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WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: April 18, 2000, at 9:00 a.m.
WHERE: Conference Room, Suite 700
Office of the Federal Register
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–4 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 1999–2000 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 1999–2000 crop Natural (sun-dried) Seedless raisins (Naturals) and Zante Currant raisins (Zantes) covered under the Federal marketing order for California raisins (order). The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective April 10, 2000. Comments received by June 9, 2000, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Naturals and Zantes for the 1999–2000 crop year, which began August 1, 1999, and ends July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule establishes final volume regulation percentages for 1999–2000 crop Naturals and Zantes covered under the order. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages for Zantes were recommended by the Committee on January 13, 2000, and for Naturals on February 11, 2000.

Computation of Trade Demands

Section 989.54 of the order prescribes the procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 12, 1999, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types.

The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year and by adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one-half of October. In accordance with these provisions, the Committee computed and announced 1999–2000 trade demands for Naturals and Zantes at 254,475 and 1,855 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	Naturals	Zantes
Prior year's shipments	[1]314,013	3,542
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	282,612	3,188
Minus carryin inventory	101,946	1,906
Plus desirable carryout	73,809	573
Equals computed trade demand	254,475	1,855

[1] Pursuant to § 989.54(a), 1996–97 shipments were utilized to compute trade demand because 1998–99 shipments were limited.

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on October 1, 1999, and announced a preliminary crop estimate of 294,519 tons for Naturals. This estimate was almost 15 percent lower than the 10-year average of 346,325 tons. Naturals are the major varietal type of California raisins. Combining the carryin inventory of 101,946 tons with the 294,519-ton crop estimate resulted in a total available supply of 396,465 tons, which was much higher than the 254,475-ton trade demand. Thus, the Committee determined that volume regulation for Naturals was warranted. The Committee announced preliminary free and reserve percentages for Naturals which released 65 percent of the computed trade demand since the field price had not yet been established. The preliminary percentages were 56 percent free and 44 percent reserve. The Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 22, 1999, and the preliminary percentages were thus modified to 73 percent free and 27 percent reserve.

Also at its October 1, 1999, meeting, the Committee announced a preliminary crop estimate for Zantes at 4,187 tons, which is comparable to the 10-year average of 4,463 tons. Combining the carryin inventory of 1,906 tons with the 4,187-ton crop estimate resulted in a total available supply of 6,093 tons, which is significantly greater the 1,855-ton trade demand. Thus, the Committee determined that volume regulation for Zantes was warranted. The Committee announced preliminary free and reserve percentages for Zantes which released 65 percent of the computed trade demand since field price had not yet been established. The preliminary percentages were 29 percent free and 71 percent reserve. Like Naturals, the Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 12, 1999, and the preliminary percentages were thus modified to 38 percent free and 62 percent reserve. As in past seasons, the Committee submitted its marketing policy to the Department for review. In addition, the Committee determined that volume regulation was not warranted for the other varietal types of raisins covered under the order.

Computation of Final Volume Regulation Percentages

Pursuant to §§ 989.54(c) and (d) of the order, the Committee met on January 12, 2000, and announced interim percentages for Zantes at 50.75 percent free and 49.25 percent reserve. These interim percentages were based on a revised Zante crop estimate of 3,650 tons. At that meeting, the Committee also computed final percentages for Zantes which, when applied to the final 3,650-ton crop estimate, tend to release the full Zante trade demand. Final percentages compute to 51 percent free and 49 percent reserve.

The Committee met on February 11, 2000, and announced interim percentages for Naturals at 84.75 percent free and 15.25 percent reserve. These interim percentages were based on a revised crop estimate of 298,477 tons. The Committee also computed final percentages for Naturals which, when applied to the final 298,477-ton crop estimate, tend to release the full trade demand. Final percentages compute to 85 percent free and 15 percent reserve. The Committee's calculations to arrive at final percentages for Naturals and Zantes are shown in the table below.

FINAL VOLUME REGULATION PERCENTAGES

[Tonnage as natural condition weight]

	Naturals	Zantes
Trade demand	254,475	1,855
Divided by crop estimate	298,477	3,650
Equals free percentage	85	51
100 minus free percentage equals reserve percentage	15	49

In addition, the Department's "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal will be met for Naturals and Zantes by the establishment of final percentages which release 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For Naturals, both 10 plus 10 offers will be held in June 2000 where a total of about 44,000 tons of raisins will be made available to handlers. This quantity is less than the amount specified in the order. As previously stated, the Committee utilized 1996–97 shipments of 314,013 tons as a base to compute trade demand because 1998–99 shipments were limited. Similarly, as specified in § 989.54(g), 1996-97 shipments were used as a base to compute the amount of tonnage to be made available in the 10 plus 10 offers. Thus, 31,402 tons should be made available in each of the 10 plus 10 offers (62,803 tons total). However, this amount is not available in the reserve. Thus, all of the reserve pool raisins will be made available to handlers for free use through the 10 plus 10 offers.

Adding the 44,000 tons of 10 plus 10 raisins to the 254,475-ton trade demand figure, plus 101,946 tons of 1998-99

carryin inventory equates to about 400,423 tons natural condition raisins, or 375,893 tons packed raisins, that will be made available for free use, or to the primary market. This is 136 percent of the quantity of Naturals shipped during the 1998–99 crop year (295,401 natural condition tons or 277,305 packed tons).

For Zantes, both Zante 10 plus 10 offers were made available simultaneously in early February 2000 and 708 tons of raisins were purchased by handlers. Adding the 708 tons of 10 plus 10 raisins to the 1,855 ton trade demand figure, plus 1,906 tons of 1998–99 carryin inventory equates to 4,469 tons natural condition raisins, or about 3,985 tons packed raisins, made available for free use, or to the primary market. This is 126 percent of the quantity of Zantes shipped during the 1998–99 crop year (3,542 natural condition tons or 3,158 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, these additional offers of reserve raisins make even more raisins available to primary markets which is consistent with the Department's Guidelines.

Initial Regulatory Flexibility Analysis

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

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 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 1999-2000 crop Natural and Zante raisins. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for Naturals because the final crop estimate of 298,477 tons combined with the carryin inventory of 101,946 tons results in a total available supply of 400,423 tons, which is about 57 percent higher than the 254,475-ton trade demand. Volume regulation is warranted for Zantes this season because the crop estimate of 3,650 tons combined with the carryin inventory of 1,906 tons results in a total available supply of 5,556 tons which is about 200 percent higher than the 1,855-ton trade demand. The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

Raisin-variety grapes can be marketed as fresh grapes, crushed for use in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. These supply fluctuations can cause producer price instability and disorderly market conditions. Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, excluding the 1997–98 season for which complete data is not yet available, producer prices for Naturals have remained fairly steady between the 1992–93 through the 1998–99 seasons, although production has varied. As shown in the table below, production has varied from a low of 240,469 tons in 1998–99 to a high of 387,007 tons in 1993–94, or 61 percent. According to Committee data, during years of Natural volume regulation, the total producer return per ton, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production (natural condition tons)	Producer prices
1998–99	240,469	[1] $1,290
1997–98	382,448	[2] 925.50
1996–97	272,063	1,049
1995–96	325,911	1,007
1994–95	378,427	928
1993–94	387,007	904
1992–93	371,516	901

[1] No volume regulation.
[2] Return to date, reserve pool still open.

In addition, the Committee is implementing an export program for Naturals. Through this program, the Committee hopes to export more Naturals thereby helping to build and maintain export markets, and ultimately improving producer returns. Volume regulation helps the industry not only to manage its supply of raisins, but also maintain market stability.

Regarding Zantes, Zante production is much smaller than that of Naturals. Volume regulation has been implemented for Zantes during the 1994–95, 1995–96, 1997–98, and 1998–99 seasons. Various programs to utilize reserve Zantes were implemented when volume regulation was in effect during the 1994–95, 1995–96, 1997–98, and 1998–99 seasons. As shown in the table following this paragraph, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve Zantes) from $412.56 per ton in 1994–95 to an estimated high of $730 per ton in 1997–98. The Committee is implementing an export program for Zantes, in addition to Naturals. Through this program, the Committee hopes to export more Zantes, thereby continuing to reduce the industry's oversupply, helping to build export markets, and ultimately improving producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[* Natural condition tons]

Crop year	Production *	Inventory *		Total season average producer price (per ton)
		Desirable	Physical	
1998–99	3,880	573	1,906	[1]
1997–98	4,826	694	1,188	[2] $730.00
1996–97	4,491	987	549	[3] 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] Data not yet available, reserve pool open.
[2] Estimate.
[3] No volume regulation.

Free and reserve percentages are established by variety, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. However, volume regulation may also be utilized in short crop years so that the industry may utilize its export program as described to maintain its export markets and provide stability in the domestic market. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended only two of the nine raisin varieties defined under the order for volume regulation this season.

The free and reserve percentages established by this rule release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For Naturals, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. All handlers are regulated based on the quantity of raisins which they acquire from producers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

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

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

This rule invites comments for a 60-day period on the establishment of final volume regulation percentages for 1999–2000 crop Natural and Zante raisins covered under the order. All comments received within the comment period will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause

that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1999–2000 crop year apply to all Natural and Zante raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1999–2000 crop Natural and Zante raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demands available to handlers; (3) handlers are aware of this action, which the Committee recommended at open meetings, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

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

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. Section 989.253 is added to Subpart—Supplementary Regulations to read as follows:

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

§ 989.253 Final free and reserve percentages for the 1999–2000 crop year.

The final percentages for standard Natural (sun-dried) Seedless and Zante Currant raisins acquired by handlers during the crop year beginning on August 1, 1999, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free-percentage	Reserve-percentage
Natural (sun-dried) Seedless	85	15
Zante Currant	51	49

Dated: April 4, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–8728 Filed 4–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 80

[Docket No. 98–037–2]

Johne's Disease In Domestic Animals; Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the interstate movement of domestic animals that have reacted to a test for paratuberculosis. First, we are replacing all references to "paratuberculosis" with references to "Johne's disease" to reflect a change in nomenclature. Second, we are identifying an official test for the detection of Johne's disease in domestic animals. Third, we are amending the requirements for moving animals interstate. These actions will update the regulations and remove restrictions on the interstate movement of animals that are positive to an official Johne's disease test that do not appear necessary to prevent the interstate spread of Johne's disease.

EFFECTIVE DATE: May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Paratuberculosis, also known as Johne's disease, is a disease caused by *Mycobacterium paratuberculosis*. This disease primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants. Paratuberculosis is a chronic and contagious enteritis that results in progressive wasting and eventual death. Clinical signs are rarely evident until 2 or 3 years after the initial infection, which usually occurs soon after birth. The organism is shed in large numbers in the feces of infected animals, and infection can be acquired by ingestion of organisms from contaminated food and water sources. The organisms can also be present in colostrum and milk of infected cows. The disease is nearly always introduced into a clean herd by an infected animal that does not show symptoms of the disease. Our regulations are intended to control the interstate spread of the disease in the United States.

The regulations in subchapter C of chapter I, title 9, Code of Federal Regulations (CFR), govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Parts 71 and 80 (referred to below as the regulations) are included in subchapter C. Part 71 relates to the interstate transportation of animals, poultry, and animal products. Part 80 pertains to the interstate movement of domestic animals that are paratuberculosis reactors. A paratuberculosis reactor is a domestic animal that has reacted to a test recognized by the Secretary of Agriculture for paratuberculosis.

On March 22, 1999, we published in the **Federal Register** (64 FR 13726–13732, Docket No. 98–037–1) a proposal to amend the regulations regarding the interstate movement of domestic animals affected with Johne's disease. We proposed to replace references to "paratuberculosis" with references to "Johne's disease", to identify an official test for Johne's disease, and to allow the interstate movement of domestic animals that are positive to the official Johne's disease test for slaughter purposes or the collection of germ plasm.

We solicited comments concerning our proposal for 60 days ending May 21, 1999. We received six comments by that date. They were from a national veterinary medical association, a State veterinary association, a beef association, two dairy associations, and a State advisory committee on Johne's disease. Two commenters supported the proposed rule. One commenter stated that he could not support the proposed rule. This commenter and the remaining commenters expressed concerns that are discussed below.

Movement of Animals for the Collection of Germ Plasm

Several commenters raised concerns related to our proposed provisions to allow the interstate movement of positive animals for the collection of germ plasm (semen, embryos, and ova). We stated in our proposal that artificial insemination and embryo transfer were considered to present a low risk of transmitting Johne's disease, and that allowing interstate movement of positive animals for germ plasm collection would allow herd owners to

salvage valuable genetics and continue an animal's lineage. One commenter took issue with our statement about low risk, maintaining that there is insufficient research to support our contention. One commenter mentioned that semen, embryos, and ova are not the only genetic materials that could be considered germ plasm. One commenter recommended that we allow interstate movement of positive animals only from herds that have achieved a certain status level under the United States Animal Health Association's (USAHA) Voluntary Johne's Disease Herd Status Program for Cattle, and that germ plasm be collected from other animals in a sanitized station on the premises. One commenter stated that many breeders enrolled in various voluntary Johne's disease programs are not interested in having an animal from a herd positive for Johne's disease on their property.

Based on these comments, and because germ plasm from positive animals may be collected without restriction on the premises of origin, this final rule will not allow the interstate movement of positive animals for germ plasm collection. Our proposed rule did not place any restrictions on the collection of germ plasm at the premises of origin, and we are not adding such provisions in this final rule.

In addition, because we are removing the proposed requirements for the interstate movement of positive animals for the collection of germ plasm, we have removed the definitions of *accredited veterinarian, germ plasm, permit,* and *premises of origin* from the proposed list of definitions in § 80.1. These terms were used and referenced in the aforementioned proposed requirements.

One commenter took exception to a portion of the discussion under the heading, "Executive Order 12866 and Regulatory Flexibility Act," that stated, "However, for most producers, the impact may be insignificant." The commenter stated that the impact of the proposed rule on a substantial number of seed stock producers will be very significant if overly vigorous administration of testing programs puts a significant number of seed stock producers out of business or reduces them to producing commercial milk products, which could have an international impact. This commenter further stated that the premature restriction of the movement of breeding animals could affect the rate of genetic gain in the United States, especially if the incidence of Johne's disease is as high as estimated. This commenter also stated that seed stock herds cannot be destroyed or locked up during the process of controlling Johne's disease.

Approximately 22 percent (25,670 herds) of U.S. dairy herds are affected with Johne's disease. In developing our proposal, we considered how breeding programs, and genetic gains, could be affected by restrictions on the interstate movement of animals that are positive to an official Johne's disease test. We proposed to limit the interstate movement of these animals, but we did not propose any quarantine or related measures, and we did not propose to require testing before interstate movement because mandatory testing programs are not currently supported by a majority of the cattle industry, partially due to the effect that testing might have on some seed stock producers. Industry sources indicated that when removing positive animals from a herd, most producers would choose to move the positive animals for slaughter purposes. Because we will allow the interstate movement of positive animals for slaughter purposes in this rule, and remove, among other things, requirements for permits and branding, seed stock producers will be able to implement more efficient and accelerated herd cleanup programs, if desired, and, thus, reduce the economic effect Johne's disease could have on their operations.

This rule will allow domestic animals that are positive to an official test for Johne's disease to be moved interstate only to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment. However, there may be circumstances, including pilot projects, where other interstate movements may be appropriate. Therefore, this final rule provides that the Administrator may, upon request in specific cases, allow animals that are positive to an official Johne's disease test to be moved interstate to other locations and for other purposes under such conditions as the Administrator may prescribe in each case to prevent the spread of Johne's disease. The Administrator must notify the State animal health officials of the States involved of any such action.

Other Comments

One commenter stated that we should require serological tests for herd screening and allow the interstate movement of an animal from a herd only if the animal is negative when tested by an organism identification test.

As noted previously in this document, mandatory testing programs are not currently supported by a majority of the cattle industry. We believe that requiring serological testing of a herd prior to the interstate movement of an individual animal would be too restrictive and put too many constraints on herd owners. Therefore, at this time, we are only restricting the interstate movement of animals that are positive to an official Johne's disease test.

One commenter had concerns regarding the identification of specific officially recognized tests. One commenter stated that our use of the term "polymerase chain reaction (PCR)" was confusing, and noted that PCR is a process. The commenter who had concerns regarding the identification of specific officially recognized tests did not elaborate further.

We continue to believe that a standard test for Johne's disease is necessary and that a test that detects the presence of the *M. paratuberculosis* organisms in fecal samples is the most specific and reliable index of infection in live animals. As to the comment regarding PCR, we agree that PCR is a process. In our proposal, we stated, "Organism detection tests, such as fecal culture or polymerase chain reaction (PCR), detect the presence of the *M. paratuberculosis* organism in fecal samples."

Two commenters stated that there were loopholes in the proposed regulations that could contribute to the spread of Johne's disease, and one of these commenters stated that the loopholes could affect various voluntary programs. One of these commenters had concerns regarding the structure of the proposed changes for interstate movement.

The commenters who stated that there were loopholes in the proposed regulations did not identify those areas of the proposed regulations that they thought might contribute to the spread of Johne's disease or affect voluntary programs. The commenter who had concerns regarding the structure of the proposed changes did not elaborate further. We assume that these commenters were referring to the proposed requirements that would have allowed sexually intact animals that are positive to an official Johne's disease test to be moved interstate for the collection of germ plasm. As stated previously in this document, this final rule will not allow the interstate movement of positive animals for germ plasm collection. This final rule will allow domestic animals that are positive to an official Johne's disease test to be moved interstate only to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment, or elsewhere only with specific authorization from the Administrator.

One commenter stated that new regulations should not be finalized until States have standardized control and testing programs. This commenter further stated that it may be best to eliminate the current regulations, pending the development of an appropriate proposed rule, because they cannot be enforced. This commenter also stated that he was unable to endorse any particular animal movement control systems at this time. Another commenter expressed disapproval that this rulemaking exposed the public to the existing regulations, which he maintains are "obsolete and disregarded."

The current regulations are outdated, and this rulemaking is intended to remove language that hinders State and industry voluntary programs that are attempting to reduce the national prevalence of Johne's disease. Prior to this final rule, the regulations provided that cattle and other domestic animals that had reacted to a test for Johne's disease could be moved interstate only to a recognized slaughtering establishment or to a specifically approved stockyard for sale to a recognized slaughter establishment. Prior to movement, cattle and other domestic animals had to be identified with an approved metal eartag that was attached to their left ear and bore a serial number and the inscription, "U.S. Reactor," or a similar State reactor tag. Cattle also had to be: (1) Branded with the letter "J" on their left hip near the tailhead; or (2) accompanied directly to slaughter by an APHIS or State representative; or (3) moved in vehicles closed with official seals that were applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

Based on this final rule, domestic animals that are positive to an official Johne's disease test may be moved interstate to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment if they bear an official eartag, are shipped with an owner-shipper statement, and are moved to the destination in one continuous movement without unloading. We believe that these changes will allow herd owners to remove infected animals from their premises sooner and decrease the possibility of these animals infecting other animals on the premises. We also believe that these changes, compared to the previous requirements, will allow APHIS to better enforce restrictions on interstate movement.

One commenter stated that there needs to be an effective program to raise the level of awareness of Johne's disease among producers because only with an understanding of the disease and the mode of its transmission can broad-based support for control and eradication be gained. One commenter stated that control and eradication of Johne's disease requires producer and veterinary education, development of adequate diagnostic tests, design and implementation of herd testing and classification systems, and design of appropriate animal movement controls. One commenter stated that the regulations may need to be amended in the future to promote uniformity as States develop and implement Johne's disease control programs and to incorporate recommendations from future Johne's disease studies. Another commenter said that we should have included the voluntary herd status programs developed by USAHA's Johne's Disease Committee.

We agree that educating the beef and dairy industry and the public about Johne's disease is essential to control and eradication efforts. Some beef and dairy associations have taken steps to provide educational material regarding Johne's disease and other diseases of livestock to their members. APHIS has distributed educational material on Johne's disease as well as conducted training courses for our field veterinary medical officers. In addition, a classification system—the "voluntary herd status program" mentioned by the commenter above—has been developed by USAHA's Johne's Disease Committee. While APHIS supports the U.S. Voluntary Johne's Disease Herd Status Program for Cattle, we do not believe it is appropriate at this time to make it a federally-regulated activity and, therefore, have not made it part of this rulemaking.

In the future, the regulations may be further amended to include new technologies (including diagnostic tests) and standards from voluntary programs and to incorporate changes that may be necessary as States develop and implement their own Johne's disease control programs.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule will establish an official test for Johne's disease. It also will make it easier to move domestic animals that are positive to an official Johne's disease test interstate to slaughter.

However, we do not anticipate that these changes will have a significant economic effect on small entities. Under the regulations in effect before this final rule, animals moved interstate to slaughter had to bear an eartag with a serial number and the inscription "U.S. Reactor" and be transported with a certificate. In addition, cattle also had to be branded with the letter "J" on their left hip, accompanied directly to slaughter by an APHIS or State representative, or moved in vehicles closed with official seals. We are removing these requirements and will simply require positive animals moving interstate to slaughter to bear an official eartag and be shipped with an owner-shipper statement. There are no direct costs related to these requirements, so herd owners will not experience a savings from the removal of these requirements. However, this rule will expedite the movement of animals by 1 to 5 days because herd owners will not have to wait to obtain the services of an APHIS or State representative prior to the interstate movement of their animals to slaughter. This may result in some small savings to herd owners.

In a recent study, APHIS examined the cost of Johne's disease on U.S. dairy cattle producers.[1] The study found that infected herds with at least 10 percent of the culled cows showing clinical signs of Johne's disease had an average disease-related cost to producers of $227 for each cow in the herd per year. Therefore, the disease-related costs for a 100 cow dairy with at least 10 percent of culled cows showing clinical disease signs of Johne's disease would be approximately $22,700 per year. By amending the regulations, we may be able to strengthen detection and control of Johne's disease, which should reduce the producers' Johne's disease-related costs. However, the reduction in disease-related costs is not likely to be significant for the reasons provided in the next paragraph.

We anticipate that this rule will affect primarily U.S. dairy cattle producers. In 1997, there were 116,680 dairy herds or farms in the United States. We estimate that about 22 percent (25,670 herds) of the U.S. dairy herds are affected with Johne's disease. The Small Business

[1] See *Johne's disease on U.S. DairyOperations*, National Animal Health Monitoring System, Dairy 1996, October, 1997.

Administration (SBA) considers a dairy farm a small entity if its annual receipts are $0.5 million or less. According to the 1992 Census of Agriculture, 95 percent of dairy producers are considered small entities under SBA guidelines. This rule should benefit dairy cattle producers, but for most producers, the economic effect of the rule may be insignificant. This is because on a per head basis only about 10 percent of the cattle will test positive, not all positive animals are likely to be moved interstate for slaughter, and, as noted earlier, there are no direct costs associated with the requirements we are removing.

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0148.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 80

Animal diseases, Livestock, Transportation.

Accordingly, we are amending 9 CFR parts 71 and 80 as follows:

PART 71—GENERAL PROVISIONS

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

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 71.3 is amended as follows:

a. In paragraph (a), by removing the word "paratuberculosis" and adding the words "Johne's disease" in its place.

b. By revising paragraph (c)(1) to read as set forth below.

c. By redesignating paragraphs (c)(2), (c)(3), and (c)(4) as paragraphs (c)(3), (c)(4), and (c)(5), respectively, and adding a new paragraph (c)(2) to read as set forth below.

d. In newly redesignated paragraph (c)(3), remove "; and" and add a period in its place.

§ 71.3 Interstate movement of diseased animals and poultry generally prohibited.

* * * * *

(c) * * *

(1) Domestic animals that have reacted to an official test for brucellosis, are not affected with any other disease referred to in this section, and are not tick infested may be moved interstate in accordance with part 78 of this chapter.

(2) Domestic animals that are positive to an official Johne's disease test, are not affected with any other disease referred to in this section, and are not tick infested may be moved interstate in accordance with part 80 of this chapter.

* * * * *

3. Part 80 is revised to read as follows:

PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

Sec.

Authority: 21 U.S.C. 111–113, 114a-1, 115, 117, 120, 121, and 125; 7 CFR 2.22. 2.80, and 371.2(d).

§ 80.1 Definitions.

The following definitions apply to this part:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Approved livestock facility. A stockyard, livestock market, buying station, concentration point, or any other premises that has been approved under § 71.20 of this chapter.

Area veterinarian in charge. An APHIS veterinarian authorized by the Administrator to supervise and manage the animal health work of APHIS in a specified area of the United States.

Interstate. From one State into or through any other State.

Johne's disease. An infectious and communicable disease that primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants, also known as paratuberculosis, caused by *Mycobacterium paratuberculosis.*

Moved. Shipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved.

Official eartag. An identification eartag approved by APHIS as being tamper-resistant and providing unique identification for each animal. An official eartag may conform to the alpha-numeric National Uniform Eartagging System, or it may bear a valid premises identification number that is used in conjunction with the producer's livestock production numbering system to provide a unique identification number.

Official Johne's disease test. An organism detection test approved by the Administrator and conducted in a laboratory approved by the Administrator.[1]

Owner-shipper statement. A statement signed by the owner or shipper of animals, which states: The number of animals to be moved, the official eartag number of each animal, the species of the animals, points of origin and destination, the consignor and consignee, a statement that the animals are positive to an official Johne's disease test, and any additional information required by this part.

Premises identification number. A unique number assigned by the State animal health official to a livestock production unit that is, in the judgment of the State animal health official or area veterinarian in charge, epidemiologically distinct from other livestock production units. A premises

[1] A list of currently approved laboratories and the requirements for obtaining approval are available from the Diagnostic Bacteriology Laboratory, National Veterinary Services Laboratories, P.O. Box 844, Ames, Iowa 50010. the Administrator will approve laboratories to conduct an official Johne's disease test only after determining that the laboratory meets the check test proficiency requirements prescribed by the National Veterinary Services Laboratories. Approval will continue as long as such check test proficiency requirements are met on an annual basis.

identification number shall consist of the State's two-letter postal abbreviation followed by the premises' assigned number. A premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal.

Recognized slaughtering establishment. A slaughtering establishment [2] operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State inspected slaughtering establishment.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a State or political subdivision of a State, and who is authorized by the State or political subdivision to perform tasks required by this part.

§ 80.2 General restrictions.

Domestic animals that are positive to an official Johne's disease test may not be moved interstate except in compliance with this part.

§ 80.3 Movement of domestic animals that are positive to an official Johne's disease test.

(a) *Movement of domestic animals for slaughter.* Domestic animals that are positive to an official Johne's disease test may be moved interstate for slaughter if:

(1) The animals are moved directly to a recognized slaughtering establishment or to an approved livestock facility for sale to a recognized slaughtering establishment;

(2) An owner-shipper statement that identifies the animals as positive to an official Johne's disease test accompanies the animals during the movement and is delivered to the consignee;

(3) Each animal bears an official eartag; and

(4) The animals are moved to the destination in one continuous movement without unloading.

(b) *Other movements.* The Administrator may, upon request in specific cases, allow domestic animals that are positive to an official Johne's disease test to be moved interstate other than as provided in paragraph (a) of this section, under such conditions as the Administrator may prescribe in each case to prevent the spread of Johne's disease. The Administrator will promptly notify the State animal health officials of the States involved of any such action.

(c) *Cleaning and disinfecting.* Each means of conveyance used to transport the animals must be cleaned and disinfected in accordance with § 71.6 of this chapter. The facilities in which the animals were maintained must be cleaned and disinfected in accordance with § 71.7 of this chapter.

§ 80.4 Segregation of animals positive to an official Johne's disease test during interstate movement.

Animals that are positive to an official Johne's disease test may not be moved interstate in a railroad car, boat, truck, or other vehicle containing healthy animals susceptible to Johne's disease unless all of the animals are for immediate slaughter, or unless the positive animals are kept separate from the other animals by a partition that is securely affixed to the sides of the vehicle and prevents the transfer of fecal matter from the animals positive to an official Johne's disease test to the healthy animals in the vehicle.

Done in Washington, DC, this 5th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–8780 Filed 4–7–00; 8:45 am]

BILLING CODE 3410–34–U

[2] A list of recognized slaughtering establishments in any State may be obtained from an APHIS representative, the State animal health official, or a State representative.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–84–AD; Amendment 39–11663; AD 2000–07–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and 800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, and 800 series airplanes. This action requires a one-time inspection to detect loose nuts installed on the bolts at each end of the input rods connected to each elevator power control unit (PCU), and corrective action, if necessary. This amendment is prompted by reports of loose nuts on the bolts that connect the lower input crank arm and the vernier adjustment input rod of the elevator PCU. The actions specified in this AD are intended to detect and correct loose nuts on the bolts of the input crank arms of the elevator PCU, which could result in the loss of pivot bolts on the PCU and consequent loss of control of the airplane during takeoff and landing.

DATES: Effective April 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 9, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA received several reports indicating that operators found loose nuts on the bolts that connect the lower input crank arm and the vernier adjustment input rod of the elevator power control unit (PCU). Apparently, maintenance had not been accomplished on the PCU's since delivery of the airplanes from the manufacturer. One of the loose PCU input rod nuts was found on a production airplane during a line check. The loose nuts reported had been finger tightened, but had not been properly torqued on the bolts.

Loose nuts on the bolts of the input rod of the elevator PCU could result in the loss of pivot bolts on the crank arms of the elevator PCU's, and consequent

loss of control of the airplane during takeoff and landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Telegraphic Service Letter 737–SL–27–150, dated February 14, 2000, which describes procedures for a one-time visual inspection to determine if the nuts installed on the bolts at each end of the input rods connected to each elevator power control unit (PCU) are installed correctly, and tightening of any loose nut that is found.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–600, –700, and –800 series airplanes of the same type design, this AD is being issued to prevent loss of control of the airplane during takeoff and landing due to loose nuts on the bolts of the input crank arms of the elevator PCU, and consequent loss of pivot bolts on the PCU. This AD requires a one-time general visual inspection to determine if the nuts installed on the bolts at each end of the input rods connected to each elevator PCU are installed correctly, and corrective action, if necessary. The actions are required to be accomplished in accordance with the telegraphic service letter described previously.

This AD also requires that operators report findings of loose nuts to the FAA.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–84–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–07–09 Boeing: Amendment 39–11663. Docket 2000–NM–84–AD.

Applicability: Model 737–600, –700, and –800 series airplanes, line numbers 1 through 477 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of control of the airplane during takeoff and landing due to loose nuts on the bolts of the input crank arms of the elevator power control unit (PCU), and consequent loss of pivot bolts, accomplish the following:

Note 2: For the purposes of this AD, a general visual inspection is defined as:"A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(a) Within 30 days after the effective date of this AD, perform a one-time general visual inspection to determine if the nuts installed on the bolts at each end of the input rods connected to each elevator PCU are installed correctly, in accordance with Boeing Telegraphic Service Letter 737–SL–27–150, dated February 14, 2000.

(1) If all bolts are protruding through the nuts, no further action is required by this AD.

(2) If any bolt does not protrude through the nut, prior to further flight, tighten the nut in accordance with the telegraphic service letter.

(b) Within 10 days after accomplishing the inspection required by this AD; or within 10 days after the effective date of this AD if the inspection was accomplished prior to the

effective date of this AD: Submit a report of any findings of loose nuts to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the operator's name, the date the inspection was accomplished, the airplane line number, and the number of loose nuts found on that airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Telegraphic Service Letter 737–SL–27–150, dated February 14, 2000. 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 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 25, 2000.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8392 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–87–AD; Amendment 39–11664; AD 2000–07–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, –300, –400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes. This action requires repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. For certain airplanes, this action also provides for a modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. This amendment is prompted by reports that cracked fire extinguisher discharge tubes have been found in the engine struts on certain airplanes. The actions specified in this AD are intended to detect and correct cracked fire extinguishing tubes in the engine struts. In the event of an engine fire, such cracked tubes could reduce the amount of fire extinguishing agent that can be delivered to the engine, and could result in a fire spreading from the engine to the wing of the airplane.

DATES: Effective April 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 9, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has recently received reports indicating that several operators have found cracked fire extinguisher discharge tubes in the number 2 and number 3 struts on several Boeing Model 747–400 series airplanes that are equipped with General Electric (GE) CF6–80C2 series engines. Further investigation revealed similarly cracked fire extinguisher discharge tubes on Boeing Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines, which incorporate a similar tube installation. The cause of the cracking has been attributed to installation preload and flexing of the tube due to motion between the wing and the strut.

The subject fire extinguisher discharge tubes extend from the fire extinguisher bottles to the number 2 and number 3 engine struts, and are intended to deliver fire extinguishing agent to the engine in the event of an engine fire. Similar designs exist in Boeing Model 747–200B and –300 series airplanes equipped with GE CF6–80C2 series engines. A cracked tube could reduce the amount of fire extinguishing agent that can be delivered to the engine. In the worst case (a broken tube), no fire-extinguishing agent would be delivered to the engine. This condition, if not corrected, could result in a fire spreading from the engine to the wing of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. That alert service bulletin describes procedures for repetitive detailed visual inspections to detect cracking of fire extinguisher discharge tubes in the number 2 and number 3 engine struts. The alert service bulletin also describes procedures for replacement of any cracked tube with a new or serviceable tube.

The FAA also has reviewed and approved Boeing Service Bulletin 747–26–2233, dated May 11, 1995. That service bulletin applies to Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines and describes procedures for a modification

of the fire extinguisher discharge tubes in the number 2 and number 3 engine struts, and a post-modification test of the fire extinguishing system to ensure that it functions properly. The modification is intended to prevent cracked fire extinguishing tubes by rerouting the fire extinguisher discharge tubes along the front spar and changing the orientation of two wire bundle clamps in the number 2 engine strut. Accomplishment of the modification eliminates the need for the repetitive inspections described previously on the subject airplanes.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes of the same type design, this AD is being issued to detect and correct cracked fire extinguishing tubes in the engine struts. In the event of an engine fire, such cracked tubes could reduce the amount of fire extinguishing agent that can be delivered to the engine, and could result in a fire spreading from the engine to the wing of the airplane. This AD requires repetitive detailed visual inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and replacement of any cracked tube with a new or serviceable tube. These actions are required to be accomplished in accordance with Boeing Alert Service Bulletin 747–26A2266. For Boeing Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines, this AD also provides for a modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. If accomplished, that modification is required to be accomplished in accordance with Boeing Service Bulletin 747–26–2233.

Explanation of Applicability

Though Boeing Alert Service Bulletin 747–26A2266 specifies that it applies to airplanes having line numbers 679 through 1062 inclusive, this AD applies to airplanes having line numbers 679 through 1061 inclusive. The alert service bulletin states that the intent of Boeing Service Bulletin 747–26–2233 was accomplished (by service bulletin validation) prior to delivery on the airplane having line number 1062. As stated previously, accomplishment of Boeing Service Bulletin 747–26–2233 constitutes terminating action for the requirements of this AD for Boeing Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines. Therefore, the airplane with line number 1062 is not included in the applicability statement of this AD.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–87–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–07–10 Boeing: Amendment 39–11664. Docket 2000–NM–87–AD.

Applicability: Model 747–200B, –300 series airplanes equipped with General Electric (GE) CF6–80C2 series engines, and Model 747–400, 747–400D, and 747–400F series airplanes equipped with General Electric (GE) CF6–80C2 series engines or Pratt & Whitney PW4000 series engines; line numbers (L/N) 679 through 1061 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracked fire extinguishing tubes in the engine struts, which, in the event of an engine fire, could reduce the amount of fire extinguishing agent that can be delivered to the engine, and result in a fire spreading from the engine to the wing of the airplane, accomplish the following:

Repetitive Inspections and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a detailed visual inspection to detect cracking of the fire extinguisher discharge tubes in the number 2 and number 3 engine struts, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(2) If any cracking is detected, prior to further flight, replace the cracked tube with a new or serviceable part, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. Repeat the inspection required by paragraph (a) of this AD within 18 months after the replacement and thereafter at intervals not to exceed 18 months.

Optional Terminating Action

(b) For Model 747–400 series airplanes, L/N 696 through 1061 inclusive, equipped with Pratt & Whitney PW4000 series engines: Modification of the fire extinguisher discharge tubes in the number 2 and number 3 struts, in accordance with Boeing Service Bulletin 747–26–2233, dated May 11, 1995, constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The inspections and replacement shall be done in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. If accomplished, the optional terminating action shall be accomplished in accordance with Boeing Service Bulletin 747–26–2233, dated May 11, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 25, 2000.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8393 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–72–AD; Amendment 39–11659; AD 2000–07–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. That AD also provides optional terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by a report that a fractured diagonal brace lug was found during a routine maintenance inspection. The actions specified by this AD are intended to prevent cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut.

DATES: Effective May 15, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998, was approved previously by the Director of the Federal Register as of April 12, 1999 (64 FR 14578, March 26, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–07–06, amendment 39–11091 (64 FR 14578, March 26, 1999), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on June 23, 1999 (64 FR 33437). The action proposed to supersede AD 99–07–06 to continue to require repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. That action also proposed to require accomplishment of the previously optional terminating action.

Comments

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

Support for the Proposal

Two commenters support the proposed rule.

Requests To Revise Compliance Time

One commenter requests that the compliance time for the repetitive inspection intervals specified in paragraph (b)(1) of the proposed AD be extended. The commenter suggests that the inspection intervals should coincide with its current heavy maintenance program, which specifies that inspections be performed between 1,200 and 1,300 flight cycles. The commenter further states that to carry out the inspection at intervals not to exceed 1,000 flight cycles would be considered punitive action as it is prior to the normally scheduled maintenance.

The FAA does not concur with the commenter's request to extend the compliance time for accomplishment of the repetitive inspection intervals to between 1,200 and 1,300 flight cycles after the initial inspection. In developing an appropriate compliance time for the repetitive inspections, the FAA considered not only the degree of urgency associated with addressing cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, but other factors as well. Those factors include the recommendations of the manufacturer, and the practical aspect of accomplishing the repetitive inspections within an interval of time coinciding with normally scheduled maintenance for the majority of affected operators. Considering those factors, the FAA has determined that the compliance time of 1,000 flight cycles after the accomplishment of the initial inspection represents the maximum interval in which the affected airlines can continue to operate without compromising safety. In view of those factors, and the amount of time that has already elapsed since issuance of the notice of proposed rulemaking, the FAA has determined that further delay of these inspections is, in general, not appropriate. The FAA may, however, approve a request for an adjustment of the compliance time under the provisions of paragraph (f) of this final rule if data are submitted to substantiate that such an adjustment would provide an equivalent level of safety. No change to the final rule is necessary in this regard.

Another commenter requests that the compliance times for the replacement of the diagonal brace specified in paragraphs (d) and (e) of the proposed rule be changed to reflect the flight cycle threshold formula specified in the structural inspection program service bulletin, 767–54–0081, Figure 1, which is to be released soon. The commenter also notes that the threshold formula could be placed in an appendix to the proposal.

The FAA does not concur with the commenter's request. Boeing Service Bulletin 767–54–0081 states that the threshold formula may be used in lieu of the calendar threshold specified in the identified service bulletins. The formula in service bulletin 767–54–0081 was FAA-approved based on the fact that certain airplanes (*e.g.*, those that have extended flights) would reach the 20-year calendar threshold long before they accumulated the flight cycle threshold of 37,500 total flight cycles specified in that service bulletin. The FAA notes that there is no comparable threshold in calendar time contained in this final rule for which the proposed threshold formula can be used as a substitute. The FAA considered many factors (as stated previously) before developing an appropriate compliance time for this AD, and the FAA has determined that the compliance time for the replacement required by paragraphs (d) and (e) of the final rule represents the maximum interval in which the affected airlines can continue to operate without compromising safety. Therefore, no change to the final rule is necessary.

Another commenter requests the compliance time in paragraph (b)(2) of the proposal be revised to read, "* * * diagonal brace has accumulated 24,000 flight cycles * * *" to agree with the alert service bulletin. The FAA does not concur. The alert service bulletin specifies that the initial inspection for Group 2 airplanes be performed prior to the accumulation of 24,000 flight cycles, or within 90 days after receipt of the service bulletin; and the repetitive inspections be performed at intervals not to exceed 3,000 flight cycles until the diagonal brace has accumulated 32,000 flight cycles. Therefore, the final rule agrees with the alert service bulletin and no change is necessary in this regard.

Request To Revise Paragraphs (a), (b), and (c) of the Proposed Rule

Three commenters request that the word "damage" be deleted from or clarified in paragraphs (a), (b), and (c) of the proposal.

The first commenter states that, if any damage is detected, even if it is minor and repairable, replacement of the diagonal brace is required, as specified in paragraph (c) of the proposal. The commenter further states that the alert service bulletin referenced in the proposal specifies an inspection to detect cracking of the diagonal brace lugs only, and does not specify inspecting for damage; therefore, the word "damage" should be deleted.

The second commenter states that if the words "or damage" are not removed, paragraphs (a), (b), and (c) of the proposal should specifically clarify what should be searched for (cracks, fracture) during the inspection. The same commenter requests the addition of a requirement in paragraph (c) of the proposal to specify that damage to the lug bores (including wear, cracks, or surface corrosion) be repaired in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

The third commenter states that the word "damage" is undefined in the proposed rule, and notes that the alert service bulletin specifies that cracks originated in the lug bore of the diagonal brace caused by bushing motion and subsequent fretting of the lug bore, indicating that the damage that caused the cracks was fretting of the lug bore. The commenter also notes that the detailed visual inspection required by paragraph (a) of the proposal does not inspect the lug bore; therefore, the fretting or "damage" will not be found. The commenter indicates that, without any damage limit guidelines, even very minor damage (tool marks, scratched paint) will make it necessary for operators to perform costly additional inspections. The commenter notes that the inspection should be limited to the unsafe condition that is caused by fretting of the lug bore, which can be found by crack indications.

The FAA does not concur with the commenters' requests concerning removal of the word "damage" as referenced in paragraphs (a), (b), and (c) of the final rule. The FAA has reviewed this issue and has determined that the inspection to detect cracks or damage as required by paragraphs (a) and (b) of the final rule, is necessary. Certain types of damage, if detected, specifically fretting and bushing motion, must be corrected in accordance with the Manager, Seattle Aircraft Certification Office. These types of damage are two links in a sequential chain of events that can ultimately result in a fractured lug, or other possible failure modes. Other types of damage (tool marks, scratched paint) are not related to the unsafe condition specified in this AD, and would be defined as superficial. The FAA has, however, added a "NOTE 2" to the final rule to define the word "damage."

The FAA concurs with the second commenter's request to add another requirement to paragraph (c) of the final rule, which states that damage can be repaired in accordance with the applicable service bulletin. Paragraph

(c) of the final rule has been revised to give the operator the option of either repair or replacement of the diagonal brace if any cracking or damage is detected, following accomplishment of any inspection required by paragraph (a) or (b) of the AD.

Request for Clarification of Paragraph (c) of the Proposed Rule

One commenter requests that the wording in paragraph (c) of the proposal be revised to read, "* * * and if one or more ligaments of the lugs are fractured perform additional inspections to detect damage of the strut secondary load paths * * *" The commenter notes that cracking, rather than fractures, will not increase the load in the secondary load path.

Another commenter requests clarification of the requirements in paragraph (c) of the proposal. The commenter questions which two lugs out of the four lugs (two lugs on the forward end and two lugs on the aft end) of the diagonal brace must be fractured before the extensive follow-on inspections of the secondary load path structure (Figure 8 of the service bulletin) are necessary. The commenter's interpretation is that the inspections specified in Figure 8 of the service bulletin are necessary only if both lugs on one of the ends of the diagonal brace are fractured, and if only one lug on each end of the diagonal brace is fractured, the inspections specified in Figure 7 of the service bulletin would be necessary.

The FAA agrees that clarification is necessary in order to better define the requirements in paragraph (c) of the AD. Paragraph (c) of the final rule has been revised to provide a detailed explanation of the inspection area and procedures.

Conclusion

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

Cost Impact

There are approximately 208 airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 99–07–06, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $6,300, or $60 per airplane, per inspection cycle.

The replacement that is required in this AD action takes approximately 8 work hours (4 work hours for each strut) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $50,000 per airplane. Based on these figures, the cost impact of the required replacement required by this AD on U.S. operators is estimated to be $5,300,400, or $50,480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11091 (64 FR 14578, March 26, 1999), and by adding a new airworthiness directive (AD), amendment 39–11659, to read as follows:

2000–07–05 Boeing: Amendment 39–11659. Docket 99–NM–72–AD. Supersedes AD 99–07–06, amendment 39–11091.

Applicability: Model 767 series airplanes; as listed in Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut, accomplish the following:

Initial Inspection

(a) Perform a detailed visual inspection to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, on the left and right sides of the airplane, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

Note 2: The word "damage" as referenced in this AD, is defined as fretting and/or bushing motion.

(1) For airplanes in Groups 1, 3, and 4: Inspect prior to the accumulation of 12,000 total flight cycles, or within 90 days after April 12, 1999 (the effective date of AD 99–07–06, amendment 39–11091), whichever occurs later.

(2) For airplanes in Group 2: Inspect prior to the accumulation of 24,000 total flight cycles, or within 90 days after April 12, 1999, whichever occurs later.

Follow-On Actions

(b) If no cracking or damage is detected during the inspection required by paragraph

(a) of this AD, repeat the inspection thereafter at the interval specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Repeat the inspection until the actions specified by paragraph (d) or (e) of this AD have been accomplished.

(1) For airplanes in Groups 1, 3, and 4; and for airplanes in Group 2 on which the diagonal brace has accumulated more than 32,000 total flight cycles: Repeat the inspection at intervals not to exceed 1,000 flight cycles.

(2) For airplanes in Group 2 on which the diagonal brace has accumulated 32,000 or fewer total flight cycles: Repeat the inspection at intervals not to exceed 3,000 flight cycles.

(c) If any cracking or damage is detected during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, remove the diagonal brace and perform additional inspections to detect damage of the strut secondary load paths, in accordance with Part 4 of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; and accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD; as applicable.

(1) If any cracking is detected: Prior to further flight, accomplish the requirements of paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this AD, as applicable.

(i) If one lug on one or both ends of the diagonal brace is fractured (Figure 7 of the alert service bulletin), or if two lugs on either end of the diagonal brace are fractured (Figure 8 of the alert service bulletin), prior to further flight: Rework the forward and aft lugs of the diagonal brace in accordance with the rework limits specified in Part 2 of the Accomplishment Instructions of the alert service bulletin.

(ii) Replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

(iii) If any additional damage of the alternate load paths is detected, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

(2) If any damage is detected: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(d) For airplanes on which no cracking is detected during the inspection required by paragraph (a) of this AD, in lieu of accomplishing repetitive inspections in accordance with paragraph (b) of this AD, rework of the forward and aft lugs of the diagonal brace may be accomplished in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. If such rework is accomplished: Within 12,000 flight cycles after the rework, repeat the inspection required by paragraph (a) of this AD; and, prior to the accumulation of 37,500 total flight cycles on the diagonal brace, replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

Terminating Action

(e) Prior to the accumulation of 37,500 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later: Replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Such replacement constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraphs (c)(1)(i) and (c)(3) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. The incorporation by reference of this service bulletin was approved previously by the Director of the Federal Register as of April 12, 1999 (64 FR 14578, March 26, 1999). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 15, 2000.

Issued in Renton, Washington, on March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8518 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27065, 25148 and 26620; Amendment No. 121–273]

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects FAA office addresses listed in the Code of Federal Regulations regarding Drug Testing Programs and Alcohol Misuse Prevention Programs. The action is necessary so that required notifications and reports are received by the FAA in a timely and efficient manner. The intended effect of this action is to ensure that the regulated public has correct information regarding FAA office addresses.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph Timmons, Acting Manager, Program Analysis Branch, AAM–810, Drug Abatement Division, Office of Aviation Medicine, Federal Aviation Administration, Washington, DC 20591, telephone (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1994, the FAA published a final rule, Alcohol Misuse Prevention Program (59 FR 7380). On August 19, 1994, the FAA published a final rule, Antidrug Program for Personnel Engaged in Specified Aviation Activities (59 FR 42922). These final rules specified the requirements for drug and alcohol testing of air carrier employees. Since the publication of the final rules, the FAA has identified several FAA office addresses specified in the final rules that have changed. This technical amendment updates office addresses specified in 14 CFR Part 121, Appendices I and J. The changes will facilitate notification, reporting, and submission requirements.

Because this action is merely a technical amendment reflecting the change to office addresses, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 5553(d) for making this amendment effective upon publication.

Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.thm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this rule.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analysis Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Agency Findings

This is a routine matter that will affect only changes to office addresses for notification, reporting, and submission purposes. 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 action does not warrant preparation of a regulatory evaluation since the anticipated impact is minimal. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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.

Paperwork Reduction Act

Information collection requirements in the amendment to Part 121, Appendix I, Sections VI, VII, and IX and Appendix J, Sections V and VII have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), and have been assigned OMB Control Numbers 2120–0535 and 2120–0571, respectively.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 121, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In Appendix I to part 121:

A. In section VI.E., paragraph 1 is revised.

B. In section VII.B., paragraph 4 is revised.

C. In section IX.A., paragraph 1 is revised.

The revisions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

VI. * * *

E. * * * 1. Each employer shall notify the FAA within 5 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this appendix. Notification should be sent to: Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

VII. * * *

B. * * *

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Office of Aviation Medicine, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

IX. * * * A. * * * 1. Each employer shall submit an antidrug program plan to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

3. In appendix J to part 121:

A. In section V.C., paragraph 3 is revised.

B. In section V.D., paragraph 1 is revised.

C. In section VII.A., paragraph 1 introductory text is revised.

The revision read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

V. * * *

C. * * *

3. All documents shall be sent to the Federal Air Surgeon, Office of Aviation Medicine, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

D. * * *

1. Except as provided in subparagraph 2 of this paragraph D, each employer shall notify the FAA within 5 working days of any covered employee who holds a certificate issued under 14 CFR part 61, part 63, or part 65 who has refused to submit to an alcohol test required under this appendix. Notifications should be sent to: Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

VII. * * *

A. * * *

1. Each employer shall submit an alcohol misuse prevention program (AMPP) certification statement as prescribed in paragraph B of section VII of this appendix,

in duplicate, to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591, in accordance with the schedule below.

* * * * *

Issued in Washington, DC, on March 31, 2000.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 00–8362 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–42603A; File No. S7–12–98]

RIN 3235–AH41

Regulation of Alternative Trading Systems; Temporary Stay of Effectiveness

AGENCY: Securities and Exchange Commission.

ACTION: Temporary stay of effectiveness.

SUMMARY: The Securities and Exchange Commission stays the effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2000. This would provide sufficient time for a reporting system to be developed that would compile and publish data for investment grade and non-investment grade corporate market segments. These provisions relate to alternative trading systems that trade certain categories of debt securities. The other alternative trading system rules, which were published in 63 FR 70844 on December 22, 1998, remain effective as previously stated.

DATES: 17 CFR 242.301(b)(5)(i)(D) and (E) and 242.301(b)(6)(i)(D) and (E) are stayed until December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Kiggins, Senior Special Counsel, at (202) 942–0059, and Kevin Ehrlich, Attorney, at (202) 942–0778, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1998, the Securities and Exchange Commission ("Commission") adopted new rules and rule amendments to allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume.[1] The effective date for most of these new rules and rule amendments was April 21, 1999. The Commission stated in the adopting release that Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) would become effective on April 1, 2000. These rules relate to certain requirements for alternative trading systems that trade investment grade and non-investment grade corporate debt securities. For alternative trading systems trading 20 percent or more of the average daily trading volume over at least four of the preceding six months in either investment grade or non-investment grade corporate debt securities, the fair access and systems capacity, security, and integrity requirements were to take effect on April 1, 2000.

II. Temporary Stay of Effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E)

In the Adopting Release, we noted that volume data for investment grade and non-investment grade corporate debt was not being compiled or published. Accordingly, market participants and regulators had no mechanism to determine what the aggregate daily trading volume is for either investment grade corporate bonds or non-investment grade corporate bonds. The Commission had anticipated that a comprehensive reporting system for corporate debt would be in place by April 1, 2000 that would have allowed market participants to access aggregate data with which to determine their own compliance with the rules. While efforts are ongoing to complete such a system, no such comprehensive reporting system is currently in place. The Commission currently believes that staying the effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2000 would provide sufficient time for a system to be developed and implemented that would compile and publish data for both market segments.[2]

By the Commission.

Dated: March 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8873 Filed 4–7–00; 8:45 am]

BILLING CODE 8010–01–U

[1] Securities Exchange Act Release 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) ("Adopting Release").

[2] The Commission, however, believes that good business practice dictates that alternative trading systems adopt the standards of systems capacity, security, and integrity regardless of their trading volume.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211 and 720

[Docket No. 00N–1217]

Code of Federal Regulations; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a correct footnote and a part heading. This action is being taken to improve the accuracy of the regulations.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: FDA has discovered that errors have been incorporated into the agency's codified regulations for 21 CFR parts 211 and 720. This document corrects those errors. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 720

Confidential business information, Cosmetics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 211 and 720 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374.

§ 211.194 [Amended]

2. Section 211.194 *Laboratory records* is amended by removing in paragraph (a)(2) and its footnote the number "2" and by adding in their place the number "1".

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

3. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

4. The heading for part 720 is revised to read as set forth above.

Dated: March 31, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8716 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–037–FOR]

New Mexico Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed revisions about cross sections, maps, and plans required in a permit application; criteria for permit approval or denial; requirement to release performance bonds; timing of backfilling and grading; backfilling and grading requirements for the construction of small depressions; and design requirements for road embankments. New Mexico revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated March 11, 1996, New Mexico sent to us an amendment (SPATS No. NM–037–FOR, administrative record No. NM–773) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment to include changes made in response to the required amendment at 30 CFR 931.16(t) and at its own initiative.

We announced receipt of the amendment in the March 26, 1996 **Federal Register** (59 FR 13117), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–802). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 25, 1996.

During our review of the amendment, we identified concerns and notified New Mexico of the concerns by letter dated May 15, 1996 (administrative record no. NM–785). New Mexico responded in a letter dated November 9, 1998, by submitting a revised amendment and additional explanatory information (administrative record no. NM–803).

We announced receipt of the proposed amendments in the December 3, 1998 **Federal Register** (63 FR 66774). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (administrative record No. NM–809). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 18, 1998.

During our review of the revised amendment, we identified concerns and notified New Mexico of the concerns by letter dated December 21, 1998 (administrative record no. NM–814). New Mexico responded in a letter dated December 1, 1999, by sending us a revised amendment (administrative record no. NM–816).

Based upon New Mexico's revisions to its amendment, we reopened the public comment period in the December 22, 1999 **Federal Register** (64 FR 71698); administrative record no. NM–818). The public comment period ended on January 21, 2000.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

1. Minor Revisions to New Mexico's Rules

New Mexico proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

19 NMAC 8.2 813.L [30 CFR 779.25(b)] recodification concerning the requirement for maps, plans, and cross sections to be prepared by or under the direction of and certified by a qualified registered professional engineer;

19 NMAC 8.2 2054.A(2) [30 CFR 816.100] to refer to the term "open pit mining;" and

19 NMAC 8.2 2054.A(3) [30 CFR 816.100] to refer to the term "strip mining."

Because these changes are minor, we find that they will not make New Mexico's rules less effective than the corresponding Federal regulations.

2. Revisions to New Mexico's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

New Mexico proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

19 NMAC 8.2 2055.C(1) [30 CFR 816.102(h)], concerning backfilling and grading requirements for the construction of small depressions, and

19 NMAC 8.2 1106.C [30 CFR 773.15(c)(5)], concerning permit approval or denial pertaining to the probable cumulative hydrological impacts.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

3. Revisions to New Mexico's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

A. 19 NMAC 8.2 2054.A(1), (2), (3), and (5), Timing of Backfilling and Grading

New Mexico proposed to revise 19 NMAC 8.2. 2054A(1), (2), and (3), concerning time requirements for backfilling and grading of contour mining, open pit mining, and strip mining, to add the allowance for the Director of the New Mexico program to approve additional distance, as well as additional time, for rough backfilling and grading if the permittee can demonstrate, on the basis of the materials submitted under 19 NMAC 8.2 906.B(3), that additional distance is necessary.

New Mexico also proposed to add at 19 NMAC 8.2 2054.A(5) the requirement that, at completion of mining, rough backfilling and grading shall occur in accordance with a time schedule approved by the Director of the New Mexico program based on materials submitted under 19 NMAC 8.2 906.B(3).

Existing 19 NMAC 8.2 906.B(3) requires that each permit application contain a reclamation plan including a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area.

On December 17, 1991, OSM promulgated new regulations, at 30 CFR 816.101, that provided national time and distance performance standards for rough backfilling and grading for surface mining operations. Those regulations were subsequently challenged in *National Coal Association and American Mining Congress* v. *U.S. Department of the Interior, et al.*, Civ. No. 92–0408–CRR (1992). This case was dismissed without prejudice by the U.S. District Court for the District of Columbia as the result of a joint stipulation of the parties that included OSM's agreement to suspend the regulation at 30 CFR 816.101.

The December 17, 1991, Federal regulations at 30 CFR 816.101 concerning time and distance performance standards for rough backfilling and grading were suspended by OSM on July 31, 1992. Therefore, in absence of a specific Federal regulation providing specific time and distance performance standards for rough backfilling and grading, the Federal standards against which State time and distance performance standards for rough backfilling and grading must be judged are section 515(b)(16) of SMCRA and 30 CFR 816.100.

Section 515(b)(16) of SMCRA requires that surface coal mining and reclamation operations be conducted so as to insure that all reclamation efforts proceed as contemporaneously as practicable with the surface coal mining operations. The Federal regulation at 816.100 similarly provides that backfilling and grading shall occur as contemporaneously as practicable with mining operations. In common usage, the term "practicable" means "possible to perform" or "feasible". Therefore, New Mexico's proposal to allow time and distance standards for backfilling and grading demonstrated as necessary by an applicant's reclamation plan, whether during active mining as proposed by New Mexico at 19 NMAC 8.2 2054.A (1), (2), and (3), or at the completion of mining, as proposed by New Mexico at 19 NMAC 8.2 2054.A(5), is equivalent in meaning to and consistent with section(b)(16) of SMCRA and the Federal regulation at 30 CFR 816.100. Accordingly, New Mexico's proposed rules at 19 NMAC 8.2 2054.A (1), (2), (3), and (5) are no less stringent than section 515(b)(16) of SMCRA and no less effective than the Federal regulations at 30 CFR 816.100 with respect to standards for rough backfilling and grading. The Director approves 19 NMAC 8.2 2054.A (1), (2), (3), and (5).

B. 19 NMAC 8.2 2076.B and 2077.A(5), Design of Primary Road Embankments

OSM required at 30 CFR 931.16(t) that New Mexico revise 19 NMAC 8.2 2076.B(9), concerning the requirement for all ancillary and primary roads to have (at a minimum) a static safety factor of 1.3 for all embankments, to reference 19 NMAC 8.2 2076.D instead of 19 NMAC 8.2 2076.C. (See finding No. 20(b), 58 FR 65907, 65923, December 17, 1993.)

New Mexico proposed to revise 19 NMAC 8.2 2076.B by deleting the general requirement at 19 NMAC 8.2 2076.B(9) that all roads have, at a minimum, a static factor of safety of 1.3 for all embankments, with the exception that the Director of the New Mexico program could determine a lesser static factor of safety on a site-specific basis with respect to an ancillary road. New Mexico also proposed to revise 19 NMAC 8.2 2077.A by adding the requirement at 19 NMAC 8.2 2077.A(5) that all primary roads have a static factor of safety of 1.3, at a minimum, for all embankments.

The Federal regulations at 30 CFR 816.150 and 817.150, concerning performance standards for all roads, do not specify a static safety factor for road embankments and the Federal regulations at 30 CFR 816.151(b) and 817.151(b), concerning performance standards for primary roads, require that each primary road embankment have a minimum static factor of 1.3.

Because New Mexico's proposed revisions cause its rules to be the same as the Federal regulations, the Director finds that New Mexico's proposed deletion at 19 NMAC 8.2 2076.B(9) and addition at 19 NMAC 8.2 2077.A(5) have resolved the required amendment and are no less effective than the Federal regulations at 30 CFR 816.150 and 151(b) and 817.150 and 151(b). The Director approves the proposed deletion of 19 NMAC 8.2 2076.B(9) and addition of 19 NMAC 8.2 2077.A(5) and is removing the required amendment at 30 CFR 931.16(t).

