed, it is estimated that 27 of them (84 percent) also possess 9 or fewer aircraft.

FAA Order 2100.14A defines cost thresholds for significant economic impacts for various entity types. The threshold for "operators of aircraft for hire—unscheduled" was $3,300 per year in December 1983 dollars or about $4,100 in second quarter 1990 dollars. The total annualized lifetime cost of complying with the final rule is estimated at about $75 per rotorcraft for operators of part 27 rotorcraft and $450 per rotorcraft with 12 seats ($1,670 per rotorcraft with 45 seats) for operators of part 29 rotorcraft.

The final rule would affect only newly manufactured rotorcraft. If, under a worst-case scenario, an operator of a part 27 rotorcraft purchased nine new rotorcraft manufactured under the final rule over a 10-year period, the total annualized cost due to the rule would be $675, which is less than the $4,100 threshold. A small commercial operator would exceed the annual cost threshold only if the operator replaced at least 9 part 29 rotorcraft with 12 seats (or 3 part 29 rotorcraft with 45 seats). This is very unlikely. Furthermore, even if this did occur among all operators with 8 or 9 part 29 rotorcraft with more than 12 seats, it would represent only 15 commercial operators or 8.4 percent of the 178 commercial operators. The rule, therefore, does not impact more than one-third of affected small entities. Thus, even in the worst case, the final rule would not substantially impact a significant number of small entities.

Federalism Implications

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

Conclusion

For these reasons, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that these amendments do not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. These amendments are considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A regulatory evaluation of the amendments, including a Regulatory Flexibility Determination and an International Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Parts 27 and 29

Aircraft, Aviation safety.

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Noise control, Political candidates, Reporting and recordkeeping requirements.

Adoption of the Amendments

Accordingly, parts 21, 27, 29, and 91 of the Federal Aviation Regulations (14 CFR parts 21, 27, 29, and 91) are amended as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.*: E.O. 11514; 49 U.S.C. 106(g).

§ 21.17 [Amended]

2. Section 21.17(a) introductory text is amended by adding ", § 27.2, § 29.2," after "§ 25.2".

§ 21.101 [Amended]

3. Section 21.101(a) introductory text is amended by revising "§ 23.2 and § 25.2" to read "§§ 23.2, 25.2, 27.2, 29.2".

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

4. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

5. A new § 27.2 is added to subpart A to read as follows:

§ 27.2 Special retroactive requirements.

For each rotorcraft manufactured after September 16, 1992, each applicant must show that each occupant's seat is

equipped with a safety belt and shoulder harness that meets the requirements of paragraphs (a), (b), and (c) of this section.

(a) Each occupant's seat must have a combined safety belt and shoulder harness with a single-point release. Each pilot's combined safety belt and shoulder harness must allow each pilot, when seated with safety belt and shoulder harness fastened, to perform all functions necessary for flight operations. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(b) Each occupant must be protected from serious head injury by a safety belt plus a shoulder harness that will prevent the head from contacting any injurious object.

(c) The safety belt and shoulder harness must meet the static and dynamic strength requirements, if applicable, specified by the rotorcraft type certification basis.

(d) For purposes of this section, the date of manufacture is either—

(1) The date the inspection acceptance records, or equivalent, reflect that the rotorcraft is complete and meets the FAA-Approved Type Design Data; or

(2) The date the foreign civil airworthiness authority certifies that the rotorcraft is complete and issues an original standard airworthiness certificate, or equivalent, in that country.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

6. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

7. A new § 29.2 is added to subpart A to read as follows:

§ 29.2 Special retroactive requirements.

For each rotorcraft manufactured after September 16, 1992, each applicant must show that each occupant's seat is equipped with a safety belt and shoulder harness that meets the requirements of paragraphs (a), (b), and (c) of this section.

(a) Each occupant's seat must have a combined safety belt and shoulder harness with a single-point release. Each pilot's combined safety belt and shoulder harness must allow each pilot, when seated with safety belt and shoulder harness fastened, to perform all functions necessary for flight operations. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(b) Each occupant must be protected from serious head injury by a safety belt plus a shoulder harness that will prevent the head from contacting any injurious object.

(c) The safety belt and shoulder harness must meet the static and dynamic strength requirements, if applicable, specified by the rotorcraft type certification basis.