4. Revisions to New Mexico's Rules With No Corresponding Federal Regulations

A. 19 NMAC 8.2 813.K, Cross Sections, Maps, and Plans Required in a Permit Application

New Mexico proposed to revise 19 NMAC 8.2 813.K(1) through (3), concerning cross sections, maps, and plans required in a permit application, by (1) deleting specific slope measurement requirements paragraphs (1) through (3) so that proposed 19 NMAC 8.2 813.K requires that a map show the existing land surface configuration of the proposed permit area on contour maps of a maximum of 5 foot contour intervals.

The corresponding Federal regulation at 30 CFR 779.25(a) lists what is required to be shown by cross sections, maps, and plans required in a permit application. There is no counterpart to proposed 19 NMAC 8.2 813.K, pertaining to a map showing existing land surface configuration, in the corresponding Federal regulations at 30 CFR 779.25(a). However, the requirement at proposed 19 NMAC 8.2 813.K serves to aid the regulatory authority in a determination at phase I bond release concerning backfilling and grading to approximate original contours and is not inconsistent with the requirements of the Federal regulations at 30 CFR 779.25(a).

Therefore, the Director finds that proposed 19 NMAC 8.2 813.K is no less effective than the Federal regulations at 30 CFR 779.25(a). The Director approves proposed 19 NMAC 8.2 813.K.

B. 19 NMAC 8.2 1412, Requirement to Release Performance Bonds

New Mexico proposed to revise 19 NMAC 8.2 1412 by adding new 19 NMAC 8.2 1412.A(2) (i) through (vii), concerning minimum requirements for all bond release applications, and recodifying existing 19 NMAC 1412.A(2) as 19 NMAC 1412.A(3). New Mexico also proposed to revise 19 NMAC 1412.A(3) by deleting the requirement for bond release applications that the applicant submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. New Mexico deleted this requirement because it is proposed under the minimum requirements for a bond release application at 19 NMAC 1412.A(2)(v).

There are no specific counterparts setting forth minimum requirements for a bond release application in the corresponding Federal regulations at 30 CFR 800.40(a)(1). However, New Mexico's proposed minimum requirements at proposed 19 NMAC 1412.A(2)(i) through (vii) clarify what kinds of legal and technical information any bond release application must contain and are consistent with the Federal regulation at 30 CFR 800.40(a)(1). Recodified and revised 19 NMAC 1412.A(3), concerning the permittee's public notice of a bond release application, along with the requirement now codified at 19 NMAC 1412.A(2)(v) for copies of letters notifying specified individuals and governmental or private entities of the application for bond release, are substantively identical to the Federal regulation at 30 CFR 800.40(a)(2).

Therefore, the Director finds that proposed 19 NMAC 8.2 1412.A(2)(i) through (vii) and 1412.A(3) are no less effective than the Federal regulations at 30 CFR 800.40(a)(1) and (2). The Director approves proposed 19 NMAC 8.2 1412.A(2)(i) through (vii) and 1412.A(3).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record Nos. 776, 806, and 817).

The National Mining Association requested, by letter dated December 8, 1998 (administrative record No. NM–810), that OSM send copies of (1) the May 15, 1996, letter sent to New Mexico by OSM setting forth concerns with the proposed amendment and (2) the supplemental information OSM sent to New Mexico by letter dated February 26,1998. OSM sent the requested information by letter dated December 22, 1998 (administrative record No. NM–813).

The Navajo Nation commented, by letter dated January 21, 2000 (administrative record No. 821), that it was unclear from the two December 22, 1999, **Federal Register** notices (64 FR 71698 and 64 FR 71700), which published OSM's receipt of three New Mexico amendments (including the amendment that is the subject of this document), that there would be an opportunity for public comment prior to OSM's decision on the amendments. The text of December 22, 1999, **Federal Register** notices identified the changes proposed by New Mexico, notified the public of its right to comment and/or request a public hearing or meeting, and provided for a thirty day public comment period on the proposed New Mexico amendments. The public comment period for the New Mexico amendments closed on January 21, 2000. OSM explained to the Navajo Nation, in a letter dated February 7, 2000 (administrative record No. NM–823), the OSM's published **Federal Register** notices, as well as OSM's distribution of the proposed amendment to interested parties (which included the Navajo Nation) by letters dated April 1, 1996, November 23, 1998, and December 15, 1999, were the vehicles by which OSM provided for a public comment period and solicited public comments.

The Navajo Nation had two additional comments concerning New Mexico's March 11, 1996, amendment that is the subject of this notice. First, the Navajo Nation commented that the word "demonstrate" was missing from the text of 19 NMAC 8.2 2054.A(3), concerning the timing of backfilling and grading for strip mining. The amendment language at this rule as submitted by New Mexico to OSM on December 1, 1999, did not include the word demonstrate. However, this typographical error was corrected when New Mexico promulgated this rule and the word "demonstrate" is included in the published text of New Mexico's rules. Second, the Navajo Nation commented that New Mexico's proposed addition of 19 NMAC 2045.A(5), concerning the timing of backfilling and grading for the final pit at completion of mining, was less effective than SMCRA and the Federal regulations because it lacked a time factor. New Mexico's proposed rule at 19 NMAC 2045.A(5) requires that a permittee complete backfilling and grading of a final pit at the completion of mining in accordance with a time schedule approved by New Mexico based on materials submitted by the permittee in accordance with 19 NMAC 906.B(3). Although New Mexico did not specify in the rule a time factor such as 60 days, it does require that a specific time schedule be approved by New Mexico when mining is complete. And, as discussed in finding 3.A above, New Mexico's proposal to allow time (and distance) standards for backfilling and grading demonstrated as necessary by a permittee's reclamation plan, whether during active mining as proposed by New Mexico at 19 NMAC 8.2 2054.A(1), (2), and (3), or at the completion of mining, as proposed by New Mexico at 19 NMAC 8.2 2054.A(5), is equivalent in meaning to and consistent with section 515(b)(16) of SMCRA and the Federal regulation at 30 CFR 816.100. The Director is taking no further action in response to these comments in the Navajo Nation's January 21, 2000, letter.

Federal Agency Comments

Under 30 CFR 732.17(H)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (administrative record nos. 776, 806, and 817).

The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), submitted the following comments by letter dated April 12, 1996 (administrative record No. NM–781).

New Mexico's recodified rule at 19 NMAC 8.2 1412.A(2)(v) requires that bond release application contain copies of letters which that have been sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. As discussed in finding No. 4.B above, 19 NMAC 8.2 1412.A(2)(v) is identical to the Federal regulation at 30 CFR 800.40(a)(3). NRCS questioned whether these groups will

have sufficient opportunity to respond, whether they will have information on where to send their response, and will the responses be included as part of the bond release application. New Mexico's rules at 19 NMAC 8.2 1412.A(3) require that the applicant for bond release advertise its intention to seek bond release and that the advertisement include, among other things, the name and address of the Director of the New Mexico to which written comments, objections, or requests for public hearings and informal conferences may be submitted. New Mexico's rules at 19 NMAC 8.2 1412.F provide for a person's right to file written objections until 30 days after the last publication of the advertisement required by 19 NMAC 8.2 1412.A(3). These rules are identical to the counterpart Federal regulations. All comments pertaining to a bond release application received by New Mexico will become part of the public record.

NRCS commented that New Mexico's proposed rule at 19 NMAC 8.2 1510, concerning minimum requirements for coal mine operations exclusively under reclamation, should also contain information and analysis that will define expected land use, capability, and productivity after reclamation is complete. As announced by OSM in the December 3, 1998, **Federal Register** notice (which reopened the comment period on New Mexico's November 9, 1998, revisions proposed to its March 11, 1996, amendment), New Mexico withdrew all proposed rules at 19 NMAC 8.2 Part 15 (administrative record No. NM–809). These rules had no counterpart in the Federal program and were repealed by New Mexico so that they no longer exist in its program.

NRCS commented that the timing of backfilling and grading, as proposed by New Mexico at 19 NMAC 8.2 2054.A(1) and (3), should not rely only on distance, but should include a time factor as well. New Mexico subsequently revised its proposed rules at 19 NMAC 8.2 2054.A, as discussed in finding 3.A above, to require that the timing of backfilling and grading be determined by both time and distance standards.

Based on the discussion above, the Director is taking no further action in response to the NRCS comments.

The Bureau of Land Management (BLM) submitted the following comments by letter dated April 17, 1996 (administrative record No. NM–782).

BLM recommended that New Mexico revise 19 NMAC 8.2 813.K, concerning a map showing the existing land surface configuration of the proposed permit area on contour maps of a maximum of 5 foot contour intervals, to require the map to show roads, rail lines, occupied dwellings, pipelines, power lines, and planned exploratory and development features on a scale of 1:24,000 or larger. As discussed at finding No. 4.A above, proposed 19 NMAC 8.2 813.K is not inconsistent with the requirements of the Federal regulations at 30 CFR 779.25(a). New Mexico's existing rules at 19 NMAC 8.2 812.D and E require a map showing the location of (1) all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings, and (2) surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields. The counterpart Federal regulations, concerning map requirements at 30 CFR 779.24 and 779.25, do not otherwise include requirements similar to the ones recommended by BLM. OSM can only require that New Mexico's program contain rules that are no less effective than the Federal regulations.

BLM recommended New Mexico revise proposed 19 NMAC 8.2 2054.A to require that the permittee demonstrate that additional distance for backfilling and grading is necessary or conducive to greater recovery of coal. As discussed in finding No. 3.A above, New Mexico revised 19 NMAC 8.2 2054.A to provide for additional time and distance for the timing of backfilling and grading based on information submitted in the reclamation plan required at 19 NMAC 906.B(3). This information could include justification for additional distance based on the need to maximize coal recovery. OSM is approving proposed 19 NMAC 8.2 2054.A in part because OSM recognized that there may exist unique conditions at individual surface coal mining operations that require unique standards for the timing of backfilling and grading (see finding No. 3A above). However, the counterpart Federal regulations at 30 CFR 816.100 contain no requirement to the one recommended by BLM. OSM can only require that New Mexico's program contain rules that are no less effective than the Federal regulations.

BLM recommended New Mexico revise 19 NMAC 8.2 2076.B, concerning general road design requirements, to require that roads be maintained and reclaimed so as to be in compliance with any and all safety standards established or approved by the Director. As discussed at finding 3.B above, New Mexico's proposed revision of 19 NMAC 8.2 2076 and 2077 to require a 3.1 safety factor for primary road embankments, rather than for all road embankments, is identical to the requirements in the Federal regulations. New Mexico's existing rule at 19 NMAC 8.2 2076.C requires that the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, *and any necessary design criteria established by the Director* (emphasis added).

The counterpart Federal regulations, concerning general road design at 30 CFR 816.150, do not include a requirement similar to the one recommended by BLM. OSM can only require that New Mexico's program contain rules that are no less effective than the Federal regulations.

Based on the discussion above, the Director is taking no further action in response to BLM's comments.

The U.S. Department of Interior, Fish and Wildlife Service (FWS), submitted several comments, by letter dated April 30, 1996 (administrative record No. NM–784), pertaining to proposed 19 NMAC Part 15, concerning minimum requirements for coal mine operations exclusively under reclamation. As announced by OSM in the December 3, 1998, **Federal Register** notice (which reopened the comment period on New Mexico's November 9, 1998, revisions proposed to its March 11, 1996, amendment), New Mexico withdrew all proposed rules at 19 NMAC 8.2 Part 15 (administrative record No. NM–809). These rules had no counterpart in the Federal program and were repealed by New Mexico so that they no longer exist in its program. For this reason, the Director is taking no action in response to the FWS comments.

The U.S. Department of Agriculture, Forest Service, Southwestern Region, commented, by letter dated December 9, 1998 (administrative record No. NM–811), that it had no comments.

The U.S. Department of Army, Corps of Engineers, commented, by dated December 28, 1999 (administrative record No. NM–820), that it found the proposed changes to be satisfactory.

BLM also commented, by letter dated January 26, 2000 (administrative record No. NM–822) that New Mexico's proposed 19 NMAC 8.2 2054.A allows 60 days for rough backfilling and grading when contour mining, yet 180 days for strip mining. BLM commented that this difference indicates that 60 days is an insufficient time for such remediation and recommended either the 180 day, 1500 linear feet limit or limits determined by plans of operations. BLM further stated that it preferred tying time frames to plans

because specific seams may lend themselves to different backfilling and grading schedules.

As discussed in finding No. 3.A above, New Mexico proposed and OSM is approving, revisions to 19 NMAC 8.2 2054.A(1), (2), and (3), concerning time requirements for backfilling and grading of contour mining, open pit mining, and strip mining. New Mexico proposed to add the allowance for the Director of the New Mexico program to approve additional distance, as well as additional time, for rough backfilling and grading of contour mining, open pit mining, and strip mining, if the permittee can demonstrate, on the basis of the materials submitted that additional time or distance is necessary. Because New Mexico proposed (and OSM is approving) what BLM recommended in it's comment letter, the Director is taking no further action in response to this comment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertain to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (administrative records Nos. 776, 806, and 817). EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. We requested comments on New Mexico's amendment from the SHPO and ACHP (administrative record Nos. 776, 806, and 817); the ACHP did not respond to our request.

By letter dated April 19, 1996, the SHPO commented that it was unclear whether the protection from adverse effect of reclamation operations proposed at 19 NMAC 8.2 1517 (protection of public parks and historic places) included cultural resources identified at 19 NMAC 8.2 1510 (general environmental resources), and recommended that 19 NMAC 8.2 1517 be clarified to clearly include the cultural resources listed at 19 NMAC 8.2 1510.

As announced by OSM in the December 3, 1998, **Federal Register** notice (which reopened the comment period on New Mexico's November 9, 1998, revisions proposed to its March 11, 1996, amendment), New Mexico withdrew all proposed rules at 19 NMAC 8.2 Part 15 (administrative record No. NM–809). These rules concerned minimum requirements for coal mine operations exclusively under reclamation and had no counterpart in the Federal program; they were repealed by New Mexico and no longer exist in its program. Therefore, the Director is taking no action in response to this comment.

V. Director's Decision

Based on the above findings, we approved the March 11, 1996, amendment sent to us by New Mexico, as revised on November 9, 1998, and December 1, 1999.

We approved, as discussed in:

(1) Finding No. 1, 19 NMAC 8.2 813.L, 19 NMAC 8.2 2054.A(2), and 19 NMAC 8.2 2054.A(3), concerning minor wording, editorial, punctuation, grammatical, and/or recodification changes to previously-approved New Mexico rules;

(2) Finding No. 2, 19 NMAC 8.2 2055.C(1) and 19 NMAC 8.2 1106.C, revisions to New Mexico's rules that contain language that is the same as or similar to the corresponding sections of the Federal regulations concerning, respectively, backfilling and grading requirements for the construction of small depressions and permit approval or denial pertaining to the probable cumulative hydrological impacts;

(3) Finding No. 3.A, 19 NMAC 8.2 2054.A(1), (2), and (3), and 19 NMAC 8.2 2054.A(5), concerning time requirements for backfilling and grading of contour mining, open pit mining, and strip mining and the schedule for backfilling and grading at completion of mining;

(4) Finding No. 3.B, 19 NMAC 8.2 2076.B and 19 NMAC 8.2 2077.A, concerning the static factor of safety of 1.3 for road embankments;

(5) Finding No. 4.A, 19 NMAC 8.2 813.K(1) through (3), concerning cross sections, maps, and plans required in a permit application; and

(6) Finding No. 4.B, 19 NMAC 8.2 1412.A(2) (i) through (vii), concerning minimum requirements for all bond release applications.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 931, which codify decisions concerning the New Mexico program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage States to make their programs conform with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

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

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based

upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931—NEW MEXICO

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

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

2. Section 931.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 931.15 Approval of New mexico regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 11, 1996	April 10, 2000	19 NMAC 8.2 813.K (1) through (3); 813.L; 1106.C; 1412.A(2) (i) through (vii); 2054.A (1), (2), (3), and (5); 2055.C(1); 2076.B; and 2077.A.

§ 931.16 [Amended]

3. Section 931.16 is amended by removing and reserving paragraph (t).

[FR Doc. 00–8666 Filed 4–7–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency

32 CFR Part 318

Defense Threat Reduction Agency Privacy Program

AGENCY: Defense Threat Reduction Agency, DoD

ACTION: Final rule, with comments.

SUMMARY: 32 CFR part 318 is being revised to incorporate administrative changes made to the Defense Threat Reduction Agency Privacy Act Program Instruction.

DATES: This rule is effective January 18, 2000. Comments must be received by June 9, 2000.

ADDRESSES: Chief, FOIA and Privacy Division, FOIA/Privacy Act Division, Defense Threat Reduction Agency (ADF), 6801 Telegraph Road, Alexandria, VA 22310–3398.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Ford at (703) 325–1205.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 318 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects 32 CFR part 318

Privacy.

Accordingly, Title 32 CFR part 318 is revised to read as follows:

PART 318—DEFENSE THREAT REDUCTION AGENCY PRIVACY PROGRAM

Sec.

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

§ 318.1 Reissuance and purpose.

(a) This part updates the policies, responsibilities, and procedures of the DTRA Privacy Program under the Privacy Act of 1974, as amended (5

U.S.C. 552a), OMB Circular A–130,[1] and the DoD Privacy Program (32 CFR part 310).

(b) This rule establishes procedures whereby individuals can:

(1) Request notification of whether Defense Threat Reduction Agency (DTRA) maintains or has disclosed a record pertaining to them in any nonexempt system of records;

(2) Request a copy or other access to such a record or to an accounting of its disclosure;

(3) Request that the record be amended; and

(4) Appeal any initial adverse determination of any such request.

(c) Specifies those system of records which the Director, Defense Threat Reduction Agency has determined to be exempt from the procedures established by this rule and by certain provisions of the Privacy Act.

(d) DTRA policy encompasses the safeguarding of individual privacy from any misuse of DTRA records and the provides the fullest access practicable by individuals to DTRA records concerning them.

§ 318.2 Applicability.

(a) This part applies to all members of the Armed Forces and Department of Defense civilians assigned to the DTRA at any of its duty locations.

(b) This part shall be made applicable to DoD contractors who are operating a system of records on behalf of DTRA, to include any of the activities, such as collecting and disseminating records, associated with maintaining a system of records.

§ 318.3 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and record keeping as regards release to non-DoD agencies; each DoD Component is considered an agency within the meaning of the Privacy Act.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not "individuals."

Law enforcement activity. Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

Maintain. Includes maintain, collect, use or disseminate.

Official use. Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DoD 5200.1–R,[2] "DoD Information Security Program Regulation".

Personal information. Information about an individual that identifies, relates or is unique to, or describes him or her; e.g., a social security number, age, military rank, civilian grade, marital status, race, salary, home/office phone numbers, etc.

Privacy Act request. A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Member of the public. Any individual or party acting in a private capacity to include federal employees or military personnel.

Record. Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc.), about an individual that is maintained by a DoD Component, including but not limited to, his or her education, financial transactions, medical history, criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Risk assessment. An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System manager. The DoD Component official who is responsible for the operation and management of a system of records.

System of records. A group of records under the control of a DoD Component from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written or graphic presentations intended to communicate verbally or visually with another individual.

Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, handwiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device

§ 318.4 Policy.

(a) It is DTRA policy that:

(1) The personal privacy of an individual shall be respected and protected. Personal information shall be collected, maintained, used, or disclosed to insure that:

(2) It shall be relevant and necessary to accomplish a lawful DTRA purpose

[1] Copies may be obtained: http://www.whitehouse.gov/OMB/circulars.

[2] Copies may be obtained: http://web7.whs.osd.mil/corres.htm.

required to be accomplished by Federal statute or Executive order;

(3) It shall be collected to the greatest extent practicable directly from the individual;

(4) The individual shall be informed as to why the information is being collected, the authority for collection, what uses will be made of it, whether disclosure is mandatory or voluntary, and the consequences of not providing the information;

(5) It shall be relevant, timely, complete and accurate for its intended use; and

(6) Appropriate administrative, technical, and physical safeguards shall be established, based on the media (e.g., paper, electronic, etc.) involved, to ensure the security of the records and to prevent compromise or misuse during storage or transfer.

(b) No record shall be maintained on how an individual exercises rights guaranteed by the First Amendment to the Constitution, except as specifically authorized by statute; expressly authorized by the individual on whom the record is maintained; or when the record is pertinent to and within the scope of an authorized law enforcement activity.

(c) Notices shall be published in the Federal Register and reports shall be submitted to Congress and the Office of Management and Budget, in accordance with, and as required by 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310, as to the existence and character of any system of records being established or revised by the DoD Components. Information shall not be collected, maintained, or disseminated until the required publication/review requirements are satisfied.

(d) Individuals shall be permitted, to the extent authorized by this part:

(1) To determine what records pertaining to them are contained in a system of records;

(2) Gain access to such records and obtain a copy of those records or a part thereof;

(3) Correct or amend such records on a showing the records are not accurate, relevant, timely, or complete.

(4) Appeal a denial of access or a request for amendment.

(e) Disclosure of records pertaining to an individual from a system of records shall be prohibited except with the consent of the individual or as otherwise authorized by 5 U.S.C. 552a and 32 CFR part 286. When disclosures are made, the individual shall be permitted, to the extent authorized by 5 U.S.C. 552a and 32 CFR part 310, to seek an accounting of such disclosures from DTRA.

(f) Computer matching programs between DTRA and Federal, State, or local governmental agencies shall be conducted in accordance with the requirements of 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(g) DTRA personnel and Systems Managers shall conduct themselves, pursuant to established rules of conduct, so that personal information to be stored in a system of records shall only be collected, maintained, used, and disseminated as authorized by this part.

§ 318.5 Designations and responsibilities

(a) The Director, DTRA shall:

(1) Provide adequate funding and personnel to establish and support an effective Privacy Program.

(2) Appoint a senior official to serve as the Agency Privacy Act Officer.

(3) Serve as the Agency Appellate Authority.

(b) The Privacy Act Officer shall:

(1) Implement the Agency's Privacy Program in accordance with the specific requirements set forth in this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(2) Establish procedures, as well as rules of conduct, necessary to implement this part so as to ensure compliance with the requirements of 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(3) Ensure that the DTRA Privacy Program periodically shall be reviewed by the DTRA Inspectors General or other officials, who shall have specialized knowledge of the DoD Privacy Program.

(4) Serve as the Agency Initial Denial Authority.

(c) *The Privacy Act Program Manager shall:*

(1) Manage activities in support of the DTRA Program oversight in accordance with part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(2) Provide operational support, guidance and assistance to Systems Managers for responding to requests for access/amendment of records.

(3) Direct the day-by-day activities of the DTRA Privacy Program.

(4) Provide guidance and assistance to DTRA elements in their implementation and execution of the DTRA Privacy Program.

(5) Prepare and submit proposed new, altered, and amended systems of records, to include submission of required notices for publication in the Federal Register consistent with this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(6) Prepare and submit proposed DTRA privacy rulemaking, to include documentation for submission of the proposed rule to the Office of the Federal Register for publication. Additionally, provide required documentation for reporting to the OMB and Congress, consistent with this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(7) Provide advice and support to DTRA elements to ensure that:

(i) All information requirements developed to collect and/or maintain personal data conform to DoD Privacy Act Program standards;

(ii) Appropriate procedures and safeguards shall be developed, implemented, and maintained to protect personal information when it is stored in either a manual and/or automated system of records or transferred by electronic or non-electronic means; and

(iii) Specific procedures and safeguards shall be developed and implemented when personal data is collected and maintained for research purposes.

(8) Conduct reviews, and prepare and submit reports consistent with the requirements in this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310, or as otherwise directed by the Defense Privacy Office.

(9) Conduct training for all assigned and employed DTRA personnel and for those individuals having primary responsibility for DTRA Privacy Act Record Systems consistent with requirements of this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(10) Serve as the principal points of contact for coordination of privacy and related matters.

(d) *The Directorate Heads and Office Chiefs shall:*

(1) Recognize and support the DTRA Privacy Act Program.

(2) Appoint an individual to serve as Privacy Act Point of Contact within their purview.

(3) Initiate prompt, constructive management actions on agreed-upon actions identified in agency Privacy Act reports.

(e) *The Chief, Information Systems shall:*

(1) Ensure that all personnel who have access to information from an automated system of records during processing or who are engaged in developing procedures for processing such information are aware of the provisions of this Instruction.

(2) Promptly notify automated system managers and the Privacy Act Officer whenever they are changes to Agency Information Technology that may require the submission of an amended system notice for any system of records.

(3) Establish rules of conduct for Agency personnel involved in the

design, development, operation, or maintenance of any automated system of records and train them in these rules of conduct.

(f) Agency System Managers shall exercise the Rules of Conduct as specified in 32 CFR part 310.

(g) Agency personnel shall exercise the Rules of Conduct as specified in 32 CFR part 310.

§ 318.6 Procedures for requests pertaining to individual records in a record system.

(a) An individual seeking notification of whether a system of records, maintained by the Defense Threat Reduction Agency, contains a record pertaining to himself/herself and who desires to review, have copies made of such records, or to be provided an accounting of disclosures from such records, shall submit his or her request in writing. Requesters are encourage to review the systems of records notices published by the Agency so as to specifically identify the particular record system(s) of interest to be accessed.

(b) In addition to meeting the requirements set forth in this section 318.6, the individual seeking notification, review or copies. and an accounting of disclosures will provide in writing his or her full name, address, Social Security Number, and a telephone number where the requester can be contacted should questions arise concerning the request. This information will be used only for the purpose of identifying relevant records in response to an individual's inquiry. It is further recommended that individuals indicate any present or past relationship or affiliations, if any, with the Agency and the appropriate dates in order to facilitate a more thorough search. A notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746 may also be required.

(c) An individual who wishes to be accompanied by another individual when reviewing his or her records, must provide the Agency with written consent authorizing the Agency to disclose or discuss such records in the presence of the accompanying individual.

(d) Individuals should mail their written request to the FOIA/Privacy Act Division, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517 and indicate clearly on the outer envelope "Privacy Act Request."

§ 318.7 Disclosure of requested information to individuals.

(a) The Defense Threat Reduction Agency, upon receiving a request for notification of the existence of a record or for access to a record, shall acknowledge receipt of the request within 10 working days.

(b) Determine whether or not such record exists.

(c) Determine whether or not such request for access is available under the Privacy Act.

(d) Notify requester of determinations within 30 working days after receipt of such request.

(e) Provide access to information pertaining to that person which has been determined to be available within 30 working days.

(f) Notify the individual if fees will be assessed for reproducing copies of the records. Fee schedule and rules for assessing fees are contained in § 318.11.

§ 318.8 Request for correction or amendment to a record.

(a) An individual may request that the Defense Threat Reduction Agency correct, amend, or expunge any record, or portions thereof, pertaining to the requester that he/she believe to be inaccurate, irrelevant, untimely, or incomplete.

(b) Such requests shall specify the particular portions of the records in question, be in writing and should be mailed to the FOIA/Privacy Act Division, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

(c) The requester shall provide sufficient information to identify the record and furnish material to substantiate the reasons for requesting corrections, amendments, or expurgation.

§ 318.9 Agency review of request for correction or amendment of record.

(a) The Agency will acknowledge a request for correction or amendment within 10 working days of receipt. The acknowledgment will be in writing and will indicate the date by which the Agency expects to make its initial determination.

(b) The Agency shall complete its consideration of requests to correct or amend records within 30 working days, and inform the requester of its initial determination.

(c) If it is determined that records should be corrected or amended in whole or in part, the Agency shall advise the requester in writing of its determination; and correct or amend the records accordingly. The Agency shall then advise prior recipients of the records of the fact that a correction or amendment was made and provide the substance of the change.

(d) If the Agency determines that a record should not be corrected or amended, in whole or in part, as requested by the individual, the Agency shall advise the requester in writing of its refusal to correct or amend the records and the reasons therefor. The notification will inform the requester that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

§ 318.10 Appeal of initial adverse Agency determination for access, correction or amendment.

(a) An individual who disagrees with the denial or partial denial of his or her request for access, correction, or amendment of Agency records pertaining the himself/herself, may file a request for administrative review of such refusal within 30 days after the date of notification of the denial or partial denial.

(b) Such requests shall be made in writing and mailed to the FOIA/Privacy Act Division, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

(c) The requester shall provide a brief written statement setting for the reasons for his or her disagreement with the initial determination and provide such additional supporting material as the individual feels necessary to justify the appeal.

(d) Within 30 working days of receipt of the request for review, the Agency shall advise the individual of the final disposition of the request.

(e) In those cases where the initial determination is reversed, the individual will be so informed and the Agency will take appropriate action.

(f) In those cases where the initial determination is sustained, the individual shall be advised:

(1) In the case of a request for access to a record, of the individual's right to seek judicial review of the Agency refusal for access.

(2) In the case of a request to correct or amend the record:

(i) Of the individual's right to file a concise statement of his or her reasons for disagreeing with the Agency's decision in the record,

(ii) Of the procedures for filing a statement of the disagreement, and

(iii) Of the individual's right to seek judicial review of the Agency's refusal to correct or amend a record.

§ 318.11 Disclosure of record to persons other than the individual to whom it pertains.

(a) General. No record contained in a system of records maintained by DTRA shall be disclosed by any means to any person or agency within or outside the

Department of Defense without the request or consent of the subject of the record, except as described in 32 CFR 310.41, Appendix C to part 310, and/or a Defense Threat Reduction Agency system of records notice.

(b) Accounting of disclosures. Except for disclosures made to members of the DoD in connection with their official duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DTRA system of records.

(1) Accounting entries will normally be kept on a DTRA form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) Accounting records will be maintained for at least 5 years after the last disclosure, of for the life of the record, whichever is longer.

(4) Subjects of DTRA records will be given access to associated accounting records upon request, except for those disclosures made to law enforcement activities when the law enforcement activity has requested that the disclosure not be made, and/or as exempted under § 318.16.

§318.12 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DTRA records pertaining to them. Requesters will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with 32 CFR part 310.

§318.13 Enforcement actions.

Procedures and sanctions are set forth in 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

§318.14 Blanket routine uses.

(a) *Blanket routine uses.* Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published only once in the interest of simplicity, economy and to avoid redundancy.

(b) *Routine Use—Law Enforcement.* If a system of records maintained by a DoD Component, to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

(c) *Routine Use—Disclosure When Requesting Information.* A record from a system of records maintained by a Component may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(d) *Routine Use—Disclosure of Requested Information.* A record from a system of records maintained by a Component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(e) *Routine Use—Congressional Inquiries.* Disclosure from a system of records maintained by a Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(f) *Routine Use—Private Relief Legislation.* Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the OMB in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(g) *Routine Use—Disclosures Required by International Agreements.* A record from a system of records maintained by a Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

(h) *Routine Use—Disclosure to State and Local Taxing Authorities.* Any information normally contained in Internal Revenue Service (IRS) Form W–2 which is maintained in a record from a system of records maintained by a Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C. 5516, 5517, and 5520 and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76–07.

(i) *Routine Use—Disclosure to the Office of Personnel Management.* A record from a system of records subject to the Privacy Act and maintained by a Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

(j) *Routine Use—Disclosure to the Department of Justice for Litigation.* A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

(k) *Routine Use—Disclosure to Military Banking Facilities Overseas.* Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be

liable for the losses the facility may incur.

(l) *Routine Use—Disclosure of Information to the General Services Administration (GSA).* A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(m) *Routine Use—Disclosure of Information to the National Archives and Records Administration (NARA).* A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(n) Routine Use—Disclosure to the Merit Systems Protection Board. A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

(o) *Routine Use—Counterintelligence Purpose.* A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

§318.15 Rules of conduct

(a) DTRA personnel shall:

(1) Take such actions, as considered appropriate, to ensure that personal information contained in a system of records, to which they have access or are using incident to the conduct of official business, shall be protected so that the security and confidentiality of the information shall be preserved.

(2) Not disclose any personal information contained in any system of records except as authorized by 32 CFR part 310 or other applicable law or regulation. Personnel willfully making such a disclosure when knowing the disclosure is prohibited are subject to possible criminal penalties and/or administrative sanctions.

(3) Report any unauthorized disclosure of personal information from a system of records or the maintenance of any system of records that are not authorized by the Instruction to the DTRA Privacy Act Officer.

(b) DTRA system managers for each system of records shall:

(1) Ensure that all personnel who either have access to the system of records or who shall develop or supervise procedures for the handling of records in the system of records shall be aware of their responsibilities for protecting personnel information being collected and maintained under the DTRA Privacy Program.

(2) Promptly notify the Privacy Act Officer of any required new, amended, or altered system notices for the system of records.

(3) Not maintain any official files on individuals, which are retrieved by name or other personal identifier without first ensuring that a notice for the system of records shall have been published in the "Federal Register." Any official who willfully maintains a system of records without meeting the publication requirements, as prescribed by 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310, is subject to possible criminal penalties and/or administrative sanctions.

§318.16 Exemption rules.

(a) *Exemption for classified material.* All systems of records maintained by the Defense Threat Reduction Agency shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12598 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(b) *System identifier and name:* HDTRA 007, Security Operations.

(1) Exemption: Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), (I), and (f).

(2) Authority: 5 U.S.C. 552a(k)(5).

(3) Reasons: (i) From subsection (c)(3) because it will enable DTRA to safeguard certain investigations and relay law enforcement information without compromise of the information, and protect the identities of confidential sources who might not otherwise come forward and who have furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of security investigations. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information; under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(c) *System identifier and name:* HDTRA 011, Inspector General Investigation Files.

(1) Exemption: Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(2) Authority: 5 U.S.C. 552a(k)(2).

(3) Reasons: (i) From subsection (c)(3) because it will enable DTRA to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would

be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8722 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency is exempting a system of records (S500.30 CAAS, Incident Investigation/Police Inquiry Files) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The proposed rule was published on January 20, 2000 at 65 FR 3167. No comments were received, therefore, the Defense Logistics Agency is adopting the rule as final.

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that 32 CFR part 321 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix H to Part 323 is to be amended by adding paragraph f. as follows:

Appendix H to Part 323—DLA Exemption Rules.

* * * * *

f. ID: S500.30 CAAS *(Specific exemption).*

1. *System name:* Incident Investigation/Police Inquiry Files.

2. *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

3. *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5), subsections (c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

4. *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or

necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8721 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA231–0227a; FRL–6570–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Antelope Valley Air Pollution Control District (AVAPCD) and the Mojave Desert Air Quality Management District (MDAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from Automotive Refinishing Operations and Motor Vehicle and Mobile Equipment Coatings Operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on June 9, 2000 without further notice, unless EPA receives adverse comments by May 10, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule revisions and EPA's technical support document for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

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

Environmental Protection Agency, Ariel Rios Building, (Mail Code 6102), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460;

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

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409;

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: Antelope Valley Air Pollution Control District (AVAPCD) Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and Mojave Desert Air Quality Management District (MDAQMD) Rule 1116, Automotive Refinishing Operations. These rules were submitted by the California Air Resources Board to EPA on October 29, 1999 and July 23, 1999, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the portions of the San Bernardino County Air Pollution Control District [1] within the Southeast Desert Modified Air Quality Maintenance Area and the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas.

The AVAPCD portion of the Southeast Desert Modified Air Quality Maintenance Area (SDMAQMA) is classified as Severe-17, therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The MDAQMD portion of the SDMAQMA is classified as severe; [3] therefore, this area was subject to the RACT fix-up requirements and the May 15, 1991 deadline.

The AVAPCD was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all

[1] On July 1, 1993, the San Bernardino County Air Pollution Control District was renamed the Mojave Desert Air Quality Management District.

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] Southeast Desert Air Quality Management Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

air pollution control responsibilities of the South Coast Air Quality Management District in the Antelope Valley region of Los Angeles County,[4] effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area. The AVAPCD remains subject to the RACT requirements.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 23, 1999 and October 29, 1999, including the rules being acted on in this document. This document addresses EPA's direct-final action for AVAPCD Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and MDAQMD Rule 1116, Automotive Refinishing Operations. AVAPCD adopted Rule 1151 on July 20, 1999 and MDAQMD adopted Rule 1116 on February 22, 1995 and revised Rule 1116 on April 26, 1999. These submitted rules were found to be complete on December 16, 1999 and August 24, 1999, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[5] and is being finalized for approval into the SIP.

AVAPCD Rule 1151 is a new rule for Antelope Valley. Rule 1151 limits emissions of volatile organic compounds (VOC) and stratospheric ozone-depleting and global warming compounds from coatings applied to Group I or Group II Vehicles and Mobile Equipment. The provisions of this rule apply to all commercial and non-commercial coating applications at facilities involved in the production. modification, or refinishing of motor vehicles and mobile equipment.

MDAQMD Rule 1116 limits emissions of VOC and stratospheric ozone-depleting and global warming compounds from coatings applied to Group I and Group II Vehicles and Mobile Equipment. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of AVAPCD's and MDAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

[4] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

[5] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). EPA has not yet issued a Control Techniques Guideline (CTG) for this source category, but has on December 30, 1997 amended 40 CFR Part 59, "National Volatile Organic Emission Standards for Consumer and Commercial Products" by adding Subpart E, "National Volatile Organic Compound Emission Standards for Automobile Refinishing Coatings," 62 FR 67784. This standard regulates the manufacture of automotive coatings and not the application of automobile refinishing coatings. Body shops nationwide are not directly affected by the regulation's requirements. EPA has used the proposed VOC standards for automotive coatings as guidance in evaluating the VOC limits of Rule 1151 and Rule 1116. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is currently no version of AVAPCD Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations in the SIP. The submitted rule includes the following provisions:

- Limits of 15 pounds per gallon of applied solids for the original production of motor homes;
- Limits emissions of VOCs from coatings applied to Group I and Group II Vehicles and Mobile Equipment;
- Applies to all commercial and non-commercial coating applications at facilities involved in the production, modification, or refinishing of motor vehicles and mobile equipment; and
- Includes test methods to determine compliance.

On June 13, 1995 (60 FR 31081), EPA approved into the SIP a version of MDAQMD Rule 1116, Automotive Refinishing Operations that had been adopted on February 22, 1995. Revisions to this rule were subsequently adopted on April 26, 1999. The submitted Rule 1116 includes the following significant changes from the current SIP:

- Delayed imposition of the 420 grams per liter VOC limit for multistage topcoat systems until July 1, 2000;
- Updated and streamlined VOC definition referencing the most recent federal list of exempt compounds;
- Removed of obsolete limits and language; and
- Specified exemptions to the "Prohibition of Sale" provision.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, AVAPCD Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and MDAQMD Rule 1116, Automotive Refinishing Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 9, 2000 without further notice unless the Agency receives adverse comments by May 10, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on

June 9, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 15 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I. Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(268)(i)(B) and (c)(270)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(268) * * *

(i) * * *

(B) Mojave Desert Air Quality Management District.

(*1*) Rule 1116 revised on April 26, 1999.

* * * * *

(270) * * *

(i) * * *

(E) Antelope Valley Air Pollution Control District.

(*1*) Rule 1151 adopted on July 20, 1999.

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[FR Doc. 00–8526 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–237–0221; FRL–6570–7]

Approval and Promulgation of State Implementation Plans; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a state implementation plan (SIP) revision submitted by the State of California to provide for attainment of the 1-hour ozone national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is approving the SIP revision under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This action is effective on May 10, 2000.

ADDRESSES: The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, California

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California

The SIP materials are also electronically available at: http://www.aqmd.gov/aqmp/

FOR FURTHER INFORMATION CONTACT: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1288, or jesson.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

We are finalizing approval of the 1997 ozone plan for the South Coast, as revised by a 1999 amendment.[1] The South Coast Air Quality Management District (SCAQMD) adopted the 1997 plan on November 15, 1996, and the California Air Resources Board (CARB) submitted the plan to us on February 5, 1997. SCAQMD adopted the 1999 amendment on December 10, 1999, and CARB submitted the plan to us on February 4, 2000. EPA determined the submittal to be complete on March 15, 2000.[2] In this document, we refer to the 1997 plan and 1999 amendment as "the revised ozone plan," which is intended to replace the 1994 ozone SIP except for that portion of the SIP that consists of State control measures and EPA's commitment relating to a Public Consultative Process on national mobile sources.[3]

On February 8, 2000, we proposed approval of the revised ozone plan with respect to the revised emissions inventory, the modeled attainment demonstration, control measures, commitment to achieve specified emission reductions in future years, revised rate-of-progress (ROP) plan, and emissions budget. Please see that document (65 FR 6091–6102) for further details on our proposed action, applicable CAA requirements, and additional information on the affected area.

[1] The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[2] We adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216). CARB requested that we "parallel process" action on the 1997 plan and 1999 amendment before SIP submittal of the 1999 amendment.

[3] For information on the 1994 ozone SIP, see 62 FR 1150 (January 8, 1997). For information on the Public Consultative Process, see 64 FR 39923 (July 23, 1999).

II. Public Comments

We received 3 public comments. SCAQMD supported the proposed action, but requested a minor correction. The proposal stated that the South Coast Air Basin recorded the largest number of ozone violations in the country in 1999 based on preliminary data from EPA's Aerometric Information Retrieval System (AIRS). 65 FR 6092. We agree with SCAQMD that updated AIRS data now show that the basin had the second highest number of violations in 1999. Over the past three years (1997–1999), however, the South Coast Air Basin did have the largest number of ozone violations in the country.

A representative of the National Paint and Coatings Association commented regarding the purported technological and economic infeasibility of SCAQMD's coatings control measures, and issues regarding public notice and hearing requirements relative to SCAQMD's revisions to Rule 1113.

As noted by the commenter, we are barred from considering claims of economic or technological infeasibility in determining whether to approve a submitted SIP.

Union Electric Co. v. *U.S. EPA*, 429 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

The comment regarding Rule 1113 is not germane to our proposed action on the revised ozone plan, which does not address any approval issues associated with revisions to Rule 1113. When we take action on the SIP revision to Rule 1113, we will determine whether or not SCAQMD met public notice and public hearing requirements when the rule was revised. If the commentor continues to believe that these requirements were not met, he must resubmit comments during the public comment period for our rulemaking on the revisions to SCAQMD Rule 1113.

A private citizen argued that the emissions inventory does not meet the CAA section 172(c)(3) requirements and should not be approved. The commenter stated that the control factors associated with California's enhanced motor vehicle inspection and maintenance (I/M) program are known to be bogus. The commenter referenced a CARB letter dated January 7, 2000, stating: "There have been a number of legislative and operational changes to the I/M program that have reduced its effectiveness and associated air quality benefits."

We addressed this issue in our proposed approval of the plan, noting that the revised ozone plan represents more current and accurate information than was used in the 1994 ozone SIP and complies with acceptable methodologies for inventory preparation, but that the responsible agencies are in the process of updating and refining emissions reductions, including those associated with the I/M program. 65 FR 6094, 6100.

When improved information is available to refine the estimate of emissions reductions associated with the I/M program, CARB and SCAQMD will use this information in a comprehensive ozone plan revision, scheduled for adoption and submittal as a SIP revision in 2001. As discussed in our proposed approval, this future revision will include a revised control strategy if needed to provide for expeditious attainment.

We reaffirm our finding that the emissions inventory portion of the revised ozone plan not only improves on the accuracy of the 1994 ozone SIP but also meets CAA requirements that the inventory be comprehensive, accurate, and current. Therefore, we are finalizing approval of the revised ozone plan with respect to the requirements of CAA sections 172(c)(3) and 182(a)(1).

III. EPA Final Action

In this document, we are finalizing the following actions on the revised ozone plan. For each action, we indicate the page on which the element is discussed in our proposal.

(1) Approval of the revised baseline and projected emissions inventories under CAA sections 172(c)(3) and 182(a)(1)—6094;

(2) Approval of the SCAQMD commitment to implement those measures that had been adopted in regulatory form between November 1994 and September 1999, by the dates specified to achieve the identified emission reductions, under CAA section 110(k)(3)—6095 (Table 1);

(3) Approval of the SCAQMD commitment to adopt and implement the short- and intermediate-term control measures in the revised ozone plan by the dates specified to achieve the identified emission reductions, under CAA section 110(k)(3)—6095 (Table 2);

(4) Approval of the SCAQMD commitment to adopt and implement control measures to achieve the identified emission reduction commitments[4] for 1999 to 2008, as specified in Table 2–6 of the 1999

[4] This approval makes enforceable the SCAQMD commitment to achieve the overall emission reduction schedule and thus creates the possibility of SCAQMD control measure adjustments and substitutions under the approved SIP, so long as the overall emission reduction obligations are met as described in Chapter 2 of the 1999 amendment.

amendment, under CAA section 110(k)(3)—6097 (Table 3);

(5) Deletion of 1994 ozone SIP control measures identified in the 1999 Amendment—6097 (Table 4);

(6) Approval of the SCAQMD commitment to adopt and implement the long-term control measures in the revised ozone plan by the dates specified to achieve the identified emission reductions, under CAA section 110(k)(3) and 182(e)(5)—6098 (Table 5);

(7) Approval of the revised rate-of-progress plan for the milestone years 1999, 2002, 2005, 2008, and 2010, under CAA sections 182(c)(2)—6099 (Table 6);

(8) Approval of the revised attainment demonstration under CAA sections 182(c)(2) and (e)—6100;

(9) Approval of the revised motor vehicle emissions budgets for purposes of transportation conformity under CAA section 176(c)(2)(A). Approval of the revised ozone plan also establishes new emissions budgets for ROP milestone years for purposes of general conformity under CAA section 176(c)(1)—6100–1 (Table 8).

Upon the effective date of our approval of the revised ozone plan, this plan replaces and supersedes the 1994 ozone SIP for the South Coast Air Basin with the exception of the State control measures for mobile sources, consumer products, and pesticides, and EPA's commitment. The State measures remain unchanged from those approved as part of the 1994 ozone SIP until we, in separate action, approve revised measures.

As discussed in our proposed action, CARB and SCAQMD intend to adopt and submit a comprehensive revision to the ozone plan in 2001. 65 FR 6101. We intend to work with CARB and SCAQMD to ensure the timely completion of this new comprehensive revision to refine and enhance the technical foundations of the attainment demonstration and update the control measures, as necessary.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a

significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 20, 2000.

David P. Howekamp,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(247)(i)(A)(*3*) and (c)(272) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(247) * * *

(i) * * *

(A) * * *

(3) Baseline and projected emissions inventories and ozone attainment demonstration, as contained in the South Coast 1997 Air Quality Management Plan for ozone.

* * * * *

(272) New and amended plan for the following agency was submitted on February 4, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) SCAQMD commitment to adopt and implement short- and intermediate-term control measures; SCAQMD commitment to adopt and implement long-term control measures; SCAQMD commitment to achieve overall emissions reductions for the years 1999–2008; SCAQMD commitment to implement those measures that had been adopted in regulatory form between November 1994 and September 1999; rate-of-progress plan for the 1999, 2002, 2005, 2008, and 2010 milestone years; amendment to the attainment demonstration in the 1997 Air Quality Management Plan for ozone; and motor vehicle emissions budgets for purposes of transportation conformity, as contained in the 1999 Amendment to the South Coast 1997 Air Quality Management Plan.

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[FR Doc. 00–8534 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6570–4]

RIN 2060–AC42

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: Under the Clean Air Act (CAA), the EPA issued a final rule entitled "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," published in the **Federal Register** on March 12, 1996 (61 FR 9905). A subsequent direct final rule, published

on June 16, 1998 (63 FR 32743) corrected errors and clarified regulatory text of the final rule. These technical corrections will correct an error in the amendatory instructions and an inconsistency between the reportable exceedances and reporting of monitoring data. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the NSPS/EG rule. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

DATES: These technical corrections are effective April 10, 2000.

ADDRESSES: Docket No. A–88–09 contains the supporting information used in the development of this rulemaking. The docket is located at the U.S. Environmental Protection Agency in Room M–1500, Waterside Mall (ground floor), 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5256, e-mail: laur.michele@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The entities potentially affected by this action include:

Category	SIC	Examples of regulated entities
Industry and Local Government Agencies	4953	Existing municipal solid waste landfills where solid waste from households is placed in or on land. Waste from commercial or industrial operations may be mixed with the household waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. While the landfills EG and NSPS (40 CFR part 60, subparts Cc and WWW) will primarily impact facilities in the Standard Industrial Classification (SIC) code 4953, not all facilities in this code will be affected by this action. To determine if your landfill is affected by the landfills EG or NSPS, see 40 CFR part 60, subparts Cc and WWW, or the technical amendments published on June 16, 1998 (63 FR 37243).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's action will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. Background

On March 12, 1996, the EPA promulgated in the **Federal Register** (61 FR 9919) EG for existing municipal solid waste landfills and the NSPS for municipal solid waste landfills. These regulations and guidelines were promulgated as subparts Cc and WWW of 40 CFR part 60. This action corrects an error in the amendatory instructions, typographic and formatting errors, and it corrects three inconsistencies in the direct final action published on June 16, 1998.

II. Description of Corrections

A. Amendatory Instruction Error

Due to an error in the amendatory instructions for the direct final rule published in the **Federal Register** on June 16, 1998, § 60.752(b)(2)(ii) (A) and (B) and § 60.752(b)(2)(iii)(B) (1) and (2) were incorrectly removed. These technical corrections add those paragraphs back into the final rule.

B. Inconsistencies

An inconsistency exists between what constitutes a reportable exceedance for boilers and process heaters in § 60.758(c)(1)(i), and the monitoring (§ 60.756(b)(1)) and recordkeeping (§ 60.758(b)(2)) requirements for these devices. Boilers and process heaters with design heat input capacity less than or equal to 44 megawatts are required to monitor temperature and keep records. A reportable exceedance related to temperature can only occur for boilers and process heaters that are less than 44 megawatts. It was not our intent to require monitoring and recordkeeping for boilers and process heaters if their design heat input capacity is equal to or greater than 44 megawatts.

C. Typographical and Formatting Errors

A typographical error appearing in the equation in §§ 60.754(a)(1) (i), (ii) and 60.759(a)(3)(ii) is being corrected. The term "$CN_{NM}MOC$" is corrected to read "C_{NMOC}", meaning the concentration of non-methane organic compounds.

A typographical error appearing in § 60.754(a)(1)(ii) is being corrected. The paragraph immediately following the list of terms to the equation in this section was incorrectly duplicated from the paragraph in § 60.754(a)(1)(i). The paragraph is amended to correctly reflect the method for subtracting nondegradable solid waste when actual year-to-year solid waste acceptance rates are known.

A formatting error in § 60.756(a), introductory text, is being corrected. A comma was left out between the words "thermometer" and "other."

A typographical error appearing in § 60.757(c) is being corrected. Throughout the rule, various requirements are triggered by the emission rate cutoff of "equals or exceeds 50 megagrams per year." The term "equals or" was inadvertently omitted. This omission is being corrected to be consistent with the remainder of the rule and with our intent.

A typographical error appearing in § 60.758(c)(1)(ii) is being corrected. This section incorrectly references § 60.758(b)(3)(i) which does not exist. The correct reference is § 60.758(b)(3).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see

Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 16, 1998 amendments to the final NSPS/EG rule **Federal Register** document.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 10, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 27, 2000.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

Subpart WWW—[Amended]

2. Section 60.752 is amended by adding paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), (b)(2)(iii)(B)(1) and (b)(2)(iii)(B)(2) to read as follows:

§ 60.752 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) An active collection system shall:

(*1*) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment;

(*2*) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:

(*i*) 5 years or more if active; or

(*ii*) 2 years or more if closed or at final grade.

(*3*) Collect gas at a sufficient extraction rate;

(*4*) Be designed to minimize off-site migration of subsurface gas.

(B) A passive collection system shall:

(*1*) Comply with the provisions specified in paragraphs (b)(2)(ii)(A)(*1*), (*2*), and (2)(ii)(A)(*4*) of this section.

(*2*) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall be installed as required under § 258.40.

* * * * *

(iii) * * *

(B) * * *

(*1*) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.

(*2*) The control device shall be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in § 60.756;

* * * * *

3. In § 60.754, in the equation in paragraph (a)(1)(i) the term "$C_{NM}OC$" is revised to read "C_{NMOC}" and paragraph (a)(1)(ii) is revised to read as follows:

§ 60.754 Test methods and procedures.

(a) * * *

(1) * * *

(ii) The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_o R (e^{-kc} - e^{-kt}) C_{NMOC} (3.6 \times 10^{-9})$$

Where:

M_{NMOC}=mass emission rate of NMOC, megagrams per year

L_o=methane generation potential, cubic meters per megagram solid waste

R=average annual acceptance rate, megagrams per year

k=methane generation rate constant, $year^{-1}$

t = age of landfill, years

C_{NMOC}=concentration of NMOC, parts per million by volume as hexane

c=time since closure, years; for active landfill c=O and e^{-kc}1

3.6×10 − 9=conversion factor

The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

* * * * *

4. Section 60.756 is amended in paragraph (a) introductory text by

adding a comma between the words "thermometer" and "other" and by revising paragraph (b)(1) to read as follows:

§ 60.756 Monitoring of operations.

* * * * *

(b) * * *

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

* * * * *

5. Section 60.757 is amended by revising paragraph (c) introductory text to read as follows:

§ 60.757 Reporting requirements.

* * * * *

(c) Each owner or operator subject to the provisions of § 60.752(b)(2)(i) shall submit a collection and control system design plan to the Administrator within 1 year of the first report required under paragraph (b) of this section in which the emission rate equals or exceeds 50 megagrams per year, except as follows:

* * * * *

6. Section 60.758 is amended by revising paragraphs (b)(2) introductory text and (c)(1)(ii) to read as follows:

§ 60.758 Recordkeeping requirements.

* * * * *

(b) * * *

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

* * * * *

(c) * * *

(1) * * *

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

* * * * *

§ 60.759 [Amended]

7. In § 60.759 (a)(3)(ii), the term "$C_{NM}OC$" is revised to read "C_{NMOC}".

[FR Doc. 00–8151 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL52—200014; FRL–6568–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on April 20, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This direct final rule is effective on June 9, 2000, without further notice, unless EPA receives adverse comment by May 10, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Kimberly Bingham, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038, Bingham.Kimberly@epa.gov or Scott Davis at (404) 562–9127, Davis.ScottR@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action is Being Taken by EPA Today?

We are approving the Alabama State Plan, as submitted on April 20, 1999, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348–48391, September 15, 1997, 40 CFR part 60, subpart Ce [Emission Guidelines and Compliance Times for HMIWIs] and subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The ADEM developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective June 9, 2000, unless by May 10, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective June 9, 2000.

II. The HMIWI State Plan Requirement

What is a HMIWI State Plan?

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

Why Are We Requiring Alabama To Submit a HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when

EPA published the EG for HMIWIs under 40 CFR part 60, subpart Ce (see 62 FR 48348, September 15, 1997).

Under section 129, EPA is required to promulgate EG for several types of existing solid waste incinerators. These EG establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why Do We Need To Regulate Air Emissions From HMIWIs?

The State Plan establishes control requirements which reduce the following emissions from HMIWIs: particulate matter; sulfur dioxide; hydrogen chloride; nitrogen oxides; carbon monoxide; lead; cadmium; mercury; and dioxin/furans. These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What Criteria Must a HMIWI State Plan Meet To Be Approved?

The criteria for approving a HMIWI State Plan include requirements from sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. Under the requirements of sections 111(d) and 129 of the Act, a State Plan must be at least as protective as the EG regarding applicability, emission limits, compliance schedules, performance testing, monitoring and inspections, operator training and certification, waste management plans, and recordkeeping and reporting. Under section 129(e), State Plans must ensure that affected HMIWI facilities submit Title V permit applications to the State by September 15, 2000. Under the requirements of 40 CFR part 60, subpart B, the criteria for an approvable section 111(d) plan include demonstration of legal authority, enforceable mechanisms, public participation documentation, source and emission inventories, and a State progress report commitment.

III. What Does the Alabama State Plan Contain?

The ADEM adopted the Federal EG into the ADEM Administrative Code, Rule 335–3–3–.04 and the Federal NSPS into the ADEM Administrative Code, Rule 335–3–10–.02(c). The State rules were effective on April 13, 1999. The Alabama State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. State rules, Rule 335–3–3–.04 and Rule 335–3–10–.02(c), as the enforceable mechanism;
3. An inventory of approximately 56 known designated facilities, along with estimates of their potential air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date of one year from the effective date of this State Plan approval;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing on the State Plan; and,
8. Provisions for progress reports to EPA.

IV. Is My HMIWI Subject to These Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

V. What Steps Do I Need to Take?

You must meet the requirements listed in the ADEM Administrative Code, Rule 335–3–3–.04, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.
2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table 1 of Rule 335–3–3–.04 to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events.
3. There are provisions to address small rural incinerators (if your unit is applicable).
4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block.
5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c).
6. Your operator must be certified, as discussed in 5 above, no later than one year after EPA approval of this Alabama State Plan.
7. You must develop and submit to ADEM a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to ADEM no later than 60 days following the initial performance test for the affected unit.
8. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. This performance test must be completed as required under 40 CFR 60.8.
9. You must install and maintain devices to monitor the parameters listed under Table 4 of Rule 335–3–3–.04.
10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years.
11. You must submit an annual report to ADEM containing records of site-specific operating parameters, performance test results, and exceedance information, and for small HMIWI units records of annual equipment inspections, any required maintenance, and unscheduled repairs. This annual report must be signed by the facilities manager.

VI. Why Is the Alabama HMIWI State Plan Approvable?

EPA compared the Alabama rules (ADEM Administrative Code, Rule 335–3–3–.04) against our HMIWI EG. EPA finds the Alabama rules to be at least as protective as the EG. The Alabama State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious*

Waste Incinerators. The Alabama State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Alabama HMIWI State Plan.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 16, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 62.100 is amended by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.100 Identification of plan.

* * * * *

(b) * * *

(5) Alabama Department of Environmental Management Plan for the Control of Hospital/Medical/Infectious Waste Incinerators, submitted on April 20, 1999, by the Alabama Department of Environmental Management.

(c) * * *

(5) Existing hospital/medical/infectious waste incinerators.

3. Subpart B is amended by adding a new § 62.104 and a new undesignated center heading to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.104 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 00–8142 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL–6574–7]

RIN 2060–AI76

Transportation Conformity Amendment: Deletion of Grace Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule we (EPA) are eliminating a provision of the transportation conformity rule that was overturned by the U.S. Court of Appeals for the District of Columbia Circuit (*Sierra Club* v. *EPA, et al.*, 129 F.3d 137 (D.C. Cir. 1997)). In compliance with the court's ruling, today's final rule formally deletes the 1995 amendment that allowed new nonattainment areas a one-year grace period before transportation conformity began applying.

In addition, we discuss in the preamble four issues that were raised in

a Petition for Reconsideration of the original transportation conformity rule that was finalized November 24, 1993. Although we are not taking any regulatory action in response to these issues at this time, the preamble clarifies our policies on the issues raised in the Petition.

Transportation conformity is a Clean Air Act requirement for transportation plans, programs, and projects to conform to state air quality plans. Conformity to a state air quality plan means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national air quality standards.

Our transportation conformity rule establishes the criteria and procedures for determining whether or not transportation activities conform to the state air quality plan.

EFFECTIVE DATE: May 10, 2000.

ADDRESSES: Docket No. A–99–35 contains materials relevant to today's action and is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor). The docket is open and supporting materials are available for review between 8:00 a.m. and 5:30 p.m. on all federal government workdays . You may have to pay a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Denise Kearns, Transportation and Market Incentives Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, kearns.denise@epa.gov. (734–214–4240).

SUPPLEMENTARY INFORMATION: The text of this rulemaking and certain supporting documents used to develop the rule also can be accessed and downloaded from the Internet at http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature) OR http://www.epa.gov/OMSWWW/ (look in What's New or under the Conformity file area). Please note that there may be format changes in the documents on the web due to differences in software.

Regulated Entities

Entities potentially regulated by the conformity rule are those which adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies.
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration and Federal Transit Administration).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. This table lists the types of entities that EPA is now aware could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The contents of this preamble are listed in the following outline:

I. Background

The original conformity rule was finalized on November 24, 1993 (58 FR 62188). That rule has been subsequently amended on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780).

In 1998, we entered into a settlement with Environmental Defense (ED) in response to litigation. In that settlement, we agreed to repeal the grace period which had been established by the November 14, 1995 amendments and was permitted under 40 CFR 93.102(d) of the conformity rule. This grace period was overturned by the United States Court of Appeals in 1997.

We also agreed to respond to four issues raised in a Petition for Reconsideration that was submitted by the ED, Natural Resources Defense Council, and Sierra Club. That petition was filed with us on May 26, 1994 and addressed various provisions of the original conformity rule (58 FR 62188).

The Notice of Proposed Rulemaking for today's rule was published on November 30, 1999 (64 FR 66832). The comment period for the proposal ended December 30, 1999.

We received four comments on our proposal. Most commenters addressed issues relating to the rule's effect in areas subject to conformity. However, one commenter focused exclusively on our discussion of the four issues raised in the 1994 petition. Copies of the comments in their entirety can be obtained from the docket for this rule (see **ADDRESSES**).

This docket also includes a complete Response to Comments document for this rule. We summarize our response to comments below in parts III, IV and V of this preamble.

II. How Soon Does Conformity Apply to a New Nonattainment Area?

Conformity applies as soon as we formally designate an area nonattainment. In this final rule we are deleting § 93.102(d), which had provided a one-year grace period following nonattainment designation. On November 4, 1997, the U.S. Court of Appeals for the District of Columbia Circuit overturned § 93.102(d) of the conformity rule, and ruled that the

Clean Air Act requires conformity to apply upon designation. Because the court overturned § 93.102(d), we must delete this provision from our rules.

Therefore, as soon as a nonattainment designation is effective for your area, you must have a conforming transportation plan and transportation improvement plan (TIP) in order to approve transportation projects. This plan and TIP must conform with respect to all pollutants for which the area is designated nonattainment. You may have to delay approving projects until this is done.

III. What Are the Effects of Deleting the Grace Period and EPA's Response to Comments?

Under today's rule, new nonattainment areas must have a conforming plan and TIP in place as soon as their designations become effective. As a practical matter, this requirement has been in effect since November 14, 1997, when the court ruled to delete the one-hour grace period.

Two commenters expressed concern that transportation planning agencies will not have enough time to respond to a new nonattainment designation and ensure that their plans and TIPs conform. These commenters were concerned that without a grace period, virtually all transportation projects in new nonattainment areas could be stopped upon the effective date of a designation.

We believe that new nonattainment areas will have ample time to develop a conforming plan and TIP before nonattainment designations are final and effective. There are generally several opportunities for transportation agencies to become aware that we are preparing to designate an area nonattainment, and as a consequence to prepare for conformity as needed.

For example, on October 25, 1999, we published a proposal to reinstate the one-hour ozone standard in areas that had previously been designated nonattainment. In that proposal, we stated that designations would not become effective until 90 days after we publish the final rule reinstating our one-hour ozone standard. In these areas, state and local transportation agencies will have been notified more than six months in advance of our decision to reinstate the nonattainment designations.

In addition, we point out that we do pursue a public process before we formally designate an area as nonattainment for the first time. We seek recommendations from the state regarding nonattainment designations and boundaries. If we modify the state's recommendations, we notify the state at least 120 days before finalizing the designation.

State and local transportation agencies and air quality agencies also are working to coordinate their planning processes and avoid situations that would result in a conformity lapse. We and the U.S. Department of Transportation (DOT) will work with areas to process their conformity determinations expeditiously. Although we acknowledge the timing issues and other concerns expressed by commenters regarding the deletion of the grace period, we believe that all partners involved in the conformity process can share information and effectively find ways to avoid significant delays in transportation projects resulting from the court's interpretation of the Clean Air Act.

We also note some transportation projects can proceed in the absence of a conforming plan and TIP, including exempt projects (§§ 93.126 and 93.127) and transportation control measures in an approved state implementation plan. These projects would not be affected by a new nonattainment designation.

IV. What Are the Issues From the Petition for Reconsideration and EPA's Response to Comments?

On May 26, 1994, Environmental Defense (ED), Natural Resources Defense Council, and Sierra Club Legal Defense Fund submitted to us a Petition for Reconsideration of the November 1993 conformity rule. We have responded to all issues raised in this petition through previous conformity amendments, with the exception of four issues addressed in this preamble. In a 1998 court settlement, EPA and ED agreed to address these four issues through today's rulemaking. A copy of the 1998 settlement and the full Petition for Reconsideration are included in the docket for this rulemaking see (**ADDRESSES**). As proposed, we are not taking any regulatory action in today's rule in response to the four issues raised in the 1994 Petition. However, in the discussion below we do clarify certain existing EPA policies, where we feel such clarification is necessary to address concerns raised by commenters on our proposed response to the Petition for Reconsideration.

A. Fiscal Constraint

1. What Is the Issue?

As discussed in the November proposal, in issue 6 of the Petition for Reconsideration, the petitioners requested that we adopt our own regulatory language requiring transportation plans and TIPs to be fiscally constrained, rather than referencing the Department of Transportation's (DOT's) metropolitan planning regulations. The existing conformity rule requires plans and TIPs to be fiscally constrained as required by DOT's metropolitan planning rule at 23 CFR part 450. These DOT regulations require that proposed projects in plans and TIPs be consistent with already available or projected sources of revenue.

2. What Comments Did EPA Receive on Fiscal Constraint, and What Is EPA's Response?

In response to our proposal, one of the petitioners reiterates their position that by referencing DOT's planning regulations, we have unlawfully delegated our rulemaking authority to DOT. Another commenter on the issue concurs with our belief that it is not necessary for us to establish our own language regarding fiscal constraint.

As we discussed in the proposal, we believe it is appropriate to refer to DOT's regulations on fiscal constraint for several reasons. First, we believe DOT's definition of fiscal constraint substantively meets the goals of our conformity rule. We also maintain that by referencing DOT's definition, we have met our procedural obligation to provide criteria and procedures for determining conformity, as required under section 176(c)(4)(A) of the Clean Air Act. We disagree with the commenter's contention that the Clean Air Act directs us to issue regulations specifically regarding fiscal constraint.

Again, we note that we rely on many other DOT definitions and rules, including some that are even more fundamental to the implementation of conformity (*e.g.*, DOT definitions and requirements for plans and TIPs). We also note that the petitioner's comments agree with us that DOT's existing fiscal constraint definition is acceptable for the purposes of conformity.

The commenter's real concern seems to be that future changes to the definition may be unacceptable, and that the conformity rule will automatically incorporate any future changes without EPA action. To remedy this situation, the commenter suggests that we adopt by reference DOT's existing definition of fiscal constraint and specifically exclude any changes that may be made in future DOT rules.

Although we agree that we do not have a concurrence role on DOT's metropolitan planning rule, we point out that there are effective, non-

statutory mechanisms in place to ensure federal coordination. We are fully utilizing these mechanisms and actively working with DOT on their new metropolitan planning regulations, including those provisions that address the definition of fiscal constraint. DOT is proposing to amend these regulations under the Transportation Equity Act for the 21st Century. Petitioners will have an opportunity to comment directly on any changes DOT may propose to their regulation on fiscal constraint through DOT's regulatory process.

As described in the proposal, we also believe that it is appropriate and efficient to rely on DOT's definition of fiscal constraint. It would be impractical to require plans and TIPs to satisfy two different definitions of fiscal constraint. If we refer only to the current definition of fiscal constraint, to ensure consistency we would have to amend the conformity rule whenever DOT's regulations change.

In summary, we believe that by referencing DOT's fiscal constraint definition we are meeting our statutory duty under the Clean Air Act. We also believe that it is reasonable to rely on the framework for federal coordination to ensure that DOT's regulations are appropriate in the conformity context. Lastly, we also believe that wherever it makes sense, we have a responsibility to provide state and local agencies involved in transportation conformity with clear and consistent rules. By referencing DOT's regulations in this case, and coordinating with DOT on any changes they may be contemplating, we believe the goals of conformity and the needs of the public will be effectively met.

B. Horizon Years for Hot-Spot Analyses

1. What Is the Issue?

As discussed in the proposal, issue 9B of the Petition for Reconsideration requested that we require hot-spot analyses to examine the 20-year timeframe of the transportation plan. The existing transportation conformity rule does not clearly specify the horizon for hot-spot analyses.

2. What Comments Did We Receive on the Hot-Spot Analysis Issue?

One of the petitioners explained that their intention was to request that EPA require hot-spot reviews of transportation projects to be consistent with plan and TIP time horizons, and with the time horizons for emissions analyses required by our general conformity rule. To ensure that projects do not cause or worsen hot-spots during the timeframe of the transportation plan, the petitioner suggests that we require an analysis to be conducted for the year during which peak emissions from the action are expected.

3. What Is Our Policy on the Horizon for Hot-Spot Analysis?

As discussed in the proposal to this rule, the conformity rule allows flexibility for areas to decide through the interagency consultation process how to demonstrate that hot-spots are not caused or worsened in any area. Although most areas conduct hot-spot analyses for the year of project completion, many areas also examine other analysis years in the future. For example, some areas do analyze the last year of a currently conforming transportation plan, or another year within the timeframe of that plan, whichever year emissions are highest.

In response to comments on the proposal, we acknowledge the need to clarify that the hot-spot analysis must demonstrate that no hot-spots will be caused or worsened during the timeframe of the transportation plan. Nonetheless, we continue to believe that the specific year examined in the hot-spot analysis to make this demonstration should be decided through interagency consultation, as appropriate to the individual area, on a case-by-case basis. This is allowed by our conformity rule. We also reiterate that it is not necessary in all cases to model the last year of the transportation plan in a hot-spot analysis. Rather, the hot-spot analysis should examine the year in which peak emissions are expected, which may not necessarily be the last year of the conforming plan.

We believe that it would be useful for § 93.116 of the conformity rule to specify that a demonstration that local violations will not be caused or worsened should cover the timeframe of the transportation plan. We agree that without this clarification, it is difficult for implementers to decide which years to examine in order to demonstrate that the conformity requirement is satisfied. For example, some could read the existing requirement to mean that the demonstration regarding local violations must consider only the year of project completion, or in contrast that it consider all future years.

Because we need to propose a regulatory clarification before finalizing it, we are not making any changes to § 93.116 or § 93.123 in this rule. However, we will propose clarifying regulatory text on this issue in an upcoming proposal to amend the conformity rule in response to the March 2, 1999 court decision (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). That proposal would codify existing EPA guidance, issued in a May 14, 1999 memorandum from Gay MacGregor, Director of the Regional and State Programs Division in the Office of Transportation and Air Quality, to Regional Air Division Directors, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." Based on the court's decision that guidance outlines our approach for notifying and providing the public an opportunity to participate in the conformity process. It also provides criteria for transportation projects that may proceed during a conformity lapse.

In the interim, until this proposal is advanced, we believe our interpretation of § 93.116 and § 93.123 is consistent with our existing conformity rule, and that selection of the year of peak emissions should continue to be decided through the consultation process. We and DOT will implement the hot-spot requirements of the conformity rule as described in this preamble in all future conformity determinations.

C. Assumptions Regarding the Regional Distribution of Emissions

1. What Is the Issue?

In issue 12 of the Petition for Reconsideration, petitioners requested that we require metropolitan planning organizations (MPOs) to demonstrate that regional land use policies and proposed transportation plans achieve the same spatial distribution of motor vehicle emissions as was used in the state implementation plan (SIP) for demonstrating attainment. As discussed in the proposed rule, we had interpreted issue 12 of the Petition for Reconsideration to mean that the petitioners were in effect requesting that we should always require SIPs to establish subarea budgets that MPOs would have to conform to.

2. What Are the Conformity Rule's Requirements on the Use of Subarea Budgets?

Our existing conformity rule does not require states to establish subarea budgets in their SIPs. However, the conformity rule does support the development and use subarea budgets where states choose to do so, and it requires conformity to such budgets if they are established.

3. What Comments Did We Receive?

One commenter supported our current requirement that subarea budgets be established only at the state's

discretion. One of the petitioners commented that we had misconstrued this issue as presented in the Petition for Reconsideration.

The petitioner states that they did not mean to request that subarea budgets be established in all cases. Rather, the petitioner intended to request that we require MPOs to determine whether the emissions it projects for an area are going to be spatially distributed in the same way their distribution has been assumed in a SIP, whether or not there are subarea budgets. The petitioner also suggests that we develop screening criteria to help MPOs identify what is a significant magnitude of variance. In cases where the variance is significant, the petitioner believes we should require MPOs to perform an updated air quality analysis.

4. What Is Our Response to These Comments?

We do not believe that the Clean Air Act directs us to require analyses of spatial distribution or regional air quality analyses as a means for ensuring that transportation activities will not cause or contribute to new or increased violations, or delay timely attainment. The Clean Air Act simply requires a comparison with the SIP's estimates of emissions. We do not believe that the Clean Air Act ever intended MPOs to routinely perform regional air quality analyses, such as photochemical grid modeling, as part of a conformity determination.[1]

As a practical matter, we also note the SIP's assumptions about spatial distribution of emissions would not necessarily be clear to an MPO unless subarea budgets had been established. This is because not all SIPs are required to specifically document their assumptions about spatial distribution, and these assumptions are not always developed or presented in a form that is useful for other agencies, such as MPOs. Spatial distributions of emissions in SIPs are generally developed strictly to serve as an input to the SIP's dispersion modeling, and these emissions distributions are not designed or required to be used for any other purpose.

Again, neither the Clean Air Act nor the conformity rule requires states to develop subarea budgets. We have always interpreted the Clean Air Act to allow for a single budget for a nonattainment area for a given criteria pollutant or precursor, although states have the option to disaggregate and establish subarea budgets at their discretion (see our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 at 57 FR 13448, April 16, 1992).

To conclude, we do not believe that the Clean Air Act directs us to require the analysis suggested in the petitioner's comments as a means to ensuring that conformity is properly implemented. We also believe that the analysis suggested by petitioners would in effect require states to establish subarea budgets. Although EPA recognizes that there may be some areas that would benefit by conducting emissions analyses that rely on subarea budgets, we believe these areas will be identified through the interagency consultation process and that it is not necessary for us to issue regulations imposing these kinds of requirements.

D. Credit for Delayed TCMs

1. What Is the Issue?

As described in issue 15 of the Petition for Reconsideration, the petitioners believe that where a transportation control measure (TCM) has been delayed beyond the scheduled implementation date(s) in the SIP, an area's conformity determination should not be allowed to take emissions reduction credit for the TCM until after the TCM has actually been brought into service.

2. What Are the Conformity Rule's Requirements on the Timely Implementation of TCMs?

Under the current conformity rule, emission reduction credit may be taken at "such time as implementation has been assured" (see § 93.122(a)(2)). Once implementation has been assured, emissions analyses can take credit for the TCM in the analysis years during which the TCM would actually be in service (under the revised schedule). In the preamble discussion of the November 30, 1999 proposed rule, we clarified that an assurance of implementation would require at least the following: (a) Past obstacles to implementation of the TCM have been overcome; (b) state and local agencies are giving maximum priority to approval or funding of TCMs over other projects within their control; (c) funding for the TCM is identified and reasonably expected to be available; and (d) the legal or regulatory authority necessary to implement the TCM has been secured or appropriate commitments are in place.

3. What Comments Did EPA Receive on the Timely Implementation of TCMs, and What Is EPA's Response?

In response to our discussion on requirements for assuring the timely implementation of TCMs in the proposal, commenters seemed satisfied that EPA's existing requirements were appropriate. However, a petitioner suggested that we include the criteria listed in the November 1999 proposal as a regulatory definition for assurance of implementation.

EPA does not believe that it is necessary to amend the conformity rule to include such a regulatory definition. We believe that § 93.113 of the conformity rule as written is clear, and that this preamble is an appropriate place to elaborate on the rule. We note that a previous preamble discussion on the timely implementation of TCMs (58 FR 62197, November 24, 1993) has provided additional guidance on our implementation of the conformity rule to date. EPA and DOT have effectively used this 1993 preamble discussion to implement conformity, and we will continue to do so with the language in today's preamble.

V. How Would This Action Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs in order to include the criteria and procedures for determining conformity.

If we approved your area's conformity SIP and it includes a provision for a one-year grace period (§ 93.102(d)), that provision cannot be implemented. This has been the case ever since the November 4, 1997, court decision, which found such provisions to be inconsistent with the Clean Air Act. Future conformity SIP submissions may not include § 93.102(d).

If your area has submitted a conformity SIP to us that contains this provision (and we have not yet approved the conformity SIP), we will not approve such a provision as part of the SIP.

VI. Administrative Requirements and EPA's Response to Comments on Small Business and Environmental Justice Impacts of Rule

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant

[1] One state has opted to require dispersion modeling for conformity for its own purposes.

"regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This rule does not impose any new information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Analysis and EPA's Response to Comments on Impact of Grace Period Deletion on Small Entities

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions. EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities.

One commenter questioned our determination that the proposal to delete the grace period will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA). We found no such impact because the conformity rules only apply directly to Federal agencies and metropolitan planning organizations (MPOs), which by definition are designated only for metropolitan areas with population of at least 50,000 and thus do not meet the definition of small entities under the RFA. The commenter alleged that both the RFA, the courts, and our own implementing guidance require us to consider the indirect impacts of a proposed rule as well.

We do not agree with the commenter that the agency must consider the indirect impacts of a regulation under the RFA. EPA has consistently interpreted the RFA as requiring the agency only to assess the impacts of proposed rules on the small entities directly regulated by the proposed rule, and this position has been upheld by the courts. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule); *American Trucking Associations, Inc., et al.,* v. *EPA, et al.,* 175 F.3d 1027 (D.C. Cir. 1999) (court has consistently interpreted RFA to impose no obligation on agency to assess impacts on entities it does not regulate).

In addition, the commenter misreads EPA's guidance concerning consideration of indirect impacts. The sentence the commenter quotes from EPA's guidance directs agency staff to consider indirect impacts as part of any broader economic analysis conducted for the rule, such as a Regulatory Impact Analysis if one is conducted. However, the immediately preceding sentence of the guidance clarifies that if a rule is applicable only to large entities but indirectly impacts small entities, the agency can still certify no significant impact on small entities under the RFA. See Revised Interim Guidance for EPA Rulewriters: Regulatory Flexibility Act, March 29, 1999, p. 17. In any event, the document to which the commenter refers is only guidance; it does not establish any legally binding requirements.

It is also clear that the conformity rule applies directly only to federal agencies and MPOs and does not directly regulate small entities, such as the road builders represented by the commenter. These entities will only be adversely effected by the deletion of the grace period if DOT and the MPOs fail to develop a conforming transportation plan and program by the effective date of a nonattainment designation. In light of the advance warning areas will have of pending designations during the notice and comment period, and the delayed effective date EPA intends to provide for such designations, EPA believes that DOT and MPOs will be able to develop conforming plans and programs in a timely fashion.

Finally, the commenter's allegation is incorrect that the court which ordered EPA to delete the grace period determined that such a change would adversely effect small entities. The court in *Sierra Club* did find that the fact that an intervening governmental agency could alleviate any potential impact on private individuals was not sufficient to deprive such individuals of standing to challenge the grace period in court. However, the standard for showing harm sufficient to support legal standing to sue has no bearing on the impact necessary to mandate a finding of significant impacts under the RFA. The RFA only requires an agency to assess the impacts of a proposed rule on entities directly subject to the proposed rule. The analysis under the RFA need not cover any entities not directly subject to the proposed rule notwithstanding any indirect impacts that may result to other entities, regardless of whether any such impacts could support legal standing to challenge the rule.

EPA therefore concludes that it correctly interpreted the RFA and correctly found that the proposal to delete the grace period would not have a significant impact on a substantial number of small entities. Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Furthermore, this rule simply formalizes what the court has already decided as a legal matter, and which is already being implemented in practice.

This rule affects only those areas that are newly designated as nonattainment, and it simply applies conformity one year earlier than our previous rule had required. Therefore, this rule could require a limited number of areas to perform perhaps one additional transportation plan/TIP conformity determination each.

A 1992 DOT survey of metropolitan planning organizations (MPOs) found that most MPOs spend less than $50,000 per transportation plan/TIP conformity determination. The largest MPOs (serving a population over one million) spent up to $250,000. Thus, even if EPA were to designate 200 areas as nonattainment in one year and each one incurred the maximum costs, the expenditures would not exceed $100 million.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this regulatory change is required by statute. Furthermore, today's rule would not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Executive Orders on Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency

consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's Prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule, which is required by statute, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this rule is codifying in regulation the statutory interpretation by the court that is currently in effect. Consequently, this rule is required by statute, and by itself will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 12898 and EPA's Response to Comments on Environmental Justice Impacts of Grace Period Deletion

One commenter indicated that we failed to consider the disproportionate impact the deletion of the grace period would have on minority and low income groups as required by Executive Order 12898 on environmental justice. The commenter argued that we recently found that minorities and low income populations were disproportionately represented in nonattainment areas, and that we are required by the Executive Order to consider the economic impact on such populations of job loss resulting from deletion of the grace period.

We do not agree that Executive Order 12898 requires us to consider the economic impact of the grace period deletion on minorities and low income populations in this case. The Executive Order only requires agencies to assess adverse impacts on minorities and low income populations where the action the agency is taking will cause disproportionate human health or environmental impacts on such populations. In this case the regulatory action we are taking to delete the grace period from our conformity regulations will not have such impacts, since we are only formally correcting our regulations to reflect the action taken by the United States Court of Appeals in 1997. Any potential adverse impacts on minority and low income populations resulting from deletion of the grace period were caused by the court when it found the grace period to be illegal and overturned it. Since the court decision in 1997, the grace period has effectively been nullified and any areas newly redesignated to nonattainment have been subject to conformity requirements immediately upon the effective date of any redesignation. In addition, since this deletion is mandated by the court's ruling, we could not effectively address any potential adverse impacts from EPA action even if an environmental justice analysis disclosed any.

J. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceeding to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act.)

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: March 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 93.102 [Amended]

2. In § 93.102, paragraph (d) is removed.

[FR Doc. 00–8712 Filed 4–7–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6570–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting a petition submitted by Rhodia, Inc. (Rhodia), to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition originally submitted by Rhodia to delist the Filter Cake Sludge on a "generator specific" basis from the lists of hazardous waste.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in subtitle D landfills/surface impoundments. This exclusion applies to Filter Cake Sludge generated at Rhodia's Houston, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in subtitle D landfills/surface impoundments but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: April 10, 2000.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "F–99–TXDEL–RHODIA." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this document, contact James Harris, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–8302.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

The EPA is finalizing the decision to grant Rhodia's petition to have their Filter Cake Sludge excluded, or delisted, from the definition of a hazardous waste.

After evaluating the petition, EPA proposed, on December 10, 1999 to exclude Rhodia's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 64 FR 8278).

B. Why Is EPA Approving This Delisting?

Rhodia petitioned to exclude the Filter Cake Sludge treatment residues because it does not believe that the petitioned waste meets the criteria for which it was listed.

Rhodia also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See*, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

For reasons stated in both the proposal and this document, EPA believes that Rhodia' Filter Cake Sludge should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to Rhodia, located in Houston, Texas for its Filter Cake Sludge.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. The maximum annual volume of the Filter Cake Sludge is 1,200 cubic yards.

D. How Will Rhodia Manage the Waste if It Is Delisted?

Rhodia currently disposes of the petitioned waste (filter-cake Sludge) generated at its facility in off-site, RCRA permitted Treatment Storage or Disposal facilities which are not owned/operated by Rhodia. If the waste is delisted it will be disposed of in a subtitle "D" landfill.

E. When Is The Final Delisting Exclusion Effective?

This rule is effective April 10, 2000. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Rhodia transports the petitioned waste to or manages the waste in any State with delisting authorization, Rhodia must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the

Code of Federal Regulations (CFR). Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents), other than those for which the waste was listed, could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste Did Rhodia Petition EPA To Delist?

On November 4, 1997, Rhodia petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (Filter-Cake Sludge) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 260.3(c)(2)(i). Specifically, in its petition, Rhodia, Incorporated, located in Houston, Texas, requested that EPA grant an exclusion for 1,200 cubic yards per year of filter-cake sludge resulting from its treatment process which treats listed hazardous waste. The resulting waste is also listed, in accordance with § 261.3(c)(2)(i) (*i.e.*, the "derived from" rule).

The waste codes of the constituents of concern are EPA Hazardous Waste Numbers D001–D043, F001–F012, F019, F024, F025, F032, F034, F037–F039, K002–004, K006–K011, K013–K052, K060–K062, K064–K066, K069, K071, K073, K083–K088, K090–K091, K093–K118, K123–K126, K131–K133, K136, K141–K145, K147–K151, K156–K161, P001–P024, P026–P031, P033–P034, P036–P051, P054, P056–P060, P062–P078, P081–P082, P084–P085, P087–P089, P092–P116, P118–P123, P127–P128, P185, P188–P192, P194, P196–P199, P201–P205, U001–U012, U014–U039, U041–U053, U055–U064, U066–U099, U101–U103, U105–U138, U140–U174, U176–U194, U196–U197, U200–U211, U213–U223, U225–U228, U234–U240, U243–U244, U246–U249, U271, U277–U280, U328, U353, U359, U364–U367, U372–U373, U375–U379, U381–U396, U400–U404, U407, U409–U411.

B. How Much Waste Did Rhodia Propose To Delist?

Specifically, in its petition, Rhodia requested that EPA grant a standard exclusion for 1,200 cubic yards of Filter Cake Sludge generated per calender year.

C. How Did Rhodia Sample and Analyze the Waste Data in This Petition?

In support of its petition, which included the sampling and analysis plan, Rhodia analyzed the samples for the complete list of constituents included in 40 CFR part 264, appendix IX and the additional parameters for waste common to the petrochemical, oil and gas industries. The analyses was performed using EPA-approved methods. The analytical parameters and methods are provided in Table I.

TABLE I.—ANALYTICAL PARAMETERS AND METHODS

Parameter	Matrix	Method
GC/MS BNA, App IX List	Solid	SW846 Method 8270.
GC/MS VOA, App IX List	Solid	SW846 Method 8240.
Metals—App IX List	Solid	SW846 Methods 6010/7000 Series.
Herbicides—App IX List	Solid	SW846 Method 8150.
Pesticide/PCB, App IX List	Solid	SW846 Method 8080.
Organophosporus Pesticides, App IX List	Solid	SW846 Method 8140.
Sulfide	Solid	EPA 376.1.
Cyanide, Total	Solid	SW846, Method 9010.
Dioxin/Furan—App IX List	Solid	SW846 Method 8280.
TCLP—40 CFR 261.24 List, and Nickel	Solid	SW846 Method 1311.
Neutral Leach Cyanide	Solid	SW846 Method 1311 (Modified).
Oil & Grease	Solid	EPA 413.1.
Reactive Cyanide	Solid	SW 846 Chapter 7.3.3.2.
Reactive Sulfide	Solid	SW846 Chapter 7.3.4.2.
Flash Point Closed Cup	Solid	SW846 Method 1010.
pH	Solid	SW846 Method 9045.

Note: Rhodia performed TCLP analyses for specific constituents detected in the total analyses for a given sample.

IV. Public Comments Received on the Proposed Exclusion

Were Public Comments Submitted on the Proposed Rule?

No public comments were received.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

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

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act (NTTAA), the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so

would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the NTTAA requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIV. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one State.

List of Subjects 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 17, 2000.

Carl E. Edlund,

P.E. Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. In Tables 1, 2, and 3 of appendix IX of part 261, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * * *
Rhodia	Houston,Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. D001–D43, F001–F012, F019, F024, F025, F032, F034, F037–F039) generated at Rhodia. Rhodia must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (mg/l). For the filter-cake constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. (A) Filter-cake Sludge (i) Inorganic Constituents: Antimony-1.15; Arsenic-1.40; Barium-21.00; Beryllium-1.22; Cadmium-0.11; Cobalt-189.00; Copper-90.00; Chromium-0.60; Lead-0.75; Mercury-0.025; Nickel-9.00; Selenium-4.50; Silver-0.14; Thallium-0.20; Vanadium-1.60; Zinc-4.30 (ii) Organic Constituents: Chlorobenzene-Non Detect; Carbon Tetrachloride-Non Detect; Acetone-360; Chloroform-0.9 (2) *Waste Holding and Handling:* Rhodia must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Filter-cake Sludge until the verification testing described in Condition (3)(A), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Filter-cake Sludge do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. (3) *Verification Testing Requirements:* Rhodia must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Rhodia may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Rhodia must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) *Initial Verification Testing:* At quarterly intervals for one year after the final exclusion is granted, Rhodia must collect and analyze composites of the filter-cake sludge. From Paragraph 1 TCLP must be run on all waste and any constituents for which total concentrations have been identified. Rhodia must conduct a multiple pH leaching procedure on samples collected during the quarterly intervals. Rhodia must perform the TCLP procedure using distilled water and three different pH extraction fluids to simulate disposal under three conditions. Simulate an acidic landfill environment, basic landfill environment and a landfill environment similar to the pH of the waste. Rhodia must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the generation of the waste. (B) *Subsequent Verification Testing:* Following termination of the quarterly testing, Rhodia must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion). (4) *Changes in Operating Conditions:* If Rhodia significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, Rhodia must notify the EPA in writing and may no longer handle the waste generated from the new process or no longer discharge as nonhazardous until the waste meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* Rhodia must submit the information described below. If Rhodia fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Rhodia must: (A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: (i) Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. (ii) As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. (iii) If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Rhodia possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Rhodia must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Rhodia fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Rhodia must do following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Rhodia	Houston, Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. K002–004, K006-K011, K013–K052, K060–K062, K064–K066, K069, K071, K073, K083–K088, K090–K091, K093–K118, K123–K126, K131–K133, K136, K141–K145, K147–K151, K156–K161) generated at Rhodia. Rhodia must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.
*	*	* * * * *

TABLE 3.—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
*	*	* * * * *
Rhodia	Houston, Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. P001–P024, P026-P031, P033–P034, P036–P051, P054, P056-P060, P062–P078, P081–P082, P084–P085, P087–P089, P092–P116, P118–P123, P127-P128, P185, P188–P192, P194, P196–P199, P201–P205, U001–U012, U014–U039, U041-U053, U055–U064, U066–U099, U101–U103, U105–U138, U140–U174, U176–U194, U196-U197, U200–U211, U213–U223, U225–U228, U234–U240, U243–U244, U246–U249, U271, U277–U280, U328, U353, U359, U364–U367, U372–U373, U375–U379, U381–U396, U400-U404, U407, U409–U411) generated at Rhodia. Rhodia must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.
*	*	* * * * *

[FR Doc. 00–8152 Filed 4–7–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6572–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office announces the deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the New Jersey Department of Environmental Protection (NJDEP) have determined that all appropriate response actions under CERCLA have been implemented at the Site to protect human health and the environment.

DATES: This "direct final" action will be effective on June 9, 2000 unless EPA receives significant adverse or critical comments by May 10, 2000. If written significant comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to: Diego M. Garcia, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor New York, New York 10007–1866.

Comprehensive information on this Site is available for viewing at the Upper Deerfield Township Sanitary Landfill Superfund Site information repositories at the following locations:

Upper Deerfield Municipal Building, Administrative Office, Building 1325, State Highway 77, Seabrook, New Jersey 08302, (609) 329–4000

and

U.S. EPA Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, Hours: 9:00 AM to 5:00 PM, Monday through Friday. Contact: Superfund Records Center (212) 637–4308.

FOR FURTHER INFORMATION CONTACT: Diego M. Garcia, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4947, by FAX at (212) 637–4393 or via e-mail at garcia.diego@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The United States Environmental Protection Agency (EPA) Region II announces the deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site (the "Site"), which is located in Upper Deerfield Township, Cumberland County, New Jersey, from the National Priorities List (NPL). The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of these sites. Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site or portions of a site deleted from the NPL remains eligible for Fund-financed remedial actions if future conditions at the site warrant such action.

EPA will accept comments concerning this document until May 10, 2000.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Upper Deerfield Township Sanitary Landfill Superfund Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

As described in § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA, in consultation with NJDEP, shall consider whether any of the following have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if future Site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Further, deletion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

The following procedures are being used for the intended deletion of this Site: (1) EPA Region II issued a Record of Decision (ROD) on September 30, 1991, which found that the release poses no significant threat to public health or the environment and therefore, taking remedial measures is not appropriate; (2) EPA Region II issued a Final Close-Out Report dated September 27, 1993; (3) NJDEP has concurred with the deletion decision in a letter dated March 4, 1998; (4) a five-year review was completed in September 1999, and determined that the remedy continues to be protective of public health and the environment; (5) a notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and (6) EPA Region II recommends deletion and has made all relevant documents available for public review in the regional office and local Site information repositories.

EPA is requesting public comments on the Direct Final Action to Delete. The NCP provides that EPA shall not delete a site from the NPL until the Public has been afforded an opportunity to comment on the proposed deletion.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites.

EPA Region II will accept and evaluate public comments before making a final decision to delete. If appropriate, the Agency will prepare a Responsiveness Summary to address

any significant public comments received.

If EPA does not receive significant adverse or critical comments and/or any significant new data submitted during the comment period, the Site will be deleted from the NPL effective June 9, 2000.

IV. Basis for Intended Site Deletion

The Upper Deerfield Sanitary Landfill Superfund Site is an inactive, 14-acre landfill located on a 22.72-acre tract of land in the rural farming community of Upper Deerfield Township, Cumberland County, New Jersey. The Site is located approximately two and one-half miles east-southeast of Seabrook, New Jersey and lies between Woodruff Husted Station Road (County Route 687) to the east and Centerton Road (County Route 553) to the west.

The 14-acre site was operated as a municipal landfill licensed to accept household waste until it closed in 1983. In response to complaints about water quality from residents using private ground water wells, ground water investigations were conducted in 1980. Volatile organic compounds (VOCs) and mercury were found in area wells. In 1983, NJDEP and the County advised residents to discontinue using their wells, and the Township began supplying the affected residents with bottled water. The Site was included on the NPL on September 1, 1983.

In 1986, utilizing funds provided by the State of New Jersey, the Township installed a public water supply well and distribution system to provide potable water to residents in the area. EPA conducted a remedial investigation at the Site from September 1987 through September 1990.

The results showed that the ground water and soil contamination associated with the Site no longer posed a health threat under current or likely future land use conditions. On September 30, 1991, EPA issued a ROD which called for no further action with a program to monitor the air and ground water.

In September 1994, EPA and Upper Deerfield Township signed an Administrative Order on Consent (ACO) which requires the Township to monitor the ground water for 30 years pursuant to the 1991 ROD. The ground water monitoring program began in December 1995. To date, ground water samples taken at the landfill, have not shown elevated levels of contaminants of concern. Air samples at the landfill and surrounding areas have not detected any airborne contaminants. Since airborne contaminants were not detected, the air monitoring program has been discontinued.

A five-year review was completed in September 1999, and found the remedy continues to be protective of public health and the environment. In accordance with § 300.430(f)(4)(ii) of the NCP, this site is subject to a review of the remedies selected under CERCLA every five years. The next five-year review will be conducted on or before September 2004.

All the completion requirements for this Site have been met as described in the Final Close-Out Report dated September 23, 1993. EPA and NJDEP have found that the release poses no significant threat to public health and the environment and, therefore, taking remedial measures is not appropriate. Documents supporting this action are available in the deletion docket.

V. Action

EPA and the NJDEP have found that the release poses no significant threat to public health and the environment and, therefore, taking remedial measures is not appropriate. Therefore, EPA is deleting the Site from the NPL.

This action will be effective on June 9, 2000. However, if EPA receives significant adverse or critical comments by May 10, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: March 15, 2000.

William J. Muszynki,

Acting Regional Administrator, Region 2.

Part 300, title 40 of chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for Upper Deerfield Township Sanit. Landfill, Upper Deerfield Township, New Jersey.

[FR Doc. 00–8524 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 98–137, ASD File No. 98–91; FCC 99–397]

1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document we address proposals set forth in our Notice of Proposed Rulemaking to reform our depreciation prescription process. With this Order, we greatly streamline the depreciation requirements for price cap incumbent local exchange carriers (LECs). We adopt proposals to permit summary filings, eliminate the prescription of depreciation rates for certain incumbent LECs, expand the prescribed range for the digital switching plant account, and eliminate the theoretical reserve study requirement for mid-sized incumbent LECs. These measures will minimize the regulatory burden on incumbent LECs and will provide them with greater flexibility to adjust their depreciation rates while allowing the Commission to maintain adequate oversight in order to promote competition and protect consumer.

DATES: These rules contain information collections that have not been approved by the Office of Management and Budget. The Commission will publish a document announcing the effective date of this rule. Written comments by the public on the new and/or modified information collections are due June 9, 2000.

ADDRESSES: Federal Communications Commission, 445—12th Street, SW., TW–A325, Washington, D.C. 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0800 or Andy Mulitz, Chief, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0827. For additional information concerning the information collections contained in this document,

contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Report and Order* in CC Docket No. 98–137, ASD File No. 98–81, adopted on December 17, 1999 and released on December 30, 1999, is available for inspection and copying during normal business hours in the FCC Reference Information Center (RIC), 445 12th Street, SW, TW–A325, Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This R&O contains either a new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 9, 2000. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0168.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Form No.: N/A.

Type of Review: Revised Collection.

Respondents: Business or other for-profit.

Title	Number of respondents	Est. time per respondent	Total annual burden
Section 43.43	11	5970	60030
Waiver of Depreciation Process	5	100	500

Total Annual Burden: 60,030 Hours.

Cost to Respondents: $0.

Needs and Uses: The Commission streamlined its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for certain incumbent LECs, expanding the prescribed range for the digital switching plant account, and eliminating the theoretical reserve study requirement for mid-sized incumbent LECs. The Commission also established a waiver process whereby price cap incumbent LECs can free themselves of depreciation regulation. Synopsis of *Report and Order*:

I. Background

The Commission prescribes depreciation factors for price cap incumbent LECs whose revenues exceed an indexed revenue threshold, currently set at $112 million in annual revenue. These carriers currently have investments in telephone plant totaling $288 billion and an accumulated depreciation balance totaling $146 billion. Depreciation constitutes 28 percent of incumbent LECs' total operating expenses, and is their largest single expense.

Over the years, the Commission has taken steps to streamline the depreciation requirements to keep pace with changes in communications technology and legal requirements. When incumbent LECs were regulated under cost-of-service (or rate-of-return) regulation, regulation and oversight of the depreciation process was a critical function because prices for incumbent LEC services were set based on costs, including depreciation expenses. Under this regulatory scheme, each carrier seeking to change its depreciation rates was required to submit a depreciation rate study that was reviewed both by the Commission staff and the representatives of the state regulatory authorities. This depreciation prescription process required carriers to submit extensive data for each plant category to support the projection life, survivor curve, and future net salvage estimates underlying their proposed depreciation rates. These data requirements often necessitated voluminous submissions, with up to 25 pages of analysis for each of 34 plant categories for each jurisdiction.

In 1980, the Commission departed from its previous practice of relying largely on historical experience to project equipment lives and began to rely on analysis of company plans, technological developments, and other future-oriented studies. In 1993, the Commission issued the *Depreciation Simplification Order* (See 58 FR 00530 January 6, 1993) that adopted a simplified depreciation prescription process for AT&T and incumbent LECs. With regard to incumbent LECs, that Order provided for the establishment of ranges for the life and salvage factors that carriers could use to compute their depreciation rates. Consequently, incumbent LECs that proposed life and salvage factors within the Commission-approved ranges no longer needed to file detailed cost support for those rates. In contrast, a carrier that chose to propose depreciation factors outside of the ranges would have to provide cost support to justify it. Today, incumbent LECs remain subject to the Commission's rules under §§ 32.2000(g) and 43.43 for purposes of establishing depreciation rates; however, the typical carrier's filing requirements have been reduced by 75 percent when its depreciation proposals are within the prescribed ranges.

The recent *Depreciation Notice* (63 FR 56900 September 23, 1998) sought comment on proposals that would further minimize the burden on incumbent LECs in the depreciation prescription process. We address the proposals set forth in the *Depreciation Notice* and take further steps to streamline the depreciation prescription process for incumbent LECs. In this action, we take the following actions to further simplify our depreciation prescription process. Filing Requirements in the *Depreciation Notice*, we sought comment on a proposal that would reduce price cap incumbent LECs' filing requirements to four summary exhibits, and the electronic data files used to generate them, provided carriers select depreciation factors from within the specified ranges for all accounts and certify that their selections are consistent with their operations. The four summary exhibits are a comparison of existing and proposed depreciation

rates; a comparison of existing and proposed annual depreciation expenses; a book and theoretical reserve summary; and the underlying depreciation factors. We conclude that we must balance the carriers' needs for simplification with the needs of this Commission, ratepayers, state regulatory missions, and competitors for sufficient information to assess claims the incumbent LECs' may make for regulatory relief. As noted, depreciation expense constitutes a large portion of a carrier's expenses and is significant in determining cost recovery. While we believe we can reduce the amount of information a carrier must file, we find certain basic information is still needed to allow us to adequately monitor a carrier's depreciation practices and amounts associated with these practices. The information that carriers will be required to file in the four summary exhibits, along with the underlying data used to generate them, will provide the depreciation factors (*i.e.*, life, salvage, curve shape, depreciation reserve) required to verify the calculation of the carriers' depreciation rates, estimate the changes in annual depreciation expenses, and monitor the adequacy of the depreciation reserve. This information is critical because it provides the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. We conclude that the proposal in the *Depreciation Notice* strikes an appropriate balance. It will minimize the burden on the carriers, since carriers will not be required to prepare extensive supporting documents for public filing, while providing the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. Thus, we will permit carriers that select depreciation factors from within the specified ranges for all accounts, and certify that their selections are consistent with their operations, to file four summary exhibits along with electronic data files used to generate the summary exhibits as described.

Reduction of Need for Prescription Orders

In the *Depreciation Notice* we proposed that, if a carrier selects depreciation factors from within the ranges for all of its accounts, the carrier's new depreciation rates could go into effect without a prescription order. Based on our review of the record in this proceeding, we will permit carriers to submit streamlined exhibits if they request depreciation factors for all accounts that are within the prescribed ranges. Carriers that request depreciation factors outside the ranges prescribed by the Commission must continue to submit exhibits for each account. In either case, however, the information filed by the incumbent LEC would contain life, salvage, reserve, rate, and expense information, which will be maintained in public files. Also, much of this data will be maintained in the ARMIS database, and therefore, will be readily available to the public via the Internet. We conclude, therefore, that we can eliminate prescriptions in the case where carriers select depreciation factors from within the prescribed ranges for all of its accounts, thereby further reducing the burden on these carriers, and still maintaining an adequate public record that all interested parties will be able to review.

Equipment Life Ranges

We proposed to expand the range of lives for digital switching equipment from a range of 16 to 18 years to 13 to 18 years. Based on our review of the record, we are persuaded that the lower limit of the life range for digital switching should be shortened from the current 16-year minimum to 12 years. We find that this reduction is justified by incumbent LEC accounting data that shows an upward trend in retirements of digital switching equipment in recent years. The increasing retirements are due, in part, to the modular nature of modern digital switches, which allows the incumbent LECs to retire portions of a switch on an interim basis as technology improves. Incumbent LECs also advocate shorter minimum lives for accounts other than digital switching and recommend lives projected by Technology Futures, Inc. (TFI). Based on our review, and given the significant uncertainty that even TFI acknowledges exists in forecasting plant replacement over the next fifteen years, we do not find that the carriers that advocate adoption of TFI's much shorter projection lives have met their burden. Depreciation reserves are at 51 percent, an all-time high, and have increased for each of the past five years. There is no evidence that the large wave of plant replacements forecast by TFI, which should result in increased retirements, has begun or is about to begin. If the carriers do begin to retire plant more rapidly, our depreciation prescription process is flexible enough to allow them shorter lives and faster depreciation. We conclude, therefore, that the TFI study fails to establish convincingly that current projection lives are inadequate.

Salvage and Cost of Removal

In order to calculate net salvage, carriers must estimate both gross salvage and cost of removal. Given the speculative nature of these estimates and the burdens associated with their calculation, the *Depreciation Notice* tentatively concluded that the prescription of net salvage no longer serves a regulatory purpose and that eliminating that factor from the formula would significantly reduce the regulatory burden of the depreciation prescription process. Accordingly, we proposed to eliminate the future net salvage factor from the depreciation formula and to record net salvage as a current expense in the period incurred. Alternatively, we proposed making the elimination of net salvage from the depreciation formula optional, and allowing each incumbent LEC the option to treat net salvage as either a current expense or a component of depreciation. The Financial Accounting and Standards Board (FASB) is currently conducting a proceeding that could change how firms must account for net salvage on their financial books. In light of the pending action by the FASB, we conclude that it is appropriate to defer action on this issue.

Reporting Requirements for Mid-Sized LECs

In the *Depreciation Notice*, we proposed that mid-sized incumbent LECs no longer be required to file annual theoretical reserve studies. Because the Commission would continue to receive theoretical reserve studies from the largest incumbent LECs, which serve approximately 90 percent of all access lines, this proposal would relieve these mid-sized companies of this regulatory burden without seriously encumbering the Commission's ability to monitor and evaluate the adequacy of the industry's reserves. Although a carrier's theoretical reserve studies allow us to monitor and evaluate the adequacy of a carrier's depreciation reserve, we recognize the burden these studies impose on mid-sized incumbent LECs. On balance, we believe that the benefits of streamlining depreciation reporting for mid-sized LECs outweighs the risks. We note that, if necessary, we can request a mid-sized carrier to provide a theoretical reserve study. Further, we note that incumbent LECs with individual annual operating revenues below the indexed revenue threshold continue to be exempt from the Commission's depreciation prescription process.

Confidentiality

The Commission's existing confidentiality procedures are contained in 47 CFR 0.457 and 0.459 of the Commission's rules. We sought comment on whether these rules are

adequate or whether additional safeguards need to be adopted to protect information that carriers regard as confidential. We find no reason to alter the policies we have in place to protect the confidentiality of carrier information.

Waivers

In the *Depreciation Notice*, we noted that even under price caps, depreciation had a potentially significant impact on a carrier's price cap indexes and its rates for some non-price cap services. We invited comment on ways that we might eliminate our need for depreciation prescription. In addition, the USTA forbearance petition raised issues concerning conditions under which the depreciation process might not be necessary. Based on our review, we believe that it would be appropriate to grant a waiver of our depreciation prescription process for certain price cap incumbent LECs in certain instances. Specifically, we find that such a waiver may be approved when an incumbent LEC, voluntarily, in conjunction with its request for waiver: (1) Adjusts the net book costs on its regulatory books to the level currently reflected in its financial books by a below-the-line write-off; (2) uses the same depreciation factors and rates for both regulatory and financial accounting purposes; (3) foregoes the opportunity to seek recovery of the write-off through a low-end adjustment, an exogenous adjustment, or an above-cap filing; and (4) agrees to submit information concerning its depreciation accounts, including forecast additions and retirements for major network accounts and replacement plans for digital central offices. Finally, the waiver request must comply with § 1.3 of the Commission's rules. We will consider alternative proposals by carriers seeking a waiver of our depreciation requirements. Such alternative proposals, however, must provide the same protections to guard against adverse impacts on consumers and competition as the conditions adopted in this Order provide.

The first and second conditions of the waiver process we establish in this Order require that carriers seeking a waiver of our depreciation prescription process adjust their regulatory net book costs to their financial net book costs and use the same depreciation factors and rates for both regulatory and financial accounting purposes. The first condition addresses the disparity that exists between the largest incumbent LECs' financial and regulatory books. In the early 1990's many of the largest incumbent LECs wrote off billions of dollars from their financial books through adjustments to their depreciation reserves. Because they did not make comparable write-offs on their regulatory books, there are significant differences in depreciation reserves between their financial and regulatory books. The first condition requires that the incumbent LEC eliminate this disparity by increasing the depreciation reserves on its regulatory books by a below-the-line write-off. The second condition then requires that carriers use the same depreciation factors and rates for both regulatory and financial purposes. Using the same factors and rates will ensure that established accounting procedures are being followed. These conditions are important because they provide assurance that carriers do not engage in a practice that would disadvantage consumers and competition by using high financial depreciation rates with high regulatory net book costs or by applying inappropriate depreciation rates to regulatory plant accounts.

The third condition requires that carriers obtaining a waiver forego the opportunity to recover any portion of the adjustment that results from conforming their regulatory net book costs to their financial net book costs (*i.e.*, through a below-the-line write-off). As a precondition to obtaining a waiver of the depreciation prescription process, a carrier would have to voluntarily forego its opportunity to recover any portion of the one-time adjustment to its regulatory books through a low-end adjustment, an exogenous adjustment or an above-cap filing. These are all mechanisms through which a price cap incumbent LEC can increase its prices by passing costs through to ratepayers. This third condition assures that a waiver from the depreciation prescription rules would not lead to unjust and unreasonable rates that would result from the inappropriate use of recovery mechanisms. Foregoing recovery of any portion of the write-off is necessary because the depreciation prescription process is the primary way in which we evaluate such claims for recovery. If, as a condition of obtaining a waiver, an incumbent LEC voluntarily foregoes any opportunity to assert such claims in connection with this adjustment to its regulatory net book costs, then our concerns would be mitigated and we could conclude that a waiver of our rules is consistent with the public interest.

These first three conditions are imposed in order to guard against adverse impacts on consumers and competition. Without these conditions, the largest incumbent LECs could use their high financial depreciation rates with their high regulatory net book costs, thereby drastically increasing their annual depreciation expenses. Large increases in depreciation expenses on the carrier's regulatory books would significantly reduce carrier's earnings, which in the case of most all the largest incumbent LECs, would be of such magnitude as to lower rates of return below 10.25%. This in turn could trigger a low-end adjustment, or could lead to carriers seeking recovery through exogenous cost treatment or above-cap filings. These recovery mechanisms, if granted, could enable incumbent LECs to increase prices they charge for access services and in rates they charge for unbundled network elements (UNEs) and interconnection. Increases in access service prices, which could be substantial, would be imposed on purchasers of access and passed on to their customers. The harmful impact that increased charges could have on competition is also substantial. State regulatory commissions have set rates for interconnection and UNEs, and in many instances, have based the rates on Commission-prescribed depreciation factors. Incumbent LECs, acting as wholesale providers of critical facilities to their competitors, could independently establish depreciation rates that could result in unreasonably high interconnection and UNE rates, which competitors would be compelled to pay in order to provide competing local exchange service.

In addition, allowing the largest incumbent LECs to select their own financial depreciation rates for regulatory purposes could have serious consequences for the universal service process. All the largest price cap incumbent LECs are classified as non-rural for universal service purposes. Under the rules we adopted in the recent federal high-cost support mechanism proceedings, each of the non-rural carriers' high cost support is the larger of: (1) An amount determined under our previous USF calculation method, i.e., by basing the amount of support on the relationship of the carrier's average cost per loop and the nationwide average cost per loop or (2) an amount determined under the new synthesis model. Our current depreciation prescription process is critical in the calculation of high cost support amounts determined under method (1) because it ensures that the depreciation expense component of the carriers' average costs per loop are reasonable. If we were to allow incumbent LECs to choose their own depreciation factors without review, we

could no longer ensure that the depreciation expense or the average cost per loop were reasonable. If these carriers were to use their financial depreciation factors for regulatory purposes, they would report major increases in their average costs per loop. This would increase substantially their high cost support under method (1). Under this method, however, because high cost support is subject to a cap, increases in the largest incumbent LECs' high cost support would not increase the fund. Instead, it would lead to substantial reductions in the high cost support for other, primarily rural, carriers, many of which rely to a great extent on high cost support to keep their local rates affordable.

In light of the significantly harmful impact that unrestricted changes in depreciation expenses could have on consumers and competition, we find the public interest is protected only if safeguards are in place that will negate such potential harm. We believe the first three conditions provide the appropriate safeguards and will ensure that carriers do not unreasonably increase depreciation expenses as a result of granting flexibility to establish their own depreciation rates.

The fourth condition requires that carriers who obtain a waiver of our depreciation process submit certain information about network retirement patterns and modernization plans related to their plant accounts so that we can maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts. This condition seeks to ensure that the Commission has the necessary data to periodically update depreciation factors (*i.e.*, life, salvage, curve shape, depreciation reserve) and to address issues in areas where reliance on the carriers' financial depreciation rates may be inconsistent with other regulatory policy goals. Maintaining appropriate depreciation ranges for the major plant accounts will continue to be critical even though some carriers may be granted relief from the Commission's prescribed depreciation process. This is especially true given the Commission's reliance on the prescribed depreciation ranges in the use of its cost models for universal service high cost support and UNE/interconnection prices.

As discussed, calculation of high cost support under method (2) uses the synthesis model. In this model, the Commission determined that it would rely on the weighted average of the prescribed lives and salvage percentages. If we were to discontinue depreciation prescription for most carriers, these weighted average factors would become less representative of the industry as a whole. In such a circumstance, in order to have representative depreciation factors, we would likely have to rely on the Commission's prescribed depreciation ranges. In order to do this successfully, however, we would have to require that all the major carriers continue to provide the data necessary to keep the ranges up-to-date.

Further, in the *Local Competition Proceeding*, (61 FR 45476 August 29, 1996) the Commission required the use of "economic depreciation" in calculating rates for interconnection and UNEs, but did not elaborate on how economic depreciation should be calculated. Based on our review to date, twenty-four states commissions have required incumbent LECs to use FCC-prescribed projection lives and salvage factors, or similar state-prescribed factors, to calculate their rates for UNEs. We are concerned that forbearance from depreciation regulation by the Commission might deprive state regulatory commissions of valuable information that they may want or need in setting rates for interconnection and UNEs, and might enable incumbent LECs to raise arbitrarily the rates for essential inputs that competitors must purchase from the incumbent LECs. This could have an adverse impact on the development of local competition.

Thus, in order to prevent any inappropriate and undesirable fluctuations in high cost support or the rates for interconnection and UNEs due to changes in depreciation rates caused by carriers receiving a waiver, we will continue to maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts. These ranges can be relied upon by federal and state regulatory commissions for determining the appropriate depreciation factors to use in establishing high cost support and interconnection and UNE prices. The information that carriers will be required to submit include: forecast additions and retirements for major network accounts; replacement plans for digital central offices; and information concerning relative investments in fiber and copper cable. This condition will assure that any increase in depreciation expense will not have a harmful effect on consumers or competition in rates calculated using reported costs or forward-looking cost models.

The four conditions outlined are intended to mitigate our concerns about the adverse impacts that could occur when carriers are given the freedom to select their own depreciation lives and procedures. The depreciation prescription process is our primary method of assessing the validity of the incumbent LECs' claims for reserve deficiencies and it would not be in the public interest to waive our depreciation rules with the issue of billions of dollars in potential claims unresolved. By establishing conditions pursuant to which a waiver from the depreciation prescription process would be granted, we are giving carriers the freedom from depreciation regulation that they seek. In exchange for that freedom, however, they would need to relinquish portions of the regulatory safety net that has protected them in the past.

USTA Petition for Forbearance

On September 21, 1998, USTA filed a petition for forbearance on behalf of the price cap incumbent LECs and requested that the Commission forbear from imposing §§ 32.2000(g) and 43.43 of the Commission's rules, and refrain from conducting depreciation prescription proceedings under section 220(b) of the Act. The USTA petition is filed under section 10 of the Act. We deny the USTA's petition. We find that USTA did not meet the requirements of Section 10 and that: Our depreciation prescription process is necessary to ensure just and reasonable charges; continuation of our depreciation prescription process is necessary for the protection of consumers; and that forbearance is not consistent with the public interest and the promotion of competition as it is likely to have an adverse effect on competition by raising the input prices that competitors must pay to provide local exchange service. We therefore find that none of the three prongs of the section 10 forbearance test is met. We thus deny USTA's petition for forbearance from the prescription of depreciation prescription.

IV. Procedural Issues

A. Regulatory Flexibility Act

Final Regulatory Flexibility Certification—Report and Order in CC Docket No. 98–81, RM–9341.

The Regulatory Flexibility Act (RFA), 5 USC 601 *et seq.*, amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). In the *NPRM*, 1998 Biennial Regulatory Review—Review of

Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98–137, *Notice of Proposed Rulemaking (NPRM)*, the Commission certified that the Regulatory Flexibility Act did not apply to this rulemaking because none of the proposed changes to our depreciation prescription process would have a significant economic impact on a substantial number of small entities. Pursuant to longstanding rules, the proposed changes would apply only to incumbent LECs with annual operating revenues exceeding the indexed revenue threshold. No comments were received concerning the proposed certification.

B. Paperwork Reduction Act

26. *Final Paperwork Reduction Act Analysis.*

C. Authority

This decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and has been approved in accordance with the provisions of that Act. The Office of Management and Budget (OMB) approved the proposed requirements under OMB control number 3060–0168, which expires December 31, 2001. The Report and Order contains new or modified information collections which are subject to the Paperwork Reduction Act of 1995.

D. Ordering Clauses

Pursuant to Sections 1, 2, 4, 11, 201–205, and 218–220 of the Communications Act of 1934, as amended, 47 USC 151, 152, 154, 161, 201–205, and 218–220, part 43 of the Commission's rules, 47 CFR part 43, is *Amended* as shown. Pursuant to Sections 1–4, 201–205, 220 and 303(r) of the Communications Act of 1934, as amended, 47 USC 151–154, 201–205, 220 and 303(r) that the *Report and Order is Adopted*. These rules contain information collections that have not been approved by OMB. The Commission will publish a document announcing the effective date of this rule.

Pursuant to Sections 1, 4, 10, and 220 of the Communications Act of 1934, as amended, 47 USC 151, 154, 160, and 220 that the Petition for Forbearance from Depreciation Regulation of Price Cap Local Exchange Carriers filed by the United States Telephone Association is hereby denied. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 43

Reports of Communication Common Carriers and Certain Affiliates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 43 of Title 47 of the CFR is amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154: Telecommunications Act 0f 1996, Public Law 104–104, sections 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. In § 43.43 paragraph (c) and (e) are revised to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

* * * * *

(c) Except as specified in paragraphs (c)(1) and (c)(3) of this section, when the change in the depreciation rate proposed for any class or subclass of plant (other than one occasioned solely by a shift in the relative investment in the several subclasses of the class of plant) amounts to twenty percent (20%) or more of the rate currently applied thereto, or when the proposed change will produce an increase or decrease of one percent (1%) or more of the aggregate depreciation charges for all depreciable plant (based on the amounts determined in compliance with paragraph (b)(2) of this section) the carrier shall supplement the data required by paragraph (b) of this section) with copies of the underlying studies, including calculations and charts, developed by the carrier to support service-life and net-salvage estimates. If a carrier must submit data of a repetitive nature to comply with this requirement, the carrier need only submit a fully illustrative portion thereof.

(1) A Local Exchange Carrier regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, is not required to submit the supplemental information described in paragraph (c) introductory text of this section for a specific account if: The carrier's currently prescribed depreciation rate for the specific accounts derived from basic factors that fall within the basic factor ranges established for that same account; and the carrier's proposed depreciation rate for the specific account would also be derived from basic factors that fall within the basic factor ranges for the same account.

(2) Local Exchange Carriers that are regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, and have selected basic factors that fall within the basic factor ranges for all accounts are exempt from paragraphs (b)(3), (b)(4), and (c) introductory text of this section. They shall instead comply with paragraphs (b)(1), (b)(2) and (b)(5) of this section and provide a book and theoretical reserve summary and a summary of basic factors underlying proposed rates by account.

(3) Interexchange carriers regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, are exempted from submitting the supplemental information as described in paragraph (c) introductory text of this section. They shall instead submit: Generation data, a summary of basic factors underlying proposed depreciation rates by account and a short narrative supporting those basic factors, including company plans of forecasted retirements and additions, recent annual retirements, salvage and cost of removal.

* * * * *

(e) Unless otherwise directed or approved by the Commission, the following shall be observed: Proposed changes in depreciation rates shall be filed at least ninety (90) days prior to the last day of the month with respect to which the revised rates are first to be applied in the accounts (*e.g.*, if the new rates are to be first applied in the depreciation accounts for September, they must be filed on or before July 1). Such rates may be made retroactive to a date not prior to the beginning of the year in which the filing is made: *Provided however*, that in no event shall a carrier for which the Commission has prescribed depreciation rates make any changes in such rates unless the changes are prescribed by the Commission. Carriers who select basic factors that fall within the basic factor ranges for all accounts are exempt from depreciation rate prescription by the Commission.

* * * * *

[FR Doc. 00–8639 Filed 4–7–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 69
Monday, April 10, 2000

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 27791; Notice No. 96–3]

RIN 2120–AF69

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: The FAA is withdrawing the ANPRM, published on April 16, 1996, that proposed to amend provisions of the regulations on passenger facility charges (PFCs). These provisions address the collection, handling, and remittance of PFCs.

FOR FURTHER INFORMATION CONTACT: Joe Hebert, Passenger Facility Charge Branch (APP–530), Room 619, Airports Financial Assistance Division, Office of Airports Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–8902.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1994, the Airport Transportation Association of America (ATA) petitioned for a rule change to 14 CFR 158.53(a) to extend the handling fee of $0.12 per each PFC remitted to a public agency, for an additional 3 years. Under the terms of § 158.53, the handling fee dropped to $0.08 per PFC remitted on June 28, 1994. The ATA also proposed that after the third year, they would file comments to determine if the entire airline industry had fully recovered the cost necessary to maintain the PFC collection system. Further, the ATA requested that § 158.53(a) be amended to allow air carriers to retain a handling fee for each refunded PFC. On June 24, 1994, the FAA published a summary of the ATA's petition in the **Federal Register** (59 FR 32668). Air carriers and public agencies were asked to provide specific data to the FAA, so that the agency could determine an adequate rate of airline compensation. The FAA received 12 comments in response to this notice, but determined that these comments did not constitute sufficient information to make a decision.