(d) For purposes of this section, the date of manufacture is either—

(1) The date the inspection acceptance records, or equivalent, reflect that the rotorcraft is complete and meets the FAA-Approved Type Design Data; or

(2) The date that the foreign civil airworthiness authority certifies the rotorcraft is complete and issues an original standard airworthiness certificate, or equivalent, in that country.

PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

9. Section 91.205 is amended by adding a new paragraph (b)(16) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: instrument and equipment requirements.

* * * * *

(b) * * *

(16) For rotorcraft manufactured after September 16, 1992, a shoulder harness for each seat that meets the requirements of § 27.2 or § 29.2 of this chapter in effect on September 16, 1991.

* * * * *

Issued in Washington, DC, on August 9, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-19441 Filed 8-15-91; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
August 16, 1991

Part VII

Congressional Budget Office

Sequestration Update Report for Fiscal Year 1992 to Congress and the Office of Management and Budget; Notice of Transmittal

CONGRESSIONAL BUDGET OFFICE

Transmittal of Sequestration Update Report for Fiscal Year 1992 to Congress and the Office of Management and Budget

August 14, 1991.

Pursuant to the Omnibus Budget Reconciliation Act of 1990, section 254(b), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1992 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 91-19820 Filed 8-15-91; 8:45 am]

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Reader Aids

Federal Register

Vol. 56, No. 159

Friday, August 16, 1991

INFORMATION AND ASSISTANCE

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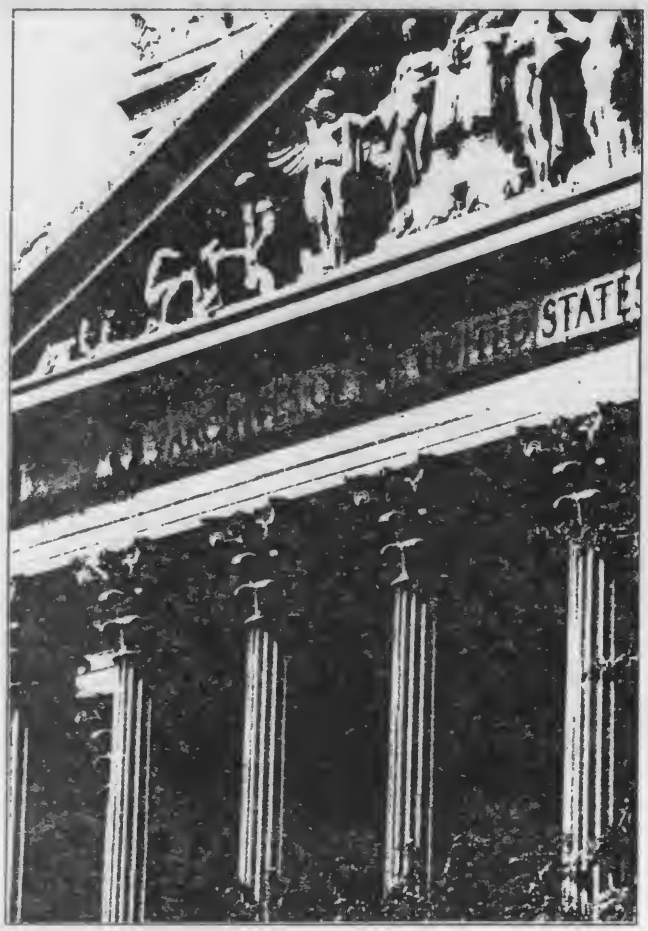