As a result, the FAA issued an ANPRM (61 FR 16678) on April 16, 1996, providing additional guidance on the quantity and quality of information that the FAA needed in order to make a decision regarding the ATA's petition on adequate compensation for PFC revenue collecting, handling, and remitting. The FAA also used the ANPRM to solicit comments on a number of ancillary issues pertaining to the handling and transfer of PFC revenues and on other changes in Part 158 to accommodate new legislation and industry practices. Specifically, these issues included the following proposals to amend sections of Part 158: require separate handling of PFC collections by air carriers to facilitate PFC remittance in the event of air carrier bankruptcy; implement the statutory prohibition on collection of PFCs from passengers traveling on frequent flyer awards; establish that PFC remittance occurs at the time that a public agency receives PFC collections from an air carrier; and codify current industry practice by providing for appropriate PFC adjustments when a trip itinerary change is initiated by the passenger.

To further analyze whether a change in PFC compensation is necessary, the FAA requested detailed and persuasive data from air carriers that, in total, represented at least 75 percent of enplanements at PFC locations. The FAA determined that information on 75 percent of total PFC enplanements was necessary to give an adequate view of current industry cost and would provide adequate cost data to determine if a change in collecting, handling, and remitting compensation is necessary. In particular, the PFC statute requires that the handling fee be a "uniform amount" that "reflects the average necessary and reasonable handling expenses (net of interest accruing to the carrier and agent after collection and before remittance)." A sample of less than 75 percent, if it included a disproportionate representation from carriers with higher PFC handling costs, would not yield an accurate average handling cost calculation for the industry. (61 FR 16678).

Reasons for Withdrawal

The FAA received responses with data from 10 air carriers. The FAA also received responses from 18 public agencies and 5 industry organizations. The airline responses represented 62 percent of the enplanements at PFC locations, which was 13 percent below the minimum response required by the FAA. As a result of the lack of information provided, the FAA cannot conclude that the current compensation level of $0.08 for each PFC remitted to a public agency does not provide adequate compensation to air carriers. The FAA has no justification to change the PFC collecting, handling, and remitting compensation level either by adjusting the uniform average handling fee itself or changing the basis on which the fee is paid from PFC remitted (which does not include refunded PFCs) to PFC collected (which would include refunded PFCs). Thus, the compensation level remains at $0.08 for each PFC remitted to a public agency, and this compensation cannot be claimed by the air carrier for refunded air travel tickets.

In addition, Congress recently passed H.R. 1000. When signed into law, this legislation, among other items, will establish higher PFC charge levels of $4 and $4.50, will set additional criteria for the review and approval of charges at the higher levels, and will make other miscellaneous changes to the prior PFC legislation. In the "Statement of Managers for the Conference Report accompanying H.R. 1000," the FAA was charged with reviewing the compensation level for air carriers collecting, handling, and remitting PFCs to airports. The FAA will shortly commence a new rulemaking to examine air carrier compensation in response to this requirement.

Many commenters addressed the three proposals the FAA made regarding bankruptcy. The first proposal would prohibit air carriers from commingling PFC revenue with other sources of revenue and require air carriers to establish separate trust accounts. Commenters viewed this proposal as the least costly of the three. The Metropolitan Washington Airports

Authority (MWAA) stated that establishing separate trust accounts would strengthen airport public agencies' claim to PFCs which had been collected. The MWAA preferred trust accounts to escrow accounts, if the PFC funds could be protected sufficiently through trust accounts. Other airports shared the MWAA's view. However, the commenters did not quantify the amount of additional cost that implementation of this proposal would entail to air carriers. Moreover, the degree of additional protection offered to public agencies from such trust accounts in the event of air carrier bankruptcy was not felt to be significantly greater than the current practice. Based on these comments, the FAA cannot determine if the benefits of implementing this proposal would justify higher costs to air carriers.

The second proposal was to require that carriers establish third-party escrow accounts to hold PFC revenue between collection of that revenue and remittance to the public agency. United Airlines indicated that this proposal would increase the air carrier's cost while reducing the compensation available to recover such cost. The FAA notes that public agencies, in their contractual arrangements with air carriers serving their airports, may require PFC escrow accounts or security deposits provided that such security requirements apply to the air carriers in a manner that is not unjustly discriminatory. However, the FAA does not have sufficient data on the costs or expected benefits of such accounts at this time to pursue mandatory implementation.

The third proposal concerning bankruptcy would require the Airline Reporting Corporation (ARC) clearinghouse to remit PFC revenue directly to the public agencies when travel agencies' tickets are processed through the clearinghouse. This proposal presented a problem to some commenters because the majority of travel agency ticket sales are purchased with credit cards, with no funds being collected from the purchaser at time of sale. Travel agents report these credit sales through ARC without remitting any funds to ARC. The ARC clearinghouse bills credit card sales on the air carriers' behalf and reports the amounts billed to the air carriers. However, credit card issuers remit directly to the air carrier. At no point in this credit sale cycle does ARC have liquid funds from the credit card sales. As with the other proposals, the FAA does not have sufficient data on the costs or expected benefits of this proposal to pursue its mandatory implementation.

In the ANPRM, the FAA proposed to implement the statutory prohibition on collection of PFCS from passengers traveling on frequent flyer awards that was promulgated in the Authorization Act of 1994. The FAA also proposed to change §§ 158.45(a)(3) and 158.47(c)(4) to delete a provision in the original PFC rule that is no longer applicable under current industry ticketing practice. The FAA did not receive any opposition on these issues from air carriers or airports. The FAA notes that it already imposes the statutory requirement pertaining to non-collection of PFCs on frequent flyer award tickets in its PFC Records of Decision and the presence of the obsolete provisions has not adversely affected ticketing and remittance practices. Consequently, a separate rulemaking to address these issues may be postponed until the changes may be combined with other changes to Part 158 when appropriate. The frequently flyer provision and technical correction to §§ 158.45(a)(3) and 158.47(c)(4) will be implemented as part of a future rulemaking on the PFC program when the need arises to address additional issues by rulemaking.

The final issue addressed changing the phrase "remitted to" to "received by" when addressing the deadline for monthly transfer of PFC revenue from air carriers to public agencies. Commenters contended that using the term "received by" would make it easier for them to enforce late payment penalties. However the term "remitted by" is common and effective in several U.S. tax laws, so the FAA has denied this request. The FAA notes that a public agency's authority to establish due dates for receipt of remitted monies and collect penalties and interest on PFC revenue that is past due depends on local law or the public agency's contractual relationship with the air carrier, although the due date cannot be in advance of the requirements of § 158.51. The FAA does not consider Part 158's silence on this subject to preclude the collection of penalties and interest based on local law or contract, and the FAA does not object to this practice as long it is applied in a manner that is not unjustly discriminatory.

Conclusion

Therefore, as a result of reviewing comments to the ANPRM Notice No. 96–3, regarding the collection, handling, and remittance of PFCs, the FAA has decided to withdraw this ANPRM. Accordingly, the ANPRM, Notice No. 96–3, published on April 16, 1996 (61 FR 16678), is withdrawn.

Issued in Washington, DC on March 31, 2000.

Catherine M. Lang,

Director, Office of Airport Planning and Programming.

[FR Doc. 00–8365 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 250

Guides for the Household Furniture Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") requests public comments about the overall costs and benefits and the continuing need for its Guides for the Household Furniture Industry ("the Household Furniture Guides" or "the Guides"), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 9, 2000.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments should be identified as "Household Furniture Industry Guides, 16 CFR Part 250—Comment."

FOR FURTHER INFORMATION CONTACT: Ingrid Whittaker-Ware, Attorney, Federal Trade Commission, Southeast Region, 60 Forsyth Street, S.W., Atlanta, Georgia 30303, telephone number (404) 656–1364, E-mail address: *"Furniture@FTC.gov"*.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Guides for the Household Furniture Industry on December 21, 1973, 38 FR 34992 (1973), under the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41–58.[1] The Guides became effective on March 21, 1974. Prior to promulgating the Guides, the Commission released proposed Guides to allow interested or affected parties an opportunity to inform the Commission of their views, suggestions, objections, or other information regarding the proposed

[1] The FTC Act makes it unlawful for one to engage in "unfair methods of competition and unfair or deceptive acts or practices in commerce."

Guides. Based on this information, the Commission determined that it was in the public interest to offer guidance to the industry thereby promoting a higher level of compliance with the laws administered by the Commission by adopting the Guides. The Guides are voluntary guidelines containing interpretations of acts or practices that the Commission has issued to assist members of the industry in complying with Section 5 of the FTC Act.

The Furniture Guides generally advise members of the industry to make affirmative disclosures for the benefit of consumers to ensure that the prospective purchaser is not misled into thinking that the product is different from that which is actually offered, because of the appearance, description, depictions or representations made about the product, in advertising, labeling or other promotional materials. The Guides also advise that advertisers making representations concerning (a) tests made on products, or (b) the performance characteristics of upholstery fabrics do in fact have a "reasonable basis" for such representations. Further, the guides also inform advertisers that the Commission may require documentation from them to substantiate their representations concerning the product. The Guides also provide several definitions for the industry, including definitions regarding certain types of wood. In summary, the Guides for the Household Furniture Industry, 16 CFR Part 250, advise members of the industry to:

(1) Make affirmative disclosures of material facts concerning merchandise, which if known to a purchaser, would influence his or her decision to purchase the merchandise:

(2) Attach an accurate tag or label in a prominent location on each product;

(3) Describe wood, wood imitations and color used in or on furniture only with qualified wood names or generally accepted wood names. The description shall not be deceptive;

(4) Identify certain woods as "walnut", "mahogany" and "mapel" only if such woods are derived from specified species;

(5) Refrain from making representations or misleading inferences about a product being made of leather, when in fact it is not;

(6) Refrain from making false or misleading representations concerning outer coverings of furniture or furniture stuffing;

(7) Accurately describe the origin of furniture, whether domestic or foreign; and whether the furniture is actually new, being made of parts and materials that were entirely unused;

(8) Refrain from describing as "floor sample" furniture that has been rented, repossessed or "traded-in";

(9) Refrain from using deceptive trademarks or claiming to be a manufacturer or wholesaler when in fact they are not; and

(10) Look to the applicable guides and rules for further guidance on guarantees, pricing and advertising.

II. Regulatory Review Program

The Commission has determined to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the Household Furniture Industry Guides; possible conflict between the Guides and state, local or other federal laws; and the effect on the Guides of any technological, economic, or other industry changes.

III. Request for Comments

The Commission solicits written public comments on the following questions:

1. Is there a continuing need for the Household Furniture Guides?

(a) What benefits have the Guides provided to purchasers of the products or services affected by the Guides?

(b) Have the Guides imposed costs on purchasers?

2. What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the Guides impose on companies subject to their requirements?

3. What significant burdens or costs, including costs of adherence, have the Guides imposed on companies subject to their requiements?

(a) Have the Guides provided benefits to such companies?

4. What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on companies subject to their requirements?

(a) How would these changes affect the benefits provided by the Guides?

5. Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Guides were issued, what effects, if any, have changes in the relevant technology or economic conditions had on the Guides?

7. What effect, if any, has the use of modern technology such as the Internet and E-mail had on the Guides?

(a) How has the use of modern technology such as the Internet and E-mail affected the rights of consumers and the responsibilities of sellers?

8. Are there any abuses in the marketing of furniture products that are not addressed by the Guides?

(a) What mechanisms (*e.g.*, consumer education, self-regulation, amendment or rescission of the Guides) should be explored to deal with any marketing abuses that may exist?

9. What significant burdens or costs, including costs of adherence, have the Guides imposed on small companies subject to their requirements?

(a) How do these burdens or costs differ from those imposed on larger companies subject to the requirements of the Guides?

10. To what extent are the burdens or costs that the Guides impose on small companies similar to those that small companies would incur under standard and prudent business practices?

11. What changes, if any, should be made to the Guides to reduce the burdens or cost imposed on small companies?

(a) How would these changes affect the benefits of the Guides?

(b) Would such changes adversely affect the competitive position of larger companies?

List of Subjects in 16 CFR Part 250

Forest and forest products, Furniture industry, Trade practices.

Authority: 15 U.S.C. 41–58

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–8770 Filed 4–7–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 201, 250, 290, 310, 329, 341, 361, 369, 606, and 610

[Docket No. 00N–0086]

Amendment of Regulations Regarding Certain Label Statements on Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to

amend its regulations to require the labels of prescription drugs to bear the statement "only" instead of the statement "Caution: Federal law prohibits dispensing without prescription" and to remove the requirement that certain habit-forming drugs bear the statement "Warning—May be habit forming." The agency is also proposing to add a new section to the regulations to make clear that these habit-forming drugs must be dispensed by prescription only. The agency is taking this action to implement changes made by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by June 26, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: For information regarding human drugs:

Jerry Phillips, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3246.

For information regarding biologics:

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. The Modernization Act

On November 21, 1997, President Clinton signed into law the Modernization Act (Public Law 105–115). Section 126 of the Modernization Act amended section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(b)(4)) to require, at a minimum, that, prior to dispensing, the label of prescription drugs bear the symbol "Rxonly" instead of the statement "Caution: Federal law prohibits dispensing without prescription." The new label statement may be printed as either "Rx only" or "Rx only."[1] Section 126 of the Modernization Act also repealed section 502(d) of the act (21 U.S.C. 352(d)), which provided that a drug or device containing certain enumerated narcotic or hypnotic (habit-forming) substances or their derivatives was misbranded unless its label bore the name and quantity of the substance and the statement "Warning—May be habit forming."

II. Description of the Proposed Rule

The proposed rule would amend parts 10, 201, 250, 310, 329, 361, 606, and 610 (21 CFR parts 10, 201, 250, 310, 329, 361, 606, and 610) by removing the requirement that prescription drugs be labeled with "Caution: Federal law prohibits dispensing without prescription" and adding in its place a requirement that prescription drugs be labeled with "Rx only" or "℞ only."

The proposed rule would amend parts 201 and 369 (21 CFR part 369) by removing the requirement that certain habit-forming drugs bear the statement "Warning—May be habit forming."

The proposed rule would remove part 329. Part 329 was issued under repealed section 502(d) of the act. Section 329.1 designates as habit-forming certain derivatives of the habit-forming substances listed in section 502(d) of the act. Section 329.10 elaborates on the labeling requirement of section 502(d) of the act.

Section 329.20 exempts certain habit-forming drugs from the prescription-dispensing requirements of the act. This section has not been substantively revised in more than 30 years. It is now out of date. Except as discussed elsewhere in this section, none of the drug ingredients listed as exempt in § 329.20 are currently marketed over-the-counter (OTC) or have any legal basis to be marketed OTC.

The proposed rule would amend part 290 (21 CFR part 290), by adding new §§ 290.1 and 290.2. Section 290.1 is being added to make clear the agency's determination that a drug that is a controlled substance listed in Schedule II, III, IV, or V of the Federal Controlled Substances Act (CSA) or implementing regulations must, unless otherwise determined by the agency, be dispensed by prescription only as required by section 503(b)(1) of the act. Section 503(b)(1) provides that a drug that "because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use," or a drug which "is limited by an approved application under section 505 of the act to use under the professional supervision of a practitioner licensed by law to administer such drug," shall be dispensed only upon a prescription of a practitioner licensed by law to administer such drug. Generally, a drug that meets the criteria for control under Schedule II, III, IV, or V of the CSA (see 21 U.S.C. 812) would also meet the standard for prescription dispensing under section 503(b)(1) of the act. Drugs included in Schedule I of the CSA cannot be lawfully marketed in the United States.

Section 290.2 retains the exemption from the prescription-dispensing requirement in § 329.20 for small amounts of codeine in combination with other nonnarcotic active medicinal ingredients. Small amounts of codeine in combination with other nonnarcotic active medicinal ingredients, for example, cough syrup with codeine, may be marketed OTC under a final monograph for cold and cough products. (See § 341.14 (21 CFR 341.14)). For the reason stated above, no other exemptions are warranted at this time for the other narcotic drugs listed in § 329.20(a). Also, an exemption under § 290.2 is not needed for the chlorobutanol preparations described in § 329.20 because chlorobutanol is not a scheduled substance under the CSA. The epinephrine product described in § 329.20(c) cannot be lawfully marketed at this time.

The proposed rule would also revise § 341.14 to refer to the exemption at § 290.2, rather than § 329.20 which is being removed.

III. Implementation

A guidance for industry entitled "Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements" (63 FR 39100, July 21, 1998) is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. The guidance indicates that, for the time periods and under the circumstances stated in this section, in the exercise of its enforcement discretion, FDA does not intend to object if a sponsor does not comply with the new labeling requirements of section 126 of the Modernization Act. The guidance advises that FDA does not intend to object if a sponsor of a currently approved product implements the new requirements of section 126 of the Modernization Act at the time of the next revision of its labels, or by February 19, 2003, whichever comes first, and reports these minor changes in the next annual report. For pending (unapproved) full or abbreviated applications received by the agency prior to February 19, 1998, sponsors should comply with the new labeling requirements by the time of the next revision of their labels or by February 19, 2003, whichever comes first. The guidance also advises that full or abbreviated applications received by FDA after February 19, 1998, should provide labels and labeling in

[1] The ℞ symbol appears in bold in this document because of type-setting limitations, however, it should not be bolded when used on the product's label.

compliance with the new labeling requirements.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) through (k) 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.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The agency's guidance document explains that FDA will exercise its enforcement discretion in a manner that will permit companies to implement the required label changes at the time of the next revision of their labels, or by February 19, 2003, whichever comes first. Because almost all labels would typically be reprinted within this timeframe, this enforcement strategy will eliminate any significant costs that would otherwise be associated with the rule. As a result, the proposed rule is not a significant action as defined by the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. The agency certifies that the proposed rule would not have a significant impact on a substantial number of small entities because the 5-year implementation period will allow companies to make the necessary label changes during the normal course of business. Therefore, under the Regulatory Flexibility Act, no further analysis is required. The Unfunded Mandates Reform Act (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). Because this rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100 million or more in any one year, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Public Law 104–13) is not required. The revised labeling information is supplied by the Modernization Act (changing "Caution: Federal law prohibits dispensing without prescription" to "℞ only" or "℞ only"). According to 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not considered a collection of information.

VII. Request for Comments

Interested persons may, on or before June 26, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 60 days after publication of the final rule. For information on implementation, see the discussion in section III of this document.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 250

Drugs.

21 CFR Parts 290 and 329

Drugs, Labeling.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of Title 21 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.50 [Amended]

2. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing and reserving paragraph (c)(7).

PART 201—LABELING

3. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

§ 201.10 [Amended]

4. Section 201.10 *Drugs; statement of ingredients* is amended in paragraph (a) by removing the phrase "as 'Warning—May be habit forming' ".

5. Section 201.16 is revised to read as follows:

§ 201.16 Drugs; Spanish-language version of certain required statements.

An increasing number of medications restricted to prescription use only are being labeled solely in Spanish for

distribution in the Commonwealth of Puerto Rico where Spanish is the predominant language. Such labeling is authorized under § 201.15(c). One required warning, the wording of which is fixed by law in the English language, could be translated in various ways, from literal translation to loose interpretation. The statutory nature of this warning requires that the translation convey the meaning properly to avoid confusion and dilution of the purpose of the warning. Section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act requires, at a minimum, that the label bear the statement "Rx only." The Spanish-language version of this must be "SoAE1lamente Rx".

§ 201.100 [Amended]

6. Section 201.100 *Prescription drugs for human use* is amended in paragraph (b)(1) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.120 [Amended]

7. Section 201.120 *Prescription chemicals and other prescription components* is amended in paragraph (b)(2) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.122 [Amended]

8. Section 201.122 *Drugs for processing, repacking, or manufacturing* is amended in the introductory text, first sentence, by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.306 [Amended]

9. Section 201.306 *Potassium salt preparations intended for oral ingestion by man* is amended in paragraph (b)(1) by removing the word "caution".

PART 250—SPECIAL REQUIREMENTS FOR SPECIFIC HUMAN DRUGS

10. The authority citation for 21 CFR part 250 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 352, 353, 355, 361(a), 362(a) and (c), 371, 375(b).

§ 250.100 [Amended]

11. Section 250.100*Amyl nitrite inhalant as a prescription drug for human use* is amended in paragraph (b) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.101 [Amended]

12. Section 250.101*Amphetamine and methamphetamine inhalers regarded as prescription drugs* is amended in paragraph (b) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.105 [Amended]

13. Section 250.105 *Gelsemium-containing preparations regarded as prescription drugs* is amended by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription.' " from the last sentence and adding in its place the phrase " 'Rx only.' ".

§ 250.108 [Amended]

14. Section 250.108 *Potassium permanganate preparations as prescription drugs* is amended in paragraph (c)(1) by removing the phrase "legend, 'Caution: Federal law prohibits dispensing without prescription. ' " and adding in its place the phrase "statement 'Rx only.' " and in paragraph (c)(2) by removing the phrase ", 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase " 'Rx only.' ".

§ 250.201 [Amended]

15. Section 250.201 *Preparations for the treatment of pernicious anemia* is amended in paragraph (d) by removing the phrase "legend 'Caution—Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.250 [Amended]

16. Section 250.250 *Hexachlorophene, as a component of drug and cosmetic products* is amended in the last sentence of paragraph (c)(1) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without a prescription,' " and adding in its place the phrase "statement 'Rx only,' " and in paragraph (c)(4)(i) by removing the phrase "prescription legend" and adding in its place the phrase "statement 'Rx only' ".

PART 290—CONTROLLED DRUGS

17. The authority citation for 21 CFR part 290 continues to read as follows:

Authority: 21 U.S.C. 352, 353, 355, 371.

18. Section 290.1 is added to subpart A to read as follows:

§ 290.1 Controlled substances.

Any drug that is a controlled substance listed in schedule II, III, IV, or V of the Federal Controlled Substances Act or implementing regulations must be dispensed by prescription only as required by section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act unless specifically exempted in § 290.2.

19. Section 290.2 is added to subpart A to read as follows:

§ 290.2 Exemption from prescription requirements.

The prescription-dispensing requirements of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act are not necessary for the protection of the public health with respect to a compound, mixture, or preparation containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams that also includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by codeine alone.

PART 310—NEW DRUGS

20. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

§ 310.103 [Amended]

21. Section 310.103 *New drug substances intended for hypersensitivity testing* is amended in paragraph (a)(3)(i) by removing the phrase " 'Caution: Federal law prohibits dispensing without a prescription' " and adding in its place the phrase " 'Rx only' ".

PART 329—HABIT–FORMING DRUGS

22. Part 329 is removed.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

23. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 341.14 [Amended]

24. Section 341.14 *Antitussive active ingredients* is amended in paragraph (a)(2) by removing "§§ 329.20(a) and 341.40" and adding in its place "§ 290.2".

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

25. The authority citation for 21 CFR part 361 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 361.1 [Amended]

26. Section 361.1 *Radioactive drugs for certain research uses* is amended in paragraph (f)(1) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER–THE–COUNTER SALE

27. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.22 [Removed]

28. Section 369.22 is removed.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

29. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

30. Section 606.121 is amended by revising paragraph (c)(8)(i) to read as follows:

§ 606.121 Container label.

* * * * *

(c) * * *

(8) * * *

(i) "Rx only."

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

31. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.60 [Amended]

32. Section 610.60 *Container label* is amended in paragraph (a)(6) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription,' " and adding in its place the phrase " 'Rx only' ".

§ 610.61 [Amended]

33. Section 610.61 *Package label* is amended in paragraph (s) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription,' " and adding in its place the phrase " 'Rx only' ".

Dated: March 31, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8737 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Defense Commissary Agency

32 CFR Part 327

Defense Commissary Agency Privacy Act Program

AGENCY: Defense Commissary Agency, DOD

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the Defense Commissary Agency Privacy Act Program. This rule establishes policies and procedures for implementing the DeCA Privacy Program, and delegates authorities and assigns responsibilities for the administration of the DeCA Privacy Program.

DATES: Comments must be received by June 9, 2000, to be considered by the agency.

ADDRESSES: Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801-1800.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Marsh at (804) 734-8841.

SUPPLEMENTARY INFORMATION: Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of subjects in CFR 32 CFR Part 327

Privacy.

Accordingly, Title 32 of the CFR is proposed to be amended in Chapter I, subchapter O, by adding part 327 to read as follows:

PART 327 - DEFENSE COMMISSARY AGENCY PRIVACY ACT PROGRAM

Sec.

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

§ 327.1 Purpose.

This part implements the basic policies and procedures for the implementation of the Privacy Act of 1974, as amended (5 U.S.C. 552a); OMB Circular A-130 [1]; and 32 CFR part 310; and to promote uniformity in the DeCA Privacy Act Program.

§ 327.2 Applicability.

This part applies to Headquarters, Field Operating Activities (FOA), Regions, Zones, Central Distribution Centers (CDC), Commissaries of DeCA, and contractors during the performance of a contract with DeCA. All personnel are expected to comply with the procedures established herein.

§ 327.3 Responsibilities.

(a) *The Director, DeCA:*

(1) Supervises the execution of the Privacy Act and this part within the DeCA, and serves as the DeCA Privacy Act Appeal Authority.

[1] Copies may be obtained: http://www.whitehouse.gov/OMB/circulars

(2) Appoints:

(i) The Executive Director for Support as the DeCA Initial Denial Authority for the DeCA Privacy Act Program.

(ii) The Records Manager, Office of Safety, Security, and Administration as the DeCA Privacy Act Officer.

(b) *The Privacy Act Officer, DeCA:*

(1) Establishes and manages the PA program for DeCA.

(2) Provides guidance, assistance and training.

(3) Controls and monitors all requests received and prepares documentation to the office of primary responsibility (OPR) for response.

(4) Prepares response to requester based on information provided by the OPR.

(5) Signs all response requests for releasable information to the requester after coordination through the General Counsel. Ensures that all denied requests for information are released by the DeCA Initial Denial Authority.

(6) Publishes instructions to contractors that:

(i) Provide DeCA Privacy Program guidance to their personnel who solicit, award, or administer government contracts;

(ii) Inform prospective contractors of their responsibilities regarding the DeCA Privacy Program; and

(iii) Establish an internal system of contractor performance review to ensure compliance with DeCA's Privacy Program.

(iv) Prepare and submit System Notices to the Defense Privacy Office for publication in the Federal Register.

(7) Maintain Privacy Case files and records of disclosure accounting.

(8) Submit the DeCA Annual Privacy Act Report (RCS: DD-DA&M(A)1379) to the Defense Privacy Office.

(c) *DeCA Directorates/Staff Offices:*

(1) Provide response and the information requested to the PA Officer for release to the individual.

(2) In the event the information is to be denied release, the requested information and rationale for denial will be forwarded to the PA Officer for denial determination.

(d) *Regions:*

(1) Regional Directors will appoint a Regional PA Coordinator who will maintain suspense control of PA actions, prepare documentation to the OPR for response, forward the information to the DeCA PA Officer for release determination, and notify the requester that the response will be received from the DeCA PA Officer using the format in Appendix A to this part.

(e) *DeCA Field Operating Activities (FOAs):*

(1) Upon receipt of a PA request that has not been received from the DeCA PA Officer, notify the DeCA PA Officer within 2 days.

(2) Collect all information available and forward to the DeCA PA Officer. If the requested information is not available, provide the DeCA PA Officer the rationale to respond to the requester.

(f) *Central Distribution Centers (CDCs) and Commissaries:*

(1) Upon receipt of a PA request, not received from the Region Coordinator, notify the Region Coordinator within 2 days.

(2) Collect all information available and forward it to the Region Coordinator for submission to DeCA PA Officer. If requested information is not available, provide the Region Coordinator the rationale so they can prepare a response to the DeCA PA Officer. If the information is available but determined to be exempt, provide the Region Coordinator with the requested information and specific reasons why the request should be denied. The Region Coordinator will formalize a reply to the DeCA PA Officer, forwarding requested information and reasons for denial. The DeCA PA Officer will prepare the response to the requester with coordination by the General Counsel and signature by the IDA.

§ 327.4 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and record keeping as regards release to non-DoD agencies; each DoD Component is considered an agency within the meaning of the Privacy Act.

Computer room. Any combination of electronic hardware and software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. The equipment contains device to receive information and other processors with various capabilities to manipulate the information, store and provide input.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Federal Register system. Established by Congress to inform the public of interim, proposed, and final regulations or rulemaking documents having substantial impact on the public. In this case, DeCA directives have the same meaning as regulations or rulemaking documents. The secondary role of the **Federal Register** system is to publish notice documents of public interest.

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not 'individuals.'

Individual access. Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

Law enforcement activity. Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

Maintain. Includes maintain, collect, use or disseminate.

Official use. Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DoD 5200.1–R [2], 'DoD Information Security Program Regulation'.

Personal information. Information about an individual that identifies, relates or is unique to, or describes him or her; *e.g.*, a social security number, age, military rank, civilian grade, marital status, race, salary, home/office phone numbers, etc.

Privacy Act. The Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Privacy Act request. A request from an individual for notification as to the

[2] Copies may be obtained: http://www.whs.osd.mil/corres.htm.

existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Member of the public. Any individual or party acting in a private capacity to include federal employees or military personnel.

Record. Any item, collection, or grouping of information, whatever the storage media (*e.g.*, paper, electronic, etc.), about an individual that is maintained by a DoD Component, including but not limited to, his or her education, financial transactions, medical history, criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Risk assessment. An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System manager. The DoD Component official who is responsible for the operation and management of a system of records.

System of records. A group of records under the control of a DoD Component from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written or graphic presentations intended to communicate verbally or visually with another individual.

Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

§ 327.5 Systems of records.

(a) *System of records.* To be subject to the provisions of this part, a 'system of records' must:

(1) Consist of 'records' that are retrieved by the name of an individual or some other personal identifier, and

(2) Be under the control of DeCA.

(b) *Retrieval practices.* Records in a group of records that may be retrieved by a name or personal identifier are not covered by this part even if the records contain personal data and are under the control of DeCA. The records MUST BE, in fact, retrieved by name or other personal identifier to become a system of records for DeCA.

(c) *Relevance and necessity.* Only those records that contain personal information which is relevant and necessary to accomplish a purpose required by Federal statute or an Executive Order will be maintained by DeCA.

(d) *Authority to establish systems of records.* Director, DeCA has the authority to establish systems of records; however, each time a system of records is established, the Executive Order or Federal statute that authorizes maintaining the personal information must be identified.

(1) DeCA will not maintain any records describing how an individual exercises his or her rights guaranteed by the First Amendment of the U.S. Constitution.

(2) These rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluation.* Systems managers, along with the DeCA Privacy Officer, shall evaluate the information to be included in each new system before establishing the system and evaluate periodically the information contained in each existing system of records for relevancy and necessity. Such a review will also occur when a system notice amendment or alteration is prepared. Consider the following:

(1) The relationship of each item of information retained and collected to the purpose for which the system is maintained.

(2) The specific impact on the purpose or mission of not collecting each category of information contained in the system.

(3) The possibility of meeting the informational requirements through use of information not individually identifiable or through other techniques, such as sampling.

(4) The length of time each item of personal information must be retained.

(5) The cost of maintaining the information.

(6) The necessity and relevancy of the information to the purpose for which it was collected.

(f) *Discontinued information requirements.*

(1) When notification is received to stop collecting any category or item of personal information, the DeCA PA Officer will issue instructions to stop immediately and also excise this information from existing records, when feasible, and amend existing notice.

(2) Disposition of these records will be provided by the DeCA PA Officer in accordance with the DeCA Filing System [3].

(g) *Government contractors.*

(1) When DeCA contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion affected are considered to be maintained by DeCA and are subject to this part. DeCA is responsible for applying the requirements of this part to the contractor. The contractor and its employees are to be considered employees of DeCA for the purposes of the approved provisions of the Privacy Act during the performance of the contract. Consistent with the Defense Acquisition Regulation, contracts requiring the maintenance of a system of records or the portion of a system of records shall identify specifically the record system and the work to be performed and shall include in the solicitation and resulting contract such terms as are prescribed in the Defense Acquisition Regulation (DAR). [4]

(2) If the contractor must use or have access to individually identifiable information subject to this part to perform any part of a contract, and the information would have been collected and maintained by DeCA but for the award of the contract, these contractor activities are subject to this part.

(3) The restrictions in paragraphs (g)(1) and (g)(2) of this section do not apply to records:

(i) Established and maintained to assist in making internal contractor

[3] Copies may be obtained: Defense Commissary Agency, ATTN: FOIA/Privacy Officer, 1300 E. Avenue, Fort Lee, VA 23801-1800

[4] See foonote 3 to § 327.5

management decisions such as those maintained for use in managing the contract.

(ii) Those maintained as internal contractor employee records even when used in conjunction with providing goods and services to DeCA.

(4) Disclosure of records to contractors. Disclosure of personal records to a contractor for the use in the performance of any DeCA contract is considered a disclosure within the Department of Defense (DoD). The contractor is considered the agent of DeCA and is to be maintaining and receiving the records for DeCA.

(h) *Safeguarding personal information.* DeCA personnel will protect records in every system of records for confidentiality against alteration, unauthorized disclosure, embarrassment, or unfairness to any individual about whom information is kept.

(1) Supervisor/Manager paper records maintained by DeCA personnel will be treated as 'For Official Use Only' (FOUO) documents and secured in locked file cabinets, desks or bookcases during non-duty hours. During normal working hours, these records will be out-of-sight if the working area is accessible to non-government personnel.

(2) Personnel records maintained by DeCA computer room or stand alone systems, will be safeguarded at all times. Printed computer reports containing personal data must carry the markings FOUO. Other media storing personal data such as tapes, reels, disk packs, etc., must be marked with labels which bear FOUO and properly safeguarded.

(3) Adherence to paragraphs (h)(1) and (h)(2) of this section, fulfills the requirements of 32 CFR part 285.

(i) *Records disposal.*

(1) DeCA records containing personal data will be shredded or torn to render the record unrecognizable or beyond reconstruction.

(2) The transfer of large quantities of DeCA records containing personal data to disposal activities is not considered a release of personal information under this part. The volume of such transfers makes it difficult or impossible to identify easily specific individual records. Care must be exercised to ensure that the bulk is maintained so as to prevent specific records from becoming readily identifiable. If the bulk is maintained, no special procedures are required. If the bulk cannot be maintained, dispose of the records by shredding or tearing to render the record unrecognizable or beyond reconstruction.

§ 327.6 Collecting personal information

(a) *Collect directly from the individual.* To the greatest extent practicable, collect personal information directly from the individual to whom it pertains if the information may be used in making any determination about the rights, privileges, or benefits of the individual under any Federal program.

(b) *Collecting personal information from third parties.* It may not be practical to collect personal information directly from an individual in all cases. Some examples of this are:

(1) Verification of information through third party sources for security or employment suitability determinations;

(2) Seeking third party opinions such as supervisory comments as to job knowledge, duty performance, or other opinion-type evaluations;

(3) When obtaining the needed information directly from the individual is exceptionally difficult or may result in unreasonable costs; or

(4) Contacting a third party at the request of the individual to furnish certain information such as exact periods of employment, termination dates, copies of records, or similar information.

(c) *Collecting social security numbers (SSNs).*

(1) It is unlawful for DeCA to deny an individual any right, benefit, or privilege provided by law because an individual refuses to provide his or her SSN. Executive Order 9397 authorizes solicitation and use of SSNs as numerical identifiers for individuals in most Federal record systems, however, it does not provide mandatory authority for soliciting.

(2) When an individual is requested to provide their SSN, they must be told:

(i) The uses that will be made of the SSN;

(ii) The statute, regulation, or rule authorizing the solicitation of the SSN; and

(iii) Whether providing the SSN is voluntary or mandatory.

(3) Once the SSN has been furnished for the purpose of establishing a record, the notification in paragraph (c)(2) of this section is not required if the individual is only requested to furnish or verify the SSNs for identification purposes in connection with the normal use of his or her records.

(d) *Privacy act statements.* When a DeCA individual is requested to furnish personal information about himself or herself for inclusion in a system of records, a Privacy Act Statement is required regardless of the medium used to collect the information, *e.g.* forms, personal interviews, telephonic interviews. The statement allows the individual to make a decision whether to provide the information requested. The statement will be concise, current, and easily understood and must state whether providing the information is voluntary or mandatory. If furnishing the data is mandatory, a Federal statute, Executive Order, regulation or other lawful order must be cited. If the personal information solicited is not to be incorporated into a DeCA system of records, a PA statement is not required. This information obtained without the PA statement will not be incorporated into any DeCA systems of records.

(1) The DeCA Privacy Act Statement will include:

(i) The specific Federal statute or Executive Order that authorized collection of the requested information;

(ii) The principal purpose or purposes for which the information is to be used;

(iii) The routine uses that will be made of the information;

(iv) Whether providing the information is voluntary or mandatory; and

(v) The effects on the individual if he or she chooses not to provide the requested information.

(2) Forms. When DeCA uses forms to collect personal information, placement of the Privacy Act advisory statement should be in the following order of preference:

(i) Below the title of the form and positioned so the individual will be advised of the requested information,

(ii) Within the body of the form with a notation of its location below the title of the form,

(iii) On the reverse of the form with a notation of its location below the title of the form,

(iv) Attached to the form as a tear-off sheet, or

(v) Issued as a separate supplement to the form.

(3) Forms issued by non-DoD activities. Ensure that the statement prepared by the originating agency on their forms is adequate for the purpose for which DeCA will use the form. If the statement is inadequate, DeCA will prepare a new statement before using the form. Forms issued by other agencies not subject to the Privacy Act but its use requires DeCA to collect personal data, a Privacy Act Statement will be added.

§ 327.7 Access by individuals

(a) *Individual access to personal information.* Release of personal information to individuals whose records are maintained in a systems of records under this part is not considered public release of information. DeCA will

release to the individual all of the personal information, except to the extent the information is contained in an exempt system of records.

(1) Requests for access.

(i) Individuals in DeCA Headquarters and FOAs will address requests for access to their personal information to the DeCA Privacy Act Officer. Individuals in Regions, CDCs, and commissaries, will address requests to their respective Region Privacy Act Coordinator. The individual is not required to explain or justify why access is being sought.

(ii) If an individual wishes to be accompanied by a third party when seeking access to his or her records or to have the records released directly to the third party, a signed access authorization granting the third party access is required.

(iii) A DeCA individual will not be denied access to his or her records because he or she refuses to provide his or her SSN unless the SSN is the only way retrieval can be made.

(2) Granting access.

(i) If the record is not part of an exempt system, DeCA personnel will be granted access to the original record or an exact copy of the original record without any changes or deletions. Medical records will be disclosed to the individual to whom they pertain unless an individual fails to comply with the established requirements. This includes refusing to name a physician to receive medical records when required, refusing to pay fees, or when a judgment is made that access to such records may have an adverse effect on the mental or physical health of the individual. Where an adverse effect may result, a release will be made in consultation with a physician.

(ii) DeCA personnel may be denied access to information compiled in reasonable anticipation of a civil action or proceeding. The term 'civil proceeding' is intended to include quasi-judicial and pretrial judicial proceedings. Information prepared in conjunction with the quasi-judicial, pretrial and trial proceedings to include those prepared by DeCA legal and non-legal officials of the possible consequences of a given course of action are protected from access.

(iii) Requests by DeCA personnel for access to investigatory records pertaining to themselves, compiled for law enforcement purposes, are processed under this part and that of 32 CFR part 310. Those requests by DeCA personnel for investigatory records pertaining to themselves that are in records systems exempt from access provisions shall be processed under this part or 32 CFR part 285, depending upon which provides the greatest degree of access.

(3) Non agency records.

(i) Uncirculated personal notes and records that are not given or circulated to any person or organization (example, personal telephone list) that are kept or discarded at the author's discretion and over which DeCA exercises no direct control, are not considered DeCA records. However, if personnel are officially directed or encouraged, either in writing or orally, to maintain such records, they may become 'agency records' and may be subject to this part.

(ii) Personal uncirculated handwritten notes of team leaders, office supervisors, or military supervisory personnel concerning subordinates are not a system of records within the meaning of this part. Such notes are an extension of the individual's memory. These notes, however, must be maintained and discarded at the discretion of the individual supervisor and not circulated to others. Any established requirement to maintain such notes (written or oral directives, regulation or command policy) make these notes 'AGENCY RECORDS'. If the notes are circulated, they must be made a part of a system of records. Any action that gives personal notes the appearance of official agency records is prohibited unless they have been incorporated into a DeCA system of records.

(b) *Relationship Between the Privacy Act and the Freedom of Information Act (FOIA).*

(1) Requests from DeCA individuals for access to a record pertaining to themselves made under the FOIA are processed under the provisions of this part, 32 CFR part 310 and DeCA Directive 30-12, Freedom of Information Act (FOIA) Program [5].

(2) Request from DeCA individuals for access to a record pertaining to themselves are processed under this part and 32 CFR part 310.

(3) Requests from DeCA individuals for access to records about themselves that cite both Acts or the DeCA implementing directives for both Acts are processed under this part except:

(i) When the access provisions of the FOIA provide a greater degree of access process under the FOIA, or

(ii) When access to the information sought is controlled by another Federal statute process access procedures under the controlling statute.

(4) Requests from DeCA individuals for access to information about themselves in a system of records that do not cite either Act or DeCA implementing directive are processed under the procedures established by this part.

(5) DeCA requesters will not be denied access to personal information concerning themselves that would be releasable to them under either Act because they fail to cite either Act or the wrong Act. The Act or procedures used in granting or denying access will be explained to requesters.

(6) DeCA requesters should receive access to their records within 30 days.

(7) Records in all DeCA systems maintained in accordance with the Government-wide systems notices are in temporary custody of DeCA, and all requests to access or amend these records will be processed in accordance with this part.

(c) *Denial of individual access.*

(1) A DeCA individual may be denied formal access to a record pertaining to him/her only if the record:

(i) Was compiled in reasonable anticipation of civil action.

(ii) Is in a system of records that has been exempt from access provisions of this part.

(iii) All systems of records maintained by the Defense Commissary Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(iv) Is contained in a system of records for which access may be denied under some other Federal statute.

(v) All systems of records maintained by the DeCA shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(2) DeCA individuals will only be denied access to those portions of the records from which the denial of access

[5] See foonote 3 to § 327.5.

serves some legitimate governmental purpose.

(3) Other reasons to refuse DeCA individuals are:

(i) The request is not described well enough to locate it within a reasonable amount of effort by the PA Officer or PA Coordinator; or

(ii) An individual fails to comply with the established requirements including refusing to name a physician to receive medical records when required or to pay fees.

(4) Only the DeCA IDA can deny access. This denial must be in writing and contain:

(i) The date of the denial, name, title of position, and signature of the DeCA Initial Denial Authority.

(ii) The specific reasons for the denial, including specific reference to the appropriate sections of the PA, other statutes, this part or the Code of Federal Regulations (CFR);

(iii) Information providing the right to appeal the denial through the DeCA appeal procedure within 60 days, and the title, position and address of the DeCA PA Appellate Authority.

(5) DeCA Appeal Procedures. The Director of DeCA, or the designee, will review any appeal by an individual from a denial of access to DeCA records. Formal written notification will be provided to the individual explaining whether the denial is sustained totally or in part. The DeCA PA Officer will:

(i) Assign a control number and process the appeal to the Director, DeCA or the designee appointed by the Director.

(ii) Provide formal written notification to the individual by the appeal authority explaining whether the denial is sustained totally or in part and the exact reasons for the denial to include provisions of the Act, other statute, this part or the CFR whichever the determination is based, or

(iii) Provide the individual access to the material if the appeal is granted.

(iv) Process all appeals within 30 days of receipt unless the appeal authority determines the review cannot be made within that period and provide notification to the individual the reasons for the delay and when an answer may be expected.

(d) *Amendment of records.*

(1) DeCA employees are encouraged to review the personal information being maintained about them periodically. An individual may request amendment of any record contained in a system of records unless the system of records has been exempt specifically from the amendment procedures by the Director, DeCA. A request for amendment must include:

(i) A description of the item or items to be amended.

(ii) The specific reason for the amendment.

(iii) The type of amendment action such as deletion, correction or addition.

(iv) Copies of evidence supporting the request.

(v) DeCA employees may be required to provide identification to make sure that they are indeed seeking to amend a record pertaining to themselves.

(2) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to these records are made through specific procedures established for the amendment of these records.

(i) Written notification will be provided to the requester within 10 working days of its receipt by the DeCA PA Officer. No notification will be provided to the requester if the action is completed within the 10 days. Only under exceptional circumstances will more than 30 days be required to reach the decision to amend a request. If the decision is to grant all or in part of the request for amendment, the record will be amended and the requester informed and all other offices/personnel known to be keeping the information.

(ii) If the request for amendment is denied in whole or in part, the PA Officer will notify the individual in writing and provide the specific reasons and the procedures for appealing the decision.

(iii) All appeals are to be processed within 30 days. If additional time is required, the requester will be informed and provided when a final decision may be expected.

(e) *Fee assessments.*

(1) DeCA personnel will only be charged the direct cost of copying and reproduction, computed using the appropriate portions of the fee schedule in DeCA Directive 30-12 [6]. Normally, fees are waived automatically if the direct costs of a given request are less than $30. This fee waiver provision does not apply when a waiver has been granted to the individual before, and later requests appear to be an extension or duplication of that original request. Decisions to waive or reduce fees that exceed the automatic waiver threshold will be made on a case-by-case basis. Fees may not be charged when:

(i) Copying is performed for the convenience of the Government or is the only means to make the record available for the individual.

(ii) No reading room is available for the individual to review the record or a copy is made to keep the original in DeCA files.

(iii) The information may be obtained without charge under any other regulation, directive, or statute.

(2) No fees will be collected for search, retrieval, and review of records to determine releasability, copying of records when the individual has not requested a copy, transportation of records and personnel, or normal postage.

§ 327.8 Disclosure of personal information to other agencies and third parties

(a) *Disclosures and nonconsensual disclosures.*

(1) All requests made by DeCA individuals for personal information about other individuals (third parties) will be processed under DeCA Directive 30-12 [7] except when the third party personal information is contained in the Privacy record of the individual making the request.

(2) For the purposes of disclosure and disclosure accounting, the Department of Defense (DoD) is considered a single agency.

(3) Personal information from DeCA systems of records will not be disclosed outside the DoD unless:

(i) The record has been requested by the individual to whom it pertains

(ii) Written consent has been given by the individual to whom the record pertains for release to the requesting agency, activity, or individual, or

(iii) The release is pursuant to one of the specific nonconsensual purposes set forth in the Act.

(4) Records may be disclosed without the consent of a DeCA individual to any DoD official who has need for the record in the performance of their assigned duties. Rank, position, or title alone does not authorize this access. An official need for this information must exist.

(5) DeCA records must be disclosed if their release is required by 32 CFR part 285, which is implemented by DeCA Directive 30-12 [8]. 32 CFR part 285 requires that records be made available to the public unless exempt from disclosure under the FOIA.

(b) *Normally releasable information.* Personal information that is normally releasable without the consent of a DeCA individual that does not imply a clearly unwarranted invasion of personal privacy:

(1) Civilian employees

(i) Name

(ii) Present and past position titles

(iii) Present and past grades

[6] See foonote 3 to § 327.5.

[7] See foonote 3 to § 327.5.

[8] See foonote 3 to § 327.5.

(iv) Present and past salaries
(v) Present and past duty stations
(vi) Office or duty telephone numbers
(2) Military members
(i) Full name
(ii) Rank
(iii) Date of rank
(iv) Gross salary
(v) Past duty assignments
(vi) Present duty assignments
(vii) Future assignments that are officially established
(viii) Office or duty telephone numbers
(ix) Source of commission
(x) Promotion sequence number
(xi) Awards and decorations
(xii) Attendance at professional military schools
(xiii) Duty status at any given time
(3) All disclosures of personal information on civilian employees shall be made in accordance with the Office of Personnel Management (OPM) and all disclosures of personal information on military members shall be made in accordance with the standards established by 32 CFR part 285.
(4) The release of DeCA employees' home addresses and home telephone numbers is considered a clearly unwarranted invasion of personal privacy and is prohibited; however, these may be released without prior consent of the employee if:
(i) The employee has indicated previously that he or she consents to their release,
(ii) The releasing official was requested to release the information under the provisions of 32 CFR part 285.
(5) Before listing home addresses and home telephone numbers in any DeCA telephone directory, give the individuals the opportunity to refuse such a listing.
(c) *Disclosures for established routine uses.*
(1) Records may be disclosed outside of DeCA without consent of the individual to whom they pertain for an established routine use.
(2) A routine use shall:
(i) Be compatible with the purpose for which the record was collected;
(ii) Indicate to whom the record may be released;
(iii) Indicate the uses to which the information may be put by the receiving agency; and
(iv) Have been published previously in the **Federal Register**.
(3) A routine use will be established for each user of the information outside DeCA who need official access to the records. This use may be discontinued or amended without the consent of the individual/s involved. Any routine use that is new or changed is published in the **Federal Register** 30 days before actually disclosing the record. In addition to routine uses established by DeCA individual system notices, blanket routine uses have been established. See Appendix C to this part.
(d) Disclosures without Consent. DeCA records may be disclosed without the consent of the individual to whom they pertain to another agency within or under the control of the U.S. for a civil or criminal law enforcement activity if:
(1) The civil or criminal law enforcement activity is authorized by law (Federal, State, or local); and
(2) The head of the agency or instrumentality (or designee) has made a written request to the Component specifying the particular record or portion desired and the law enforcement activity for which it is sought.
(3) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency or instrumentality must specify each record or portion desired and how each relates to the authorized law enforcement activity.
(4) This disclosure provision applies when the law enforcement agency or instrumentality requests the record. If the DoD Component discloses a record outside the DoD for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be pursuant to an established routine use, such as the blanket routine use for law enforcement.
(e) *Disclosures to the public from health care records.*
(1) The following general information may be released to the news media or public concerning a DeCA employee treated or hospitalized in DoD medical facilities and non-Federal facilities for whom the cost of the care is paid by DoD:
(i) Personal information concerning the patient that is provided in section 327.8 and under the provisions of 32 CFR part 285.
(ii) The medical condition such as the date of admission or disposition and the present medical assessment of the individual's condition in the following terms if the medical doctor has volunteered the information:
(A) The individual's condition is presently (stable) (good) (fair) (serious) or (critical); and,
(B) Whether the patient is conscious, semi-conscious or unconscious.
(2) Detailed medical and other personal information may be released on a DeCA employee only if the employee has given consent to the release. If the employee is not conscious or competent, no personal information, except that required by 32 CFR part 285, will be released until there has been enough improvement in the patient's condition for them to give informed consent.
(3) Any item of personal information may be released on a DeCA patient if the patient has given consent to its release.
(4) This part does not limit the disclosure of personal medical information for other government agencies' use in determining eligibility for special assistance or other benefits provided disclosure is pursuant to a routine use.

Appendix A to part 327-Sample DeCA response letter

Mrs. Floria Employee
551 Florida Avenue
Oakland, CA 94618
Dear Mrs. Employee:
This responds to your Privacy Act request dated (enter date of request), in which you requested (describe requested records).
Your request has been referred to our headquarters for further processing. They will respond directly to you. Any questions concerning your request may be made telephonically (enter Privacy Officer's telephone number) or in writing to the following address:
Defense Commissary Agency, Safety, Security, and Administration, Attention: FOIA/PA Officer, Fort Lee, VA 23801-1800.
I trust this information is responsive to your needs.
(Signature block)

Appendix B to part 327-Internal management control review checklist.

(a) *Task:* Personnel and/or Organization Management
(b) *Subtask:* Privacy Act (PA) Program
(c) *Organization:*
(d) *Action officer:*
(e) *Reviewer:*
(f) *Date completed:*
(g) *Assessable unit:* The assessable units are HQ, DeCA, Regions, Central Distribution Centers, Field Operating Activities, and commissaries. Each test question is annotated to indicate which organization(s) is (are) responsible for responding to the question(s). Assessable unit managers responsible for completing this checklist are shown in the DeCA MCP, DeCA Directive 70–2 [1].
(h) *Event cycle 1:* Establish and implement a Privacy Act Program

[1] Copies may be obtained: Defense Commissary Agency, ATTN: FOIA/Privacy Officer, 1300 E. Avenue, Fort Lee, VA 23801–1800.

(1) Risk: If prescribed policies, procedures and responsibilities of the Privacy Act Program are not adhered to, sensitive private information on individuals can be given out to individuals.

(2) Control Objectives: The prescribed policies, procedures and responsibilities contained in 5 U.S.C. 552a are followed to protect individual privacy and information release.

(3) Control Techniques: 32 CFR part 310 and DeCA Directive 30–13 [2], Privacy Act Program.

(i) Ensure that a PA program is established and implemented.

(ii) Appoint an individual with PA responsibilities and ensure the designation of appropriate staff to assist.

(4) Test Questions: Explain rationale for YES responses or provide cross-references where rationale can be found. For NO responses, cross-reference to where corrective action plans can be found. If response is NA, explain rationale.

(i) Is a PA program established and implemented in DeCA to encompass procedures for subordinate activities? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(ii) Is an individual appointed PA responsibilities? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(iii) Are the current names and office telephone numbers furnished OSD, Privacy Act Office of the PA Officer and the IDA? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(iv) Is the annual PA report prepared and forwarded to OSD, Defense Privacy Office? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(v) Is PA awareness training/ orientation provided? Is in-depth training provided for personnel involved in the establishment, development, custody, maintenance and use of a system of records? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(vi) Is the PA Officer consulted by information systems developers for privacy requirements which need to be included as part of the life cycle management of information consideration in information systems design? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(vii) Is each system of records maintained by DeCA supported by a Privacy Act System Notice and has the systems notice been published in the Federal Register? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(i) *Event cycle 2:* Processing PA Requests

(1) Risk: Failure to process PA requests correctly could result in privacy information being released which subjects the Department of Defense, DeCA or individuals to criminal penalties.

(2) Control Objective: PA requests are processed correctly

(3) Control Technique:

(i) Ensure PA requests are logged into a formal control system.

(ii) Ensure PA requests are answered promptly and correctly.

(iii) Ensure DeCA records are only withheld when they fall under the general and specific exemptions of 5 U.S.C. 552a and one or more of the nine exemptions under DeCA Directive 30–12 [3], Freedom of Information Act (FOIA) Program.

(iv) Ensure all requests are coordinated through the General Counsel

(v) Ensure all requests are denied by the DeCA IDA.

(vi) Ensure all appeals are forwarded to the Director DeCA or his designee.

(4) Test Questions:

(i) Are PA requests logged into a formal control system? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(ii) Are individual requests for access acknowledged within 10 working days after receipt? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(iii) When more than 10 working days are required to respond to a PA request, is the requester informed, explaining the circumstances for the delay and provided an approximate date for completion? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(iv) Are DeCA records withheld only when they fall under one or more of the general or specific exemptions of the PA or one or more of the nine exemptions of the FOIA? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(v) Do denial letters contain the name and title or position of the official who made the determination, cite the exemption(s) on which the denial is based and advise the PA requester of their right to appeal the denial to the Director DeCA or designee? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(vi) Are PA requests denied only by the HQ DeCA IDA? (All). Response: Yes / No / NA. Remarks:

(vii) Is coordination met with the General Counsel prior to forwarding a PA request to the IDA? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(j) *Event cycle 3:* Requesting PA Information

(1) Risk: Obtaining personal information resulting in a violation of the PA.

(2) Control Objective: Establish a system before data collection and storage to ensure no violation of the privacy of individuals.

(3) Control Technique: Ensure Privacy Act Statement to obtain personal information is furnished to individuals before data collection.

(4) Test Questions:

(i) Are all forms used to collect information about individuals which will be part of a system of records staffed with the PA Officer for correctness of the Privacy Act Statement? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(ii) Are Privacy Statements prepared and issued for all forms, formats and questionnaires that are subject to the PA, coordinated with the DeCA forms manager? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(iii) Do Privacy Act Statements furnished to individuals provide the following:

(A) The authority for the request.

(B) The principal purpose for which the information will be used.

(C) Any routine uses.

(D) The consequences of failing to provide the requested information. Response: Yes / No / NA. Remarks:

(k) *Event cycle 4:* Records Maintenance

(1) Risk: Unprotected records allowing individuals without a need to know access to privacy information

(2) Control Objective: PA records are properly maintained throughout their life cycle

(3) Control Technique: Ensure the prescribed policies and procedures are followed during the life cycle of information.

(4) Test Questions:

(i) Are file cabinets/containers that house PA records locked at all times to prevent unauthorized access? (All). Response: Yes / No / NA. Remarks:

(ii) Are personnel with job requirement (need to know) only allowed access to PA information? (All). Response: Yes / No / NA. Remarks:

(iii) Are privacy act records treated as unclassified records and designated 'For Official Use Only'? (All). Response: Yes / No / NA. Remarks:

(iv) Are computer printouts that contain privacy act information as well as disks, tapes and other media marked 'For Official Use Only'? (All). Response: Yes / No / NA. Remarks:

(v) Is a Systems Manager appointed for each automated/manual PA systems of records? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

[2] See footnote 1 to this Appendix B.

[3] See footnote 1 to this Appendix B.

(vi) Are PA records maintained and disposed of in accordance with DeCA Directive 30-2 [4], The Defense Commissary Agency Filing System? (All). Response: Yes / No / NA. Remarks:

(l) I attest that the above listed internal controls provide reasonable assurance that DeCA resources are adequately safeguarded. I am satisfied that if the above controls are fully operational, the internal controls for this sub-task throughout DeCA are adequate.

Safety, Security and Administration FUNCTIONAL PROPONENT

I have reviewed this sub-task within my organization and have supplemented the prescribed internal control review checklist when warranted by unique environmental circumstances. The controls prescribed in this checklist, as amended, are in place and operational for my organization (except for the weaknesses described in the attached plan, which includes schedules for correcting the weaknesses).

ASSESSABLE UNIT MANAGER (Signature)

Appendix C to part 327-DeCA Blanket Routine Uses

(a) *Routine Use--Law Enforcement.* If a system of records maintained by a DoD Component, to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

(b) *Routine Use-Disclosure when Requesting Information.* A record from a system of records maintained by a Component may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(c) *Routine Use--Disclosure of Requested Information.* A record from a system of records maintained by a Component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) *Routine Use--Congressional Inquiries.* Disclosure from a system of records maintained by a Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(e) *Routine Use--Private Relief Legislation.* Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the OMB in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(f) *Routine Use--Disclosures Required by International Agreements.* A record from a system of records maintained by a Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

(g) *Routine Use--Disclosure to State and Local Taxing Authorities.* Any information normally contained in Internal Revenue Service (IRS) Form W-2 which is maintained in a record from a system of records maintained by a Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C., sections 5516, 5517, and 5520 and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76-07.

(h) *Routine Use--Disclosure to the Office of Personnel Management.* A record from a system of records subject to the Privacy Act and maintained by a Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

(i) *Routine Use--Disclosure to the Department of Justice for Litigation.* A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

(j) *Routine Use--Disclosure to Military Banking Facilities Overseas.* Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

(k) *Routine Use--Disclosure of Information to the General Services Administration (GSA).* A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(l) *Routine Use--Disclosure of Information to the National Archives and Records Administration (NARA).* A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(m) *Routine Use--Disclosure to the Merit Systems Protection Board.* A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including

[4] See foonote 2 to this Appendix B.

administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

(n) *Routine Use--Counterintelligence Purpose.* A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8723 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA231–0227b; FRL–6571–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from Automotive Refinishing Operations and Motor Vehicle and Mobile Equipment Coatings Operations.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by May 10, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's technical support document for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

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

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409;

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382.

FOR FURTHER INFORMATION CONTACT: Julie Rose, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns Antelope Valley Air Pollution Control District, Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and Mojave Desert Air Quality Management District Rule 1116, Automotive Refinishing Operations. These rules were submitted by the California Air Resources Board to EPA on October 29, 1999 and July 23, 1999, respectively. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: March 15, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–8527 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA54—200017; FRL–6574–9]

Approval and Promulgation of Implementation Plans, Georgia: Approval of Revisions for a Transportation Control Measure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Georgia State Implementation Plan (SIP) submitted by the State through the Department of Natural Resources on March 29, 2000, requesting incorporation of the Atlantic Steel Transportation Control Measure (TCM) into the SIP.

DATES: Comments on EPA's proposed action must be received on or before May 10, 2000.

ADDRESSES: All comments should be addressed to: Kay T. Prince, Chief, Regulatory Planning Section at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Contact Dr. Robert W. Goodwin at 404/562–9044.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354. 404/363–7000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert W. Goodwin at 404/562-9044, E-mail: *Goodwin.Robert@epa.gov.* Information regarding Project XL and the Atlantic Steel Final Project Agreement is available via the Internet at the following location: "http://www.epa.gov/ProjectXL".

SUPPLEMENTARY INFORMATION:

I. Background

EPA, with the cooperation of State and local authorities, has initiated Project XL to work with interested companies to develop innovative approaches for addressing environmental issues. Project XL encourages companies and communities to come forward with new approaches that have the potential to advance environmental goals more effectively

and efficiently than have been achieved using traditional regulatory tools.

Atlantis 16th, L.L.C. (hereafter referred to as Jacoby or the developer), a developer in Atlanta, Georgia, has proposed redevelopment of a 138-acre site previously owned by Atlantic Steel near Atlanta's central business district. The proposed redevelopment is a mix of residential and business uses. Project plans include a new 17th Street multi-modal (cars, pedestrians, bicycles, transit linkage) bridge that would cross over and provide access ramps to and from Interstate-75/85 (I–75/85) and connect the site to a nearby Metropolitan Atlanta Rapid Transit Authority (MARTA) rapid rail mass transit station. Jacoby worked intensively with representatives of EPA, the State of Georgia, the City of Atlanta, other local authorities, and public stakeholders to develop a site-specific Project XL Agreement that will allow implementation of the redevelopment. The XL Final Project Agreement was signed September 7, 1999.

A. Why Is Project XL Necessary?

The project site currently suffers from poor accessibility due to the lack of a linkage to and across I–75/85 and to the existing MARTA transit system in Atlanta. Construction of an interchange and multi-modal bridge across I–75/85 at or near 17th Street would improve access to the site. The bridge would also serve as a vital linkage between the Atlantic Steel redevelopment and the MARTA Arts Center station. In addition, construction of the 17th Street bridge was one of the City of Atlanta's zoning requirements for the redevelopment.

Jacoby is participating in Project XL for the Atlantic Steel redevelopment because neither the 17th Street bridge nor the associated I–75/85 access ramps would be able to proceed without the regulatory flexibility being allowed by EPA under Project XL. Atlanta is currently out of compliance with federal transportation conformity requirements because it has not demonstrated that its transportation activities will not exacerbate existing air quality problems or create new air quality problems in the region. The Clean Air Act (CAA) generally prohibits construction of new transportation projects that use federal funds or require federal approval in areas where compliance with conformity requirements has lapsed. However, projects which are approved as Transportation Control Measures (TCMs) in the SIP can proceed—even during a conformity lapse. EPA reviews and takes rulemaking action on proposed revisions to SIPs, including proposed TCMs to be included in SIPs.

B. What Is a TCM?

A TCM is any measure that is specifically identified and committed to in the applicable SIP that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

C. What Flexibility Is EPA Granting?

The flexibility Jacoby and the City of Atlanta are seeking through Project XL is to regard the entire redevelopment project, including the 17th Street bridge, as a TCM. The flexibility under Project XL is necessary because the redevelopment likely would not qualify as a TCM in the traditional sense. There are two components to the flexibility.

1. The first part of the flexibility is to consider the entire Atlantic Steel redevelopment to be a TCM. That is, the redevelopment's location, transit linkage, site design, and other transportation elements (*e.g.*, provisions for bicyclists; participation in a transportation management association (TMA)) are viewed together as the TCM. Section 108 of the CAA lists several types of projects that can be TCMs, but its language does not limit TCMs to the measures listed.

2. The second aspect of the flexibility sought under Project XL concerns use of an innovative approach to estimate the air quality benefit of the Atlantic Steel redevelopment. The redevelopment's air quality benefit is estimated relative to an equivalent amount of development at other likely sites in the region. This type of comparison is available only to this particular redevelopment through the Project XL process. The entire Atlantic Steel redevelopment would attract new automobile trips and result in new emissions. Therefore, redevelopment of the site when considered in isolation would not qualify as a TCM in the traditional sense. EPA believes, however, that the Atlanta region will continue to grow, and that redevelopment of the Atlantic Steel site will produce fewer air pollution emissions than an equivalent quantity of development that likely would occur at other potential sites in the region, if the Atlantic Steel redevelopment were not to occur.

D. Why Is This Flexibility Appropriate?

EPA believes the flexibility described above is appropriate for this project because of the combination of unique elements of the site and the redevelopment listed below. In the absence of these elements, EPA would be unlikely to approve this project as a TCM.

1. The site is a brownfield. An accelerated clean-up of the site will occur if this TCM is implemented. The clean-up and redevelopment of the former industrial site aligns with EPA's general efforts to encourage clean-up and reuse of urban brownfields.

2. The site has a regionally central, urban location. Redeveloping this property will result in a shift of growth to Midtown Atlanta from the outer reaches of the metropolitan area. Because of the site's central location, people taking trips to and from the site will be driving shorter average distances than those taking trips to and from a development on the edge of the city. Shorter driving distances will result in fewer emissions.

3. The redevelopment plan includes a linkage to MARTA. This linkage would make it possible for those who work at the site to commute without a car and would serve residents of Atlantic Steel as well as residents of surrounding neighborhoods. In addition, the transit link is valuable for those coming to the site for non-work purposes, such as dining, shopping, and entertainment.

4. The redevelopment plan incorporates many "smart growth" site design principles. These principles include features which promote pedestrian and transit access rather than exclusive reliance on the car. The redevelopment will avoid creating areas that are abandoned and unsafe in the evening, hotels and offices will be within walking distance of shops and restaurants, shops that serve local needs will be within walking distance of both the Atlantic Steel site and the adjacent neighborhoods, and wide sidewalks will encourage walking and retail use. Jacoby has also responded to the adjacent neighborhood's request for public parks, designating public space to central locations rather than relegating it to the edge.

5. The redevelopment plan incorporates many elements that could qualify as TCMs by themselves. In addition to other features, such as the linkage to mass transit, the redevelopment will participate in a TMA. The TMA may participate with the City of Atlanta and Jacoby in monitoring the transportation performance of the redevelopment by collecting travel-related data on an annual basis.

With the exception of the site's accelerated clean-up, all of these elements will have an impact on transportation decisions of people who begin and/or end trips in the Atlantic

Steel site. The combination of the site's location in a central urban area, connection to the existing transit system, design that promotes pedestrian access, participation in a TMA, and provision of bicycle and pedestrian conveniences are expected to work together to reduce growth in auto traffic in the Atlanta region. The redevelopment could demonstrate that the application of smart growth concepts can make a difference in travel patterns. Therefore, EPA is proposing to use the regulatory flexibility under Project XL to approve the Atlantic Steel redevelopment and its associated transportation projects as a TCM.

II. Analysis of State's Submittal

On March 29, 2000, the State of Georgia through the Department of Natural Resources submitted to EPA a request to approve the Atlantic Steel TCM into the SIP. A public hearing on the proposed SIP revision was held on September 30, 1999.

EPA's policy establishes six criteria that a TCM must meet before it can be considered for approval in the SIP. These criteria are contained in the September 1990 report entitled "Transportation Control Measures: State Implementation Plan Guidance." These six criteria are addressed in the following six sections.

A. Complete Description of the Measure and Its Estimated Emissions Reduction Benefits

Current plans for redevelopment of the 138-acre Atlantic Steel site include 1.6 million ft^2 of retail space, 4.0 million ft^2 of office space, 2885 residential units, 1150 hotel rooms, and 1.5 million ft^2 of high tech office space to be built in three phases over approximately ten years. The final site design may change from the current design site provided in the March 29, 2000, submittal, however the SIP revision requires the final site design to meet or exceed certain criteria for overall density, transit-oriented density, activity diversity, and external street connectivity.

The City of Atlanta has established 27 zoning conditions on the Atlantic Steel property that are included as part of the SIP revision, requiring Jacoby to complete certain activities, several of which are related to implementation of the TCM. Relevant conditions include: development and appropriate phasing of residential and non-residential components of the project; development of 17th Street as a mixed use street; construction of bicycle lanes; creation of and maintenance of open space; incorporation of a transit connection to the MARTA Arts Center station from the site; development of a transportation management plan, including support for and participation in a TMA; and the necessity of having the 17th Street bridge under contract for construction before building permits are issued for the site. The SIP revision requires that the zoning conditions apply to the current developer and all subsequent developers of the property. The conditions help ensure that the site design maximizes pedestrian and bicycle connectivity, transit connections, and activity diversity. Before construction occurs, the zoning conditions require Jacoby to submit a site plan to the Bureau of Buildings of the City of Atlanta for approval. The zoning conditions are described in more detail in section II.E below.

A multi-modal bridge will be constructed that will connect the site to Midtown Atlanta and the MARTA Arts Center station on the east side of I–75/85 at or near 17th Street. The SIP revision requires the bridge to be designed to accommodate potential future rail transit, with dedicated transit lanes and adequate widths for dedicated sidewalks and bicycle lanes. The bridge will also include ramps connecting to I–75/85.

The SIP revision requires Jacoby to provide an interim rubber tire shuttle service connecting the Atlantic Steel site with the MARTA Arts Center Station utilizing the multi-modal bridge. The SIP revision requires the service to begin operation immediately after construction of the 17th Street bridge. The SIP revision requires that the duration of this obligation is for ten years from the date that the 17th Street bridge opens to traffic or until an appropriate entity operates a fixed mass transit link providing a similar level of service, whichever occurs first. The SIP revision requires the shuttle to complement the hours of service and headways of fixed transit serving the MARTA Arts Center station, operating on a dedicated transit lane with a projected minimum headway of four minutes and a projected maximum headway of eight minutes, and that it will be designed to reduce the number of single occupant trips made to the site. The SIP revision requires the shuttle to provide the most direct and closest access practicable to the anticipated on-site high-density office building development, and, at a minimum, comply with all requirements of the Americans with Disabilities Act related to operation of a transit system. The shuttle system may consist of electric and alternatively fueled buses.

To estimate the air emissions impacts of the Atlantic Steel TCM, EPA, in consultation with stakeholders including the Federal Highway Administration (FHWA), the Atlanta Regional Commission (ARC), and local citizen's groups, undertook three analyses: Regional transportation and air emissions impacts; local hot spot impacts; and site level travel impacts. The results of these analyses are included in the SIP revision in the May 10, 1999, report entitled "Transportation and Environmental Analysis of the Atlantic Steel Development Proposal." The ARC Interagency Consultation Group, comprised of staff from Federal, state, and local transportation and air quality planning agencies in the Atlanta nonattainment area, approved the modeling methodology EPA used to estimate the emissions benefits of the proposed Atlantic Steel TCM at its February 12, 1999, and May 5, 1999, meetings.

To analyze the transportation and air emissions impacts of locating new development at the Atlantic Steel site, EPA used ARC's regional transportation model and the MOBILE5 emissions factor model to compare the Atlantic Steel site to three other possible development locations for similar-scale development in the Atlanta region. EPA's evaluation of the Atlantic Steel site's impacts is predicated on two assumptions: First, Atlanta will continue to grow over the next 20 years. Second, without redeveloping the 138-acre Atlantic Steel site, more of this growth will locate in outlying areas.

Analysis of regional transportation and air impacts of the proposed Atlantic Steel redevelopment indicates that absorbing a portion of Atlanta's future growth at the Atlantic Steel site would create less travel and fewer emissions than developing likely alternative sites. The study estimates that by the year 2015 the Atlantic Steel redevelopment would generate roughly 0.2–0.3 tons per day fewer emissions of oxides of nitrogen, and 1.1–1.2 tons per day fewer emissions of volatile organic compounds, both precursors to ground-level ozone formation, than comparable developments at other likely sites in the Atlanta region. However, no emissions credit is being claimed by the State of Georgia in the SIP revision for the Atlantic Steel TCM relative to current emissions levels.

EPA analyzed whether additional traffic resulting from the redevelopment of Atlantic Steel would cause carbon monoxide hot spots, *i.e.*, localized levels of carbon monoxide exceeding the National Ambient Air Quality

Standards. The analysis indicates that the redevelopment would create no violations of the standards.

Finally, EPA analyzed the transportation and air emissions impacts of the proposed redevelopment's site design. EPA evaluated three designs for the Atlantic Steel site: The design submitted at the time of the Project XL application by Jacoby; a design commissioned by EPA and created by Duany Plater-Zyberk & Co. (DPZ), a leading town planning firm; and a redesign by Jacoby that incorporates aspects of the DPZ design. The designs differ substantially in ways that affect travel behavior and therefore emissions. Compared to Jacoby's original design, the DPZ design and Jacoby's redesign excel in three areas in particular. First, they improve the mix of uses on-site by integrating them at a finer scale. Second, they provide better connectivity both on- and off-site. Third, the pedestrian environment is improved through street design that includes more direct routing and slower traffic speeds. The current site design is essentially Jacoby's redesign.

In summary, EPA analyzed the impacts of development location and design on regional vehicle miles traveled (VMT) and emissions. EPA found that the most regionally central, most transit-accessible, and most pedestrian-friendly location and site design combinations—those at the Atlantic Steel location—produced the least VMT, emissions, and other environmental impacts. The SIP revision requires the final site design to meet or exceed certain criteria that were derived, in part, from EPA's analysis. The site design criteria help ensure that the redevelopment will contain the high density, mixed use, transit- and pedestrian-friendly components EPA studied.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing a complete description of the measure and its estimated emissions reduction benefits.

B. Evidence That the Measure Was Properly Adopted by a Jurisdiction With Legal Authority To Commit to and Execute the Measure

The City of Atlanta is the sponsor of the Atlantic Steel TCM and is responsible for implementing and monitoring the project according to the criteria and schedule in the SIP revision. This commitment is evidenced by a letter contained in the SIP revision dated June 22, 1999, from the Honorable Michael A. Dobbins, Commissioner of Planning, Development, and Neighborhood Conservation for the City of Atlanta, to Mr. Harry West, Executive Director of ARC.

In addition, the SIP revision contains a copy of the resolution approved by the ARC Board on June 23, 1999, in which the proposed Atlantic Steel TCM was adopted as part of the Interim Atlanta Region Transportation Improvement Program, Fiscal Years 2000–2002.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that the measure was properly adopted by a jurisdiction with legal authority to commit to and execute the measure.

C. Evidence That Funding Has Been (Or Will Be) Obligated To Implement the Measure

Although not a direct transportation/air quality component, remediation of the site is a necessary precondition for development. Presently, the estimated cost of remediation is $10 million, which will be paid by the sellers of the property with funds from the purchase price.

The value of the land after remediation is conservatively estimated at $1 million per acre. Of the 138 acres, 47 acres to the west of I–75/85 are scheduled for right-of-way acquisition. The SIP revision requires that, as appropriate, right-of-way for streets, sidewalks, transit, bicycle lanes and open space will be dedicated by Jacoby without cost. The SIP revision requires Jacoby to provide right-of-way in the development to MARTA or other acceptable entity for the construction of a transit linkage connecting the Atlantic Steel site to the MARTA Arts Center station. The estimated value of the right-of-way dedication is $47 million.

The SIP revision identifies several financing mechanisms available to assist with funding for construction of roads, sidewalks and bicycle lanes. The SIP revision includes an ordinance adopted by the City of Atlanta calling for the collection of Transportation Impact Fees. Fees are based upon a cost per peak hour VMT less property tax credit assessed on an amount of square feet for different building types. Jacoby can request a waiver of impact fees of similar magnitude provided the improvements are made as part of the project. Fees are collected at the time a building permit is issued. Appropriate expenditures of fees include projects that promote pedestrian activity, bicycling, mass transit and other alternatives to automobile transportation. As per the current site plan, Transportation Impact Fees for phase one of the project are approximately $2.8 million. Estimates based upon phase two and phase three development plans are approximately $9.7 million.

An alternative method of financing improvements identified and included in the SIP revision is the Atlantic Steel Brownfield Area and Tax Allocation District Number Two (BATAD#2). The BATAD#2 was approved by the Atlanta City Council on October 4, 1999, and signed by the Mayor of the City of Atlanta on October 5, 1999. The BATAD#2 will issue bonds against anticipated revenues to pay for infrastructure improvements. The BATAD#2 will continue in existence for 25 years. The estimated tax increment base set by the City of Atlanta is $7.5 million. This leverages approximately $75 million.

Current estimates for the construction of roads, sidewalks and sewers to the west of I–75/85 are $15 million; preliminary architectural and engineering costs are estimated to be $12 million. The SIP revision establishes that funding for the various infrastructure improvements associated with redevelopment of the Atlantic Steel site will be achieved through either imposition of Transportation Impact Fees or by the BATAD#2, as described above.

The cost of the 17th Street bridge is estimated to be approximately $53 million, with an additional $25 million to purchase required right-of-way and easement for that area of the project beyond the Atlantic Steel development site. The Georgia Department of Transportation (GDOT) has committed to fund all construction costs (which includes the local matching funds) for the western section of 17th Street starting at the railroad bridge and extending to Northside Drive, the 17th Street bridge interchange, including the bridge ramps, frontage road relocations, associated intersections and approaches for 17th Street at Spring Street and West Peachtree Street, and the possible reconstruction of the 14th Street bridge over I–75/85. GDOT will reserve and assign funding to ARC and provide the local match for construction of the 17th Street bridge. GDOT will also fund utility relocations. In addition, GDOT will place the 17th Street corridor from Northside Drive to Spring Street and West Peachtree Street on the temporary state system. This will enable GDOT to finance the purchase of the required right-of-way and easement for that area of the project beyond the Atlantic Steel development site. These commitments by GDOT are part of the SIP revision and are evidenced by: (1) A letter from GDOT Commissioner Wayne Shackelford to City of Atlanta Commissioner Michael A. Dobbins

dated February 5, 1999; (2) a GDOT interdepartment correspondence from Joseph P. Palladi to Commissioner Wayne Shackelford dated January 31, 2000; and (3) a letter from Commissioner Wayne Shackelford to City of Atlanta Mayor Bill Campbell dated March 7, 2000.

There are also operating costs associated with the development of the TCM. This includes the cost of operating an interim shuttle service to satisfy transit obligations. Exclusive of right-of-way, hard costs associated with the shuttle service are estimated at $2.68 million; annual operations are estimated to be approximately $1.88 million. The SIP revision requires the cost of the shuttle to be borne by Jacoby.

A TMA is to be formed for the Midtown area of the City of Atlanta. The purpose of the TMA is to gather information on performance measures to be submitted to ARC for evaluation of emissions benefits, as well as to manage alternative transportation programs within the Atlantic Steel site. Start-up costs for the TMA are estimated to be $150,000. Annual operating costs will be in the range of $250,000. The SIP revision requires Jacoby to assist with initial financial support for the TMA. As the TMA progresses, participants (i.e. employers, property managers) will pay dues to support the operation of the organization. The TMA may also be funded by the BATAD #2.

Estimated project costs and funding sources identified in the SIP revision are included in Tables 1 through 4 below.

TABLE 1.—ON-SITE TRANSPORTATION INFRASTRUCTURE COST ESTIMATES

Component	Estimate (in millions)	Funding source(s)
Streets, Sidewalks, Transit Lanes (Right of Way)	$40	Developer.
Streets, Sidewalks, Transit Lanes (Construction)	15	BATAD #2 Impact Fees.
Utilities	9	BATAD #2 Impact Fees.
Public Amenities	24	BATAD #2 Impact Fees.
Total	88	

TABLE 2.—17TH STREET BRIDGE COST ESTIMATES

Phase	Estimate (In millions)	Funding source(s)
Right of Way (Off Site)	$25	GDOT, Federal.
Preliminary Engineering and Design	4	Developer.
Construction	53	GDOT, Federal.
Total	82	

TABLE 3.—TRANSIT CAPITAL COST ESTIMATES

Component	Estimate (In millions)	Funding source(s)
Shuttle Stations	$0.52	Developer.
Shuttle Stops	0.36	Developer.
Fleet	1.8	Developer.
Total	2.68	

TABLE 4.—TRANSIT ANNUAL OPERATING COST ESTIMATE

Component	Estimate (in millions)	Funding source
Annual Operating Cost	$1.88	Developer.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that funding has been (or will be) obligated to implement the measure.

D. Evidence That All Necessary Approvals Have Been Obtained From All Appropriate Government Entities

The Georgia Environmental Protection Division (EPD) finalized approval of the site remediation plan as evidenced by a letter from the Director of EPD, Mr. Harold F. Reheis, to Mr. Jesse J. Webb, Chief Executive Officer of Atlantic Steel Industries, and Mr. Hilburn O. Hillstead, Vice President of Atlantis 16th, L.L.C., dated December 10, 1999.

The City of Atlanta approved the rezoning of the Atlantic Steel property on April 13, 1998. The City approved the Transportation Impact Fees ordinance on June 12, 1994. The City approved the BATAD #2 on October 5, 1999. Fulton County approved the BATAD #2 on November 3, 1999. The Atlanta Board of Education approved the BATAD #2 on December 13, 1999. These approvals are evidenced by copies of the relevant ordinances and the BATAD#2, which are included in the SIP revision.

Implementation of the TCM will require approval of an Interchange Modification Report for the 17th Street bridge and approval of the National Environmental Policy Act document by FHWA. Because Atlanta is currently in a transportation conformity lapse, these approvals cannot take place until EPA approves the Atlantic Steel TCM SIP revision. FHWA is committed to working with all appropriate agencies to approve these documents once this SIP is approved.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that all necessary approvals have been or will be obtained from all appropriate government entities.

E. Evidence That a Complete Schedule To Plan, Implement, and Enforce the Measure Has Been Adopted by the Implementing Agency or Agencies

The SIP revision contains the TCM implementation schedule listed in Table 5.

TABLE 5.—IMPLEMENTATION SCHEDULE

Timeframe and activity
01/01/2000–12/31/2000:
Complete remediation and infrastructure.
Begin design of bridge.
Begin Phase I vertical development.
01/01/2001–12/31/2001:
Complete bridge design.
Begin bridge construction.
01/01/2002–12/31/2003:
Complete bridge construction.
Complete Phase I vertical development.
Retail—1.2 million ft².
Office—1.0 million ft².
Residential—1,000 units.
Hotel—383 rooms.
High Tech—0.5 million ft².
01/01/2004–12/31/2005:
Complete Phase II vertical development:
Retail—0.3 million ft²—Total: 1.5 million ft².
Office—0.5 million ft²—Total: 1.5 million ft².
Residential—600 units—Total: 1,600 units.
Hotel—192 rooms—Total: 575 rooms.
High Tech—0.5 million ft²—Total: 1.0 million ft².
01/01/2006–build-out[1]:
Complete Phase III vertical development:
Retail—0.1 million ft²—Total: 1.6 million ft².
Office—2.5 million ft²—Total: 4.0 million ft².
Residential—1285 units—Total: 2885 units.
Hotel—575 rooms—Total: 1150 rooms.
High Tech—0.5 million ft²—Total: 1.5 million ft².

[1] The build out projections will vary. These numbers relate to the BATAD#2 projections.

This is a non-traditional TCM. It includes aspects which, if considered alone, may qualify as TCMs and other aspects which would not by themselves qualify as TCMs, but contribute to anticipated air quality benefits through this project. The resulting TCM is complex and requires a non-traditional analysis by EPA. Normally, EPA's review would focus on whether a sponsoring agency of a proposed TCM has sufficient legal authority, procedures and resources to complete a particular project. For a vanpool or high occupancy vehicle lane project, for example, this inquiry is fairly straightforward. For this project, with its overlap of land use, site design, mass transit and pedestrian elements, the inquiry is broadened considerably.

All of the parts of this TCM cannot be accomplished with a single piece of legislation or a single agreement. The City of Atlanta has therefore adopted a multi-faceted approach which has been tailored to accomplish the goal of turning an urban brownfield site into a mixed-use community which encourages and facilitates alternative modes of transportation. The two central pieces of this strategy are the zoning conditions applicable to this site adopted by the City and the creation of the BATAD#2, which allows for the reinvestment of tax revenues from the site to pay for the necessary infrastructure improvements. The following is a discussion of how the BATAD#2 and zoning conditions will allow the City of Atlanta to plan, implement, and enforce the necessary components of this TCM.

At the request of Jacoby, and with the support of the affected neighborhood groups, on April 13, 1998, the City of Atlanta adopted 27 special zoning conditions for the Atlantic Steel site that go beyond the zoning conditions typically adopted by the City. The SIP revision contains evidence that these conditions have been fully adopted by the City. Specific conditions which EPA believes support this project being classified a TCM include the following:

1. Rezone the property to C–4–C (mixed use) classification. By allowing a mix of uses the site design will limit trips as persons who work or live at the site will have retail and entertainment opportunities nearby.

2. The property will be developed in accordance with the "Use Diagram" filed with the City which includes right-of-way for bicycle lanes, sidewalks, mass transit lines and greenspace. It also limits the uses available in certain sensitive areas of the site to help maintain a desirable quality of life for residents.

3. The development will be subject to restrictive covenants which will provide for maintenance of open space areas and architectural control on all buildings through an architectural review board, which will include representatives from neighboring Home Park and Loring Heights. This condition will help provide and keep up greenspace as well as ensure a desirable quality of life for residents and visitors.

4. The developer will work with the City and neighborhood groups to limit cut-through traffic in designated areas by use of cul-de-sacs and traffic calming devices. This condition will promote pedestrian activity.

5. There will be at least seven acres of open space which will include a lake and landscaped areas as indicated in the "Primary Residential" area of the diagram. This condition will help create a pedestrian-friendly atmosphere.

6. Design standards with dimensions for streetscape, pedestrian and bike paths will be implemented as depicted on the drawing and will be installed concurrently with the street system. This condition will help ensure that non-automobile access is prioritized concurrently with road construction.

7. No "at-grade" crossing over the railroad line at Mecaslin Street will be utilized and the developer will not pursue any other crossing of Mecaslin Street north of the railroad line, except to provide a trail link and crossing for bikes and pedestrians. The developer also will construct a 12-feet wide concrete, multi-use trail connection to this crossing from the bike lanes on 17th Street and the multi-use trail. This condition will encourage pedestrian and bicycle activity.

8. The developer will incorporate people movers and other alternative forms of public transportation into its plans, subject to state, local and Federal approvals, including plans for access to the MARTA Arts Center station as well as provision for a rail corridor to the west and use its best efforts to see that such transportation is provided. This condition will contribute to the transit and pedestrian orientation of the project.

9. Only retail shops will be allowed in all buildings facing 17th street in the "Mixed Use" area. This will encourage pedestrian activity by creating a pedestrian friendly atmosphere and destinations for pedestrians.

10. The developer will use best efforts to ensure that development is phased so that proposed residential is completed before or concurrently with proposed retail/commercial. This will help ensure development of the mixed-use attributes of the site, which relates to the pedestrian orientation of the project.

11. Primary pedestrian entrances shall face public sidewalks. This condition will enhance the pedestrian friendly design of the site.

12. In the 17th Street "Mixed Use" area, no parking or driveways shall be permitted between any building and the sidewalk (with the exception of parking

garages and hotels with circular driveways). This condition will enhance the pedestrian friendly design of the site.

13. In the 17th Street "Mixed Use" area, curb cuts will be limited to one per building (except for parking garages and hotels, which may have two). This condition will enhance the pedestrian friendly design of the site.

14. In the 17th Street "Mixed Use" area, buildings shall be set back no more than 25 feet from edge of the curb, except to provide public plazas, greenspace or pedestrian space. This condition will enhance the pedestrian friendly design of the site.

15. No temporary or permanent Certificates of Occupancy will be provided by the city until the Bureau of Buildings certifies that entire landscape plan for that phase of the development has been fully implemented. This condition will help ensure that landscape, pedestrian and greenspace designs receive priority from the developer.

16. All proposed pedestrian and open space improvements must be fully implemented for that phase of development before any temporary or permanent Certificates of Occupancy shall be issued. This condition will help ensure that landscape, pedestrian and greenspace designs receive priority from the developer.

17. The Bureau of Buildings shall not issue a building permit until such time as the applicant has submitted a Transportation Management Plan for all non-residential components. This condition is designed to ensure that an important focus of the development remains consideration of pedestrians and mass transit.

18. The developer is required to meet with the local neighborhood planning unit on an annual basis to report on the status of the project. This condition will help ensure that the developer stays in communication with affected residents and gives the public an opportunity to stay involved and monitor progress at the site.

The City of Atlanta has the legal authority to enact, implement and enforce the zoning conditions described above. Further, affected citizens and businesses also have standing under Georgia law to bring a lawsuit and enforce specific zoning conditions, provided they can meet the standing requirements. By proposing this project as a TCM , adopting these zoning conditions, and by committing to implement this project as part of the SIP revision, the City of Atlanta is demonstrating that it is willing to implement and enforce the necessary measures to complete this project.

The City of Atlanta's commitment to this project is also evident by the creation of the BATAD#2. The BATAD#2, created pursuant to Georgia law, allows Atlanta to commit anticipated public tax revenues to the necessary infrastructure improvements to accomplish the goals set forth in the proposed Redevelopment Plan by the City for the site. The City will contract with the Atlanta Development Authority to serve as the City's "Redevelopment Agent" responsible for implementing the proposed Redevelopment Plan. An important consideration for EPA in analyzing a TCM proposal includes whether or not there is sufficient financial support to implement the project as well as whether there is sufficient political means to complete a project. By creating the BATAD#2, Atlanta ensures that not only will there be sufficient funds and an enforcement mechanism for them, but the BATAD#2 also contributes additional mechanisms for assisting the implementation of mass transit and pedestrian orientation at the site.

The BATAD#2 will provide funding for the construction and maintenance of sidewalks, bike-paths, open space and other quality of life attributes of the site. Jacoby will donate the right-of-way for streets, sidewalks, bike-lanes and open space consistent with the Site Plan filed under the zoning conditions. The BATAD#2 will then ensure that funding is available for transportation and other important infrastructure improvements such as waste and stormwater controls.

The BATAD#2 will be able to provide some funding for the study and implementation of mass transit service to the Atlantic Steel site and connectivity to existing MARTA rail (i.e, contribute towards a local match for securing federal transit support). As with sidewalks, bike-paths and roads, Jacoby will donate the right-of-way to either the City or MARTA (or another suitable entity) to ensure that land acquisition of the necessary right-of-way is not an impediment to the success of the transit/pedestrian orientation of the site.

The BATAD#2 will provide the City with the financial wherewithal to coordinate development activities at the site with the various stakeholders, most important, the residents, neighbors and business owners in the area. The BATAD#2 may also provide the necessary funding for the creation of a TMA for the area. A TMA can play a crucial role in developing and implementing methods to reduce congestion, VMT and unnecessary automobile trips.

Despite the non-traditional aspects of this TCM, it is still subject to the same enforceability considerations and constraints applicable to any TCM as required by the Clean Air Act and its implementing regulations. Control measures adopted into a SIP are enforceable by EPA pursuant to section 113 of the CAA (42 U.S.C. 7413). That section provides for the assessment by the Administrator of civil penalties of up to $27,500 per day per violation against a person who has violated any requirement or prohibition of an applicable implementation plan. An "applicable implementation plan" is defined as that portion of a state implementation plan, which has been approved by the Administrator. (CAA Section 302(q) (42 U.S.C. 7602(q)). Once the SIP revision is approved by the EPA, it becomes part of the State's "applicable implementation plan" or SIP, and enforceable by EPA as well as by the State. Violations of SIP measures relating to TCMs are also enforceable by citizen suit under section 304(a)(1) and (f)(3).

Given the extraordinary zoning conditions placed on the site, and the creation of the BATAD#2 with the specific objective of providing the necessary funding for requisite infrastructure improvements, EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that a schedule to plan, implement, and enforce the measure has been adopted by the City.

F. Description of the Monitoring Program To Assess the Measure's Effectiveness and To Allow for Necessary In-Place Corrections or Alterations

The implementation and performance of the Atlantic Steel TCM will be monitored in accordance with the following seven main components:

1. The City of Atlanta has established zoning conditions on the Atlantic Steel property that require the project developer to complete certain activities that are also related to implementation of the TCM. (See section II.E above.) Compliance with zoning conditions is enforceable by law.

2. The SIP revision requires that the 17th Street bridge must be designed as a multi-modal facility that will provide a connection to the MARTA Arts Center station, accommodate future rail transit, and provide adequate widths dedicated for sidewalks and bicycle lanes. The SIP revision requires GDOT to ensure that the bridge will not be constructed

without these elements. In addition, there are a number of design-specific measures that will be considered in the next phase of bridge and intersection design to ensure that bicycle and pedestrian needs are met. These include: construction of narrower lanes to shorten the length of the intersection crossing; develop wider medians to provide islands; consideration of prioritized signal timing for pedestrians; use of special surface treatments for cross walks; consideration of elimination of turn lanes; and consideration of phased construction of 17th Street to provide for optimal pedestrian improvements. The SIP revision requires the City of Atlanta and GDOT to commit to work with affected stakeholders of the project to ensure that pedestrian needs are considered and a continuous flow of pedestrian movement is maintained in the design of roadways and intersections connecting the 17th Street bridge into Midtown Atlanta.

3. The SIP revision requires Jacoby to submit copies of the site plan, with revisions, to the City of Atlanta, ARC, EPD, and EPA Region 4 annually after the 17th Street bridge opens to traffic until the project is built-out. The SIP revision requires that when the project reaches two-thirds build-out or after six years from the date that the bridge opens to traffic, whichever comes first, the site design will be compared to the four site design criteria targets listed in Table 6. The site design criteria will be evaluated consistent with the definitions and methodologies contained in the EPA report entitled "Transportation and Environmental Analysis of the Atlantic Steel Development Proposal," dated May 10, 1999. The comparison will evaluate whether the site meets or will meet the criteria. If the site design at this time does not meet or exceed the target values in Table 6, Jacoby must submit and receive approval from the City of Atlanta, ARC, EPD, and EPA for a revised final site plan that does. Project build-out is defined as the amount of development allowed under the conditions of zoning for the Atlantic Steel project.

TABLE 6.—ATLANTIC STEEL TCM SITE DESIGN CRITERIA

Criterion	Description	Target value
Overall density	Total number of residents + employees on site	≥12,000
Transit-oriented density [1]	Total number of residents + employees per net acre within ¼-mile of an on-site transit stop.	≥180
Activity diversity	Percent of blocks with mixed uses [2]	≥33
External street connectivity	Average distance (in feet) between site ingress/egress streets.	≤1,000—unless the City of Atlanta specifies otherwise [3]

[1] Transit-oriented density around any individual transit stop may vary significantly, but the average density around all transit stops must be equal to or greater than 180 people per net acre within ¼ mile of the stop. This measure only includes on-site acreage.

[2] Percent of blocks with mixed use. A block is defined traditionally by the area contained within streets. Classification of uses will be according to major Standard Industrial Classification codes.

[3] This is calculated by dividing the length of the site's perimeter in feet by the number of ingress/egress streets. It is possible that the City of Atlanta would prevent connectivity of some streets or close access to some streets after they are built at the request of adjacent neighborhoods. Because this would be beyond the control of developers of the Atlantic Steel property, if such an event occurs, the target value is no longer effective.

4. The SIP revision requires that the TCM be monitored annually, beginning in the year following the opening of the 17th Street bridge to traffic and biennially after the project has reached two-thirds build-out. As part of the monitoring effort, the City of Atlanta will be responsible for collecting and maintaining the following data, at a minimum:

a. Average daily VMT per resident;

b. Average daily VMT per employee working at the site;

c. The percent of all combined trips made to, from and on the site by residents and employees in modes other than single occupancy vehicles (modal splits); and

d. Origin and destination data for trips made to, from and on the site by residents and employees.

The SIP revision requires the City of Atlanta and Jacoby, through a contractor or through the TMA, to develop a plan for data collection and submit it to ARC, EPD, and EPA Region 4 for approval prior to opening of the 17th Street bridge to traffic. The SIP revision specifies that data collection will continue until ten years following redesignation by EPA of the Atlanta area to attainment under the National Ambient Air Quality Standards for ozone. The SIP revision requires that the data be evaluated consistent with the definitions and methodologies contained in the EPA report entitled "Transportation and Environmental Analysis of the Atlantic Steel Development Proposal," dated May 10, 1999. ARC will be responsible for deriving mobile source emissions obtained from the data. At any time, the City of Atlanta may choose to solicit other transportation information such as travel cost and transit patronage that are beneficial for devising strategies to reduce VMT and single occupancy automobile travel.

This data collection requirement may necessitate that EPA submit an Information Collection Request (ICR) to the Office of Management and Budget. EPA will submit the ICR at a later date. Until EPA receives approval of the ICR, any component of the monitoring of this TCM that requires a survey of ten or more people may not be enforceable.

5. The SIP revision requires that at two, three and a half, and five years after the 17th Street bridge opens to traffic, the City of Atlanta, EPD, and EPA Region 4 will compare the observed average daily VMT per resident, the observed average daily VMT per employee working at the site, and the observed percent of all combined trips made to, from and on the site by residents and employees in modes other than single occupancy vehicles with ARC's most recent estimates of the regional (Atlanta 13-county nonattainment area) averages for these measures. If either of the observed VMT measures for the site is greater than or equal to the corresponding regional average, or if the observed mode split for the site is less than or equal to the regional average, then Jacoby will identify funding or fund the creation of a TMA for a period of twenty years from the applicable date, if employers and property managers are not participating in a TMA at that time. (The SIP revision requires that employers on the Atlantic Steel site participate in a TMA and that Jacoby assist with initial financial support for the TMA.) The TMA will consult with the City of Atlanta concerning implementation of additional alternative

transportation programs that achieve the performance standards stipulated in Table 7. The SIP revision requires the City of Atlanta to ensure that these programs will be developed and implemented, as appropriate, by the TMA.

TABLE 7.—ATLANTIC STEEL TCM PERFORMANCE MEASURES

Performance measure	Description	Target value
VMT per resident	Average daily VMT for all trips made by residents of the site.	≤27.
VMT per employee	Average daily VMT for trips to and from work for employees working on site.	≤11.
Mode Split	Percent of all trips to, from and on the site made by residents and employees combined, using non-SOV modes.	≥25.

6. The SIP revision requires that starting at six years after the 17th Street bridge opens to traffic or at two-thirds build-out, whichever occurs first, and at any time thereafter, if the site is not meeting or exceeding the performance targets contained in Table 7, Jacoby will identify funding or fund the creation of a TMA for a period of twenty years from the applicable date, if employers and property managers are not participating in a TMA at that time. (The SIP revision requires that employers on the Atlantic Steel site participate in a TMA and that Jacoby assist with initial financial support for the TMA.) The SIP revision requires the TMA to consult with the City of Atlanta concerning implementation of additional alternative transportation programs that achieve the performance standards stipulated in Table 7. The SIP revision requires the City of Atlanta to ensure that these programs will be developed and implemented, as appropriate, by the TMA. Examples of suggested programs are:

a. Transit discounts for on-site employees.

b. Increased provision of shuttle bus service or other transit service.

c. Increased parking rates, by time-of-day, by facility, and by parking type, as needed.

d. Reduction of available parking facilities or spaces.

e. Carpool/vanpool matching services.

f. Providing free or highly discounted annual regional transit passes with each residential unit (included in leases and property covenants).

g. Addition of traffic calming measures, such as raised pedestrian crosswalks, sidewalk bump-outs, diagonal on-street parking, or pedestrian islands.

h. Provisions and support for neighborhood car rental, car sharing systems, and real-time ridesharing services for residents and visitors.

i. Provision of additional facilities and amenities for non-SOV users such as bus shelters, bike racks and lockers, sidewalks, bike paths, park-and-ride facilities, telephones at shelters, newsstands, convenience retail, and daycare facilities.

j. Provision of guidance for telecommuting and alternative work schedules.

k. Employee Commuter Choice incentives—employees would be given the opportunity to purchase employer-discounted transit passes and vanpool benefits using pre-tax dollars.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that a monitoring program to assess the measure's effectiveness and to allow for necessary in-place corrections or alterations has been included in the TCM.

III. Proposed Action

EPA finds that the Atlantic Steel TCM SIP revision satisfies EPA's six TCM criteria, and therefore EPA is proposing approval of the aforementioned changes to the Georgia SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

Unanticipated Takings'' issued under the executive order. The data collection requirement may necessitate that EPA submit an ICR to the Office of Management and Budget. EPA will submit the ICR at a later date. Until EPA receives approval of the ICR, any component of the monitoring of a TCM that requires a survey of ten or more people may not be enforceable.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution cor'rol, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 3, 2000,

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

[FR Doc. 00–8835 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL52—200014; FRL–6568–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving the Section 111(d) Plan for the State of Alabama submitted by the Alabama Department of Environmental Management (ADEM) on April 20, 1999, for implementing and enforcing the Emissions Guidelines applicable to existing Hospital/Medical/Infectious Waste Incinerators. The Plan was submitted by the ADEM to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the Alabama State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by May 10, 2000.

ADDRESSES: Written comments should be addressed to Kimberly Bingham at the EPA Regional Office listed below. Copies of the documents relevant to this rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3014. Ms. Bingham can be reached at (404) 562–9038 and Bingham.Kimberly@epa.gov.

Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 16, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–8143 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6572–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office proposes to delete the Upper Deerfield Township Sanitary Landfill Superfund Site (Site), which is located in Upper Deerfield Township, Cumberland County, New Jersey, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA and the New Jersey Department of Environmental Protection have determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA; and therefore, further remedial measures pursuant to CERCLA are not appropriate.

We are publishing a direct final action along with this proposed deletion without a prior proposal because the Agency views this as a noncontroversial revision and anticipates no significant adverse or critical comments. A detailed rationale for this approval is set forth in the direct final rule. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by May 10, 2000.

ADDRESSES: Comments may be mailed to: Diego M. Garcia, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available for viewing at the Upper Deerfield Township Sanitary Landfill Superfund Site information repositories at the following locations: Upper Deerfield Municipal Building, Administrative Office, Building 1325, State Highway 77, Seabrook, New Jersey 08302, (609) 329–4000, and, U.S. EPA Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866,Hours: 9 AM to 5 PM, Monday through Friday. Contact: Superfund Records Center, (212) 637–4308

FOR FURTHER INFORMATION CONTACT: Diego M. Garcia, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4947, by FAX at (212) 637–4393 or via e-mail at garcia.diego@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: March 15, 2000.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 00–8525 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket No. MARAD–2000–7147]

RIN 2133–AB41

Appeal Procedures for Determinations Concerning Compliance With Service Obligations, Deferments, and Waivers

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Maritime Administration (MARAD) is soliciting public comment on proposed revisions to the procedures for reviewing: Determinations that a student or graduate of the U. S. Merchant Marine Academy (USMMA) or a State maritime academy that receives student incentive payments has breached the service obligation; denials of requests for deferment of the service obligation; and denials of requests for waivers of the service obligation contract. Currently, the regulations call for review by a panel composed of a representative of MARAD and representatives from the Department of the Navy, the National Oceanographic and Atmospheric Administration (NOAA), and the United States Coast Guard. The proposed revisions provide for an appeal to the Maritime Administrator, the head of the agency, rather than review by the panel. The intended effect of this regulation is to streamline the process of reaching a final agency decision and allow for timely action on requests for review.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than May 10, 2000. Comments filed late will be considered to the extent practicable.

ADDRESSES: Comments should refer to docket number MARAD–2000–7147. Written comments may be submitted by hand or mail to the Docket Management Facility, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Jay Gordon of the Office of Chief Counsel at (202) 366–5191. You may send mail to Jay Gordon, Maritime Administration, Office of Chief Counsel, Room 7228, MAR–226, 400 7th St., SW, Washington, DC, 20590–0001, or you may send e-mail to jay.gordon@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Who May File Comments?

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including, but not limited to, any state government agency, any political subdivision of a State, or any person.

How Do I Prepare and Submit Comments?

To ensure that your comments are correctly filed in the Docket, please include the docket number of this NPRM in your comments. In addition, your comments must be written in English.

We encourage you to write your primary comments in a concise fashion. You may, however, attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to the Docket Management Facility at the address given above under **ADDRESSES.** If possible, one copy should be in an unbound format to facilitate copying and electronic filing.

How Can I Be Sure That My Comments Were Received?

If you want Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you send comments by e-mail, you will receive a message by e-mail confirming receipt of your comments. Your e-mail address should be noted with your comments.

Is Information That I Submit to MARAD Made Available to the Public?

When you submit information to us as part of this NPRM, during any rulemaking proceeding, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential. If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT** You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential.

In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to the Docket Management Facility at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should also include a cover letter setting forth with specificity the basis for any such claim (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552).

We will decide whether or not to treat your information as confidential. You will be notified in writing of our decision to grant or deny confidentiality before the information is publicly disclosed and you will be given an opportunity to respond.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by the Docket Management Facility at the address and during the hours provided above under **ADDRESSES.**

Comments may also be viewed on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System ("DMS") Web page of the Department of Transportation (http://dms.dot.gov). On that page, click on "search." On the next page (http://dms.dot.gov/search), type in the four-digit docket number shown on the first page of this document. The docket number for this NPRM is 7147. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

Background

Since 1980, each individual U.S. citizen who enters the USMMA and each student at a State maritime academy who receives Federal student incentive payments is required pursuant to statute (46 U.S.C. App. 1295b(e) and 1295c(g)) to sign an agreement committing: (A) To complete the course of instruction at the relevant academy, unless the individual is separated by such institution; (B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the USMMA or, if a student incentive payment recipient, to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation and to fulfill the requirements for such a license not later than 3 months after the date of graduation from a State maritime academy; (C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the relevant academy; (D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the relevant academy; (E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the USMMA or for at least 3 years following the date of graduation from a State maritime academy; and (F) to report to the Maritime Administrator on the compliance by the individual. If the official designated by the Maritime Administrator determines that the individual has breached the service obligation contract, denies a request for a deferment of the service obligation, or denies a request for a waiver of the service obligation contract, the individual may seek review of that determination(s).

Currently, review of said determination(s) is by a panel composed of a representative of MARAD and representatives from the Department of the Navy, the National Oceanographic and Atmospheric Administration, and the United States Coast Guard. There is no standing panel and, when requested in writing by the individual, the panel must be convened on an ad hoc basis. These revisions would remove the panel as the reviewing authority and provide for direct appeal to the Maritime Administrator, the head of MARAD. These revisions are designed to streamline the process of reaching a final agency decision and allow for timely review of the decisions of the designated official. It also recognizes that the fundamental concerns involved in breach determinations and waiver and deferment decisions are central to the statutory purposes of the authority and responsibility of MARAD to operate the USMMA and administer the program for incentive payments to students at State maritime academies. These programmatic concerns do not necessarily involve areas of concern to organizations, such as NOAA and the United States Coast Guard, currently designated to sit on the panel.

This NPRM is being published with an abbreviated comment period of 30 days because the proposed amendments are limited to procedural changes, affect a relatively small segment of the public, and are not technical or complex.

Rulemaking Analyses and Notices

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

This rulemaking has been reviewed under Executive Order 12866, and it has been determined that this is not a significant regulatory action. The rule is not likely to result in an annual effect on the economy of $100 million or more. Also, it has been determined to be a nonsignificant rule under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary. These amendments are intended only to simplify and clarify the procedural requirements for appeals of determinations concerning breaches of service obligations, deferments, and waivers.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13084

The Maritime Administration does not believe that the revised regulations evolving from this NPRM will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. This NPRM only proposes new procedural rules for students and graduates of the USMMA or State maritime academies to appeal determinations regarding breaches of service obligations, deferments, and waivers.

Environmental Impact Statement

We have analyzed this NPRM for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations that have no environmental impact.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves the objective of the rule.

List of Subjects 46 CFR Part 310

Grant programs—education, Reporting and recordkeeping requirements, Schools, Seamen.

Accordingly, MARAD proposes to amend 46 CFR Part 310 as follows:

PART 310—MERCHANT MARINE TRAINING

1. The authority citation for Part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

2. Section 310.7 is amended by revising paragraph (b)(10) heading paragraph (b)(10)(ii), paragraph (b)(10)(iii) and adding a new paragraph (b)(10)(iv) to read as follows:

§ 310.7 Federal student subsistence allowances and student incentive payments.

* * * * *

(b) * * *

(10) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

* * * * *

(ii)(A) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal shall set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(B) Appeals must be filed with the Maritime Administrator within 30 calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Secretary, Maritime Administration, Room 7210, 400 7th St., SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(C) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to insure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(D) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (b)(10)(ii)(B) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received at the address for the Office of the Secretary set forth in paragraph (b)(10)(ii)(B) of this section. Appeals may not be submitted by facsimile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(E) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example to paragraph (b) (10) (ii)(E): If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(iii) The Maritime Administrator shall issue a written decision for each timely appeal. This decision constitutes final agency action.

(iv) If a student or graduate fails to appeal within the time set forth in paragraph (b)(10)(ii) of this section, the decision of the designated official shall be final and constitute final agency action.

3. Section 310.58 is amended by revising paragraph (h) heading, paragraphs (h)(2), (h)(3), and (h)(4) to read as follows:

§ 310.58 Service obligation for students enrolled after April 1, 1982.

* * * * *

(h) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

* * * * *

(2)(i) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal shall set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(ii) Appeals must be filed with the Maritime Administrator within 30 calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Secretary, Maritime Administration, Room 7210, 400 7th St. SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(iii) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to insure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(iv) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (h)(2)(ii) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received

at the address for the Office of the Secretary set forth in paragraph (h)(2)(ii) of this section. Appeals may not be submitted by facsimile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(v) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example to paragraph (b)(10)(v): If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(3) The Maritime Administrator shall issue a written decision for each timely appeal. This decision constitutes final agency action.

(4) If a student or graduate fails to appeal within the time set forth in paragraph (h)(2) of this section, the decision of the designated official shall be final and constitute final agency action.

Dated: April 3, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–8614 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000323080–0080–01; I.D. 031500A]

RIN 0648–AN97

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Angling Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is requesting public comments regarding the geographical division of the Atlantic bluefin tuna (BFT) Angling category fishery and whether an adjustment of the north-south division line and an associated adjustment of the BFT subquota percentages allocated to each area is warranted. Over the last several BFT fishing seasons, fishery participants have stated to NMFS that the division line needs to be adjusted to increase the extent of recreational fishing opportunities and to divide the northern and southern areas in a manner consistent with current fishing patterns. NMFS wants to determine if a change to the current division line and subsequent reallocation of quota is needed to better coordinate domestic conservation and management of the fishery consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: Written comments on this ANPR are invited and must be received on or before May 22, 2000.

ADDRESSES: Written comments should be sent to Rebecca Lent, Chief, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Comments also may be sent via facsimile (fax) to (301) 713–1917. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Sarah McLaughlin, (978) 281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the HMS Management Division of the Office of Sustainable Fisheries.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP. The HMS FMP and its implementing regulations establish percentage quota shares for the ICCAT-recommended U.S. BFT landing quota for each of the domestic fishing categories, and include measures regarding geographic subquotas and set-asides.

Angling Category Geographical Division

In response to quota reductions in 1992, two management areas were created for the BFT Angling category fishery. The north-south division line is located at 38°47' N. latitude (Delaware Bay). Generally, the recreational fishery begins each season off the southern and mid-Atlantic states, and so a subdivision was created to ensure a late season fishery in the northern mid-Atlantic and southern New England regions. Thus, the geographic split was designed to enable NMFS to manage the early season (June/July off the Virginia to Delaware coasts) and late season (August/September off the New Jersey to Massachusetts coasts) BFT fisheries under separate quotas, corresponding with the summer feeding migration of school, large school, and small medium BFT.

For the last several BFT fishing seasons, NMFS has received comments that an adjustment to the Angling category BFT north-south division line is warranted. Specifically, vessels fishing for BFT from ports in southern New Jersey, which is in the northern area, tend to utilize fishing areas located in the southern area (i.e., offshore of Ocean City, Maryland). This pattern of activity raises two concerns with respect to the dividing line for the southern and northern areas. First, when the southern and northern areas are both open, a significant number of fish caught in the southern area are landed in the northern area and counted against the applicable northern area subquotas. Second, when the southern area is closed, vessels from southern New Jersey are effectively excluded from the school BFT fishery because the fish are generally distributed too far north to accommodate single-day trips. NMFS has received specific suggestions to move the north-south division line to the north of the Ocean City, New Jersey area or to the south of the Ocean City, Maryland area.

NMFS is requesting comments on whether the current north-south division line is adequate or whether it should be moved to increase the geographical extent of recreational fishing opportunities and to define the northern and southern areas in a manner consistent with current fishing patterns. Any change to the current

division line and subsequent reallocation of quota, must be consistent with the HMS FMP, specifically with the objectives to better coordinate domestic conservation and management of the fisheries and to simplify and streamline HMS management. For the BFT Angling category, it is NMFS' goal to ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the Angling category quota.

Various options include: (1) No adjustment to the division line; (2) move the division line to the Ocean City, New Jersey area or to 39°18' N. latitude, just north of Great Egg Inlet to effectively isolate the fisheries as virtually all vessels fishing for BFT from these areas fish in the southern, early season fishery (as suggested to NMFS in previous public comments); (3) move the division line to 38° 03' N. latitude (south of Ocean City, Maryland), so that all of the fishing activity based out of Maryland, Delaware, and southern New Jersey ports takes place in one area, i.e., a newly defined northern area (as suggested to NMFS in previous public comments); (4) move the division line to another latitude that is also consistent with the HMS management objectives mentioned above; and (5) eliminate the line altogether and use NMFS' existing authority to close and open the fishery based on inseason monitoring through review of daily landing trends, availability of BFT on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota over the longest possible period of time. Adjusting the location of the north-south division line may reduce confusion and may prevent vessels from being excluded from participating in the fishery, especially when retention limits are different in the two areas.

Angling Category BFT Subquotas

Currently, there are separate Angling category BFT quota landings allocations for each of the areas north and south of the division line (38°47' N. lat). As stated in the HMS FMP, allocations to the southern area are as follows: (1) 47.2 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve; (2) 47.2 percent of the large school/small medium BFT Angling category quota; and (3) 66.7 percent of the large medium and giant BFT Angling category quota. Allocations to the northern area are as follows: (1) 52.8 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve; (2) 52.8 percent of the large school/small medium BFT Angling category quota; and (3) 33.3 percent of the large medium and giant BFT Angling category quota.

If NMFS adjusts the north-south division line, revision of the north and south allocation percentages also may be considered. Various options for revising the north and south allocation percentages include: (1) Maintain the status quo, i.e., no quota allocation change; (2) revise the allocation based on a review of data regarding estimated landings of all sizes of BFT north and south of any new division line; or (3) switch the north-south allocation percentages of school through small medium BFT in conjunction with implementation of an Ocean City, New Jersey area division line, i.e., 52.8 percent for the southern area and 47.2 for the northern area (as suggested to NMFS in previous public comments).

Request for Comments

NMFS requests comments on whether the location of the north-south division line in the Angling category should be adjusted and, if so, to where; and whether the subquota allocations for the northern and southern areas should be adjusted and, if so, how. Comments received on this ANPR will assist NMFS in drafting any future proposed changes to the Atlantic HMS regulations. The public will be provided ample opportunity for written and verbal comments following publication of any proposed regulatory amendments concerning these issues.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 4, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8773 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 69
Monday, April 10, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest Timber; Demand Considerations; Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: A notice of availability and request for comment on draft timber sale procedures for the Tongass National Forest was published in the **Federal Register** on November 27, 1998 (Vol. 63, No. 228). The draft procedures described an approach for incorporating market and industry information in planning the annual sale program for the Tongass National Forest in accordance with Section 101 of the Tongass Timber Reform Act. The draft procedures were made available to the public at the Regional Forester's office in Juneau, Alaska, and the three Forest Supervisor's Offices in Ketchikan, Petersburg, and Sitka, Alaska. In addition, the document was posted on the internet at a location identified in press releases and briefing sessions. A total of six sets of comments were received and incorporated in the final procedures ("Responding to the Market Demand for Tongass Timber," R10–MB–413, April 2000, USDA Forest Service, Alaska Region). Implementation direction for the procedures is included in the Forest Service Sale Preparation Handbook, Region 10 Supplement 2409.18–2000–1. The Forest Service hereby gives notice that the final procedures and Forest Service directive are now available to the public.

ADDRESSES: Copies of the final procedures and Region 10 Supplement may be obtained by writing Rick Cables, Regional Forester, Alaska Region, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628. The final procedures are also posted on the Alaska Region internet site at *www.fs.fed.us./r10/ro/epb/economic.htm.*

FOR FURTHER INFORMATION CONTACT: Frederick L. Norbury or Kathleen S. Morse, Ecosystem Planning Staff, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628; (907) 586–8886/8809.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

Section 705(a) of the Alaska National Lands Conservation Act (Pub. L. 96–487) required the Forest Service to "maintain the timber supply from the Tongass National Forest to dependent industry at a rate of four billion five hundred million board feet measure per decade." Section 101 of the Tongass Timber Reform Act (Pub. L. 101–626) removed the timber supply mandate and substituted a more general requirement that the Forest Service seek to provide a supply of timber from the Tongass which meets the annual market demand for timber from such forest and meets the market demand for timber from such forest over the planning cycle. The legislation qualified this admonishment, saying that efforts to meet market demand must be consistent with providing for the multiple use and sustained yield of all renewable forest resources. Further, such efforts are subject to appropriations, other applicable law and the requirements of the National Forest Management Act (Pub. L. 94–588).

In the Record of Decision (ROD) for the Tongass Land and Resource Management Plan (May 23, 1997) the Regional Forester made a commitment to "develop procedures to ensure that annual timber offerings are consistent with market demand." In April 1999, a new ROD for the Tongass Forest Plan was issued by Under Secretary Lyons. The 1999 ROD referenced the draft procedures, finding them to be "an appropriate methodology for the purposes of implementing the 'seek to meet market demand' language of the TTRA." The 6* draft procedures were made available for public review and comment via **Federal Register** notification on November 27, 1998 (Vol. 63, No. 228). The procedures and implementing direction have been finalized.

Summary of Procedures

The procedures estimate the volume of timber likely to be purchased from the Tongass National Forest in the coming year based on observations of industry behavior in prior years. The industry draws its annual raw material supply from an accumulated inventory of timber volume under contract, sometimes called the "buffer stock." This inventory must be large enough to keep mills operating at a steady rate while new sales are being prepared for offer and harvest. Historically, the Forest Service has attempted to allow the industry as a whole to hold the equivalent of two to three years' worth of raw material as volume under contract. The procedures suggest a similar approach but define this inventory requirement in more analytical terms.

The draft procedures assume that, at a minimum, the industry will want to maintain its existing timber inventory and will purchase timber to replace that harvested in a given year. If the existing timber inventory is lower than desired, the industry is likely to purchase more timber than is processed in order to build inventory. Commonly, if the inventory is higher than desired, the industry is likely to purchase less. By comparing the current inventory with an estimate of the desired inventory and factoring in projected annual harvest, the Forest Service can develop a range of expected timber purchases for any given year. The volume offered will be adjusted to fall within the most current estimate.

Comments and Responses

The Forest Service issued a Notice of Availability and Request for Comment on the draft procedures in the **Federal Register** on November 27, 1998 (Vol. 63, No. 228). The comment period closed January 1, 1999.

All relevant comments have been given full consideration in adoption of the final procedures and implementing direction. Comments were received from two environmental organizations, one timber industry association, two economic consulting firms, and one timber sale purchaser. All respondents were from Alaska or from entities representing Alaskan interests. A summary of the comments and responses is in the final report.

Dated: March 24, 2000.

James A. Caplan,

Deputy Regional Forester for Natural Resources.

[FR Doc. 00–8726 Filed 4–7–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–802; A–475–802; A–559–802; A–588–807]

Industrial Belts from Germany, Italy, Singapore, and Japan; Corrected Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of correction to final results of expedited sunset reviews: industrial belts from Germany, Italy, Singapore, and Japan.

SUMMARY: On December 30, 1999, the Department of Commerce ("the Department") published in the **Federal Register** (64 FR 73511) the final results of the June 1999 sunset reviews of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan. Subsequent to the publication of the final results, we identified an inadvertent error in the "Scope" section of the notice. Therefore, we are correcting and clarifying this error.

On page 73511, the error lies in the following sentence: "The merchandise covered by the antidumping duty orders on Germany and Japan includes industrial belts other than V-belts and synchronous belts used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.* closed loops) belts, or in belting lengths or links from Germany and Japan." This sentence should be replaced with: "The merchandise covered by the antidumping duty order on Germany includes industrial belts, other than V-belts and synchronous belts used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.* closed loops) belts, or in belting lengths or links.[1]

Further, we are inserting the following sentence, which was inadvertently left out: "The antidumping duty order on imports from Japan covers industrial V-belts and synchronous belts and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links."[2]

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230: telephone (202) 482–1930 and (202) 482–3217, respectively.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: April 4, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8820 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany,* 54 FR 25316 (June 14, 1989).