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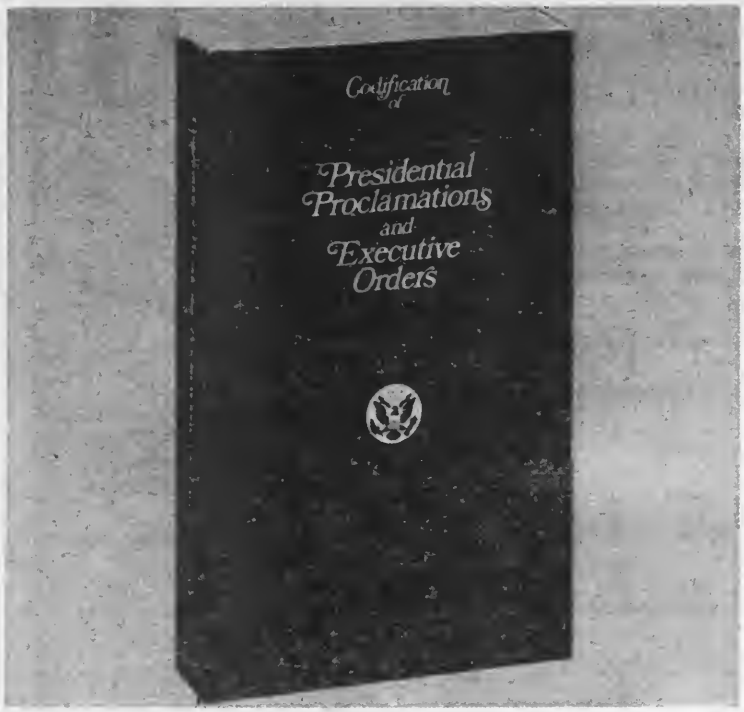

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102d Congress, 1st Session, 1991

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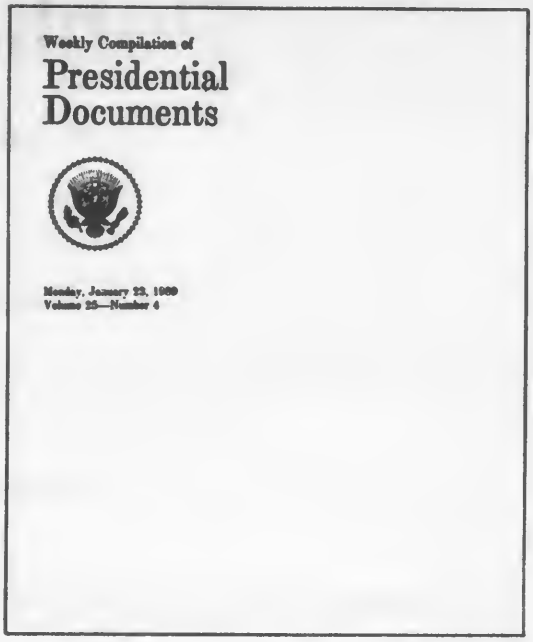

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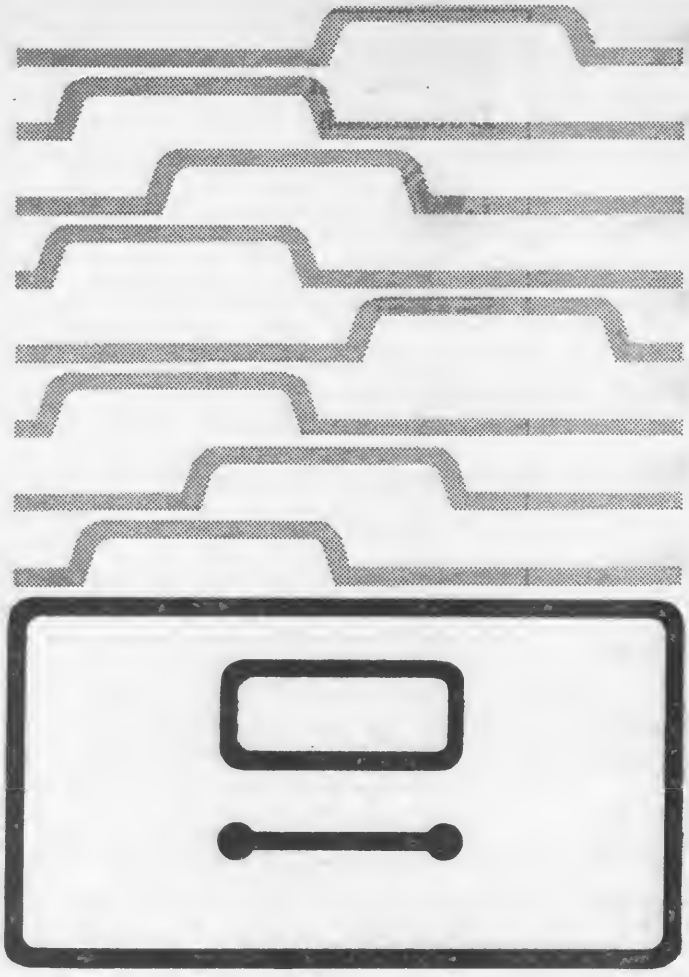

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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