[2] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured , From Japan; Final Results of Antidumping Duty Administrative Review,* 60 FR 39929 (August 4, 1995).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to requests by the petitioner, FMC Corporation, and the following two manufacturers/exporters of the subject merchandise: Shanghai Ai Jian Import and Export Corporation, and Sinochem Jiangsu Wuxi Import and Export Corporation. In addition to these two respondents, the petitioner also requested a review of Guangdong Petroleum Chemical Import & Export Trade Corporation. The period of review is July 1, 1998, through June 30, 1999.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value. We also have preliminarily determined that the review of Sinochem Jiangsu Wuxi Import & Export Trade Corporation should be rescinded.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: James Nunno, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0783.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1999, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on persulfates from the People's Republic of China (PRC) covering the period July 1, 1998 through June 30, 1999. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 64 FR 38181 (July 15, 1999).

On July 31, 1999, in accordance with 19 CFR 351.213(b), the petitioner requested an administrative review of Shanghai Ai Jian Import & Export Corporation (Ai Jian), Sinochem Jiangsu Wuxi Import & Export Corporation (Wuxi), and Guangdong Petroleum Chemical Import & Export Trade Corporation (Guangdong Petroleum). We also received requests for a review from Ai Jian and Wuxi on July 31, 1998. We published a notice of initiation of this review on August 30, 1999. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 64 FR 47167 (August 30, 1999).

On September 8, 1999, we issued an antidumping questionnaire to Ai Jian, Wuxi, and Guangdong Petroleum. The Department received a response from Ai

Jian in October 1999. In addition, the Department received a response from Shanghai Ai Jian Reagent Works (AJ Works) (producer for Ai Jian) in November 1999. On November 5, 1999, Wuxi notified the Department that it had not made any U.S. sales of subject merchandise during the period of review (POR). *See* the "Partial Rescission of Administrative Review" section of the notice below. Guangdong Petroleum did not respond to the Department's questionnaire.

On November 25, 1999, we issued a letter to Guangdong Petroleum asking it to indicate whether it intended to participate in this administrative review. Guangdong Petroleum did not respond to this letter.

We issued supplemental questionnaires to Ai Jian and AJ Works in January 2000, and received responses to these questionnaires in February 2000. In March 2000, we requested and received additional information from Ai Jian and AJ Works concerning chemical inputs and packing materials.

In February 2000, Ai Jian and the petitioner submitted publicly available information and comments for consideration in valuing the factors of production. In March 2000, the parties submitted rebuttal comments.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Partial Rescission of Administrative Review

Wuxi notified the Department that it had not made any U.S. sales of subject merchandise during the POR. Entry data provided by the Customs Service confirms that there were no POR entries from Wuxi of persulfates.

Therefore, consistent with the Department's practice, we preliminarily determine to rescind this review with respect to Wuxi. *See* Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 12209 (March 8, 2000).

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a *de facto* absence of government control, the Department considers the following four factors: (1) Whether the respondent sets its own export prices independent from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See* Silicon Carbide, 59 FR at 22587; *see also* Sparklers, 56 FR at 20589.

With respect to Ai Jian, for purposes of our final results for the period of review (POR) covering December 27, 1996 through June 30, 1998, the Department determined that there was an absence of *de jure* and *de facto* government control of its export activities and determined that it warranted a company-specific dumping margin. *See* Persulfates From the People's Republic of China: Final Results of Antidumping Administrative Review, 64 FR 69494 (December 13, 1999) (Persulfates First Review). For purposes of this POR, Ai Jian has responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in Persulfates First Review and continues to demonstrate an absence of government control, both in law and in fact, with respect to its exports, in accordance with the criteria identified in Sparklers and Silicon Carbide.

With respect to Guangdong Petroleum, which did not respond to the Department's questionnaire, we preliminarily determine that this company does not merit a separate rate. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We preliminarily determine that Guangdong Petroleum is subject to the country-wide rate for this case because it failed to demonstrate an absence of government control.

Use of Facts Otherwise Available

On September 8, 1999, the Department sent Guangdong Petroleum a questionnaire and cover letter, explaining the review procedures, by air mail through FedEx International Airway Bill. A response to the questionnaire, which covered exports to the United States for the period of review, was due by October 29, 1999. We did not receive responses by the due date. On November 25, 1999, we sent a follow-up letter regarding the past due date for the questionnaire responses and noting the necessity of relying on facts available. Because we have received no responses and have not been contacted by this respondent, we determine that the use of facts available is appropriate.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because Guangdong Petroleum, which is part of the PRC entity (*see* "Separate Rates" section above), has failed to respond to the original questionnaire and has refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate for the PRC-wide rate. *See, e.g.,* Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty

Administrative Review, 65 FR 13366, 13367 (March 13, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See* Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997) (Final Rule). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." Guangdong Petroleum failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine this respondent failed to cooperate to the best of its ability, making the use of an adverse inference appropriate. In this proceeding, in accordance with Department practice, as adverse facts available we have preliminarily assigned Guangdong Petroleum and all other exporters subject to the PRC-wide rate the petition rate of 119.02 percent, which is the PRC-wide rate established in the LTFV investigation, and the highest dumping margin determined in any segment of this proceeding. See Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 39115 (July 21, 1999). The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review, 62 FR 60472, 60477 (November 10, 1997). It is reasonable to assume that if Guangdong Petroleum could have demonstrated that its actual dumping margin was lower than the PRC-wide rate established in the LTFV investigation, it would have participated in this review and attempted to do so.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. *See* id. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. Although the petition rate of 119.02 percent constitutes secondary information, the information has already been corroborated in the LTFV investigation. *See* Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China, 62 FR 27222, 27224 (May 19, 1997). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here; nor have we any other reason to believe that application of the rate as adverse facts available would be inappropriate for the PRC-wide rate. Thus, the 119.02 percent margin does have relevance. Accordingly, we have used the petition rate from LTFV investigation, 119.02 percent, because there is no evidence on the record indicating that the selected margin is not appropriate as adverse facts available.

Export Price

For Ai Jian, we calculated export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted, based on the facts of record. We calculated EP based on packed, CIF U.S. port, or FOB PRC port, prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling, marine insurance, and ocean freight. With respect to ocean freight, although Ai Jian asserted that it used market-economy carriers for shipments of persulfates, we could not establish, based on the submitted information, that the freight charges Ai Jian paid reflect prices set by market-economy carriers. Accordingly, for ocean freight and other movement expenses, we based the charges on surrogate values. *See* "Normal Value" section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country

prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is at a level of economic development comparable to that of the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is at a level of economic development comparable to the PRC. *See* Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2, dated November 8, 1999.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to persulfates. For purposes of the last administrative review of this order, we found that India was a producer of persulfates based on information submitted by the respondents. See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review, 64 FR 42912, 42914 (August 6, 1999) (Persulfates First Review Preliminary Results). For purposes of this administrative review, we continue to find that India is a producer of persulfates based on information submitted by both the respondents and the petitioner. We find that India fulfills both statutory requirements for use as the surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* the Preliminary Results Factors Valuation Memorandum from the Team to the File, dated April 3, 2000 (Factors Memorandum). In accordance with this methodology, we valued the factors of production as follows:

To value ammonium sulfate, caustic soda, and sulfuric acid, we used public information from the Indian publication Chemical Weekly, as provided by both the petitioner and the respondents in their February 25, 2000 submissions. For caustic soda and sulphuric acid, because price quotes reported in the Chemical Weekly are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulphuric acid used by respondents. For potassium sulfate and anhydrous ammonia, we relied on import prices contained in the January through August 1998 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics), as collectively provided by the petitioner and the respondents in their February 25, 2000 submissions. Where necessary, we adjusted the values reported in the Chemical Weekly to exclude sales and excise taxes. For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (WPI) published by the International Monetary Fund (IMF). We made further adjustments to account for freight costs between the suppliers and AJ Works' manufacturing facilities.

During the POR, AJ Works self-produced ammonium persulfates, which is a material input in the production of potassium and sodium persulfates. In order to value such ammonium persulfates, we calculated the sum of the materials, labor, and energy costs for ammonium persulfates based on the usage factors submitted by AJ Works on November 5, 1999, February 28, 2000, and March 15, 2000. Consistent with our methodology used in Persulfates First Review, we then applied this value to the reported consumption amounts of ammonium persulfates used in the production of potassium and sodium persulfates.

In accordance with our practice, for inputs for which we used CIF import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61977 (November 20, 1997) and the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401 (Fed. Cir. 1997).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408 (c)(3).

For electricity, we relied upon public information from an August 6, 1996, article in Business World to obtain an average price for electricity provided to industries in India. To value water we relied on public information reported in the October 1997 publication of the Second Water Utilities Data Book: Asian and Pacific Region. To value coal, we relied on import prices contained in the March 1998 issue of Monthly Statistics. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted the value for coal to account for freight costs incurred between the suppliers and AJ Works.

For the reported packing materials—polyethylene bags, woven bags, polyethylene sheet/film and liner, and fiberboard—we relied upon Indian import data from the January through August 1998 issues of Monthly Statistics. For paper bags and wood pallets, we relied upon Indian import data from the March 1998 issue of Monthly Statistics. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and AJ Works.

To value truck freight, we used price quotes obtained by the Department from Indian truck freight companies in November 1999, and used recently in the investigation of bulk aspirin from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 116, 118 (January 3, 2000). Because the time period for this data (*i.e.,* November 1999) is later than that of the POR, we adjusted the data to reflect POR values using the WPI published by the IMF. For ocean freight we used a price quote

from Maersk, Inc. This rate was recently used in the fourth administrative review of sebacic acid from the PRC. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503, 69507 (December 13, 1999).

For marine insurance we used the June 1998 marine insurance data used in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–97 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR 63842 (November 17, 1998). For foreign brokerage and handling expenses we used public information reported in the new shipper review of stainless steel wire rod from India. See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184, 48185 (September 9, 1998); Factors Memorandum at page 5. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied on the financial statements of Calibre Chemicals Pvt. Limited (Calibre), an Indian producer of potassium persulfates and other chemicals, which were submitted by the petitioner in its February 25, 2000, submission, because this company is a producer of subject merchandise.

The petitioner also submitted the financial statements of National Peroxide Limited (National Peroxide), and asserted that while the Department should value factory overhead and profit using Calibre's financial data, the Department should use National Peroxide's data to value SG&A. The petitioner maintains as it did in Persulfates First Review Final that because Calibre produces non-subject merchandise in addition to subject merchandise, its financial data is not representative of persulfates production. However, as we stated in Persulfates First Review Final, we find this approach to be inappropriate and unwarranted. SG&A expenses are not considered to be directly related to the production of merchandise, unlike factory overhead costs. In addition, while we recognize that Calibre's financial data may not mirror the actual experience of AJ Works, this does not render Calibre's data unreliable for purposes of calculating a surrogate SG&A ratio within the context of the Department's NME methodology. Finally, because a company's profit amount is a function of its total expenses, using Calibre's financial data for factory overhead and profit, then using National Peroxide's data for SG&A, as proposed by the petitioner, results in applying a profit ratio that bears no relationship to the overhead and SG&A ratios. Therefore, for purposes of these preliminary results, we have continued to rely upon Calibre's financials for these values. See Persulfates First Review Final, 64 FR at 69499–500.

Consistent with our methodology used in Persulfates First Review, we calculated factory overhead as a percentage of the total raw material costs for subject merchandise, as opposed to calculating factory overhead as a percentage of total materials, labor, and energy costs for all products. See Persulfates First Review, 64 FR at 69498–99; Factors Memorandum at page 6. We also reclassified certain depreciation expenses from Calibre's financial statements as SG&A expenses. See Persulfates First Review, 64 FR at 69501. We removed from the profit calculation the excise duties and sales taxes. See Persulfates First Review Preliminary Results, 64 FR at 42915.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the period July 1, 1998 through June 30, 1999:

Manufacturer/Exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	0.82
PRC-Wide Rate	119.02

Interested parties may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise 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 Ai Jian will be that established in the final results of this administrative review; (2) the rate will continue to be 7.18 percent for Wuxi, which we determined to be entitled to a separate rate in the previous review but which did not have shipments or entries to the United States during this POR (this is the rate which currently applies to this company); (3) the cash deposit rate for all other PRC exporters, including Guangdong Petroleum, will be 119.02 percent, the PRC-wide rate established in the less-than-fair-value investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of

antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 3, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8822 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary Results of antidumping duty administrative review of sebacic acid from the People's Republic of China

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China in response to requests from the petitioner, Arizona Chemical Company, and the following two respondents: Tianjin Chemicals Import and Export Corporation and Guangdong Chemicals Import and Export Corporation. In addition to these two respondents, the petitioner also requested a review of Sinochem Jiangsu Import and Export Corporation and Sinochem International Chemicals Company. This review covers four exporters of the subject merchandise. The period of review is July 1, 1998, through June 30, 1999.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: James Nunno or Christopher Priddy, Office 2, AD/CVD Enforcement Group I, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0783 or (202) 482–1130, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1999, the Department published in the **Federal Register** at 64 FR 38181 a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) covering the period July 1, 1998, through June 30, 1999.

On July 22, 1999, in accordance with 19 CFR 351.213(b), the petitioner requested that we conduct an administrative review of Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong), Sinochem International Chemicals Company, Ltd. (SICC) and Sinochem Jiangsu Import and Export Corporation (Jiangsu). On July 26, 1999, Tianjin and Guangdong also requested that we conduct an administrative review. We published a notice of initiation of this antidumping duty administrative review on August 30, 1999, at 64 FR 47167. On September 9, 1999, we issued questionnaires to the four respondents. Tianjin and Guangdong submitted responses to sections A, C, and D of the antidumping questionnaire on November 8, 1999. The Department issued its supplemental questionnaires on January 19, 2000, and received responses to the questionnaires in February 2000. Both Guangdong and Tianjin submitted additional information clarifying their reported sales and factors of production data in March 2000. SICC and Jiangsu did not respond to the Department's questionnaire.

On December 14, 1999, the Department invited interested parties to provide publicly available information (PAI) for valuing the factors of production and for surrogate country selection. We received responses from the petitioner on January 24, 2000. The respondents did not submit PAI information for purposes of the preliminary results.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), and amplified in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative

enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a *de facto* absence of government control, the Department considers the following factors: (1) Whether the respondent sets its own export prices independent from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See* Silicon Carbide at 22587 and Sparklers at 20589.

With respect to Tianjin and Guangdong, in our final results for the period of review (POR) covering July 1, 1997, through June 30, 1998, the Department determined there was both *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See* Final Results of Antidumping Administrative Review: Sebacic Acid From the People's Republic of China, 64 FR 69503 (December 13, 1999) (Sebacic Acid Fourth Review). For this review, both Tianjin and Guangdong have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in the Sebacic Acid Fourth Review and continues to demonstrate an absence of both *de jure* and *de facto* government control with respect to their exports in accordance with the criteria identified in Sparklers and Silicon Carbide.

With respect to SICC and Jiangsu, which did not respond to the Department's questionnaire, we preliminarily determine that these companies do not merit a separate rate. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We preliminarily determine that SICC and Jiangsu are subject to the country-wide rate for this case because they failed to demonstrate an absence of government control.

Use of Facts Otherwise Available for Non-Responding Companies

On September 9, 1999, the Department sent antidumping questionnaires to SICC and Jiangsu. SICC and Jiangsu did not respond to the questionnaire. Because we have received no responses, we determine that the use of facts available is appropriate.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because SICC and Jiangsu, which are part of the PRC entity (*see* "Separate Rates" section above), have failed to respond to the original questionnaire and have refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate. *See, e.g.*, Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 65 FR 13366, 13367 (March 13, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See* Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997) (Final Rule). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." SICC and Jiangsu failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine these respondents failed to cooperate to the best of their ability, making the use of an adverse inference appropriate. In this proceeding, in accordance with Department practice, as adverse facts available we have preliminarily assigned SICC, Jiangsu and all other exporters subject to the PRC-wide rate, the petition rate of 243.40 percent, which is the PRC-wide rate established in the LTFV investigation, and the highest dumping margin determined in any segment of this proceeding. *See* Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 39115 (July 21, 1999). The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See* Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. *See* Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review, 62 FR 60472, 60477 (November 10, 1997). It is reasonable to assume that if SICC and Jiangsu could have demonstrated that their actual dumping margins were lower than the PRC-wide rate established in the LTFV investigation, they would have participated in this review and attempted to do so.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative

value. *See id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g.*, Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For the initiation of the investigation, the petitioner alleged a dumping margin of 243.40 percent. *See* Initiation of Antidumping Duty Investigation; Sebacic Acid From the People's Republic of China, 58 FR 43339, 43340 (August 16, 1993). In the petition, the U.S. price was based on March 1993 price quotations obtained for sebacic acid from the PRC. The factors of production were valued, where possible, using publicly available published information for India. Where Indian values were not available, the petitioners used data from Pakistan, an appropriate surrogate country at a comparable level of economic development to the PRC. The petitioner relied on its own costs for two factors, steam and factory overhead. If we adjust the petitioner's normal value calculation by excluding steam cost and recalculate factory overhead, selling, general and administrative expenses and profit using the statistics in the Reserve Bank of India Bulletin (1992–1993), a publicly available and independent source used in other investigations of imports from the PRC, the adjusted normal value is comparable to the value calculated in the petition.

We find, therefore, for the purpose of these preliminary results that the PRC-wide margin established in the LTFV investigation is reliable. As there is no information on the record of this review that demonstrates that the rate selected is not an appropriate adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for facts otherwise available.

Export Price

For Tianjin and Guangdong, we calculated export price (EP), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price (CEP) methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed CIF prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. With respect to ocean freight, although both respondents asserted that they used market-economy carriers for shipments of sebacic acid, we could not establish, based on the submitted information, that the freight charges the respondents paid reflect prices set by market-economy carriers. Accordingly, for ocean freight and other movement expenses, we based the charges on surrogate values. *See* "Normal Value" section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Furthermore, none of the parties to this proceeding has contested the PRC's NME status. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is at a level of economic development comparable to that of the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is at a level of economic development comparable to the PRC. *See* "Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2," dated November 8, 1999.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to sebacic acid. We determined in prior reviews of this order that India was a significant producer of comparable merchandise (*i.e.*, oxalic acid). *See* Sebacic Acid Fourth Review. For this review, we find that India was a producer of oxalic acid during the POR based on the Customs Service import data. We find that India fulfills both statutory requirements for use as the surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices either within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating the various surrogate values, see "Preliminary Results Factors of Production Valuation Memorandum," dated April 3, 2000. We adjusted all values not contemporaneous to the POR to reflect inflation up to the POR using wholesale price indices published by the International Monetary Fund. In accordance with this methodology, we valued the factors of production as follows:

During the POR, both Hengshui Dongfeng Chemical Factory (Hengshui) and Handan Fuyang Sebacic Acid Factory (Handan) purchased castor oil

from market economy suppliers and paid for the castor oil in a market economy currency. Hengshui also purchased castor oil from NME suppliers. For all purchases of castor oil, including castor oil Hengshui purchased from NME suppliers, we used the actual price the factories paid to the market economy suppliers to calculate the factors-based NV in accordance with 19 CFR 351.408(c)(1).

We valued castor seed using 1998 price data from the Solvent Extractors Association of India provided by the petitioner in its January 24, 2000, submission. For macropore resin, we used the value for activated carbon because the Department determined in previous reviews that the valuations of these inputs are interchangeable. *See* Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 63 FR 17367, 17369 (April 9, 1998) (Sebacic Acid Third Review). Consistent with our methodology used in the fourth review of this proceeding, we valued activated carbon using public price quotes obtained from Indian companies. *See* Sebacic Acid Fourth Review at 69506. For caustic soda, cresol, phenol, sulfuric acid, and zinc oxide, we used published market prices reported in the Chemical Weekly. For caustic soda and sulfuric acid, because price quotes reported in Chemical Weekly are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulfuric acid used by the respondents. For sodium chloride (also referred to as sodium chlorite or vacuum salt), we used Indian import values from the Monthly Statistics of the Foreign Trade of India (Monthly Statistics) for the period April 1997 through March 1998.

Where appropriate, we adjusted the values reported in the Chemical Weekly to exclude sales and excise taxes. We made further adjustments to account for freight costs between the suppliers' buildings and the respondents' sebacic acid manufacturing facilities.

In accordance with our practice, for inputs for which we used CIF import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. *See* Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61977 (November 20, 1997) and the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401 (Fed. Cir. 1997).

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the average rate applicable to medium industrial users throughout India as obtained from the "Our India" website (http://www.ourindia.com/power.htm) compiled by the Indian Industrial and Management Services and submitted by the petitioner on January 24, 2000. We based the value of steam coal on April 1997 through March 1998 import values from the Monthly Statistics.

We based our calculation of factory overhead, selling, general and administrative (SG&A) expenses, and profit on data contained in the April 1995 Reserve Bank of India Bulletin for the Indian metals and chemicals industries. To value factory overhead, we summed those components which pertain to overhead expenses and divided them by the sum of those components pertaining to the cost of manufacturing. We multiplied this factory overhead rate by the cost of manufacturing divided by one minus the factory overhead rate. Using the same source, we also calculated the SG&A rate as a percentage of the cost of manufacturing. We calculated profit as a percentage of the cost of production (*i.e.,* materials, energy, labor, factory overhead, and SG&A).

To value plastic and woven bags, we used import values from the Monthly Statistics. For jumbo bag valuation, we used a value from Monthly Statistics as found in the Department's Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China (Index of Factor Values) found on the Department's website (http://www.ia.ita.doc.gov/factorv/prc). Additionally, we adjusted these values to account for freight costs incurred between the suppliers and sebacic acid producers.

In valuing foreign inland trucking freight, we relied upon price quotes obtained by the Department from Indian truck freight companies in November 1999; for foreign inland rail rates the Department relied upon data from Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 13401 (March 18, 1999). To value ocean freight, we used a price quote from Maersk Inc., for merchandise comparable to sebacic acid (*i.e.,* oxalic acid). For marine insurance, we used the June 1998 marine insurance data collected for Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–97 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR 63842 (November 17, 1998). For foreign brokerage and handling expenses, we used public information reported in the antidumping duty investigations of sulfur dyes and stainless steel wire rod from India, respectively. *See* Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Vat Dyes from India , 58 FR 11835 (March 1, 1993); Certain Stainless Steel Wire Rod From India: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184 (September 9, 1998).

Consistent with the methodology employed in Sebacic Acid Fourth Review, we have determined that fatty acid, glycerine, and castor seed cake (when castor oil is self-produced) are by-products. Because they are by-products, we subtracted the sales revenue of fatty acid, glycerine, and, where applicable, castor seed cake, from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. *See* Cost Accounting: A Managerial Emphasis (1991) at pages 539–544. To value fatty acid and glycerine, we used prices published in Chemical Weekly. We valued castor seed cake using market prices quoted in The Economic Times of India (Mumbai) for certain months in 1997.

We also allocated a by-product credit for glycerine to the production cost for the co-product capryl alcohol. We deducted a by-product credit for glycerine from sebacic acid based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol.

Consistent with the methodology employed in the previous administrative review, we have determined that capryl alcohol is a co-product and have allocated the factor inputs based on the relative quantity of output of this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. *See* Cost Accounting: A Managerial Emphasis (1991) at pages 528–533. To value capryl alcohol, consistent with our methodology from

the previous administrative review, we used POR market prices reported in the Chemical Weekly and adjusted the prices for sales and excise taxes.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Tianjin Chemicals I/E Corp	0.82
Guangdong Chemicals I/E Corp	7.51
PRC-Wide Rate	243.40

Interested parties may request a hearing within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue a notice of the final results of this administrative review which will include the results of its analysis of issues raised in any such written briefs no later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For the reviewed companies named above which have separate rates (Tianjin and Guangdong), the cash deposit rates will be the rates for those firms established in the final results of this administrative review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 3, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8821 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Internaticnal Trade Administration

[A–588–054 and A–588–604]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decisions and amended final results of antidumping duty administrative reviews.

SUMMARY: On November 7, 1996, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054) for the period October 1, 1992 through September 30, 1993. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding, 61 FR 57629 (November 7, 1996) (1992–93 TRBs from Japan). Subsequent to our publication of these final results, parties to the proceedings challenged certain aspects of our final results before the United States Court of International Trade (the CIT) and, in certain instances, before the United States Court of Appeals for the Federal Circuit (the Federal Circuit).

The CIT recently affirmed final remand results with respect to the 1992–93 final results. As there are now final and conclusive court decisions with respect to litigation for these parties, we are hereby amending our final results of review and will subsequently instruct Customs to liquidate entries subject to these reviews.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the 1992–93 final results for which the CIT and Federal Circuit have issued final and conclusive decisions.

On November 7, 1996, we published in the **Federal Register** our notice of the final results of administrative reviews for the 1992–93 period of review (POR) for 16 manufacturers/resellers/exporters (*see 1992–93 TRBs from Japan*). Subsequent to the publication of these final results, the petitioner (The Timken Co. (Timken)) and two respondents, NSK Ltd. (NSK), and NTN Corporation (NTN), challenged various aspects of our final results before the CIT. (*See* CIT

Ct. Nos. 96–12–02686, 96–12–02730, and 96–12–02740, which were consolidated into Consolidated Court No. 96–12–02686.) The CIT has issued decisions with respect to this litigation which are now final and conclusive.

The decisions issued by the CIT and Federal Circuit with respect to the Department's final results were as follows:

- *Timken* v. *U.S.*, 989 F. Supp. 234 (CIT 1997). The CIT remanded the case and ordered the Department to: (1) treat NTN's home market discounts and NSK's return rebates, post-sales price adjustments (PSPAs), lump-sum PSPAs, and stock transfer commissions as direct expenses; (2) investigate possible dumping of relevant Honda TRB sales during the period April 1, 1993 through March 31, 1997 and, upon a determination that Honda's dumping margin has been zero or *de minimis* for this period and pursuant to a request for revocation by Honda, revoke the antidumping order with respect to Honda; (3) exclude any zero-priced sample sales from NSK's sales database; (4) recalculate the below-cost sales for NSK using the COP database submitted by NSK's related supplier of inputs; (5) (a) explain the circumstances in which it treats related-party commissions as intra-company transfers when it applies its test for determining whether a circumstance-of-sale adjustment should be made to foreign market value (FMV) for commissions, (b) explain conflicting statements as to whether NTN's commission payments were included in or excluded from indirect selling expenses for exporter's sales price (ESP) transactions, and (c) reconsider its treatment of the commission payments to NTN's related U.S. affiliate; (6) reconsider its treatment of NTN's U.S. and home market selling expenses with respect to level of trade; and (7) allow NTN's downward adjustment to U.S. indirect selling expenses for interest incurred when financing antidumping duty cash deposits.
- *Timken* v. *U.S.*, 46 F. Supp. 2d 1052 (CIT 1999). The CIT affirmed the Department's remand results and dismissed the litigation for Consolidated Court No. 96–12–02686.
- *Timken* v. *U.S.*, 1 F. Supp. 2d 1390 (CIT 1998). The CIT granted the Department's and Honda's motions for reconsideration of the Honda issue and set aside the portions of its decision in the 96–12–02686 litigation ordering the Department to investigate possible dumping by Honda during the 1993 through 1997 period. The CIT thereby affirmed the Department's revocation of Honda as described in 1992–93 TRBs from Japan.
- *NTN* v. *U.S.*, No. 99–1461 (Fed. Cir. November 5, 1999). Pursuant to NTN's voluntary motion to dismiss, the Federal Circuit dismissed NTN's appeal of the CIT's decisions in the 96–12–02686 litigation.

As there are now final and conclusive court decisions with respect to the 96–12–02686 litigation, we are amending our final results of review for NSK and NTN based on our recalculation of NSK's and NTN's rates pursuant to the remand. The amended final results margins for NSK are 11.42 percent in the A–588–054 review and 10.28 percent in the A–588–604 review. The amended final results margin for NTN in the A–588–604 review is 16.55 percent.[1] We will issue instructions to Customs to liquidate entries of subject merchandise made by NSK and NTN during this period pursuant to these amended final results.

Since the CIT affirmed the Department's revocation of Honda, we will issue instructions to Customs to liquidate entries of subject merchandise exported by Honda as described in 1992–93 TRBs from Japan at 57652.

In addition, as we have not amended the margins of any of the remaining manufacturers/resellers/exporters subject to the 1992–93 administrative reviews of TRBs from Japan, we will issue instructions to Customs to liquidate entries of subject merchandise based on the rates published in 1992–93 TRBs from Japan.

Amendment to Final Determinations

Pursuant to 19 U.S.C. 1516(f), we are now amending the final results of the 1992–93 administrative reviews of the antidumping finding and duty order on TRBs from Japan. The amended weighted-average margins are:

Manufacturer/exporter	Margin (percent)
For the A–588–054 finding:	
NSK	11.42
For the A–588–604 duty order:	
NSK	10.28
NTN	16.55

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by the review of the period listed above. The Department will issue appraisement instructions directly to Customs.

[1] The A–588–054 antidumping finding does not cover TRBs manufactured by NTN.

Dated: March 27, 2000.

Robert LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8823 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Certain cold-rolled and corrosion-resistant carbon steel flat products from Korea; final results of expedited sunset reviews.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the countervailing duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties in each of these reviews, as well as inadequate response from respondent interested parties, we determined to conduct expedited sunset reviews. Based on our analysis of the substantive comments received, we find that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy rates are listed in the Final Results of Review section of this notice.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated sunset reviews of the countervailing duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (64 FR 47767), pursuant to section 751(c) of the Act. We invited parties to comment. On the basis of a notice on intent to participate and adequate substantive responses filed on behalf of domestic interested parties in both reviews, and inadequate response (in these cases no response) from respondent interested parties, we determined to conduct expedited (120-day) sunset reviews, in accordance with 19 CFR 351.218(e)(1)(ii)(C). The Department has conducted these sunset reviews in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). These reviews concern transition orders within the meaning of section 751(c)(6)(C)(i) of the Act. Therefore, on December 22, 1999, the Department determined the sunset reviews of the countervailing duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea to be extraordinarily complicated, and, extended the time limit for completion of the final results of these reviews until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by these orders are certain cold-rolled and corrosion-resistant carbon steel flat products as described below. Although the Harmonized Tariff Schedule of the United States ("HTS") subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Cold-Rolled Carbon Steel Flat Products

The products covered by this order include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this order is certain shadow mask steel, *i.e.,* aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

The merchandise covered by this order includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been "worked after rolling")— for example, products which have been bevelled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled

[1] *See Extension of Time Limit for Final Results of Five-Yeor Reviews,* 64 FR 71726 (December 22, 1999).

products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Analysis of Comments Received

All issues raised in the substantive responses by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of the continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail were the orders revoked, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Department's Central Record Units, Room B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the countervailing duty orders would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producers/exporters/product	Net countervailable subsidy (percent)
Cold-rolled carbon steel flat products: All Korean producers/exporters	3.95
Corrosion-resistant carbon steel flat products: All Korean producers/exporters	2.69

Nature of the Subsidy

In the *Sunset Policy Bulletin,* the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Because the benefits received in some of the programs were contingent on exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. The remaining programs, outside the export subsidy definition under Article 3.1(a) could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to calculate whether the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Therefore, we are providing the Commission the following program descriptions.

(1) Government Equity Infusions in Pohang Iron & Steel Company, Ltd.

Government equity infusions bestow a countervailable benefit when they occur on terms inconsistent with commercial considerations. *See* 19 U.S.C. 1677(5)(A)(1988). In the investigation, the Department determined subsidy rates of 0.13 percent and 0.07 percent for certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat product, respectively.

(2) Loans Inconsistent With Commercial Considerations/Preferential Access to Foreign Loans

This benefit is conferred through a disproportionately high volume of loans to the steel industry at rates that are substantially below Korea's generally available commercial interest rates. In the investigation, the Department determined subsidy rates of 2.94 percent and 1.83 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.[2]

(3) Government Infrastructure Assistance for POSCO's Integrated Steel Mill at Kwangyang Bay

The Korean government's infrastructure development at Kwangyang Bay constituted a specific and countervailable subsidy to POSCO because POSCO was found to be the predominant user of the infrastructure. In the investigation, the Department determined subsidy rates of 0.58 percent and 0.30 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

(4) Dockyard Fees

In the investigation, we determined that POSCO enjoys the use of 15 berths in the Kwangyang Bay port facility at no charge. The GOK normally charges a user fee, or dockyard fee, for the use of berths at all of Korea's ports. Thus, we determined the free use of 15 berths by POSCO in the Kwangyang Bay Industrial Estate constitutes a countervailable benefit. The Department determined subsidy rates of 0.01 percent and less than 0.005 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

(5) Reserve for Export Loss

Under Article 22 of the Tax Exemption and Reduction Control Act (TERCL), a corporation engaged in export activities can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. This program confers a benefit that constitutes an export subsidy because it provides a deferment, contingent upon export performance, of direct taxes. In the period of investigation, the Department determined that Dongbu, POSCO, and Union received benefits under this program. In the investigation, the Department determined subsidy rates of 0.03 percent, and 0.06 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.[3]

(6) Reserve for Overseas Market Development

This program operates in a similar fashion to Article 22 of the TERCL described above. This program constitutes an export subsidy because benefits under the program are contingent upon export performance. In the investigation, the Department determined subsidy rates of 0.04 percent and 0.09 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

[2] On October 1, 1999, the Court of Appeals for the Federal Circuit issued an opinion affirming-in-part and reversing-in-part the Department's determination in this investigation. *AK Steel Corp. et al.* v. *United States* 192 F. 3d 1367 (CAFC Oct. 1, 1999). In that litigation, the court reviewed the Department's determination with respect to the following programs: foreign and domestic loans and government infrastructure assistance for POSCO's integrated steel mill at Kwangyang Bay including POSCO's exemption from the payment of dockyard fees. The case has been remanded to the Court of International Trade. Thus, the CAFC's decision is not yet final and conclusive.

[3] *See Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Korea,* 57 FR 57761 (December 7, 1992)

(7) Unlimited Deduction of Overseas Entertainment Expense

Under Article 18–2 of the Corporation Tax Act and supporting legislation, entertainment expenses for domestic clients and foreign clients are eligible to be deducted from taxable income. The amount that can be deducted for domestic entertainment expenses is subject to a ceiling according to an established formula and depending on the amount of any overseas entertainment expenses claimed. There is no cap on overseas entertainment expenses. Because entertainment expense deductions are unlimited only for overseas clients, this program confers benefits which constitute export subsidies, to the extent that the overseas expenses claimed are greater than those which would have been allowed using the domestic cap formula. In the investigation, the Department determined a subsidy rate of less than 0.005 percent for both certain cold-rolled and certain corrosion-resistant carbon steel flat products.

(7) Reserve for Investment

This reserve fund program operates in the same manner as reserves for export loss and overseas market development described above. However, because this program provides benefits only to those industries that use certain production facilities outside of metropolitan Seoul, this program is a regional subsidy. In the investigation, the Department determined subsidy rates of 0.03 percent and 0.02 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

(8) Duty Drawback

The Government of Korea establishes an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the authorized loss or wastage for the raw materials. Duty drawback for loss or wastage only becomes countervailable when the allowance for this loss or wastage is unreasonable or excessive. Here, we found the duty drawback was not excessive and, therefore, was not countervailable with regard to POSCO. However, Union Steel was found to benefit from this program. The Department, therefore, calculated estimated net subsidies of 0.01 percent for both certain cold-rolled and corrosion carbon steel flat products.

(9) Preferential Utility Rates

In the investigation, the Department determined that countervailable benefits were provided to the steel industry with respect to certain discounts applied to electricity charges for certain firms. The Department determined subsidy rates of 0.03 percent and 0.02 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat product, respectively.

(10) Short-Term Export Financing

The Department determined that during the period of investigation, Pohang Coated Steel Company ("POCOS"), was the only respondent to receive short-term loans contingent on exports. The calculated estimated net *ad valorem* subsidies was less than 0.005 percent for both certain cold-rolled and corrosion-resistant carbon steel flat products.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversions to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8819 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040300E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold public meetings of its Herring Oversight Committee, the joint Council/Atlantic States Marine Fisheries Commission (ASMFC) Herring Advisory Panel and the Groundfish Oversight Committee in April, 2000. Recommendations from the committees will be brought to the full Council for formal consideration and action, if appropriate.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held between April 24 and April 27, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, April 24, 2000, 10:00 a.m.—Groundfish Oversight Committee

Location: Yoken's Conference Center, Route 1, Portsmouth NH 03801; telephone: (603) 433–3338.

A Groundfish Oversight Committee meeting is scheduled for April 11, 2000. Should the Committee need additional time to continue its discussions, another meeting will be held on April 24, 2000. Contact the Council offices after April 12 to determine if this second meeting is necessary. If held, at this meeting, the committee will continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Agenda items include discussion of guidance received from the full Council and NMFS concerning overfishing definitions and control rules. Current overfishing definitions and control rules for the multispecies complex will be reviewed and the assumptions and policy decisions in those rules examined. The committee will determine the biological goals of the amendment in light of these discussions. The committee also will organize into subcommittees that will be tasked to develop specific management options for consideration by the full committee.

Wednesday, April 26, 2000, 10 a.m.—Joint Council/ASMFC Herring Advisory Panel Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The Joint Advisory Panel will review the comments received from the public during the scoping process for a limited entry or controlled access system for the Atlantic Herring fishery. Based on this review, the advisors will recommend how to proceed in the development of such a system. The advisors will also discuss options for the protection of spawning herring and will recommend whether to make any revisions to the spawning restrictions contained in the ASMFC management plan, and whether to recommend spawning restrictions for

the Council's Atlantic Herring Fishery Management Plan. The advisors will discuss the impact of the total allowable catch on industry sectors and will determine what action, if any, should be recommended to insure the fixed gear sector has access to the fishery. The advisors will also discuss possible adjustments to the area specific total allowable catches, and may make recommendations for changes. The advisors will also elect a chair. The advisors may also discuss the annual specification process and may recommend how that process should proceed.

Thursday, April 27, 2000, 10 a.m.—Joint Council Herring Oversight Committee/ASMFC Atlantic Herring Section

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The Committees will review the comments received from the public during the scoping process for a limited entry or controlled access system for the Atlantic Herring fishery. Based on this review, the Committees will decide how to proceed in the development of such a system, and will develop a schedule for a and provide initial direction to the Plan Development Team should they choose to continue development of a limited entry or controlled access system. The Committees will also discuss options for the protection of spawning herring and will decide whether to make any revisions to the spawning restrictions contained in the ASMFC management plan, and whether to recommend spawning restrictions for the Council's Atlantic Herring Fishery Management Plan. The Committees will discuss the impact of the total allowable catch on industry sectors and will determine what action, if any, should be taken to insure the fixed gear sector has access to the fishery. The Committees will also discuss possible adjustments to the area specific total allowable catches, and may make recommendations for changes. The Committee may also discuss the annual specification process and may provide direction to the Plan Development Team on how that process should proceed.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 4, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8772 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Notice of the First Meeting of the Technology Advisory Committee

This is to give notice, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), and Section 101–6.1015(b) of the regulations promulgated thereunder, 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Technology Advisory Committee ("TAC") will conduct a public meeting to discuss current issues related to technology in the futures and option markets. The meeting will be held on April 25, 2000, from 1:00 p.m. to 4:00 p.m., in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The agenda for the meeting will be posted on the Commission's website when finalized at http://www.cftc.gov.

The TAC was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on issues arising out of technological innovation in the financial services marketplace. The purposes and objectives of the TAC are more fully set forth in its charter.

The meeting is open to the public. The Chairman of the TAC, Chairman William J. Rainer, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the TAC should mail a copy of the statement prior to the meeting to the attention of: The Technology Advisory Committee, c/o Chairman William J. Rainer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Members of the public who wish to make oral statements should also inform Chairman Rainer in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

For further information contact De'Ana Dow, Legal Counsel to Chairman Rainer, at (202) 418–5038, or Marcia K. Blase, Legal Counsel to Commissioner Newsome, at (202) 418–5138.

Issued by the Commission in Washington, D.C. on April 5, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–8913 Filed 4–7–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, April 26, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb.

Secretary of the Commission.

[FR Doc. 00–8845 Filed 4–5–00; 4:17 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0009]

B & B Amusements, Inc., a Corporation, and B & B Spectaculars, L.L.C., a Limited Liability Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. 1115.20(b). Published below is a provisionally-accepted

Settlement Agreement with B & B Amusements, Inc., a corporation, and B & B Spectaculars, L.L.C., a limited liability corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 25, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 2, 2000.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

1. This Consent Order Agreement (hereinafter, "Agreement"), entered between B&B Amusements, Inc. (hereinafter, "Respondent B & B Amusements"), a corporation, B&B Spectaculars, L.L.C., a limited liability corporation (hereinafter, "B&B Spectaculars") and the staff of the Consumer Product Safety Commission (hereinafter, "Commission") pursuant to the procedures set forth in section 1115.20(b) of the Commission's Procedures for Consent Order Agreements, 16 C.F.R. 1115.20(b), is a compromise resolution of the matter described herein, without a hearing or a determination of issues of law and fact.

I. The Parties

2. The "staff" is the staff on the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Respondent B&B Amusements, Inc. is a corporate organized and existing under the laws of the State of Arizona with its principal corporate offices located at 4491 South 4th Avenue, Yuma, AZ 85365. Respondent is the operator of the Himalaya amusement ride.

4. Respondent B&B Spectaculars, L.L.C. is a limited liability corporation organized and existing under the laws of the State of Oregon with its principal corporate offices located at 4491 South 4th Avenue, Yuma, AZ 85365. Respondent is the owner of the Himalaya amusement ride.

II. Staff's Allegations

5. The staff conducted an investigation of an incident that occurred on or about March 19, 1998 at the Travis County Livestock and Rodeo Show in Austin, TX involving the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements. The incident resulted in the death of a female passenger and in injuries to two other passengers.

6. The staff alleges that the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements contains a defect that creates a substantial risk of injury to the public because Respondents failed to properly maintain, inspect, and operate the ride at the time of the incident involving two injuries and one death.

III. Response of Respondents

7. Respondents deny the allegations set forth by the staff in paragraphs 5 and 6 above.

8. Respondents specifically deny that the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements contains a defect that creates a substantial risk of injury to the public because Respondents failed to properly maintain, inspect, and operate the ride at the time of the incident involving two injuries and one death.

IV. Agreement of the Parties

9. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*

10. Upon final acceptance by the Commission of this Consent Order Agreement, the Commission shall issue the attached Order incorporated herein by reference.

11. This Agreement is entered into for the purposes of settlement only and does not constitute an admission by Respondents or a determination by the Commission that the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements contains a defect that creates a substantial risk of injury to the public because Respondents failed to properly maintain, inspect, and operate the ride at the time of the incident involving two injuries and one death.

12. Upon final acceptance of this Consent Order Agreement by the Commission, Respondents knowingly, voluntarily, and completely waive any rights they may have in this matter (a) to the issuance of a complaint; (b) to an administrative or judicial hearing; (c) to judicial review or other challenge or contest of the validity of the Commission's actions; (d) to a determination by the Commission as to whether Respondents failed to comply with the CPSA as aforesaid, (e) to a statement of findings of facts and conclusions of law; and (f) to any claims under the Equal Access to Justice Act.

13. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms and conditions of this Consent Order Agreement.

14. Upon provisional acceptance of this Consent Order Agreement by the Commission, this Consent Order Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1115.20(b)(4) and (b)(5). If the Commission does not receive any written request not to accept the Consent Order Agreement within 15 days, the Consent Order Agreement will be deemed finally accepted on the 20th day after the date it is published in the **Federal Register**.

15. This Consent Order Agreement is a Commission order issued under section 15 of the CPSA, 15 U.S.C. 2064.

16. A violation of the incorporated Consent Order Agreement is a prohibited act under section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5) and may subject Respondents to civil and/or criminal penalties pursuant to sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

17. Any interested person may bring an action pursuant to section 24 of the CPSA, 15 U.S.C. 2073 in any U.S. District Court for the district where the Respondents are found or are transacting business for the purpose of enforcing the Consent Order Agreement and/or obtaining appropriate injunctive relief.

18. The provisions of the Consent Order Agreement shall apply to Respondents and each of their successors and assigns.

19. Agreements, understandings, representations, or interpretations made outside of this Consent Order Agreement may not be used to vary or to contradict its terms.

Respondent B&B Amusements, Inc.

Dated: February 18, 2000.

Steven J. Merten III,

President, B&B Amusements, Inc., 4491 S. 4th Avenue, Yuma, AZ 85365.

Respondent B&B Spectaculars, L.L.C.

Dated: February 18, 2000.

Steven J. Merten III,

Partner, B&B Spectaculars, L.L.C., 4491 S. 4th Avenue, Yuma, AZ 85365.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: March 1, 2000.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the foregoing Consent Agreement entered into between Respondent B&B Amusements, Inc., a corporation, B&B Spectaculars, L.L.C., a limited liability corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and the Respondents; and it appearing that the Consent Order Agreement is in the public interest,

I. *It Is Ordered that* the Consent Agreement be, and hereby is, accepted.

II. *It is Further Ordered that* Respondents will not operate the Himalaya amusement ride unless they take the actions set forth in sections III, IV, and V of this Order.

III. *It Is Further Ordered That* Respondents and each of their successors and assigns notify the Commission in writing at least 60 days prior to placing the Himpalay in service at each location in which Responsents intend to operate the Himalaya.

IV. *It Is Further Ordered That* Respondents and each of their successors and assigns allow the Commission or an entity acting on behalf of the Commission including, but not limited to state amusement ride safety inspectors and private amusement ride safety inspectors, to inspect the Himalaya prior to the ride being placed in service at each location in which Respondents intent to operate it.

V. *It Is Further Ordered That* Respondents and each of their successors and assigns comply with all manufacturer's recommendations and specifications including, but not limited to, parts, operation, inspection, secondary restraints, and maintenance of the Himalaya.

VI. *It Is Further Ordered That* Respondent B & B Spectaculars and each of its successors and assigns notify the Commission in writing at least 60 days prior to sale of all parts of the Himalaya. Such notice shall include the name(s), address(es), and telephone number(s) of the purchaser(s).

VII. *It Is Further Ordered* That Respondent B&B Spectaculars and each of its successors and assigns notify the Commission in writing at least 60 days prior to destroying and/or disposing of the Himalaya. Such notice shall include the name, address, and telephone number of the entity charged with destroying and/or disposing of the Himalaya and the location of the destruction and/or disposal.

VIII. *It Is Further Ordered That Respondents and each of their successors and assigns direct all required notices under the Consent Order Agreement to Alan Alan H. Schoem, Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, D.C. 20207–0001.*

Provisionally accepted and Provisional Order issued on the 3rd day of April, 2000.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–8714 Filed 4–7–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE/The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Pharmacy Redesign Pilot Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of two-site implementation of the Pharmacy Redesign Pilot Program.

SUMMARY: This notice is to advise interested parties of a two-site implementation of the Pharmacy Redesign Pilot Program for certain military health system (MHS) beneficiaries who are 65 years of age or older, pursuant to the requirements in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. Specifically, Section 723 of this act mandates the pharmacy redesign to incorporate private sector "best business practices" in providing pharmacy services in the MHS, including both military medical treatment facilities (MTFs) and the mail-order and retail pharmacy benefit under TRICARE. It is projected that participation in this pilot program will extend access to a system-wide drug benefit for approximately 6,000 over-age 65 DoD eligible beneficiaries that has not been available until now. In the past, Medicare-eligible MHS beneficiaries' access to pharmacy benefits has generally been limited to the MTFs; therefore, the purpose of this pharmacy redesign pilot program is to assess the feasibility and cost of a system-side pharmacy benefit for Medicare eligible MHS beneficiaries. The pilot program is limited to two sites where up to three thousand eligible beneficiaries will be enrolled at each site. A random selection process resulted in Fleming, Kentucky and Okeechobee, Florida as the pilot sites.

The pharmacy benefit under this demonstration will require an annual $200 enrollment fee. The TRICARE retail network pharmacies will provide up to a 30-day supply of medications for a 20% co-payment with each prescription. The beneficiaries will also have access to the National Mail-Order Pharmacy Program (NMOP) where quantities up to a 90-day supply will be dispensed for a flat fee of $8 for each prescription.

The pharmacy redesign pilot program is projected to last for three (3) years and will be evaluated by an independent entity outside the Department of Defense.

EFFECTIVE DATE: Enrollment in the demonstration is projected to begin by June 1, 2000 with Delivery of services by July 1, 2000.

FOR FURTHER INFORMATION CONTACT: CAPT Charles Hostettler, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1740.

SUPPLEMENTARY INFORMATION:

A. Background

In June 1998, the General Accounting Office (GAO) testified before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, that over the past several years, concern about the costs and quality of DoD's pharmacy benefit has surfaced. GAO recommended that DoD establish a more system-wide approach to managing its pharmacy benefit by establishing a uniform, incentive-based formula across its pharmacy programs. Furthermore, GAO recommended that a system-wide pharmacy benefit be granted to

Medicare-eligible retirees who are excluded from the contractor retail network and NMOP pharmacy systems.

B. Description of Project

In response to the June 1998 GAO report, the FY 1999 Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) directed DoD to develop a system-wide pharmacy redesign plan to and implement the system-wide redesigned benefit at two sites for Medicare-eligible beneficiaries.

An eligible beneficiary for the pharmacy redesign pilot program is a member or former member of the uniformed services as described in section 1074(b) of title 10; a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of title 10; or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who meets the following requirements: (a) 65 years of age or older, (b) entitled to Medicare Part A, (c) enrolled in Medicare Part B, (d) resides in an implementation area, and (e) the requirement to be enrolled in Medicare Part B shall not apply in the case of an individual who at the time of attaining the age of 65 lived within 100 miles of the catchment area of a military medical treatment facility.

The pharmacy redesign implementation will be evaluated by an independent entity outside the Department of Defense. The evaluation shall include: (a) an analysis of the cost of the pharmacy redesign implementation under TRICARE, and also to the eligible individuals who participate in the pilot program, (b) an assessment of he extent to which the implementation of such system satisfies the requirements of the eligible individuals for the health care services available under TRICARE, (c) an assessment of the effect, if any, on military medical readiness, (d) a description of the rate of participation, and (e) an evaluation of any other matters that the Department considers appropriate.

The DoD component responsible for the conduct of this project is the TRICARE Management Activity.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 00–8720 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiative Review Panel

AGENCY: Department of Defense.

ACTION: This notice cancels the DoD Healthcare Quality Initiative Review Panel meeting, which was originally scheduled for April 27, 2000. A closed executive/administrative meeting has been scheduled for May 23, 2000, for Panel members and support staff only.

SUMMARY: This notice set forth the meeting of the DoD Healthcare Quality Initiatives Review Panel. Notice of meeting is required under The Federal Advisory Committee Act (Pub. L. 92–463).

DATES: May 23, 2000.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

TIME: 8 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: For information please contact Gia Edmonds at (703) 933–8325.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8718 Filed 4–7–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Unconventional Nuclear Warfare Defense will meet in closed session on April 25–26, 2000, at Sandia National Laboratories, Kirtland Air Force Base, Albuquerque, NM, and June 8–9, 2000, tentatively at Strategic Analysis, Inc., 3601 Wilson Boulevard, Suite 500, Arlington, VA. This Task Force will determine the adequacy of DoD's ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorists or subnational entities, and the appropriate role(s) and capability of DoD to provide protection against unconventional nuclear attacks in support of homeland defense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8719 Filed 4–07–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5)

Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 4, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the 21st Century Community Learning Centers Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 18,100. Burden Hours: 29,586.

Abstract: The program evaluation uses an experimental design for elementary school students applying to 21st Century centers and a comparison design for middle school students participating in 21st Century centers. Over a two-year period, it will include questionnaires of students, parents, and teachers; a reading test; and school and center records collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8733 Filed 4–7 –00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 4, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Progress Measures.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,300

Burden Hours: 6,850

Abstract: The National School-to-Work Office collects information from funded local partnerships to gather evidence on state and local progress in implementing School-to-Work systems. Data elements have included student, school, and employer involvement in School-to-Work; graduation and postsecondary transition rates for students; and funds leveraged by partnerships to sustain their School-to-Work systems. Information is used to provide an annual School-to-Work report to Congress, as well as to build state's capacity to collect and analyze information for their own system improvement purposes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8734 Filed 4–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 12, 2000. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 9, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 4, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Applications for Grants under the Smaller Learning Communities Program.

Abstract: This application will be used to award grants to local educational agenices for the purpose of creating and implementing smaller learning environments in large high schools.

Additional Information: This program is a high priority initiative and a key part of the Administration's overall strategy to encourage the use of effective, research-based programs to create smaller, safer learning environments.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 700

Burden Hours: 45,500

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8735 Filed 4–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–234–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000 CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of May 1, 2000:

Fifty-sixth Revised Sheet No. 32

CNG requests waiver of the filing requirements of Section 18.2 of the GT&C to relieve CNG of its obligation to make its next three quarterly stranded cost adjustment filings.

CNG states that the purpose of the rate filing is to submit CNG's quarterly revision of the Section 18.2.B Surcharge, effective for the three-month period commencing May 1, 2000. The charge for the quarter ending April 30, 2000 has been $0.0200 per Dt., as authorized by Commission order dated January 18, 2000 in Docket No. RP00–148–000. CNG's proposed section 18.2.B surcharge for the next quarterly period is $0.0217 per Dt. costs, which CNG incurred for the period of December 1999 through February 2000.

CNG states that copies of this letter of transmittal and enclosures are being served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8761 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–237–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Fifth Revised Sheet No. 280
Seventh Revised Sheet No. 281
Seventh Revised Sheet No. 282
Fourth Revised Sheet No. 283

Columbia states that it is making this filing to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 CFR Section 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia is revising General Terms and Conditions (GTC), Section 4, which contains the procedures for the awarding of existing firm capacity and the exercise of the ROFR on Columbia, to reflect these changes. Columbia is also revising Section 4 to be consistent with certain comparable time frames and provisions in Section 14.5(b).

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8763 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–238–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Fourth Revised Sheet No. 144
First Revised Sheet No. 144A
Fifth Revised Sheet No. 145
Third Revised Sheet No. 145A
Third Revised Sheet No. 147

Columbia Gulf states that it is making this filing to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 C.F.R. Section 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia Gulf is revising General Terms and Conditions (GTC), Section 4, which contains the procedures for the awarding of existing firm capacity and the exercise of the ROFR on Columbia Gulf, to reflect these changes.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8764 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–24–000]

Distrigas of Massachusetts Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective June 1, 2000:

Eighth Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8750 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–230–000]

El Paso Natural Gas Company; Notice of Revenue Crediting Report

April 4, 2000.

Take notice that on March 31, 2000, El Paso Natural Gas Company (El Paso) tendered for filing its revenue crediting report for the calendar year 1999.

El Paso states that the report details El Paso's crediting of risk sharing revenues for the calendar year 1999 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8748 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–717–001]

El Paso Natural Gas Company; Notice of Application

April 4, 2000.

Take notice that on March 28, 2000, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application in Docket No. CP98–717–001, pursuant to Section 7(b) of the Natural Gas Act and Rule 215 of the Commission's Regulations. requesting the Commission to amend the authorization to abandon facilities granted by the Commission's order issued January 15, 1999 at Docket No. CP98–717–000, all as more fully described in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

El Paso states that in the January 15, 1999 order, the Commission granted El Paso permission and approval to abandon, by removal, to the extent practicable, three segments totaling approximately 49.16 miles, of El Paso's 12¾″ O.D. El Paso-Douglas Loop Line (Line No. 1005), with appurtenances, located in Dona Ana and Luna Counties, New Mexico, Also, in the January 15, 1999 order, the Commission directed El Paso to file monthly status reports to describe the abandonment activities, including whether pipe was abandoned by removal or in place. El Paso has filed three status reports on January 12, February 11, and March 13, 2000.

El Paso further states that, as set forth in El Paso's application and responses to data requests filed in Docket No. CP98–717–000, El Paso intended to abandon the segments of pipeline by removal to the extent practicable since there may be certain areas where it is deemed more practicable to abandon the pipeline in place. El Paso indicated that areas where it may be necessary to abandon in place: pipelfne underlying agricultural land; canal and drain crossings; road crossings; railroad crossings; or any area where the landowner specifies abandonment in place.

El Paso states that in the status report filed February 11, 2000, El Paso informed the Commission that El Paso had determined it was more practicable to abandon most of the pipe by transfer to El Paso's affiliate. El Paso Energy Communications (EPECC) for use as fiber optics conduit.

By letter dated March 8, 2000, the Office of Energy Projects directed El Paso to file an application seeking an amendment to its Section 7(b) authorization to reflect the new proposal for abandonment of the three segments of Line No. 1005 totaling 49.16 miles. Accordingly, El Paso is requesting amended abandonment authorization for approximately 44.0 miles of Line No. 1005 by transfer to EPECC for use as fiber optics conduit. The remaining portion of such line consisting of approximately 5.16 miles will be abandoned in place.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's Rules require that protestors provide copies of their protests to the party or parties against whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application is no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the requested abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8751 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–162–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

April 4, 2000.

Take notice that on March 29, 2000, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP00–162–000, pursuant to Section 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by removal the Belen City Gate Meter Station authorized in blanket certificate issued in Docket No. CP82–435–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

El Paso proposes to abandon by removal the Belen City Gate Meter Station, serving PNM Gas Services, a division of Public Service Company of New Mexico (PNMGS). El Paso states that authorization for a budget-type sales facilities and services, including the Belen City Gate Meter Station, with appurtenances was received by order issued on December 14, 1967 in Docket No. CP68–88–000. El Paso reports that the facility was required by El Paso to facilitate the delivery, measurement and sale of natural gas from its interstate transmission pipeline system to PNMGS for resale. El Paso continues that due to load growth in the Belen and Los Lunas, New Mexico areas PNMGS has expanded its distribution system, and that PNMGS has requested El Paso to construct, install and operate a new delivery point, the Belen North Delivery Point, near its newly expanded system.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8753 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–240–000]

Kern River Gas Transmission Company; Notice of Report of Fuel and Lost and Unaccounted-For Gas Factors for 1999

April 4, 2000.

Take notice that on March 31, 2000, Kern River Gas Transmission Company (Kern River) tendered a report supporting its fuel and lost and unaccounted-for gas factors for August through December 1999.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8766 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–23–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

April 4, 2000.

Take notice that on March 20, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Volume No. 1, the following tariff sheets, to become effective May 1, 2000.

Twenty-Ninth Revised Sheet No. 20
Twenty-Sixth Revised Sheet No. 21
Twenty-Seventh Revised Sheet No. 22
Twenty-Ninth Revised Sheet No. 24
Second Revised Sheet No. 30
First Revised Sheet No. 1402

Koch has revised the above tariff sheets to reflect minor housekeeping changes for clarification of Koch's FERC Gas Tariff.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8754 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–228–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 4, 2000.

Take notice that on March 31, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective April 1, 2000.

Twenty-Third Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article 1, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 8.32 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8758 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–227–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Panhandle Eastern Pipe Line Company (Panhande) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective May 1, 2000.

Panhandle states that this filing is made in accordance with Section 25 (Flow Through of Cash-Out Revenues in Excess of Costs and Scheduling Charges Assessed Against Affiliates) of the General Terms and Conditions (GT&C) in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to Panhandle's currently effective Maximum Reservation Rates under Rate Schedules FT, EFT, LFT and SCT, and currently effective Maximum commodity rates under Rate Schedules IT and EIT:

(1)A ($0.01) per Dt. reduction from the Base Reservation Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules FT, EFT and LFT;

(2).A (0.06¢) per Dt. reduction from the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedule SCT; and

(3) A (0.03¢) per DT. reduction form the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules IT and EIT.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8757 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–239–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes In FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000 Pine needle LNG Company, LLC (Pine Needle) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet No. 4. The proposed effective date of the enclosed tariff sheet is May 1, 2000.

Pine Needle states that the instant filing is being submitted pursuant to Section 18 and Section 19 of the General Terms and Conditions (GT&C) of Pine Needle's FERC Gas Tariff (Tariff). Section 18 of the GT&C of Pine Needle's Tariff states that Pine Needle will file, to be effective each May 1, a redetermination of its fuel retention percentage applicable to storage services. Section 19 of the GT&C of Pine Needle's Tariff provides that Pine Needle will file, also to be effective each May 1, to reflect net changes in the Electric Power (EP) rates.

Pine Needle states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8765 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1971–000]

Poco Marketing Ltd.; Notice of Filing

April 4, 2000.

Take notice that on March 23, 2000, Poco Marketing Ltd. filed a letter recinding their permit in Docket No. ER97–2198–000, stating that they have not engaged in any electrical power purchases or sales during the time of this permit.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 and protests should be filed on or before April 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8767 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1972–000]

Poco Petroleum, Inc; Notice of Filing

April 4, 2000.

Take notice that on March 23, 2000, Poco Petroleum, Inc. filed a letter rescinding their permit in Docket No. ER97–2197–000, stating that they have not engaged in any electrical power purchases or sales during the time of the permit.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 and protests should be filed on or before April 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8768 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–235–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2000.

Third Revised Sheet No. 5
Third Revised Sheet No. 6
Fourth Revised Sheet No. 7

REGT states that the purpose of this filing is to adjust REGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to sections 27 and 28 of its General Terms and Conditions as well as a correction of a typographical mistake submitted in a previous filing. REGT is not proposing to change its current EPC Tracker rate of $0.0009.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.fer.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8762 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–231–000]

Southern Natural Gas Company; Notice of Refund Report

April 4, 2000.

Take notice that on March 31, 2000, Southern Natural Gas Company (Southern Natural) tendered for filing a Refund Report.

Southern Natural states that pursuant to Section 38.3 of the General Terms and Conditions of Southern Natural's Tariff the Refund Report sets forth Excess Storage Usage Charges to be refunded to Rate Schedule CSS customers.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 2000. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the wet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8749 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–232–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 2000.

Tariff Sheets Applicable to Contesting Parties:

Fiftieth Revised Sheet No. 14
Seventy First Revised Sheet No. 15
Fiftieth Revised Sheet No. 16
Seventy First Revised Sheet No. 17

Tariff Sheets Applicable to Settling Parties:

Thirty Sixth Revised Sheet No. 14a
Forty Second Revised Sheet No. 15a
Thirty Sixth Revised Sheet No. 16a
Forty Second Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff Seventh Revised Volume No. 1, to reflect a change in FT/FT–NN Southern Energy Cost Surcharge, due to an increase in the FERC interest rate effective April 1, 2000.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8760 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2964]

City of Sturgis; Notice of Authorization for Continued Project Operation

April 4, 2000.

On March 31, 1998, the City of Sturgis, licensee for the Sturgis Project No. 2964, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2964 is located on the St. Joseph River in St. Joseph County, Michigan.

The license for Project No. 2964 was issued for a period ending March 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2964 is issued to the City of Sturgis for a period effective April 1, 2000, through March 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that the City of Sturgis is authorized to continue operation of the Sturgis Project No. 2964 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8755 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–229–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

April 4, 2000.

Take notice that on March 31, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing. Tennessee proposes that the foregoing tariff sheets be made effective on May 1, 2000.

Tennessee states that as part of its transition to interactive Internet communications in compliance with the Federal Energy Regulatory Commission's Order No. 587–1, Tennessee has undertaken a major rewrite of its critical computer system functions. In conjunction with the rewrite, Tennessee further states that it is taking the opportunity to initiate additional modifications to its computer systems in order to streamline certain of

Tennessee's processes and to provide additional service flexibilities (collectively, hereinafter referred to as Service Upgrades). In order to provide the Service Upgrades by completion and implementation of the rewrite, Tennessee is seeking approval for certain modifications to its existing tariff and pro forma service agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing my be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A.Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8759 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Resource Agency Meeting

April 4, 2000.

On April 20, 2000, the Office of Energy Projects staff will attend a Regulatory Coordination Team Meeting at the offices of the Florida Department of Environmental Protection, 3804 Coconut Palm Drive in Tampa, Florida, starting at 9:00 am. The meeting is part of Florida's Team Permitting Process for the Gulfstream Pipeline Project. Federal, state, and local resource agencies will be in attendance along with representatives of Gulfstream Natural Gas System, L.L.C. to discuss agency concerns, coordination logistics, and the Federal process for the Gulfstream Pipeline Project in the above referenced docket.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8752 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–169–000]

Natural Gas Pipeline Company of America; Notice of Technical Conference

April 4, 2000.

In the Commission's order issued on February 24, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, April 19, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8756 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Notice

Sunshine Act Meeting

April 5, 2000.

The following notice of meeting is published Pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 12, 2000, 10 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note: Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary Telephone (202) 208–0400, For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

CONSENT AGENDA—HYDRO 739TH—MEETING APRIL 12, 2000—REGULAR MEETING

[10:00 A.M.]

CAH–1.	Docket# DI97–8	001	Georgia Pacific Corporation.
	Other# SDI97–9	001	Georgia Pacific Corporation.
CAH–2.	Docket# UL98–1	002	Great Northern Paper, Inc.
	Other# SP–2634	009	Great Northern Paper, Inc.
CAH–3.	Docket# P–2640	018	Fraser Papers, Inc.
	Other# SP–2395	011	Fraser Papers, Inc.
	P–2421	011	Fraser Papers, Inc.
	P–2473	010	Flambeau Hydro, L.L.C.
CAH–4.	Omitted.		
Consent Agenda—Electric			
CAE–1.	Docket# EC00–26	000	Commonwealth Edison Company and Peco Energy Company.
CAE–2.	Docket# EC00–41	000	Commonwealth Edison Company.

[1] 90 FERC ¶ 61,182.

CONSENT AGENDA—HYDRO 739TH—MEETING APRIL 12, 2000—REGULAR MEETING—Continued

[10:00 A.M.]

CAE–3.	Docket# ER00–1635	000	Detroit Edison Company.
CAE–4.	Docket# ER00–1262	000	Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company.
CAE–5.	Docket# ER00–1630	000	PJM Interconnection, L.L.C.
CAE 6.	Docket# ER00–1637	000	Cinergy Services, Inc.
CAE–7.	Docket# ER00–1659	000	New England Power Pool.
CAE–8.	Omitted.		
CAE–9.	Omitted.		
CAE–10.	Omitted.		
CAE–11.	Docket# ER99–3318	000	Mid–Continental Area Power Pool.
CAE–12.	Docket# ER00–1599	000	New England Power Pool.
CAE–13.	Docket# ER00–1675	000	Reliant Energy Desert Basin, LLC.
	Others# SER00–1676	000	Fulton Cogeneration Associates, L.P.
CAE–14.	Docket# ER00–882	000	Northern Maine Independent System Administrator, Inc.
CAE–15.	Docket# ER99–3163	000	Utilicorp United, Inc.
	Other# EL99–78	000	Utilicorp United, Inc.
	EL99–78	001	Utilicorp United, Inc.
	ER99–3163	001	Utilicorp United, Inc.
CAE–16.	Docket# QF88–21	008	Pittsfield Generating Company, L.P.
CAE–17.	Omitted.		
CAE–18.	Docket# EC00–40	000	Delmarva Power & Light Company, Atlantic City Electric Company, DPL REIT, Inc. and Conectiv Atlantic Generation, LLC.
CAE–19.	Docket# ER99–25	001	Peco Energy Company.
CAE–20.	Docket# ER99–307	001	Metropolitan Edison Company and Pennsylvania Electric Company.
CAE–21.	Docket# EL99–44	004	Arizona Public Service Company v. Idaho Power Company.
CAE–22.	Docket# ER00–555	001	California Independent System Operator Corporation.
CAE–23	Omitted.		
CAE–24.	Omitted.		
CAE–25.	Docket# EL00–52	000	Delmarva Power & Light Company and Atlantic City Electric Company.
CAE–26.	Docket# EL00–36	000	Atlantic City Electric Company, Camden Cogen, L.P., Delmarva Power & Light Company, Edison Mission Marketing & Trading, Inc., Electric Power Supply Association, FPL Energy, Inc., New Energy, Inc., Old Dominion Electric Cooperative, Peco Energy Company, PG&E Energy Trading-Power, L.P., PG&E Energy Generating Company, Sithe Power Marketing, L.P., Strategic Energy, L.L.C., Virginia Electric and Power Company, Williams Energy Marketing and Trading Company and WPS Energy Services, Inc. v. PJM Interconnection, L.L.C.
CAE–27.	Omitted.		

Consent Agenda—Gas and Oil

CAG–1.	Docket# RP00–218	000	Natural Gas Pipeline Company of America.
CAG–2.	Docket# PR00–2	000	Lee 8 Storage Partnership.
CAG–3.	Docket# PR00–3	000	Creole Gas Pipeline Corporation.
CAG–4.	Docket# RP00–163	002	Kern River Gas Transmission Company.
CAG–5.	Omitted.		
CAG–6.	Docket# RP00–157	001	Kern River Gas Transmission Company.
CAG–7.	Omitted.		
CAG–8.	Docket# RP00–176	000	ANR Pipeline Company.
CAG–9.	Omitted.		
CAG–10.	Docket# RP00–17	000	Cover Point LNG Limited Partnership.
CAG–11.	Docket# RP00–17	000	Transcontinental Gas Pipe Line Corporation.
CAG–12.	Docket# RP00–136	000	EL Paso Natural Gas Company.
CAG–13.	Docket# RP99–291	001	Transcontinental Gas Pipe Line Corporation.
CAG–14.	Docket# RP00–35	001	Viking Gas Transmission Company.
CAG–15.	Docket# RP00–63	001	Great Lakes Gas Transmission Limited Partnership.
CAG–16.	Docket# RP00–7	002	Texas Eastern Transmission Corporation.
	Others# SRP00–7	001	Texas Eastern Transmission Corporation.
CAG–17.	Docket# RP97–29	003	Panhandle Eastern Pipe Line Company.
CAG–18.	Docket# RP96–275	005	Tennessee Gas Pipeline Company.
CAG–19.	Docket# RP97–369	013	Public Service Company of Colorado, and Cheyenne Light, Fuel and Power Company.
	Other# SGP97–3	003	Amoco Production Company, Anadarko Petroleum Corporation, Mobil Oil Corporation, OXY USA, Inc. and Union Pacific Resources Company.
	GP97–4	003	Kansas Small Producer Group.
	GP97–5	003	Mesa Operating Company.
CAG–20.	Docket# CP00–35	000	Equitrans, L.P.
	Other# PR95–9	000	Three River Pipeline Company.
	PR95–9	003	Three River Pipeline Company.
CAG–21.	Omitted.		
CAG–22.	Docket# CP99–538	001	B–R Pipeline Company and Portland General electric Company.
	Other# SCP99–538	000	B–R Pipeline Company and Portland General Electric Company.
CAG–23.	Docket# CP99–94	002	Florida Gas Transmission Company.
CAG–24.	Docket# RM98–10	002	Regulation of Short-Term Natural Gas Transportation Services.

CONSENT AGENDA—HYDRO 739TH—MEETING APRIL 12, 2000—REGULAR MEETING—Continued

[10:00 A.M.]

	Other# RM98–12	002	Regulation of Interstate Natural Gas Transportation Services.
CAG–25.	Docket# CP98–74	001	ANR Pipeline Company v. Transcontinental Gas Pipe Line Corporation.
CAG–26.	Docket# PR00–9	000	PG&E Texas Pipeline, L.P.
CAG–27.	Docket# RP97–287	045	El Paso Natural Gas Company.
Hydro Agenda			
H–1.	Reserved.		
Electric Agenda			
E–1.	Reserved.		
Oil and Gas Agenda			
I.	Pipeline Rate Matters.		
PR–1.	Reserved.		
II.	Pipeline Certificate Matters.		
PC–1.	Reserved.		

David P. Boergers,

Secretary.

[FR Doc. 00–8894 Filed 4–6–00; 11:18 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6575–1]

Office of Research and Development; Board of Scientific Counselors Request for Suggestion of Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for suggestions of candidates.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), EPA, Office of Research and Development (ORD) is requesting suggestions for candidates for membership on the Board of Scientific Counselors.

The Board of Scientific Counselors (BOSC), is in its second charter renewal process, and once renewed will provide advice and recommendations to the EPA on the operation of ORD's research program. As stated in the Charter, BOSC's primary functions are to: (a) evaluate science and engineering research programs, laboratories, and research-management practices of ORD and recommend actions to improve their quality and/or strengthen their relevance to the mission of the EPA; and (b) evaluate and provide advice concerning the utilization of peer review within ORD to sustain and enhance the quality of science in EPA.

The membership of the BOSC will include a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the BOSC and may be drawn from business and industry, the academia, environmental organizations and other related organizations. Committee members are appointed for terms of one to four years by the EPA Deputy Administrator.

ADDRESSES: Submit suggestions for the list of candidates to: Shirley R. Hamilton, Designated Federal Officer, Board of Scientific Counselors, Environmental Protection Agency (8701R), 1200 Pennsylvania Ave., NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton at the above address or at (202) 564–6853. The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: Submit suggestions of candidates no later than May 5, 2000. Any interested person or organization may submit names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address and telephone number, and if available, email address. Candidates will be asked to submit a resume of their background, experience and qualifications and other relevant information as a part of the consideration process.

Dated: April 4, 2000.

Norine E. Noonan,

Assistant Administrator, for Research and Development.

[FR Doc. 00–8710 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–8]

Tampa Bay Water Regional Reservoir and Pipeline: Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the reservoir and pipeline to the Alafia River located in southeast Hillsborough County, Florida.

PURPOSE: Pursuant to 40 CFR 1501.7 and in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) has identified the need to prepare an environmental impact statement (EIS) and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE MAILING LIST CONTACT: Ms. Lena Scott, Environmental Protection Agency—Region 4, Office of Environmental Assessment, 61 Forsyth Street, Atlanta, Georgia 30303, Telephone (404) 562–9607 of Fax (404) 563–9598.

SUMMARY: EPA intends to prepare the EIS to evaluate Tampa Bay Water's (Authority) proposal to construct and operate a 1,200-acre reservoir and pipeline located in southeast Hillsborough County, Florida. The proposed reservoir will provide storage during high flow periods for use as potable water when surface water is not available for withdrawals. An 84-inch, 8-mile long pipeline will connect the reservoir to the South Central Hillsborough Intertie near the Alafia River withdrawal location. EPA intends to retain the services of an independent contractor to prepare the EIS using the

"third party method" as provided under 40 CFR Section 6.510(b)(3). By utilizing the third party method, EPA enters into an agreement for the Authority to engage and pay for the services of a contractor to prepare the EIS under the direction of EPA.

Need for Action: EPA awarded construction grants totaling $12,615,000 to Tampa Bay Water for the reservoir and pipeline. Based upon draft Environmental Information Documents (EID) submitted for the regional reservoir, EPA determined the EID did not adequately address potential impacts of the project and could not issue a Finding of No Significant Impact (FNSI). Known concerns include viable alternatives to the proposed action, impacts on protected wetlands, effects from inter-basin transfer of water, short- and long-term impacts on the Alafia River and Tampa Bay aquatic ecosystems from the incremental withdrawal of water resources attributable to reservoir operations, impacts on threatened and endangered species, impacts of salinity changes on aquatic organisms, sport and commercial fisheries.

Alternatives:

- EPA releases grant funds without conditions.
- EPA releases grant funds with conditions.
- EPA withholds grant funds exercising the "No Action" alternative.

Scoping: EPA will hold a public scoping meeting in which a general description of the projects and its goals will be presented. Time and meeting location will be announced in newspapers local to the project. Both oral and written comments will be accepted at the meeting to assist EPA to determine the scope of the EIS. Persons who do not attend the meeting and wish to comment on the issues are invited to respond in writing to this agency within 30 days of the scoping meeting.

Estimated Date of Release: August 30, 2001.

Responsible Official: A. Stanley Meiburg, Deputy Regional Administrator, Region 4, Environmental Protection Agency.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 00–8671 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6574–8]

Electric Utility Steam Generating Units; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The EPA must determine whether hazardous air pollutants (HAP) emissions from electric utility steam generating units should be regulated under section 112 of the Clean Air Act (CAA), as amended, on or before December 15, 2000. The EPA's Office of Air and Radiation, Office of Air Quality Planning and Standards will hold a public meeting to provide interested persons an opportunity to provide EPA their views regarding the Agency's determination.

DATES: The public meeting will be held on June 13, 2000.

ADDRESSES: The public meeting will be held in the Lake Michigan Room, 12th floor, of the EPA Region V offices located at 77 West Jackson Boulevard, Chicago, Illinois. The meeting will be from 9:30 a.m. until 4 p.m., Central Daylight time.

FOR FURTHER INFORMATION CONTACT: Mr. William Maxwell, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5430, facsimile number: (919) 541–5450, e-mail *maxwell.bill@epa.gov*. Members of the public wishing to attend the meeting should register by phoning Ms. Libby Bradley at (919) 541–5578. Please note that space is limited to approximately 150 attendees and registrations will be accepted on a first-come, first-served basis. On or about June 1, 2000, a tentative agenda, including a list of those registered to date, will be posted to the Agency website *http://www.epa.gov/ttn/uatw/combust/utiltox*.

SUPPLEMENTARY INFORMATION: Section 112(n)(1)(A) of the CAA requires EPA to perform a study (*i.e.*, utility toxics study) of the hazards to public health anticipated to occur as a result of HAP emissions from electric utility steam generating units, after imposition of the requirements of the CAA, and to prepare a Report to Congress containing the results of the study. The Agency is to proceed with rulemaking activities under section 112 to control HAP emissions from electric utility steam generating units if EPA finds such rulemaking is appropriate and necessary after considering the results of the study. The utility toxics study was completed, and the Final Report to Congress issued on February 24, 1998. The Agency is required to make a finding as to whether it is appropriate and necessary to regulate HAP emissions from electric utility steam generating units on or before December 15, 2000.

On February 29, 2000, EPA published a notice in the **Federal Register** (65 FR 10783) requesting from the public any information or data that might be considered appropriate for the Agency to consider prior to making the regulatory determination. The deadline for submitting any such data is March 31, 2000. A public meeting is being held in order to provide the public an opportunity to present their views to EPA concerning this determination. This meeting will allow EPA to listen to public opinion on the issue of mercury and other HAP emissions from electric utility steam generating units and the regulatory determination. Members of the public wishing to present formal comments at the meeting should so indicate when registering. Individual speaking times will be limited to 10 minutes in order to give everyone an equal opportunity to speak. Seating will be limited for the meeting and advance registration is suggested. Walk-in comments will be heard on a time-available basis at the end of the session. Please note that scheduling of this public meeting does not extend the March 31, 2000 deadline for submitting additional data in response to the February 29, 2000 **Federal Register** document. Rather, this meeting provides opportunity for interested persons to make known their views to EPA.

Dated: March 27, 2000.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–8713 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6575–4]

Meeting of the Local Government Advisory Committee and Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee and its Small Community Advisory Subcommittee

will meet on April 26, 2000, from 12 noon—2 p.m. EDT in Washington, DC. The meeting will be held in Room 3528 in the Ariel Rios North Building and Committee members will participate via conference call. The Committee will consider adopting recommendations to the Agency regarding its draft implementation guidance for Executive Order 13132, entitled "Federalism."

The Committee will hear comments from the public between 12:30–12:45 p.m. on the 26th. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 12 p.m. on Wednesday, April 26, 2000, and conclude no later than 2 p.m. on the same day.

ADDRESSES: The meeting will be held in Washington, DC at EPA Headquarters in Room 3528 of the Ariel Rios North Building located at 1200 Pennsylvania Avenue, NW.

Requests for Minutes and other information can be obtained by writing to the DFO at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 564–3684 or by email at ney.denise@epa.gov.

Dated: March 3, 2000.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 00–8834 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6575–6]

National Environmental Justice Advisory Council; Notification of Meeting and Public Comment Period(s); Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), along with the various subcommittees will meet on the dates and times described below. All times noted are Eastern Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and subcommittee meetings will take place at the Omni Hotel at CNN Center, 100 Center Street, Atlanta, GA 30335. The meeting dates are as follows: May 23 , 2000 through May 26, 2000. All times shown are Eastern Time. This is the second in a series of focused policy issue meetings for the NEJAC. To help prepare for this specific focused policy issue meeting the following background information is provided:

Request

The Charter for the National Environmental Justice Advisory Council (NEJAC) states that NEJAC shall provide independent advice to the Administrator on areas that may include, among other things, "the direction, criteria, scope, and adequacy of the EPA's scientific research and demonstration projects" relating to environment justice. In order to provide such independent advice, the Agency, through the Office of Environmental Justice (OEJ), requests that the NEJAC convene a focused and issue-oriented public meeting in Atlanta, Georgia. The meeting shall be used to receive comments on, discuss, and analyze federal efforts to make community-based strategies in the area of disease prevention and health improvement more effective. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the issue, and provide advice and recommendations for the Agency's review and consideration.

Issue

The meeting will focus on federal efforts to secure disease prevention and health improvement in communities where health disparities exist that may result from, or be exacerbated by, disproportionate effects of environmental pollutants and certain socioeconomic and cultural factors.

(1) What strategies and areas of research* should be pursued to achieve more effective, integrated community-based health assessment, intervention, and prevention efforts?

(2) How should these strategies be developed, implemented and evaluated so as to insure substantial participation, integration and collaboration among federal agencies, in partnership with: impacted communities; public health, medical and environmental professionals; academic institutions; state, tribal and local governments; and the private sector?

(3) How can consideration of socioeconomic status and cultural factors: (a) Contribute to health disparities and cumulative and disproportionate environmental effects; and (b) be incorporated into community health assessments?

Background

Dr. David Satcher, the Surgeon General, recently stated that a major national health goal for the next ten years should be to reduce the health disparities that exist in this country and which are especially apparent in minority, low-income, and/or indigenous communities. Equally true is that many of these same communities bear a disproportionate exposure to environmental pollutants that may underlie and/or contribute to these disparities. When such exposures are combined with other social and physical living conditions present in these environments, the potential for health disparities is magnified even further.

A growing number of researchers and community representatives have argued that one should not treat minority, low-income, and/or indigenous communities with an "all things being equal" approach. Given varying degrees of vulnerability among communities, the impacts of specific environmental pollutants on a given community's health and that community's ability to cope with such impacts often may be

*Research in this context encompasses a broad range of studies that may include basic science, applied research, and data collection. These may be carried out by: federal, state, tribal or local governments; universities; communities; industry; and/or individuals.

affected dramatically by a multiplicity of factors.

Two additional issues that arise in environmental justice communities are how community-based research is carried out and the nature and availability of health care. Environmental justice communities are defined as communities with significant minority, low-income and/or indigenous populations adversely and disproportionately impacted by environmental pollution. First, most research targeted at identifying environmentally related health problems in communities does not take into account the need to build partnerships within the community. In addition, the research is focused on finding problems not solutions. As a result, the community usually lacks a full understanding of research findings and does not have the resources or knowledge to address the problem. Second, communities usually lack access to health care and even when available, practitioners often lack training in environmental medicine and therefore may be unable to provide proper diagnosis and treatment.

Discussion

Improvements in health and living conditions are a priority for most residents of minority, low-income and/or indigenous communities. These communities also desire the ability to meaningfully participate in any decision-making process that affect their lives and to take actions to protect and improve their health. Community-based assessment, intervention and prevention efforts, *i.e.*, efforts conducted by, with, or for communities, intended to address these concerns are finally beginning to take the above into consideration.

Integrated community-based assessment, intervention and prevention strategies should lead to the following:

(1) More effective integrated community-based intervention/prevention strategies that address contributors to negative health in a community;

(2) Multi-disciplinary research that elucidates specific vulnerabilities that result from the interaction of socioeconomic factors and physical environments. These vulnerabilities may be associated with the health disparities found among minority, low-income and/or indigenous populations; and

(3) Direction on how community-based assessments can contribute to better understanding of causal relationships.

The NEJAC is being requested to provide advice and recommendations in the following specific areas:

(1) To assess the extent to which an integrated community-based public health model that includes assessment, intervention and prevention can contribute to disease prevention and health improvement in environmental justice communities;

(2) To identify the most critical gaps in community-based assessment and research and to recommend strategies that federal agencies should employ to address them;

(3) To identify ways in which a community-based model enhances ongoing research, intervention/prevention, and regulatory activities of EPA and other federal agencies; and

(4) To recommend strategies and mechanisms that should be developed and implemented to insure a more fully integrated, collaborative effort by the federal agencies, working with impacted communities and other vital partners, to reduce these health disparities.

Greater coordination, collaboration, and cooperation by multiple federal agencies is necessary. This effort should now include a number of health agencies that have been concerned with health disparities but have not recognized environmental exposures as an etiologic factor. Such agencies can play critical roles in providing solutions to environmental justice issues. EPA and other federal agencies involved to date in the upcoming NEJAC meeting include the National Institute for Environmental Health Sciences (NIEHS), the Agency for Toxic Substances and Disease Registry (ATSDR) and the National Center for Environmental Health (NCEH) which will facilitate engaging the other key public health agencies.

Meeting

Registration for the NEJAC meeting will begin on Tuesday, May 23, 2000 at 4:00 p.m. A public comment period for overall environmental justice issues is scheduled for Tuesday, May 23, 2000, from 6:30 p.m. to 9:30 p.m. On Wednesday, May 24, 2000, a second public comment period dedicated to the focused policy issue is scheduled from 6:30 p.m. to 9:30 p.m. The full NEJAC will convene Wednesday, May 24, 2000, from 8:00 a.m. to 5:00 p.m. Business will include a series of panels with expert testimony on the focused policy issue, a review of ongoing NEJAC activities and a discussion of new business items. All subcommittees of the NEJAC, will meet on Thursday, May 25, 2000, from 9:00 a.m. to 5:30 p.m. The full NEJAC will reconvene Friday, May 26, 2000, from 8:00 a.m. to 5:00 p.m. for Subcommittee reports and closing discussions.

Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee Federal official	Telephone No.
Enforcement: Ms. Shirley Pate	202/564–2607
Health and Research:	
Mr. Lawrence Martin	202/564–6497
Mr. Chen Wen	202/260–4109
International: Ms. Wendy Graham	202/564–6602
Indigenous Peoples: Mr. Danny Gogal	202/564–2576
Waste/Facility Siting: Mr. Kent Benjamin	202/260–2822
Air and Water:	
Mr. Wil Wilson	202/564–1954
Ms. Alice Walker	202/260–1919

Members of the public who wish to participate in one of the public comment periods should pre-register by May 1, 2000. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative from a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows:

Request To Make Public Comment Speaker's Template

Name of Speaker: _____
Name of Organization/Community: _____
Address/Phone/Fax/Email: _____
Description of Concern: _____
Recommendations/Desired Outcome: _____

If you wish to submit written comments of any length (at least 50 copies), they should also be received by May 1, 2000. Comments received after that date will be provided to the Council as logistics allow. All information should be sent to the address or fax number cited below.

Registration

Pre-registration for all attendees is recommended. To receive a registration form, call the number listed below or visit the web site. Correspondence concerning registration should be sent to Tama Clare of Tetra Tech Environmental Management, Inc. at: 1881 Campus Commons, Suite 200, Reston, VA 20191, phone: 703/390–0641 or fax: 703/391–5876. Hearing-impaired individuals or non-English speaking attendees wishing to arrange

for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 1–888/335–4299. For on-line registration, you may visit the Internet site: *http://www.ttclients.com/nejac.*

Dated: April 4, 2000.

Marva E. King,

Acting Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 00–8836 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6574–5]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the National Zinc Superfund Site, with Cyprus Amax Minerals Company; St. Joe Minerals Corporation, now known as the Doe Run Resources Corporation; Horsehead Industries, Inc. d/b/a Zinc Corporation of America; and Salomon Smith Barney Holdings, Inc. ("Settling Parties"); and the United States Departments of Justice, and State, and the United States General Services Administration ("Settling Federal Agencies").

The settlement requires the Settling Parties to pay a total of $350,000.00 in reimbursement of Past Response Costs, plus an additional sum for interest on the amount calculated from the date set forth in the definition of Past Response Costs in the Settlement Agreement through the date of payment to the Hazardous Substances Superfund.

As soon as reasonably practicable after the effective date of this Agreement, and consistent with paragraph 12.1(b) of the Settlement Agreement, the United States, on behalf of the Settling Federal Agencies, shall pay to the Environmental Protection Agency Hazardous Substance Superfund $150,000.00 in reimbursement of Past Response Costs, plus an additional sum for interest on that amount calculated from the date set forth in the definition of Past Response Costs in the Settlement Agreement through the date of payment.

The settlement includes a covenant not to sue under section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may withdraw or withhold its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before May 10, 2000.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden (6SF–AC), U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the National Zinc Superfund Site, Bartlesville, Oklahoma and EPA Docket Number 6–02–98, and should be addressed to James E. Costello at the address listed below.

FOR FURTHER INFORMATION CONTACT: James E. Costello (6RC–S), U.S. Environmental Protection Agency 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–8045.

Dated: March 27, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 00–8711 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

Time and Date: 10 A.M., Wednesday, April 12, 2000.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matters to be Considered During Portions Open to the Public: Proposed Rule: Authorization to Acquire Member Assets and Definition of Core Mission Activities.

Contact Person for more Information: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 00–8885 Filed 4–6–00; 10:28 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Robert James Coleman, Mt. Carmel, Illinois; Shane Evan Gray, St Francisville, Illinois; and Bryan Keith Loeffler, Allendale, Illinois, all as trustees; to acquire voting shares of Allendale Bancorp, Inc., Allendale, Illinois, and thereby indirectly acquire voting shares of First National Bank of Allendale, Allendale, Illinois.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jeffrey B. and June L. Van Dyke, Plainville, Kansas; to acquire voting shares of Plainville Bancshares, Inc., Plainville, Kansas, and thereby indirectly acquire voting shares of The Plainville State Bank, Plainville, Kansas.

Board of Governors of the Federal Reserve System, April 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8725 Filed 4–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Islands Bancorp, Beaufort, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Islands Community Bank, N.A., Beaufort, South Carolina (in organization).

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Central Bancshares, Inc., Lenoir City, Tennessee; to acquire 100 percent of the voting shares of First Central Bank of Monroe County, Sweetwater, Tennessee (in organization).

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lisco State Company, Lisco, Nebraska, and First Nebraska Bancs, Inc., Sidney, Nebraska; to acquire 100 percent of the voting shares of Kimball Bancorp, Inc. Kimball, Nebraska, and thereby indirectly acquire the American National Bank, Kimball, Nebraska.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Plains Bancorp, Inc., Lubbock, Texas; to merge with Sudan Bancshares, Inc., Sudan, Texas, and thereby indirectly acquire First National Bank, Sudan, Texas.

Board of Governors of the Federal Reserve System, April 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8724 Filed 4–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Sun Bancshares, Inc., Murrells Inlet, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of SunBank, N.A. (in organization), Murrells Inlet, South Carolina.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of First Commerce Bancshares, Inc., Lincoln, Nebraska; National Bank of Commerce Trust & SA, Lincoln, Nebraska; City National Bank & Trust Corporation, Hastings, Nebraska; Overland National Bank of Grand Island; Grand Island, Nebraska; First National Bank & Trust of Kearney, Kearney, Nebraska; Western Nebraska National Bank, North Platte, Nebraska; First National Bank of McCook, McCook, Nebraska; First National Bank of West Point, West Point, Nebraska; and First Commerce Bank of Colorado, N.A., Colorado Springs, Colorado.

In connection with this application, Applicant also has applied to acquire First Commerce Technology, Inc., Lincoln, Nebraska, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y; First Commerce Mortgage, Inc., Lincoln, Nebraska, and thereby engage in mortgage purchasing and servicing company activities, pursuant to § 225.28(b)(1) of Regulation Y; Cabela's LLC, Lincoln, Nebraska, and thereby engage in credit card joint venture activities, pursuant § 225.28(b)(1) of Regulation Y; Community Mortgage Corp., Lincoln, Nebraska, and thereby engage in mortgage origination company activities, pursuant to § 225.28(b)(1) of Regulation Y; Elleven Corp., Lincoln, Nebraska, and thereby engage in holding and operating property used by company and its subsidiaries, pursuant to § 225.22(b)(2)(vi) of Regulation Y; Commerce Affiliated Life Insurance Co., Lincoln, Nebraska, and thereby engage in captive credit life insurance company activities, pursuant to § 225.28(b)(11) of Regulation Y; and First Commerce Investors, Inc., Lincoln, Nebraska, and thereby engage in investment advisory company activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8809 Filed 4–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 001 0080]

Duke Energy Corporation, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 1, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Kristin Malmberg or Gary Kennedy, Federal Trade Commission, Southwest Region, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–9381 or 979–9379.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 31, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("Commission") has accepted for public comment from Duke Energy Corporation ("Duke"), Phillips Petroleum Company ("Phillips"), and Duke Energy Field Services L.L.C. ("DEFS" an agreement containing Consent Order designed to remedy the anticompetitive effects resulting from: (1) Duke and Phillips' proposed merger of all of their natural gas gathering and processing businesses into DEFS; and (2) Duke's proposed acquisition of certain gas gathering and processing assets in central Oklahoma currently jointly owned by Conoco Inc. ("Conoco") and Mitchell Energy & Development Corporation ("Mitchell"). The Consent Order requires Duke to divest approximately 2780 miles of gas gathering pipeline in Kansas, Oklahoma, and Texas.

This agreement has been placed on the public record for thirty (30) days for the receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Order.

On December 16, 1999, Duke and Phillips signed a letter agreement to transfer their natural gas gathering and processing businesses to DEFS. Duke will be the majority owner of DEFS. The value of this transaction is approximately $6 billion. On December 21, 1999, Duke agreed to acquire Conoco and Mitchell's jointly held central Oklahoma gas gathering and processing assets. Gas gathering is the pipeline transportation of natural gas from a wellhead or central delivery point to a gas transmission pipeline or gas processing plant. The Commission found that the merger and acquisition may create competitive problems in counties in Kansas, Oklahoma, and Texas. The Commission's complaint alleges that Duke, Phillips, and DEFS' merger agreement and Duke's acquisition agreement with Conoco and Mitchell violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the merger and acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

Seven relevant markets were identified where gas producers could only turn to the parties or, at most, to one other gas gatherer, for gas gathering services. In these areas, the proposed merger and acquisition would reduce competition in the provision of gas gathering services and would likely lead to anticompetitive increases in gathering rates and an overall reduction in gas drilling and production. It is unlikely that the competition eliminated by the proposed merger and acquisition would be replaced by new entry into the gas gathering market in these areas.

The proposed Consent Order requires Duke to divest pipeline systems in these markets areas, eliminating any overlap between Duke's current holdings and what it will acquire from Phillips and the Conoco/Mitchell joint venture. The gas gathering assets to be divested are listed in Schedules A–J, with maps depicting the assets listed in Schedules C–J. Of the 2,780 miles to be divested under this Consent Order, 2,250 miles will be divested to Duke's joint venture partners for these assets. On February 28, 2000, Duke divested its interest in the Schedule A assets, 800 miles of pipe in the Westana area of Oklahoma, to Western, co-owner of the Westana Gathering Company. Duke has agreed to divest its interest in the Schedule B assets, 1,450 miles of pipe in the Austin Chalk area of Texas, to Mitchell, co-owner of Ferguson-Burleson County Gas Gathering System. The remaining 530 miles will be sold to Commission-approved buyers. The purposes of the divestitures are to ensure the continued use of the assets as gas gathering assets and to remedy the lessening of competition resulting from the acquisition.

Duke must divest the assets within 120 days of final acceptance of the Consent Order by the Commission. The Consent Order provides that if Duke fails to sell the 530 miles of pipe that currently does not have an identified buyer, it must offer additional assets for sale ("crown jewels"). If Duke fails to divest these assets, or if the sale of Mitchell is not completed, by the deadline, the Commission may appoint a trustee to sell the assets. Duke has entered into an Asset Maintenance Agreement, in which it has agreed to

maintain the assets that are being divested (as well as the "crown jewel" assets) in their current condition and provide gas gathering services on the same terms and conditions available to customers on March 1, 2000, until the assets are sold.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–8771 Filed 4–7–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Special Emphasis Panel meeting.

A Special Emphasis panel (SEP) is a committee of a few experts selected to conduct scientific reviews of applications related to their areas of expertise. The committee members are drawn from a list of experts and designated to serve for particular individual meetings rather than for extended fixed terms of services.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b (c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

Name of SEP: Understanding the Eliminating Minority Health Disparities.

Date: May 1–2, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meeting should contact Ms. Jenny Griffith, Committee management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 29, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–8842 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P–4848]

Determination That Carbinoxamine Maleate 4 Milligrams per 5 Cubic Centimeters Elixir Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that carbinoxamine maleate (Clistin) 4 milligrams (mg) per 5 cubic centimeters (cc) elixir was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for carbinoxamine maleate 4 mg per 5 cc elixir.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)) the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated October 8, 1999 (Docket No. 99P–4848/CP1), submitted under 21 CFR 314.122, Mikart, Inc., requested that the agency determine whether carbinoxamine maleate (Clistin) 4 mg per 5 cc elixir was withdrawn from sale for reasons of safety or effectiveness. Carbinoxamine maleate (Clistin) 4 mg per 5 cc elixir was the subject of approved NDA 8–955. In the **Federal Register** of April 5, 1985 (50 FR 13661), FDA withdrew approval of NDA 8–955 for Clistin Elixir after McNeil Pharmaceutical notified the agency that Clistin Elixir was no longer being marketed under NDA 8–955 and requested the withdrawal of that application.

FDA has reviewed its records and, under § 314.161, has determined that carbinoxamine maleate 4 mg per 5 cc elixir was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will list carbinoxamine maleate 4 mg per 5 cc elixir in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to carbinoxamine maleate 4 mg per 5 cc elixir as the listed drug may be approved by the agency.

Dated: April 3, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8715 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2893–N]

Medicare Program; Deductible Amount for Medigap High Deductible Options for Calendar Year 2000

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

ACTION: Notice.

SUMMARY: This notice announces the annual deductible amount of $1,530.00 for the Medicare supplemental health insurance (Medigap) high deductible options for 2000. High deductible options are those with benefit packages classified as F or J that have a high deductible feature. The deductible amount represents the annual out-of-pocket expenses (not including premiums) that a beneficiary who chooses one of these options must pay before the policy begins paying benefits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn McCann, (410) 786–7623.

SUPPLEMENTARY INFORMATION:

I. Background

Medicare Supplemental Insurance

A Medicare supplemental, or Medigap, policy is the principal type of private health insurance that a beneficiary may purchase to cover costs that Medicare does not cover. Medicare beneficiaries are responsible for certain deductibles and coinsurance amounts for both Part A (hospital insurance) and Part B (supplementary medical insurance) of the Medicare program. In addition, Medicare generally does not cover custodial nursing home care, eyeglasses, dental care, and most outpatient prescription drugs. Beneficiaries must either pay the full cost of these services themselves, or they may purchase additional private health insurance to help pay these costs. Medigap policies offer coverage for some or all of the deductibles and coinsurance amounts required by Medicare. Additionally, Medigap policies may provide coverage for some services that are not covered under Medicare.

Section 1882 of the Social Security Act (the Act) establishes, among other things, standards for Medigap policies. This section of the Act states that no Medigap policy may be issued in a State unless the policy meets the following criteria: (a) It has been approved by the Health Care Financing Administration as meeting federal standards, or (b) it complies with State laws established in accordance with section 1882(b)(1) of the Act.

The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended the Act by standardizing Medigap benefits and requiring that no more than ten Medigap benefit packages, Plans A through J, be offered nationwide. [1] Plan A is the basic benefit package. It includes Medicare Part A hospital coinsurance plus coverage for 365 additional days over the beneficiary's lifetime, Medicare Part B coinsurance (generally 20% of Medicare-approved expenses), and coverage for the first 3 pints of blood per year. Medigap Plans B through J contain this basic benefit package, as well as different combinations of coverage for some or all of the following benefits: Medicare Part A inpatient hospital deductibles, skilled-nursing facility coinsurance, foreign travel health emergencies, at home recovery, preventive care, some prescription drug coverage, and Medicare Part B excess charges protection.

B. High Deductible Medigap Standard Policies

Section 4031(c) of the Balanced Budget Act of 1997 (BBA) added high deductible versions of two of the standard Medigap policies, or their counterparts in the waivered states. [2] Unlike the regular versions of Plans F and J, however, the high deductible versions of these policies will not begin paying benefits until the deductible amount is met. Amounts included in this deductible are the expenses that would ordinarily be paid by the regular version of the policy, including Medicare deductibles for Parts A and B. The Plan F deductible does not include the separate foreign travel emergency deductible of $250. The Plan J deductible does not include the plan's separate $250 prescription drug deductible or the plan's separate $250 deductible for foreign travel emergencies.

II. Provisions of This Notice

In 1998 and 1999, the high deductible amount was statutorily defined as $1,500.00 in section 1882(p)(11)(C)(i) of the Act. For 2000, the high deductible amount is increased by the percent increase in the Consumer Price Index (CPI) for all urban consumers (all items, U.S. city average) for the 12-month period ending with August of the preceding year. The percent increase in the CPI for all urban consumers (all items, U.S. city average) for the 12-month period ending in August 1999 was 2.26%, according to the Division of Labor Statistics, Department of Labor. A 2.26% increase in $1,500.00 is $1,533.90. Section 1882(p)(11)(C)(ii) of the Act stipulates that this amount ($1,533.90) be rounded to the nearest multiple of $10 to find the high deductible amount for the subsequent year. Rounding $1,533.90 to the nearest $10 multiple, the 2000 deductible for the Medigap high deductible options is $1,530.00.

This figure can also be found by dividing the August 1999 CPI (167.1) by the August 1998 CPI (163.4), which equals 1.022643819. Multiplying this number by the 1998/1999 deductible ($1,500.00) equals $1,533.97 which, rounded to the nearest $10 multiple, is $1,530.00.

III. Unfunded Mandates and Executive Orders

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. This notice will not have an effect on the governments mentioned, and the private sector costs will not be greater than the $100 threshold.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255). The Executive Order is effective November 2, 1999, which is 90 days after the date of this Order. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

Authority: Section 1882 of the Social Security Act.

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

[1] Three states (Wisconsin, Minnesota, and Massachusetts) experimented with standardizing benefits prior to enactment of federal standards. These states were granted a waiver and permitted to keep their alternative forms of Medigap standardization.

[2] In the three waivered states, high deductible versions of the plans that most closely approximate the benefits contained in Plans F and J are authorized by the Balanced Budget Act.

Dated: March 1, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–8774 Filed 4–7–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1110–FN]

RIN 0938–AJ90

Medicare Program; Sustainable Growth Rate for the Year 2000

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

ACTION: Final notice.

SUMMARY: This final notice implements section 211(a)(2)(C) of the Public Law 106–113, the Medicare, Medicaid, and State Childrens Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA), that requires us to publish a notice in the **Federal Register** not later than 90 days after the date of enactment. This notice includes, based on the best available data, our determination of (1) allowed expenditures for physicians' services under the Medicare Supplementary Medical Insurance program (Part B) for both the 9-month period of April 1, 1999 through December 31, 1999, and for calendar year 1999, (2) estimated actual expenditures for Part B physicians' services in 1999, and (3) the sustainable growth rate (SGR) for calendar year 2000.

This notice also discusses our plans for making available to the Medicare Payment Advisory Commission and the public, by March 1 of each year beginning with 2000, an estimate of the sustainable growth rate and the conversion factor for the next year and the data used in making this estimate, as required in section 211(a)(2)(A) of the BBRA.

EFFECTIVE DATE: The provisions of this notice are effective April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786–4539.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicare Sustainable Growth Rate

Section 1848(f) of the Social Security Act (the Act), as amended by section 4503 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, replaced the Medicare Volume Performance Standard (MVPS) with a Sustainable Growth Rate (SGR). Section 1848(f)(2) of the Act specifies the formula for establishing yearly SGR targets for physicians' services under Medicare. The use of SGR targets is intended to control the actual growth in aggregate Medicare expenditures for physicians' services.

The SGR targets are not limits on expenditures. Payments for services are not withheld if the SGR target is exceeded by actual expenditures. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3) of the Act, is adjusted to reflect the success or failure in meeting the SGR target. If expenditures exceed the target, the update is reduced. If expenditures are less than the target the update is increased.

As with the MVPS, the statute specifies a formula to calculate the SGR based on our estimate of the change in each of four factors. The four factors for calculating the SGR are as follows:

(1) The estimated change in fees for physicians' services.

(2) The estimated change in the average number of Medicare fee-for-service beneficiaries.

(3) The estimated projected growth in real gross domestic product (GDP) per capita.

(4) The estimated change in expenditures due to changes in law or regulations.

Section 211 of the BBRA amended sections 1848(d) and 1848(f) of the Act with respect to the physician fee schedule update and the SGR. Section 211(b) of the BBRA maintains the formula for calculating the SGR, but amends section 1848(f)(2) of the Act to apply the SGR on a calendar year (CY) basis beginning with 2000 while maintaining the SGR on a fiscal year (FY) basis for FY 1998 through FY 2000. Specifically, section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, states that— "* * * [t]he sustainable growth rate for all physicians" services for a fiscal year (beginning with fiscal 1998 and ending with fiscal year 2000) and a year beginning with 2000 shall be equal to the product of—

(A) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services in the applicable period involved,

(B) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare + Choice plan enrollees) from the previous applicable period to the applicable period involved,

(C) 1 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from the previous applicable period to the applicable period involved; and

(D) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the applicable period (compared with the previous applicable period) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under section 1834 (d)(3)(B) or (d)(4)(B) of the Act, as the case may be, minus 1 and multiplied by 100."

Under section 1848(f)(4)(C) of the Act, as added by section 211(b)(3)) of the BBRA, the term "applicable period" means—(1) a FY, in the case of FY 1998, FY 1999 and FY 2000, and (2) a CY with respect to a year beginning with 2000.

To make the transition from a FY SGR to a CY SGR in 1999 using the FY 2000 SGR, sections 211(b)(2) and (3) of the BBRA require us to calculate SGRs for both FY and CY 2000. Section 1848(d)(4)(C) of the Act, as modified by section 211(a)(1)(B) of the BBRA, requires us to determine the allowed expenditures for both the 9-month period beginning April 1, 1999 and for CY 1999. The SGR for CY 2000 is then applied to allowed expenditures for CY 1999.

In making the transition to a CY SGR system, the law essentially requires us to use the 2000 SGR twice (both FY and CY) twice to determine 2000 allowed expenditures. The FY 2000 SGR is used to determine allowed expenditures for the April 1, 1999 to December 31, 1999 period and the CY 2000 SGR is used to determine CY 2000 allowed expenditures. Since we are using the FY 2000 SGR to determine allowed expenditures for the April 1, 1999 to December 31, 1999 period, allowed expenditures have been increased for components of the SGR that may not be reflective of the increase that actually occurs over that period. For instance, the FY 2000 SGR includes a portion of the full year effect of the new prostate screening benefit that did not become effective until January 1, 2000. Similarly, other components of the SGR (that is, the increase in physician fees, fee-for-service enrollment, real per capita GDP, and legislative factors other than prostate screening benefit) may have a different rate of increase in the FY 2000 SGR than occurred in the April 1, 1999 to December 31, 1999 period.

The issue described above occurs because the law required mismatched

time periods (that is, allowed expenditures determined on the basis of an April 1 through March 30 period increased by an SGR determined on the basis of a October 1 to September 30 federal FY) to be used to determine allowed expenditures from April 1, 1997 until December 31, 1999. Another contributing factor is use of 2000 data twice (both FY and CY) in making the transition to a CY SGR system. We have analyzed the impact on allowed expenditures of the BBA and BBRA relative to a system that requires use of matched time periods in establishing the SGR from April 1, 1997 until December 31, 1999. Based on current estimates, the impact of the BBA and BBRA requirements will increase allowed expenditures in CY 2000 by 1 to 2 percent relative to a system that required use of matched time periods. This results in a permanent 1 to 2 percent increase in the physician fee schedule conversion factor.

It is important to note that the FY 2000 SGR is required to be revised based on more recent data, but, as explained below, the BBRA does not provide for revision of either the FY 1998 or the FY 1999 SGR. This means that, for the transition to a calender year SGR system, allowed expenditures for the period April 1, 1999 through December 31, 1999 (determined by applying the FY 2000 SGR to allowed expenditures for the 12-month period ending March 31, 1999) are subject to change based on revision of the FY 2000 SGR; allowed expenditures for the period January 1, 1999 through March 31, 1999 (determined using the FY 1999 SGR) are not subject to revision.

As we indicated in the **Federal Register** notice published on October 1, 1999 (64 FR 53396) before the November 29, 1999 enactment of the BBRA, the statute clearly requires that estimated values be used and there is no provision for revising estimates to reflect later data. Our actuaries estimate the elements of the SGR based on the best available data at the time the estimate is made. However, despite their best efforts there may be differences between the actuarial estimate and actual data on the rate of change in a component factor of the SGR. Our actuary's estimate of the percent change in a component of the SGR may be equal to, or higher or lower than, the actual percent change in that component, as determined based on later known information. For example, our actuaries have estimated the percent change in Medicare fee-for-service enrollees for each year under both the MVPS and the SGR. For the FY 1998 SGR, our actuarial estimate was equal to the percent change in Medicare fee for service enrollment that actually occurred. Under the MVPS, for each of FYs 1994, 1995, 1996, and 1997, our actuarial estimate of the percent change in the Medicare fee-for-service population was higher than the actual percent change, based on later known information. These differences largely resulted from more beneficiaries selecting a managed care plan and fewer beneficiaries remaining in the fee-for-service program than our actuaries estimated at the time each MVPS was published. For FY 1999, our actuarial estimate of the percent change in fee-for-service population used in the SGR notice published on November 2, 1998 (63 FR 59188) was lower than the actual percent change. (This is largely due to fewer beneficiaries selecting a managed care plan than we earlier estimated). While there are differences between the MVPS and the SGR, they have the same long term impact on payment levels due to differences between estimated and actual data. Differences between estimated and actual changes in the Medicare fee-for-service population under the MVPS resulted in a higher physician fee schedule conversion factor than would have occurred if either the estimate were what actually happened or if the MVPS had been revised based on later data. The opposite is the case for differences between estimated and actual changes in the Medicare fee-for-service population under the FY 1999 SGR.

The BBRA, however, explicitly requires revisions based on later known information, beginning with the FY 2000 SGR. In section 1848(f)(3) of the Act, as added by section 211(b)(5) of the BBRA, the first sentence following subparagraph (c) states: "Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999." Since the BBRA does not include provisions for revising any SGR or MVPS before the FY 2000 SGR, we are not revising the MVPS or SGR (before the FY 2000 SGR) based on later known information that indicated the actual increase in a component of the SGR or MVPS was different from the earlier published estimate.

In general, the BBRA requires us to publish SGRs for 3 different time periods, no later than November 1 of each year, using the best data available as of September 1 of each year. Under section 1848(f)(3)(C)(i) of the Act, as added by section 211(b)(5) of the BBRA, the SGR is estimated and subsequently revised twice (beginning with the FY and CY 2000 SGRs) based on later data. Under section 1848(f)(3)(C)(ii) of the Act, there are no further revisions to the SGR once it has been estimated and subsequently revised in each of the 2 years following the initial estimate.

The requirement of revisions to the SGR based on later data means that we will estimate and publish an SGR for the upcoming year, the contemporaneous year, and the preceding year by not later than November 1 of each year. For example, by not later than November 1, 2002, we will publish an estimate of the SGR for CY 2003, a revision of the CY 2002 SGR estimated in the previous year, and a revision of the CY 2001 SGR first estimated two years earlier and first revised in the previous year. Under section 1848(f)(3)(C)(ii) of the Act, this would be the final revision to the CY 2001 SGR.

Sections 1848(f)(3)(A) and (B) of the Act, as added by section 211(b)(5) of the BBRA, specify special rules with respect to the SGR and the CY 2001 and CY 2002 updates. Section 1848(f)(3)(A) of the Act requires us, no later than November 1, 2000, to revise the SGRs for FY 2000 and CY 2000 and establish the SGR for CY 2001, based on the best data available, as of September 1, 2000. Section 1848(f)(3)(B) of the Act requires us, by no later than November 1, 2001, to revise the SGRs for FY 2000 and CYs 2000 and 2001 and establish the SGR for CY 2002, based on the best data available as of September 1, 2001. In accordance with section 1848(f)(3)(C)(ii) of the Act, there will be no further revisions to the FY 2000 and CY 2000 SGRs after its revision in the 2001 notice.

B. Physicians' Services

Section 1848(f)(4)(A) of the Act defines the scope of physicians' services covered by the SGR. The BBRA made no changes to this definition that was also used for the MVPS. For this reason, we are continuing to use the same definition of physicians' services for the SGR in this notice as we did in prior SGR notices and for the MVPS published in the **Federal Register** (61 FR 59717) on November 22, 1996.

II. Provisions of This Notice

This final notice implements section 211(a)(2)(C) of the BBRA that requires us to publish a one-time notice in the **Federal Register**, not later than 90 days after the date of enactment, containing—(1) Allowed expenditures for physicians' services under the Part B program for both the 9-month period of April 1, 1999 through December 31, 1999, and for CY 1999, (2) estimated actual expenditures for physicians' services in 1999, and (3) the sustainable growth rate for CY 2000.

In general, the update for a year is based on the Medicare Economic Index (MEI) as adjusted, within bounds, by the amount of actual expenditures for physicians' services compared to allowed (that is, growth target) expenditures. A key difference between the MVPS and the SGR is that the comparison of actual and allowed expenditures is made on a cumulative basis under the SGR while it was made on an annual basis under the MVPS. The "adjustment factor" in section 1848(d)(4)(B) of the Act that reflects actual expenditures compared to target expenditures is the adjustment to the MEI to reflect performance.

Section 1848(d)(3)(C) of the Act, as modified by the BBA, defines allowed expenditures for the 12-month period ending March 31, 1997 as equal to actual expenditures for physicians' services during that period (that is, April 1, 1996 through March 31, 1997), as we have estimated. Section 1848(d)(3)(C) of the Act defines allowed expenditures for subsequent 12-month periods to be equal to allowed expenditures for physicians' services for the previous year increased by the SGR for the FY which begins during the 12-month period. For example, allowed expenditures for the 12-month period April 1, 1997 through March 31, 1998 are equal to allowed expenditures for the 12-months ending March 31, 1997, increased by the SGR for FY 1998.

Table 1 shows annual and cumulative allowed expenditures for physicians' services for each of the 12-month periods between April 1, 1996 and March 31, 2000.

TABLE 1

Period	Annual allowed expenditures (in billions)	Cumulative allowed expenditures (in billions)	FY SGR
4/96–3/97	$48.9	$48.9	
4/97–3/98	49.6	98.5	FY 1998=1.5%.
4/98–3/99	49.4	147.9	FY 1999=−0.3%.
4/99–3/00	52.3	200.2	FY 2000=5.7%.

In Table 1, for the period April 1996 through March 1997, annual allowed expenditures are equal to actual expenditures for the period. Annual allowed expenditures for each subsequent year are equal to the figure from the prior April 1 through March 31 12-month period (shown in the annual allowed expenditure column) multiplied by the SGR figure one row down in the right hand column. For example, allowed expenditures from April 1997 through March 1998 are equal to $48.9 multiplied by 1.015. Cumulative allowed expenditures in a year are equal to the sum of the annual allowed expenditures figure in the same row and annual allowed expenditures for all prior years. Our current estimate of the FY 2000 SGR of 5.7 percent (2.1 percent for factor 1, -0.4 percent for factor 2, 2.7 percent for factor 3, and 1.2 percent for factor 4) reflects more recent information and correction an error made in calculation of the published FY 2000 SGR as discussed in section D below.

A. Allowed Expenditures for April 1, 1999 Through December 31, 1999

As indicated above, section 211(b) of the BBRA amended section 1848(f) of the Act to require us to calculate the SGR in future years on the basis of a CY. Section 211(a) of the BBRA similarly amends section 1848(d) of the Act to require that allowed expenditures be determined on a CY basis. Section 1848(d)(4)(C) of the Act, as amended by section 211(a)(1)(B) of the BBRA, establishes a transition to a CY allowed expenditures system in 1999.

Section 1848(d)(4)(C)(ii)(I) of the Act, as added by section 211(a)(1)(B) of the BBRA, specifies that allowed expenditures for the 9-month period beginning April 1, 1999 must be our estimate of the amount of the allowed expenditures that would be permitted for that period under section 1848(d)(3)(C) of the Act. That is, allowed expenditures for the period April 1, 1999 through December 31, 1999 are equal to a portion of the allowed expenditures for the period April 1, 1999 through March 31, 2000, that are themselves determined by applying the FY 2000 SGR to allowed expenditures for the 12-months ending March 31, 1999.

As indicated in Table 1, annual allowed expenditures for the period April 1, 1999 through March 31, 2000 are $52.3 billion. Our actuarial estimate of allowed expenditures for the 9-month period April 1, 1999 through December 31, 1999 is $39.1 billion. We determined this figure by increasing quarterly allowed expenditures from the base period by the applicable SGR and adding them to get an annual figure. For instance, we increased actual quarterly expenditures from the base period (April 1, 1996 through March 31, 1996, July 1, 1996 through September 30, 1996, and October 1, 1996 through December 31, 1996) by the SGRs for FY 1998, FY 1999, and FY 2000 to determine quarterly allowed expenditures for each respective quarter included in the April 1, 1999 through December 31, 1999 period and added together these quarterly allowed expenditures to determine the $39.1 billion annual figure. We increased quarterly base expenditures rather than annual base expenditures because it better accounts for seasonality in expenditures.

Allowed expenditures for the April 1, 1999 through the December 31, 1999 period are based on the FY 2000 SGR. As previously discussed, section 1848(f)(3) of the Act requires two revisions to the FY 2000 SGR. The first revision must be made not later than November 1, 2000 based on the best data available as of September 1, 2000; the second revision must be made not later than November 1, 2001, based on the best data available as of September 1, 2001.

B. Allowed Expenditures for Calendar Year 1999

Section 1848(d)(4)(C)(ii)(II) of the Act, as added by section 211(a)(1)(B) of the BBRA, specifies that allowed expenditures for the year of 1999 must be our estimate of the amount of the allowed expenditures that would be permitted under section 1848(d)(3)(C) of the Act for that year. We are, therefore, calculating allowed expenditures for CY 1999 as the sum of allowed expenditures for—(1) The January 1, 1999 through March 31, 1999 period; and (2) allowed expenditures for the April 1, 1999 through December 31, 1999 period.

Annual allowed expenditures for the period April 1, 1998 through March 31, 1999 are $49.4 billion. Our actuarial

estimate of allowed expenditures for the 3-month period January 1, 1999 through March 31, 1999 is $12.5 billion that was determined by updating quarterly allowed expenditures included in the January 1, 1997 through March 31, 1997 period by the SGRs for FY 1998, FY 1999 and FY 2000. Adding this figure to the $39.1 billion figure for April 1, 1999 through December 31, 1999 equals allowed expenditures for 1999 of $51.6 billion. (Due to rounding, the figures may not add precisely to the total for 2000.) Allowed expenditures for the period April 1, 1998 through March 30, 1999 are equal to allowed expenditures for the previous 12-month period increased by the FY 1999 SGR. In the **Federal Register** published on October 1, 1999 (64 FR 53396), we stated that the statute clearly requires that we use estimated values and that there is no provision for revising estimates once the applicable SGR is determined. Although section 211 of the BBRA amends the Act to require revisions to previously determined SGRs based on later data (unavailable to us at the time the SGR is initially determined), this system of revision applies prospectively, beginning with the FY 2000 SGR. As added by section 211(b)(5) of the BBRA, the flush sentence following subparagraph (C) of section 1848(f)(3) states: "Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999."

Because there is no provision in the Act for revising the FY 1999 SGR or, consequently, the allowed expenditures for the April 1, 1998 through March 31, 1999 period, we will not revise the January 1, 1999 through March 31, 1999 portion of allowed expenditures included in the 1999 allowed expenditures. However, as indicated above, when we revise the FY 2000 SGR, allowed expenditures for April 1, 1999 through December 31, 1999 are subject to change.

C. Actual Expenditures for CY 1999

We currently estimate actual expenditures for CY 1999 to be $50.7 billion. This estimate is based on actual claims data for services furnished during CY 1999 that were received through September 30, 1999, and an estimate of expenditures for the year based on claims information received in prior years. Expenditure data for claims received after September 30, 1999 were unavailable to us at the time we made this estimate. As described in more detail below, we are making SGR data available through our web site (www.hcfa.Gov/pubforms/actuary). We will be providing quarterly expenditures under the SGR as data become available. Our estimate of actual expenditures for CY 1999 furnished in this notice will be revised as more complete claims information on 1999 expenditures becomes available to us and will be included in our web site information.

D. Sustainable Growth Rate for CY 2000

According to sections 1848(f)(2)(A) through (D) of the Act, as amended by section 211(b) of the BBRA, we have determined the CY 2000 SGR to be 5.8 percent. Our determination is based on estimates of the following four statutory factors as indicated in table 2 below:

TABLE 2

Statutory factors	Percent change
Fees	2.1
Enrollment	−0.6
Increase in Gross Domestic Product	2.5
Legislation	1.7
Total	5.8

Note: Consistent with section 1848(f)(2), the statutory factors are multiplied, not added, to produce the total (that is, $1.021 \times (1 - 0.006) \times 1.025 \times 1.017 = 1.058$.)

III. Calculation of the CY 2000 Sustainable Growth Rate

A more detailed discussion of our estimates of the four elements of the SGR follows.

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for CY 2000

This factor was calculated as a weighted average of the CY 2000 fee increases that apply for physicians' and laboratory services that are the different types of services included in the definition of physicians' services for the SGR.

Physicians' services represent approximately 89 percent of allowed charges for physicians' services under the SGR. As announced in the November 2, 1999 **Federal Register** (64 FR 59429), the physician fee schedule update (before applying the performance adjustment factor) for CY 2000 is 2.4 percent. The BBA provided for a 0.0 percent update for CY 2000 for laboratory services, which represents about approximately 11 percent of the Medicare allowed charges for physicians' services under the SGR. Table 3 shows both the physicians' and laboratory service updates that were used to determine the percentage increase in physicians' fees for CY 2000.

TABLE 3.—PHYSICIANS' AND LABORATORY SERVICE UPDATE FOR CALENDAR YEAR 2000

	2000	Weight
Physicians' Services	2.4%	.89
Laboratory Service ...	0.0%	.11

After taking into account the elements described in Table 3, we estimate that the weighted-average increase in fees for CY 2000 for physicians' services under the SGR (before applying any legislative adjustments) will be 2.1 percent.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees From CY 1999 to CY 2000

This factor is our estimate of the percent change in the average number of fee-for-service enrollees for CY 2000 as compared to CY 1999. Medicare+Choice (M+C) plan enrollees, whose Medicare-covered medical care is outside the scope of the SGR, are excluded from this estimate. Our actuaries estimate that the average number of Medicare Part B fee-for-service enrollees (excluding beneficiaries enrolled in M+C plans) will decrease by 0.6 percent in calendar year 2000. This estimate was derived by subtracting estimated M+C enrollment from estimated overall Medicare enrollment as described in table 4 below.

TABLE 4

Year	Average Medicare Part B Enrollment (in millions)		
	Overall Part B	Medicare+Choice	Overall Part B, excluding Medicare+Choice
1999	37.010	6.194	30.816
2000	37.374	6.746	30.628

TABLE 4—Continued

Year	Average Medicare Part B Enrollment (in millions)		
	Overall Part B	Medicare+Choice	Overall Part B, excluding Medicare+Choice
Percent change			−0.6

Our actuaries estimate of the percent change in the average number of fee-for-service enrollees for CY 2000 compared to CY 1999 of −0.6 percent is less of a decrease than the estimate of this factor for FY 2000 because—(1) The historical base from which our actuarial estimate is made has changed (that is, we have more information on enrollment from CY 1999 that affects our estimates for future years), and (2) the applicable time period has changed from the FY to CY.

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth in CY 2000

Section 1848(f)(2)(C) of the Act, as amended by section 211 of the BBRA, requires us to estimate growth in real GDP per capita. This factor is applied on a CY basis beginning with the CY 2000 SGR. We estimate that the growth in real GDP will be 2.5 percent in CY 2000.

In the FY 2000 SGR notice published on October 1, 1999 (64 FR 53396), we estimated that real GDP growth per capita for FY 2000 would be 1.8 percent. We are now estimating that real GDP growth per capita for CY 2000 to be 2.5 percent. The higher estimate is due in part to Bureau of Economic Analysis (BEA) revisions to the historical National Income and Product Accounts (NIPA) and in part due to a change in the outlook for growth in 2000. The historical revisions, released by BEA on October 29, 1999, raised historical real GDP per capita growth by 0.2 percentage points on average between 1959 through 1998, with larger differences in recent years. (For a detailed description of changes to NIPA, see Brent R. Moulton, Robert P. Parker, and Eugene P. Seskin, "A Preview of the 199 Comprehensive Revision of the National Income and Product Accounts," Survey of Current Business (August, 1999): 7–20.) Subsequently, the projections of growth in real GDP per capita for 2000 have been revised upwards to reflect these revisions. Also since the October 1, 1999 SGR notice, projections of real GDP per capita in 2000 have been revised upward to reflect stronger than expected stock market performance and less than expected buildup of inventories in preparation for Y2K in 1999. Also, the GDP growth figure in this notice is calculated on a calendar rather than a fiscal year basis. (Moving from a FY 2000 to a CY 2000 estimate of GDP results in a −0.2 percent change from 2.7 percent to 2.5 percent.)

These same methodological changes in GDP measurement also have the effect of reducing the MEI. If we were to recalculate the MEI for CY 2000, based on the GDP measurement changes, it would be 2.0 percent rather than the 2.4 percent calculated and used for the 2000 physician fee schedule update. However, since such an MEI would not be the one used in establishing the 2000 update, and since the price factor in the SGR is the "Secretary's estimate of the weighted average percentage increase in physician fees" for all physicians' services, we are using the 2.4 percent increase for the fee component of the CY 2000 SGR. Consistent with the law, we are using the 2.4 percent increase in physician fees used for the CY 2000 physician fee schedule update.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in CY 2000 Compared With CY 1999

Legislative changes contained in the BBA and the BBRA will have an impact on expenditures for physicians' services under the SGR in CY 2000. Section 4103 of the BBA mandates a new prostate screening benefit effective January 1, 2000. This provision is estimated to increase expenditures in CY 2000 relative to CY 1999 by 1.8 percent. Additionally, effective January 1, 2000, section 4513 of the BBA removes the requirement that a subluxation of the spine be demonstrated by an x-ray before a beneficiary can receive Medicare coverage for chiropractic services. This provision will also result in a small increase in expenditures in CY 2000. The impact of BBA Medicare Secondary Payer provisions will have small marginal impact on reducing expenditures in CY 2000.

Certain BBRA provisions will also have a small impact on expenditures in CY 2000. Section 224 of the BBRA increases payments for pap smears and will slightly increase expenditures in CY 2000. Section 221 of the BBRA postponed the implementation of payment caps on physical and occupational therapy and speech-language pathology services. The effect of this provision on physicians and independent practitioners will result in a small increase in the CY 2000 SGR.

After taking into account these provisions, the percentage change in expenditures for physicians' services resulting from changes in law or regulations is estimated to be 1.7 percent for 2000.

After it was enacted in 1997, our actuaries estimated the effect of changes in expenditures resulting from the BBA. Their estimates took into account the effect of the prostate screening benefit (effective beginning with January 1, 2000). However, we inadvertently neglected to include it as part of our estimate of factor 4 for FY 2000. Had we included the effect of this in our estimate of the changes in law or regulations, our estimate of factor 4 for FY 2000 would have been 1.5 percentage points higher and the overall FY 2000 SGR would have been 3.5 percent instead of 2.1 percent. We will incorporate the effect of the prostate screening benefit in revisions we will make to the FY 2000 SGR no later than November 1, 2000.

IV. Publication and Dissemination of Information

Section 211 of the BBRA amends section 1848(d)(1)(E) of the Act to require publication and dissemination of information related to the physician fee schedule update and SGR at two points during a year. Specifically, we must publish in the **Federal Register** not later than November 1 of each year (beginning with 2000) the conversion factor that will apply to physicians' services for the succeeding year, the update determined (under section 1848(d)(4) of the Act) for the succeeding year, and the allowed expenditures (under section 1848(d)(4) of the Act) for such succeeding year. Thus, 60 days before the conversion factor is actually implemented, we are required to publish the conversion factor that will apply for the following calendar year, as

well as the percentage update for that year and the allowed expenditures for that year. We plan to implement this provision as part of the physician fee schedule final rule that we publish by November 1 of the year before it is applicable.

In addition to this November 1 publication requirement, the BBRA amended section 1848(d)(1)(E)(ii) of the Act to require that we make available to the Medicare Payment Advisory Commission [MedPAC] and the public by March 1 of each year (beginning with 2000) an estimate of the sustainable growth rate and of the conversion factor that will apply to physicians' services for the succeeding year and the data used in making this estimate. While the statute requires dissemination of information to the MedPAC and the public, it does not require publication of this information in the **Federal Register.** In this notice, we provide information on how we intend to disseminate the information required by section 1848(d)(1)(E)(ii) of the Act and we describe the limitations of the data we plan to make available.

The statute requires that we make available the following items by March 1st of each year:

- An estimate of the SGR for the following year.
- An estimate of the physician fee schedule conversion factor for the next year and the data used in making these estimates.

We plan to make all of this information available on the HCFA web site (www.hcfa.gov/pubforms/actuary).

The March 1 estimate will not necessarily be a good predictor of the SGR that we specify by November 1 of each year. While it is the best estimate at the time, a figure specified later in the year is likely to differ from it for several different reasons.

We will have more current data on the four factors that comprise the SGR formula as of September 1 of a year for publication in the November 1st notice, than will be available by March 1. For example, for the March 1 estimate, we will need to estimate the percent change in fee-for-service enrollment for the following year although we have little information on the change in fee-for-service enrollment for the current year. Similarly, an estimate of the percent change in real GDP per capita for the subsequent year made by November 1 is likely to be better than an estimate made by March 1 of that year. In addition, an estimate of the changes in law and regulation affecting expenditures for physicians' services for the subsequent year would require an estimate of the financial impact of policy changes several months before the physician fee schedule proposed rule is published.

We also point out that there may be differences between an SGR for a year specified by November 1 and the SGR for the same year as subsequently revised based on later data. Specifically, the BBRA required the revision of the SGR for a year beginning with the FY 2000 SGR, in each of the 2 years after it is initially specified, based on more current data. Given the required revisions of the November 1 estimate, and the previously discussed limitations of the March 1 estimate, we anticipate that the March 1 estimate will not necessarily be an accurate predictor of the November 1 SGR.

The second item we are required to make available by March 1 is an estimate of the conversion factor for the following year. This factor may be even more difficult to estimate by March 1 than the SGR for the following year. The conversion factor for a year is equal to the conversion factor for the previous year updated by the physician fee schedule update. As with the MVPS, the update is equal to the MEI, adjusted (up or down) by the performance of actual expenditures compared to target expenditures (called allowed expenditures in the statute). For example, the CY 2000 update of 5.5 percent was based on an MEI of 2.4 percent and a performance adjustment of 3.0 percentage points. (These figures are multiplied, not added. The update of 5.5 percent is determined by multiplying the MEI of 2.4 percent, or 1.024, by the performance adjustment factor of 3.0 percent, or 1.030: $1.024 \times 1.03 = 1.05472$). Beginning with CY 2001, the performance adjustment compares actual expenditures from March 1, 1996 through the end of a year (2000 for the 2001 update) adjusted by the SGR for the following year (2001 for the 2001 update) to allowed expenditures from March 1, 1996 through the end of that next year (2001 for the 2001 update). (We will provide more detail on the precise formula for determining the physician fee schedule in the update notice that will be published not later than November 1, 2000.)

By March 1 of each year, however, we will have no actual data on key elements that comprise the formula for updating the conversion factor for the next year. For example, by March 1, 2000, we will have no data on actual expenditures for physicians' services under the SGR for CY 2000 since we receive expenditure information on a quarterly basis during the year, with a lag time after the quarter closes. By March 1, the first quarter of the calendar year will not even be complete.

Similarly, we are unlikely to have reasonably complete expenditure data on the last quarter of 1999. Finally, the SGR for a year also affects allowed expenditures through the end of the next year. We have already discussed why the March 1 SGR estimate is likely to change. Therefore, by March 1 of each year, we will have only estimates of the three data elements required to determine the performance adjustment to the MEI (actual expenditures for physicians' services for the current year, allowed expenditures through the end of the next year, and the SGR for the next year). We provide the above discussion to caution that the March 1 estimate of the conversion factor update for the next year is not likely to be a good predictor of the update for the year specified by November 1. It is only an estimate and will likely change based on more current information. We will make our estimate of the physician fee schedule conversion factor available on the HCFA web site (www.hcfa.gov/pubforms/actuary).

By March 1, we will also make available on the HCFA web site data used in making the estimate of the SGR and conversion factor update. Because we will not have any data on actual CY 2000 expenditures and because many elements of the SGR will probably change during the year, there are limits on the data we can provide. To provide data that will be useful, we plan, on a quarterly basis, to post on the HCFA web page quarterly expenditures for services covered by the SGR. The estimates would update prior quarters where later data were available for that quarter. Data would be posted approximately 6 months after the end of the quarter (when data for the quarter are reasonably complete).

Finally, we also point out that the two SGR elements for which there has been the largest difference between our actuaries' estimates and the actual amounts have been the fee-for-service enrollment numbers and real gross domestic product per capita. We note that more recent data on these two elements are available during a year on several web sites. Actual real GDP for a quarter is available from the home page for the Bureau of Economic Analysis of the Department of Commerce (www.bea.doc.gov). Population figures are available from the home page for the Census Bureau (www.census.gov). Real GDP per capita can be calculated from these figures. In addition, monthly M+C enrollments are currently available on the HCFA Home page (www.hcfa.gov/stats.mmcc.htm). In April of each year,

when our Office of the Actuary puts the Trustees Report on the HCFA Home page, we will also post the projections of total Medicare Part B enrollment for the current and subsequent calendar years, as well as for the preceding calendar year, consistent with the Trustees Report. Thus, the Medicare fee-for-service enrollment could be determined. With these data, during the year after March 1, the public can make estimates of actual expenditures relative to the SGR and the performance adjustment to the update for a year.

V. Waiver of Proposed Rulemaking and 30–Day-Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that engaging in proposed rulemaking in the context of this document is impracticable because section 211 of the BBRA requires that this final notice be published in the **Federal Register** not later than 90 days after enactment of this section on November 29, 1999. Moreover, in accordance with section 1871(b)(2) of the Act, notice and comment provisions do not apply where the law establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained. We also believe that it is unnecessary to publish a proposed notice for public comment because we have no discretion with respect to the provisions of this notice. We are implementing the statute as required by the BBRA.

Therefore, we find that notice and comment provisions are not applicable here and we are issuing this notice in final form. We also find that for the above reasons it is prudent to waive the 30 day delay in effective date.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians and suppliers as small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

This notice announces only a SGR rate of increase for CY 2000 and does not affect physician expenditures in CY 2000. The SGR announced in this notice will be revised later this year. It is the revised SGR that will affect allowed expenditures for physicians' services through CY 2000 and that will be part of a formula for determining the physician fee schedule update and conversion factor for CY 2001. As indicated above, we will publish the physician fee schedule update for CY 2001 by no later than November 1, 2000. It is that update which will affect expenditures for physicians' services in CY 2001.

We are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VIII. Federalism

We have reviewed this final notice under the threshold criteria of Executive Order 13132 and have determined that it does not significantly affect the rights, roles, and responsibilities of States.

(Sections 1848(d) and (f) of the Social Security Act) (42 U.S.C. 1395w–4(d) and (f))

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

Dated: February 24, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 24, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–8708 Filed 4–4–00; 3:42 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: March 2000

AGENCY: Office of Inspector General, HHS

ACTION: Notice of program exclusions.

During the month of March 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective date
Program-Related Convictions	
Baez, Eduardo, Lewisburg, PA	04/20/2000
Bizayko, Yuri, Brooklyn, NY	04/20/2000
Bouska Wright, Janet Kay, Wichita, KS	04/20/2000

Subject City, State	Effective date
Broadnax, Deitrich, Irvington, NJ	04/20/2000
Burrus, Gregory A., Roxbury, CT	04/20/2000
Campbell, Vera, Bronx, NY	04/20/2000
Cassara, Carmine, Centereach, NY	04/20/2000
Colbert, Jonathan A., Ballston, NY	04/20/2000
Costa, Lynn A., New Bedford, MA	04/20/2000
Davis, Caroline Yvonne, Tacoma, WA	04/20/2000
Delgado, Ileana, Philadelphia, PA	04/20/2000
Desanto, Gary, Avoca, PA	04/20/2000
Disibio, Joseph, Staten Island, NY	04/20/2000
Glushefski, Francis M., Plymouth, PA	04/20/2000
Gomez, Gerardo, Miami, FL	04/20/2000
Gourdikian, Haig K., Glendale, CA	09/02/1999
Heang, Hoeup Karena, Long Beach, CA	04/20/2000
Hernandez, Linda Porter, Monroe, LA	04/20/2000
Hosea, Claude Thomas, New Smyrna Beach, FL	04/20/2000
Huff, Tracy Michelle Davis, Bryan, TX	04/20/2000
Island Ambulette, Inc., Kings Park, NY	04/20/2000
James, Darren J., Keyport, NJ	04/20/2000
Jamil, Irtafa, Bayside, NY	04/20/2000
Jones-Price, Antoinette, Wendell, NC	04/20/2000
Lemon, Lazarus, Pittsburgh, PA	04/20/2000
Lifechem Inc., Lexington, MA	03/21/2000
Loiseau, Gloria Jean, S Pasadena, CA	04/20/2000
Maldonado, Bernardo, Santa Rosa, PR	04/20/2000
Merriweather, Sue, Lanham, MD	04/20/2000
Morgan, John J. JR., Covington, LA	04/20/2000
Nehorayoff, Mariana, Scarsdale, NY	04/20/2000
Nemeroff, Ronald M., New York, NY	04/20/2000
Newman, Rosanna Kim, Forest Grove, OR	04/20/2000
NMC Homecare, Inc., Lexington, MA	03/21/2000
NMC Medical Products, Inc., Lexington, MA	03/21/2000
Olson, Penny Ann, Eugene, OR	04/20/2000
Parks, Homer Patrick, Weatherford, TX	04/20/2000
Pasekov, Mikhail, Brooklyn, NY	04/20/2000
Patel, Harshadray M., Yonkers, NY	04/20/2000
Paul Jeffrey Wright DDS, Mulvane, KS	04/20/2000
Pelotte, Terry L., S Windham, ME	04/20/2000
Qayyum, Abdul, Teaneck, NJ	04/20/2000
Rivas, Jacinto, Intercession City, FL	04/20/2000
Robinson-Hallam, Beverly, S. Windsor, CT	04/20/2000
Rodriguez, Jesus, Palm Springs, FL	04/20/2000
Schwartz, Douglas A., Lawrence, NY	04/20/2000
Shakhnovich, Gennady, Swampscott, MA	04/20/2000
Shukla, Kishorekumar R., Freehold, NJ	04/20/2000
Skinner, Vicki, Tempe, AZ	04/20/2000
Sophain, Tep M., Kent, WA	04/20/2000
Strum, Thomas C., Mt. Plesant Mills, PA	04/20/2000
Sulaiman, Ihab Tayseer, Oakdale, LA	04/20/2000
Sutton, James L., Chargrin Falls, OH	04/20/2000
Taylor, Jim, Jesup, GA	04/20/2000
Turovsky, Leonid, Brooklyn, NY	04/20/2000
Verian, Richard, Northridge, CA	02/24/2000
Vitale, Jack, Manalapan, NJ	04/20/2000
Walkley, Glenn S., White Deer, PA	04/20/2000
Wright, Paul Jeffrey, Mulvane, KS	04/20/2000
Yemdin, Bella, Brooklyn, NY	04/20/2000
Felony Conviction for Health Care Fraud	
Blum, Jerrold E., Bloomfield CT	04/20/2000
Burdine, Gertrude, Alderson, VA	04/20/2000
Caturano, John, New York, NY	04/20/2000
Lenehan, Patrick D., Reeders, PA	04/20/2000
Levandowski, Ann M., Biloxi, MS	04/20/2000
Levinstim, Edwin, Goldens Bridge, NY	04/20/2000
Stanton, Tammy Sue, Salem, OR	04/20/2000
Felony Control Substances Conviction	
Grimm, Artith Loann, Daly City, CA	04/20/2000
Parkin, Valarie Coburn, Virginia Beach, VA	04/20/2000
Romosan, Vasile D., Long Island City, NY	04/20/2000
Sluck, Joann Hysock, Shenandoah, PA	04/20/2000
Sorensen, Deborah P., Sacremento, CA	04/20/2000
Ward, Anne Marshall, Troy, PA	04/20/2000
Patient Abuse/Neglect Convictions	
Ayers, Angela Michelle, N. Little Rock, AR	04/20/2000
Bakhtminoo, Reza, Studio City, CA	04/20/2000
Blackwell, Ronald S., Buffalo, NY	04/20/2000
Brown, Christopher T., Holly Hill, SC	04/20/2000
Brown, Connie, New Hebron, MS	04/20/2000
Buckland, Charlene M., Rochester, NY	04/20/2000
Cahee, Larry, Mendenhall, MS	04/20/2000
Centeno, Michelle, Cuddebackville, NY	04/20/2000
Corgnati, Susan, Bridgeville, PA	04/20/2000
Cortez, Cesar C., Lockhart, TX	04/20/2000
Davis, Mellonie Latrice, Stamps, AR	04/20/2000
Fikes, Dora Mae, New Roads, LA	04/20/2000
Gates, Peter Jr., Buffalo, NY	04/20/2000
Genovesi, Bonita A., E. Greenbush, NY	04/20/2000
Guyett, Jodi L., Utica, NY	04/20/2000
Jones, Tashara, Oxford, MS	04/20/2000
Law, Edward A. Jr., Edwards, NY	04/20/2000
Maddox, Jo Ann Lepley, Kermit, TX	04/20/2000
Martinez, Arturo, Jamaica, NY	04/20/2000
Mitchell, Jane Ann, Hot Sprngs Village, AR	04/20/2000
Moye, Iran, Brooklyn, NY	04/20/2000
Perez, Faustino, Bronx, NY	04/20/2000
Rosier, Marie A., Painesville, OH	04/20/2000
Swain, Walter Leon, Little Rock, AR	04/20/2000
Thompson, Lenora, Heath Springs, SC	04/20/2000
Tyner, Shanita, Rochester, NY	04/20/2000
Victor, Tara M., Hamburg, NY	04/20/2000
Watson, Patricia June, Vilonia, AR	04/20/2000
Williams, Deborah J., Jamestown, NY	04/20/2000
Williams, Vanessa C., W. Columbia, SC	04/20/2000
Woodall, Mary, Stonewall, MS	04/20/2000
Conviction for Health Care Fraud	
Grusd, Ronald Selwyn, Beverly Hills, CA	04/20/2000
Schulman, Susan R., N. Bellmore, NY	04/20/2000
Tumbleson, Alisha Kay, Clinton, AR	04/20/2000
Controlled Substance Convictions	
Benfield, Beverly H., Gate City, VA	04/20/2000
Hertz, Carole E., E. Berlin, PA	04/20/2000
License Revocation/ Suspension/Surrendered	
Appleton, Sue A., Winchester, MA	04/20/2000
Armstrong, Victor Dell, Meridian, MS	04/20/2000
Barlow, Timothy, Enterprise, AL	04/20/2000
Barnes, Timothy Anthony, Brandon, MS	04/20/2000
Bauer-Altizer, Donna E., Caro, MI	04/20/2000
Bayliss, Barbara Ann, Portsmouth, NH	04/20/2000
Bell, Gary John II, Dubois, PA	04/20/2000
Bergey, Patricia Ann, Santa Ana, CA	04/20/2000
Blount, Ronnie, Macon, GA	04/20/2000
Boyer, Billy J., Cadillac, MI	04/20/2000
Bradfield, Diane M., Jackson, MS	04/20/2000
Brewer, Joyce N., Columbia Hgts, MN	04/20/2000

Subject City, State	Effective date
Brown, Joanna Lee, Paso Robles, CA	04/20/2000
Browning, Donald B., Vista, CA	04/20/2000
Burden, Weldon Eugene III, Chesapeake, VA	04/20/2000
Cavallaro, Gaetano V., Poughkeepsie, NY	04/20/2000
Ciotti, Roberta Ceriani, Conneautville, PA	04/20/2000
Cisero, Laura, Newton, CT	04/20/2000
Clayton, Joanne R., Riverside, CA	04/20/2000
Cody, William C., Mansfield, MI	04/20/2000
Colwell, Christina Dawn, Apollo, PA	04/20/2000
Conway, Cristina L., Rockford, IL	04/20/2000
Cooney, Catherine, Manchester, CT	04/20/2000
Coonley, Kevin Gerard, Sacramento, CA	04/20/2000
Coulter, Jerry A., Erie, PA	04/20/2000
Cowley, Beverly J., Lake City, MI	04/20/2000
Curtis, Faye A., Swartz Creek, MI	04/20/2000
Cutler, Vicki Renee, Tampa, FL	04/20/2000
Daly, Maureen A., Bloomsburg, PA	04/20/2000
Davenport, Keith Charles, Camarillo, CA	04/20/2000
Davis, Maxine Cartwright, Weston, CT	04/20/2000
Davis, Bonnie, Montgomery, AL	04/20/2000
Davis, Jami Terrina, Alexander City, AL	04/20/2000
Davis, Shelia L., Greenville, MS	04/20/2000
Degange, Annette West, Pasadena, CA	04/20/2000
Dewitt, Linda Joy Padgett, Sarasota, FL	04/20/2000
Dia, Mohamed F., Torrance, CA	04/20/2000
Dougherty, Linda Hirsch, Hazleton, PA	04/20/2000
Dougovito, Michael F., Manistique, MI	04/20/2000
Dube, Philippe Abel, Edison, GA	04/20/2000
Ellis, Carolyn R., Orrtanna, PA	04/20/2000
Ernest, Judith Ann, Bradenton, FL	04/20/2000
Estes, Joel Alan, Gadsden, AL	04/20/2000
Evans, Kara K., Ariton, AL	04/20/2000
Fagan, Deborah Cieslik, Lancaster, PA	04/20/2000
Feinstein, Debra Ann, E. Stroudsburg, PA	04/20/2000
Fisher, Keith W., Maumelle, AR	04/20/2000
Fleeher, Marian A., N. Miami, FL	04/20/2000
Forberger, Dennis P., Sauk Rapids, MN	04/20/2000
Freeman, Lisa K., Front Royal, VA	04/20/2000
Gates, Tracey, Huntington, CT	04/20/2000
Geary, Penelope, East Hartford, CT	04/20/2000
George, Aimee Renee Cintron, Youngstown, OH	04/20/2000
Gilliland, Cynthia Doan, Sarasota, FL	04/20/2000
Gilmore, Jessica, Unionville, CT	04/20/2000
Glisson, Cynthia Ann Jones, Dover, FL	04/20/2000
Hardy, Patsy Gwen, Sylacauga, AL	04/20/2000
Harrison, Margaret Alice, Birmingham, AL	04/20/2000
Helman, Beth Ellen, Sacramento, CA	04/20/2000
Hicks, Amanda Marisa Herring, Columbia, MS	04/20/2000
Hicks, Sandra H., Newport News, VA	04/20/2000
Higginbotham, Leslie Carol, Crossville, AL	04/20/2000
Himes, Janet M., Bemidji, MN	04/20/2000
Holmes, Randall Nathan, Butler, PA	04/20/2000
Howard, Dawnne P., Eustis, FL	04/20/2000
Hultman, Barry W., N Branford, CT	04/20/2000
Hunter, Katherine Susan, Palatka, FL	04/20/2000
Ianelli, Marla J., Demopolis, AL	04/20/2000
Igwacho, Florence N., Greenbelt, MD	04/20/2000
Issa, Adly Mansour, Hemet, CA	04/20/2000
Jemison, Connie, Birmingham, AL	04/20/2000
Jennings, Thomas Josef, Redway, CA	04/20/2000
Johnson, Randy L., Ellsworth, ME	04/20/2000
Johnston, Anise C., Troy, AL	04/20/2000
Kane, Debbie Chesen, Jenkintown, PA	04/20/2000
Karaviotis, Karen, Old Saybrook, CT	04/20/2000
Kartell, James P., Andover, MA	04/20/2000
Kashan, Steven, Hicksville, NY	04/20/2000
Keck, Tracey Lynn, Riverside, CA	4/20/2000
Kelly, Colleen Betty Snyder, Lehigh, FL	04/20/2000
King, Carol G., Fredricksburg, VA	04/20/2000
Kristoff, Pamela, Andover, CT	04/20/2000
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Kriwox, Diane M., Edinburg, PA	04/20/2000
Lee, Karen L., Bedford, TX	04/20/2000
Lee, Yun Sheng, Redding, CA	04/20/2000
Lessard, Sharon, Westbrook, CT	04/20/2000
Lively, Indrea F., Jasper, AL	04/20/2000
Loll-Van Sickle, Patricia M., Elmer, NJ	04/20/2000
Lorren, Victoria Ann, Gadsden, AL	04/20/2000
Lotz, Margaret, Pottstown, PA	04/20/2000
Lucas, William A., Holt, MI	04/20/2000
MacDonald, John R., Dallas, TX	04/20/2000
Macias, Carlos Orosco Jr., Whittier, CA	04/20/2000
Mack, Michael D., New Baltimore, MI	04/20/2000
Manley, Aparil Dawn, Elkmont, AL	04/20/2000
Marayelle, Judith P., Santa Barbara, CA	04/20/2000
Marin, Philip G., Alameda, CA	04/20/2000
Martin, Angelyn Kinard, Duncanville, AL	04/20/2000
Martin, Ellen R. Bartlett, Huntsville, AL	04/20/2000
McGee, David R., Burlington, VT	04/20/2000
McGovern, Mary Ann, Hartford, CT	04/20/2000
McKenney, Clifton, Waterford, CT	04/20/2000
Mijanovich, James R., Columbus, NC	04/20/2000
Mills, Kay Frances, Los Altos Hills, CA	04/20/2000
Moglen, Leslie J., San Francisco, CA	04/20/2000
Moyer-Touhey, Barbara A., Pittsfield, MA	04/20/2000
Mullins, Danny R., Creola, OH	04/20/2000
Nydegger, Carmen M., St. Louis Park, MN	04/20/2000
O'Donnell, Linda M., New Brighton, MN	04/20/2000
O'Neil, Rhonda, Louisville, KY	04/20/2000
Obanion, Jessica A., Red Wing, MN	04/20/2000
Park, Hae Gun, Arcadia, CA	04/20/2000
Patron, Melinda Loraine, Coral Springs, FL	04/20/2000
Pendergrass, Alva W., Fresno, CA	04/20/2000
Pennucci, Joel Charles, N. Bennington, VT	04/20/2000
Perez, Ramon Luis, Pittsburgh, PA	04/20/2000
Peterson, Darla M., St. Cloud, MN	04/20/2000
Proulex, Dianna, Abington, VA	04/20/2000
Quackenbush, Gail, Wellsboro, PA	04/20/2000
Ralston, Carol J., Minneapolis, MN	04/20/2000
Ramos, Marcos U., Lynn, MA	04/20/2000
Reddick, Kadijatu, Springfield, VA	04/20/2000
Reichen, Kathleen M., Virginia Beach, VA	04/20/2000
Rhee, Ky Young, Tustin, CA	04/20/2000
Richey, Debra G., Shaftsbury, VT	04/20/2000
Ridgeway, Theresa C., Dyke, VA	04/20/2000
Robinson, Alan J., Swords Creek, VA	04/20/2000
Robinson, Andre, Richmond, VA	04/20/2000
Robinson, James Clifford, Jr., Portland, OR	04/20/2000
Rowland, Vonnie Lee, Los Angeles, CA	04/20/2000
Roy, Sharon, Harrisville, RI	04/20/2000
Sadrai-Nadjafi, Abbas, Beverly Hills, CA	04/20/2000
Samson, Michael Kevin, Morro Bay, CA	04/20/2000
Samuels, Arthur J., Felton, CA	04/20/2000
Savery, Francois L., Las Vegas, NV	04/20/2000
Scott-Hudson, Anne Christine, Chattanooga, TN	04/20/2000
Shah, Rashmikant Kantilal, Bakersfield, CA	04/20/2000

Subject City, State	Effective date
Shanfeld, Norman M., Havertown, PA	04/20/2000
Shere, Joshua, Los Angeles, CA	04/20/2000
Sherin, Patrick R., Minneapolis, MN	04/20/2000
Short, Arlene, Buffalo, NY	04/20/2000
Simington Palardis, Sherrie L., Fergus Falls, MN	04/20/2000
Smith, Philip, N. Bay Village, FL	04/20/2000
Smith, Teri Jean, Riverside, CA	04/20/2000
Srebnack, Debra Renee, Florence, AL	04/20/2000
Stanley, Robert Harvey, Fort Worth, TX	04/20/2000
Stein-Young, Eden, Branford, CT	04/20/2000
Stewart, Beverly Kay, Montgomery, AL	04/20/2000
Stewart, James Allen, Los Angeles, CA	04/20/2000
Sylvia, Michael Dean, Jupiter, FL	04/20/2000
Talbert, Kathryn Condon, Artemas, PA	04/20/2000
Teal, Mary Elizabeth, Gadsden, AL	04/20/2000
Teske, Sheila R., Lyndonville, VT	04/20/2000
Thomason, Robert N., Las Vegas, NV	04/20/2000
Thompson, Deborah L., Annville, PA	04/20/2000
Thongrivong, Phoupasith, Opelika, AL	04/20/2000
Tieszen, Frances Ann, Birmingham, AL	04/20/2000
Trefil, Jon Charles, Alibion, CA	04/20/2000
Tucker, Kenneth M., Cullman, AL	04/20/2000
Tyler, Brenda L., Remington, VA	04/20/2000
Van Dyke, Joel Wilson, Birmingham, AL	04/20/2000
Vance, Vivian Shields, Bartow, FL	04/20/2000
Vandiver, Rise K., Russell, Mt. Olive, AL	04/20/2000
Vemuri, Ramesh Babu, Elgin, IL	04/20/2000
Vicencio, Vaila Sison, Walnut, CA	04/20/2000
Voss, Robin Dawn, Hartselle, AL	04/20/2000
Waite, Verner S., Cypress, CA	04/20/2000
Waller, Parker M., Jr., Greenville, AL	04/20/2000
Wesely, Jo Anna K., St Paul, MN	04/20/2000
Wesner, Robert A., Mountville, PA	04/20/2000
Williams, Cynthia K., Wilkes-Barre, PA	04/20/2000
Williams, Amy A., Shamokin, PA	04/20/2000
Williams, Cheryl L., Ashland, OH	04/20/2000
Wittig, John H., San Diego, CA	04/20/2000
Woodard, Bart Wayne, Mesquite, TX	04/20/2000
Wright, Sonya Cassidy Pride, Batesville, MS	04/20/2000
Wuensch, Kelley, Darien, CT	04/20/2000
Federal/State Exclusion/ Suspension	
Abrams, Irving, Morganville, NJ	04/20/2000
Byrne, Rodolfo, Jamaica, NY	04/20/2000
Oscar, Alvin D., Philadelphia, PA	04/20/2000
Fraud/Kickbacks	
Acord, Ricky D., Montgomery, AL	02/04/2000
Acord, Virginia G., Pike Road, AL	02/04/2000
Acord, Price Darrell, Pike Road, AL	02/04/2000
City Ambulance of Alabama, Montgomery, AL	02/04/2000
Graydon (Owens), Peggy A., Montgomery, AL	02/04/2000
Owned/Controlled by Convicted Excluded	
Brown Chiropractic Graham, TX	04/20/2000
Cole Chiropractic Woodland Hills, CA	04/20/2000
Daniel D. Mathews, D P M, P C, Bronx, NY	04/20/2000
Easley & Easley, Hillsboro, OH	04/20/2000
Family Chiropractic Clinic of Friendswood, TX	04/20/2000
Fatima Medical Center, Inc., Miami, FL	04/20/2000
Hampton Medical Associates, Southampton, PA	04/20/2000
Hayward Chiropractic Health, Hayward, CA	04/20/2000
Jon Colbert, Inc., Monroe, NY	04/20/2000
Lake Tahoe Eyecare, Stateline, NV	04/20/2000
Lighthouse Support Svcs, Inc., Riverhead, NY	04/20/2000
Matthew Chiropractic Clinic, Fort Smith, AR	04/20/2000
Medford Family Chiropractic, Medford, OR	04/20/2000
Richard Clark Chiropractic, San Diego, CA	04/20/2000
Saint Joseph Health Center, San Jose, CA	04/20/2000
Schectman's Pharmacy, Mt. Vernon, NY	04/20/2000
Southgate Health Center, Daly City, CA	04/20/2000
Sunnyside Chiropractic Acciden, Grove City, OH	04/20/2000
Y & I Rental Medical Equip Cor., Miami, FL	04/20/2000
Default on Heal Loan	
Attig, Robert C. Jr., Blue Bell, PA	04/20/2000
Baer, Andrew M., Sharon, PA	04/20/2000
Ball, Thomas, Jr., Detroit, MI	04/20/2000
Bohn, Sara B., California, MO	04/20/2000
Buccialia, Craig M., Willow Grove, PA	04/20/2000
Chun, John H., EL Cajon, CA	04/20/2000
Clark, Freeman L., Johnson City, TN	04/20/2000
Coleman, James H. Jr., San Jose, CA	04/20/2000
Crislip, David F., Elizabethton, TN	02/24/2000
Demopoulos, Constantine, Upper Darby, PA	04/20/2000
Fallman, James M. III, Cresent City, CA	04/20/2000
Farris, Farral W., Roanoke, TX	04/20/2000
Gibson, Geoffrey J., Clearwater, FL	04/20/2000
Gullish, Amy B., Sherman Oaks, CA	04/20/2000
Ha, Dong N., Oklahoma City, OK	04/20/2000
Habbart, Joseph L., Veneta, OR	04/20/2000
Hafer, Kathryn J., Kalamazoo, MI	04/20/2000
Hall, Dudley B., Bridgeport, CT	04/20/2000
Javarone, Richard J., Oakdale, PA	04/20/2000
Kahn, Albert, San Jose, CA	04/20/2000
Kazakowitz, Harriet A., Port Richey, FL	04/20/2000
Kinsey-Green, Joy L., Indianapolis, IN	04/20/2000
Mitchell, Robert Scott, Everett, WA	02/23/2000
Mosrie, Ronnie L., Christianburg, VA	04/20/2000
Murphy, John P., Madison, WI	04/20/2000
Pairot, Alfredo A., Miami, FL	04/20/2000
Parks, Anita J., Boliver, TN	04/20/2000
Powell, Curtis, Monrovia, CA	04/20/2000
Rodriguez, Luz M., Williamsville, NY	04/20/2000
Sparks, Stacey L., Houston, TX	04/20/2000
Tropeano, Ray, Los Alamitos, CA	04/20/2000
Vickers, Joel B., Holland, MI	04/20/2000

Dated: March 31, 2000.

Joanne Lanahan,

Director, Health Care Administrative Sanctions; Office of Inspector General.

[FR Doc. 00–8824 Filed 4–7–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Director's Council of Public Representatives, April 6, 2000, 8:30 AM to April 7, 2000, 1 PM, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD, 20892 which was published in the **Federal Register** on March 27, 2000, 65 FR 16211.

The meeting will be held on April 6, 2000, from 8:30 AM to 4 PM and April 7, 2000, from 8:30 AM to adjournment.

The meeting is open to the public.

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8798 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Program Project Grant entitled "Roles and Regulations of p53".

Date: April 24—26, 2000.

Time: 7 PM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Michael B. Small, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8797 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: May 18–19, 2000.

Open: May 18, 2000, 8:30 AM to 3 PM.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: May 18, 2000, 3 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert Carlsen, Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8804 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 27, 2000.

Open: 8:30 AM to 10 AM.

Agenda: To discuss matters of program relevance.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 10 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 200814.

Contact Person: Jerry Roberts, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8800 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee, Act as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: May 21–23, 2000.

Closed: May 21, 2000, 8 PM to 9:30 PM.

Agenda: To review and evaluate program information and discuss the review process.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

Open: May 22, 2000, 8:30 AM to 5:00 PM.

Agenda: An overview of the organization and conduct of research in the Laboratory of Pharmacology and Chemistry.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T. W. Alexander Drive, Research, Triangle Park, NC 27709.

Closed: May 23, 2000, 8:30 AM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms, 101 ABC, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: J. Carl Barrett, Scientific Director/Executive Secretary, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–3205.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8785 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institutes of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorder and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: May 14–16, 2000.

Closed: May 14, 2000, 7 PM to 10 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: May 15, 2000, 8 AM to 10:40 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: May 15, 2000, 10:40 AM to 11:25 AM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: May 15, 2000, 12:25 PM to 3:55 PM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: May 15, 2000, 3:55 PM to 4:55 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: May 16, 2000, 8:30 AM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Story C Landis, Director, Division of Intramural Activities, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8786 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the

discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Special Emphasis Panel.

Date: April 11, 2000.

Time: 10 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: June 5–6, 2000.

Time: June 5, 2000, 12 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Jules R. Selden, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9737, jselden@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8787 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Child Health Research Career Development Awards.

Date: April 26, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8790 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Interdisciplinary Research Careers in Women's Health.

Date: April 24–25, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8791 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 2, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd.,

Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 10, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Lillian M. Pubols, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8792 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1– GRB–7 M2.

Date: April 11–13, 2000.

Time: 7:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mayflower Hotel on the Park, 15 Central Park West, New York, NY 10023770.

Contact Person: Lakshmanan Sankaran, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS25F, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 M1 P.

Date: April 19–21, 2000.

Time: 7:30 p.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza at Dallas Market Center, 7050 Stemmons Freeway, Dallas, TX 75247.

Contact Person: Neal A. Musto, Scientific Review Administrator Review Branch, DEA, NIDDK, Natcher Building Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 30–May 2, 2000.

Time: 7:30 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: The Majestic 1500 Sutter Street, San Francisco, CA 94109.

Contact Person: Michele L. Barnard, Scientific Review Administrator, Scientific Review Administrator Review Branch, DEA, NIDDK, National Institutes of Health, Bethesda, MD 20892, 301/594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5(M1)P.

Date: May 1–3, 2000.

Time: 7:30 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Penn Tower Hotel, on the University of Penn Campus, Philadelphia, PA 19104–4385.

Contact Person: Francisco O. Calvo, Deputy Chief, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, MD 20892, 301–594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–D(M3).

Date: May 4, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: II Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Hagan, Chief, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8794 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2(M4).

Date: April 3–5, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill, One Europa Drive, Chapel Hill, NC 27514.

Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 (M1).

Date: April 27–29, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: University Centre Hotel, 1535 S.W. Archer Road, Gainesville, FL 32608.

Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology

and Hematology Research, National Institutes of Health, HHS)

Dated: March 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8796 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Chromosome Rearrangements and Mental Retardation.

Date: May 2–3, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Warwick Hotel, 5701 Main Street, Houston, TX 77005.

Contact Person: Norman Chang, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8799 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel.

Date: April 3, 2000.

Time: 10 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 5, 2000.

Time: 10 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8801 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 13, 2000.

Time: 11 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tommy L. Broadwater, Chief, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8802 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: June 15–16, 2000.

Closed: June 15, 2000, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: June 16, 2000, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: June 15–16, 2000.

Closed: June 15, 2000, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: June 16, 2000, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142. 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 15–16, 2000.

Closed: June 15, 2000, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: June 16, 2000, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 15–16, 2000.

Open: June 15, 2000, 1 pm to 3:30 pm.

Agenda: The meeting of the full Council will be open to the public for general discussion and program presentations.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: June 15, 2000, 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142. 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8807 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 16, 2000.

Time: 8:30 am to 5:00 pm.

Agenda: The Committee will provide advice on scientific priorities, policy and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiolgoy and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8808 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural

programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, Lister Hill Center.

Date: May 18–19, 2000.

Open: May 18, 2000, 9 AM to 1 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: May 18, 2000, 1:00 PM to 2:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigations.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: May 18, 2000, 2:00 PM to 5:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: May 19, 2000, 9:00 AM to 12:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg 38A, Rm 7n–705, Bethesda, MD, 301–496–4441.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8789 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of the individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine; Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

Date: April 24–25, 2000.

Time: April 24, 2000, 7 pm to 10 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Time: April 25, 2000, 8:30 am to 2 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: David J. Lipman, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8793 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the dislcosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: May 16, 2000.

Open: 7:30 am to 8:45 pm.

Agenda: Outreach and Public Information Items.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 16–17, 2000.

Open: May 16, 2000, 9 am to 3:25 pm.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: May 16, 2000, 3:25 pm to 3:45 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: May 17, 2000, 9:00 am to 12:00 pm.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: May 16, 2000.

Closed: 12:15 pm to 1:15 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library

Assistance, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8794 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 4, 2000, 2:00 PM to April 4, 2000, 4 PM, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on March 27,2000, 65 FR 16214.

The meeting will be held on April 6, 2000 from 1:30 PM to 4:00 PM. The location remains the same. The meeting is closed to the public.

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8788 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 4, 2000.

Time: 9:00 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 5, 2000.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 10:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Betty Hayden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 1:30 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2000.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–1 (02)M..

Date: April 17, 2000.

Time: 2 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 18, 2000.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin Slater, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 18, 2000.

Time: 4 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bruce Maurer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1187.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: April 19, 2000.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: April 19, 2000.

Time: 5 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bruce Maurer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1187.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8803 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 4, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Cantact Persan: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892 (301) 435–0681.,

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8805 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 12, 2000.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Cantact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Cammittee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Cantact Persan: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name af Cammittee:

Center for Scientific Review Special Emphasis Panel ZRG1 VISA(01).

Date: April 14, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Cantact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name af Cammittee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2000.

Time: 1:30 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Cantact Persan: Ron Manning, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892 (301) 435–1723.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name af Cammittee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 2000.

Time: 1 PM to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Persan: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name af Cammittee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 2000.

Time: 8:30 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Cantact Persan: Abubakar A. Shiakh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 2000.
Time: 9:30 AM to 11 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 20, 2000.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 20, 2000.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7812, Bethesda, MD 20892, (301) 435–1225. politisa@csr.nih.gov.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 2000.
Time: 1:30 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 2000.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anthony C. Chung, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1850.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8806 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–23]

Notice of Submission of Proposed Information Collection to OMB; Certification Regarding Adjustment for Damage or Neglect

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0349) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Certification Regarding Adjustment for Damage or Neglect.

OMB Approval Number: 2502–0349.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: OMB approval will permit a one-time certification by mortgagees that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

Respondents: Business or other for-profit.

Frequency of Submission: On Occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
280		1		.50		140.

Total Estimated Burden Hours: 140.
Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 4, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8826 Filed 4–7–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–22]

Notice of Submission of Proposed; Information Collection to OMB Management Review Report for Unsubsidized Multifamily Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0259) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB to review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, of applicable, (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Management Review Report for Unsubsidized Multifamily Housing Programs.

OMB Approval Number: 2502–0259.

Form Numbers: HUD–9838.

Description of the Need for the Information and Its Proposed Use: Multifamily housing lenders use the Management Report and Worksheet to evaluate the adequacy of the management at projects and to monitor and evaluate the ongoing management operations and procedures of multifamily projects.

Respondents: Business or other not-for-profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9838	6,300		1		7		6,300

Total Estimated Burden Hours: 6,300.

Status: Reinstatement with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 4, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8827 Filed 4–7–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Arthur R. Marshall Loxahatchee National Wildlife Refuge in Palm Beach County, FL, and Notice of Meeting To Seek Public Comments on These Documents

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has made available for public review a Draft Comprehensive Conservation Plan and Environmental Assessment for Arthur R. Marshall Loxahatchee National Wildlife Refuge in Palm Beach County, Florida, and plans to hold a public meeting in the vicinity of the refuge to solicit public comments on these documents. The Service is furnishing this notice in compliance with Service comprehensive planning policy, the National Environmental Policy Act, and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain comments on the proposed plan and the other alternatives considered in the planning policy.

DATES: The Service will hold the public meeting at 6:30 p.m. on April 26, 2000, at the South County Civic Center, 16700 Jog Road, Delray Beach, Florida. The draft plan will be made available for review and comment. Written comments should be submitted no later than May 22, 2000, to the address below.

ADDRESSES: Comments and requests for copies of the draft plan and environmental assessment should be addressed to Mr. Mark J. Musaus, Refuge Manager, ARM Loxahatchee National Wildlife Refuge, 10216 Lee

Road, Boynton Beach, Florida 33437–4796, or by calling 561/732–3684.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Mark__Musaus@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at ARM Loxahatchee National Wildlife Refuge, at the above address. Finally, you may hand-deliver comments to the Refuge headquarters office at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: Arthur R. Marshall Loxahatchee National Wildlife Refuge, located 15 miles southwest of West Palm Beach, Florida, consists of 221 square miles of the remaining northern Everglades. The refuge is one of three large freshwater storage areas surrounded by levees and canals. These storage areas, built by the Army Corps of Engineers, were later placed under the jurisdiction of the South Florida Water Management District. The primary objectives of the refuge, established through an agreement between the Service and the South Florida Water Management District, is to maintain suitable habitat for a variety of wildlife native to the northern Everglades. By implementing the proposed comprehensive conservation plan, the refuge seeks to achieve the following four goals:

(1) Restore and conserve the natural diversity, abundance and ecological function of refuge flora and fauna;

(2) Conserve natural and cultural resources through partnerships, protection and acquisition from willing sellers;

(3) Develop and implement compatible wildlife-dependent recreation and environmental education programs that lead to enjoyable experiences and greater understanding of the Everglades; and

(4) Continue a partnership with the South Florida Water Management District through a new license agreement.

The Draft Comprehensive Conservation Plan/Environmental Assessment evaluates the following four alternatives for managing the refuge over the next 15 years: maintain current management; ecosystem emphasis; biological emphasis; and public use emphasis. The Fish and Wildlife Service believes that ecosystem emphasis is the best alternative to guide the refuge's future direction. In essence, this alternative will:

- Restore and maintain healthy water regimes;
- Reduce exotic and invasive plants;
- Expand the inventory and mapping of wildlife species and habitats;
- Enhance wildlife habitat for migratory and resident song birds; and
- Expand wildlife-dependent and other compatible recreation opportunities.

Dated: April 4, 2000.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 00–8736 Filed 4–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–XQ]

Resource Advisory Council Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River District Resource Advisory Council (RAC) will be held as indicated below. The agenda for this two-day meeting will include a field trip for members on the first day to recreation sites along the South Fork of the Snake River, and discussions on Standards and Guides Monitoring on the second day. The RAC will also hear a presentation from the staff of the Interior Columbia Basin Ecosystem Management Plan (ICBEMP) project. Other agenda items may be added between publication of this notice and the meeting. All meetings are open to the public. The public may present written or oral comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meetings is listed below. Depending on the number of persons wishing to comment, and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

DATES AND TIMES: The next meeting will be held May 4–5, 2000 at the BLM's Idaho Falls Field Office, 1405 Hollipark Drive in Idaho Falls, Idaho. The Field Trip to the recreational sites will begin at 1 p.m. on May 4. The RAC meeting will start at 8:30 a.m. on May 5, with public comments scheduled from 8:40–9:10 a.m.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: March 30, 2000.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 00–8727 Filed 4–7–00; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on internal combustion industrial forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on April 1, 1999 (64 FR 15786) and determined on July 2, 1999, that it would conduct a full review (64 FR 38475, July 16, 1999). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 27, 1999 (64 F.R. 46952). The hearing, scheduled to be held in Washington, DC, on January 25, 2000, was cancelled as a result of a Federal Government closure in Washington, DC due to inclement weather on January 25 and 26, 2000. On January 28, 2000, the schedule was revised (65 FR 5660, February 4, 2000) and all persons who requested the opportunity to be heard at the original hearing were permitted to submit written testimony to the Commission in lieu of the public hearing.

The Commission transmitted its determination in this review to the Secretary of Commerce on April 4, 2000. The views of the Commission are contained in USITC Publication 3287 (April 2000), entitled Internal Combustion Industrial Forklift Trucks from Japan: Investigation No. 731–TA–377 (Review).

Issued: April 5, 2000.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Lynn M. Bragg, Commissioner Thelma J. Askey, and Commissioner Deanna Tanner Okun dissenting.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8779 Filed 4–7–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–429 (Review)]

Mechanical Transfer Presses From Japan; Notice of Commission Determination to Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of respondent Komatsu Ltd., the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for April 4, 2000, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–0663, e-mail drimmer@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Komatsu, Ltd. has justified the need for a closed session. Komatsu, Ltd. seeks a closed session to allow for a discussion of the U.S. industry's performance and the consequences of the antidumping order. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with public presentations by those supporting continuation of the order and those supporting revocation of the order, with questions from the Commission. In addition, the hearing will include a 30-minute in camera session for a confidential presentation by Komatsu Ltd. and for questions from the Commission relating to the business proprietary information ("BPI"), followed by a 30-minute in camera rebuttal presentation by those supporting continuation of the order. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Mechanical Transfer Presses from Japan, Inv. No. 731–TA–429 (Review), may be closed to the public to prevent the disclosure of BPI.

Issued: April 3, 2000.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 00–8778 Filed 3–7–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Consumer Expenditure Surveys (CES). A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 9, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions; (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation; and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive Branch, rely on data collected in the CPI in their day-to-day activities. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely as well as more accurate updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand—from the public and private sectors—for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over five calendar quarters. The sample for each quarter is divided into three panels, with CU's being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey either are relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills or insurance premiums.

The Diary (or record keeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The Quarterly Interview Survey is being updated for implementation in April of 2001. The changes made to the forms fall into three categories: (1) Expenditures of new items in the marketplace were added for use in the Consumer Price Index and in CE publications. These include such items as DSL and ISDN services and shopping warehouse clubs. (2) Similar questions were consolidated to make the survey easier and more organized for the respondent. (3) Bracketed categories of responses were added to the income sections to decrease non-response through decreasing respondent burden.

The Consumer Expenditure Surveys continuously make efforts to reduce respondent burden per case by streamlining the questionnaire. Efforts were made in this forms redesign, as follows:

- In several areas field representative instructions were added to make the forms easier to understand for the field representative and the respondent.
- The questionnaire flow was improved by moving similar questions into concise and consolidated sections.
- Wording was changed to use more current terminology.

Once the forms have been in the field the BLS will perform timing tests to determine what impact these changes have had on burden. The Consumer Expenditure Surveys continue to investigate ways to reduce respondent burden, and have plans implement further changes aimed at reducing respondent burden when computer assisted personal interviewing is implemented in 2003.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: Consumer Expenditure Surveys.
OMB Number: 1220–0050.
Affected Public: Individuals or households.
Total Respondents: 18,216.
Frequency: Quarterly Interview Survey respondents are interviewed quarterly for five consecutive quarters (four time in any one year). Diary Survey respondents complete two consecutive weekly reports.
Total Responses: 68,194.
Average Time Per Response: 87.83 minutes.
Estimated Total Burden Hours: 99,820 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: Signed at Washington, D.C., this 4th day of April 2000.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–8776 Filed 4–7–00; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–97]

Applied Research Laboratories, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Applied Research

Laboratories, Inc. (ARL), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on April 10, 2000 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ARL remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Applied Research Laboratories, Inc. (ARL), as a Nationally Recognized Testing Laboratory (NRTL). ARL's expansion covers the use of the additional test standards and the additional programs, listed below.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of its final decision on an application.

ARL submitted a request, dated January 22, 1998 (see Exhibit 6A), to expand its recognition as an NRTL for 181 additional test standards. After performing an initial review of this request, the NRTL Program staff informed ARL that only 93 of the test standards met the requirements of an "appropriate test standard" set forth in 29 CFR 1910.7. In further processing the expansion request, the staff performed an on-site review of ARL's testing facility on June 8–11, 1998, and summarized the results of their evaluation in the on-site review report (see Exhibit 7). Following the review, ARL amended its application in a letter dated July 10, 1998 (see Exhibit 6B) to reduce the number of test standards requested to the 47 listed below. In its July 10 request, ARL also requested recognition for the additional programs.

The NRTL Program staff temporarily withheld its consideration of ARL's requests pending resolution by the NRTL of discrepancies noted during an audit that the staff performed at ARL's facility. ARL responded to these discrepancies in March 1999 and, after additional review, the NRTL Program staff accepted resolution of the discrepancies in September 1999, permitting OSHA to resume processing ARL's expansion request.

OSHA published the required notice in the **Federal Register** (64 FR 68388, 12/7/1999) to announce ARL's expansion application. The notice included a preliminary finding that ARL could meet the requirements for expansion of its recognition, and OSHA invited public comment on the application by February 7, 2000. OSHA received no comments concerning this application.

The most recent prior notices published by OSHA for ARL's recognition covered its initial recognition as an NRTL, which OSHA announced on August 8, 1997 (62 FR 42827), and granted on November 21, 1997 (62 FR 62356).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210, telephone: (202) 693–2350. You should refer to Docket No. NRTL–1–97, the permanent record of public information on the ARL recognition.

The current address of the facility (site) that OSHA recognizes for ARL is: Applied Research Laboratories, Inc., 5371 N.W. 161st Street, Miami, Florida 33014

Final Decision and Order

The NRTL Program staff has examined the application, the on-site review report (see Exhibit 7), and other pertinent information. Based upon this examination and the staff's recommendation, OSHA finds that the Applied Research Laboratories, Inc., facility listed above has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards, listed below, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ARL, subject to these limitations and conditions.

Limitations

OSHA hereby expands the recognition of ARL for testing and certification of products to demonstrate conformance to the following forty seven (47) additional test standards. However, OSHA plans to include certain limitations on the recognition of some standards.

The Agency's recognition of ARL, or any NRTL, is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements. OSHA has determined that each standard listed below meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

Test Standards

[1] ANSI/ASME A17.5 Elevators and Escalator Electrical Equipment
ANSI Z21.1 Household Cooking Gas Appliances
ANSI Z83.7 Gas-Fired Construction Heaters
ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.18 Direct Gas-Fired Industrial Air Heaters
ANSI/UL 65 Electric Wired Cabinets
ANSI/UL 67 Electric Panelboards
ANSI/UL 73 Electric-Motor-Operated Appliances
UL 104 Elevator Door Locking Devices and Contacts
ANSI/UL 174 Household Electric Storage-Tank Water Heaters
UL 181 Factory-Made Air Ducts and Air Connectors
ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 231 Power Outlets
ANSI/UL 325 Door, Drapery, Gate, Louver and Window Operator and Systems
UL 416 Refrigerated Medical Equipment
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 474 Dehumidifiers
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 506 Specialty Transformers
ANSI/UL 508 Electric Industrial Control Equipment
UL 544 Electric Medical and Dental Equipment
ANSI/UL 555 Fire Dampers (previously Fire Dampers and Ceiling Dampers)
ANSI/UL 563 Ice Makers

UL 664 Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 676 Underwater Lighting Fixtures
ANSI/UL 710 Exhaust Hoods for Commercial Cooking Equipment
UL 733 Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 749 Household Electric Dishwashers
ANSI/UL 778 Motor-Operated Water Pumps
UL 795 Commercial-Industrial Gas-Heating Equipment
ANSI/UL 834 Heating, Water Supply, and Power Boilers—Electric
ANSI/UL 845 Motor Control Centers
ANSI/UL 935 Fluorescent-Lamp Ballasts
[2]ANSI/UL 1004 Electric Motors
ANSI/UL 1026 Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1029 High-Intensity Discharge Lamp Ballasts
ANSI/UL 1081 Electric Swimming Pool Pumps, Filters and Chlorinators
[3]ANSI/UL 1262 Laboratory Equipment
ANSI/UL 1450 Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
ANSI/UL 1572 High Intensity Discharge Lighting Fixtures
ANSI/UL 1585 Class 2 and Class 3 Transformers
ANSI/UL 1996 Duct Heaters
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
ANSI/UL 2157 Electric Clothes Washing Machines and Extractors
ANSI/UL 2158 Electric Clothes Dryers

[1]Recognition under ANSI/ASME A17.5 is limited to cab construction and associated electrical equipment.

[2]Recognition under ANSI/UL 1004 is limited to 10HP maximum electric motors.

[3]Recognition under ANSI/UL 1262 is limited to sample processing equipment.

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice, which announced ARL's application for expansion.

Programs and Procedures

OSHA is granting the request by ARL to use the two (2) supplemental programs, listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. For ARL, the initial recognition also included use of Program 4 (Acceptance of witnessed testing data). The on-site review report indicates that ARL meets the criteria for use of the following additional supplemental programs:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

Under Appendix A to 1910.7, the Agency has no obligation to provide notice of recognition for these programs. However, The NRTL Program staff has typically included such recognition in a notice when the NRTL has requested it in conjunction with a regular application. When processing an NRTL's request solely to use one or more supplemental programs, the NRTL Program staff informs the NRTL of the decision to grant or deny the request by letter only. If granted, the staff includes the additional program(s) in OSHA's web page for each NRTL.

Conditions

Applied Research Laboratories, Inc., must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to ARL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ARL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ARL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ARL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ARL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ARL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

ARL will continue to meet the requirements for recognition in all areas where it has been recognized; and

ARL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 3rd day of April, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–8775 Filed 4–7–00; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–3 CARP DD 95–98]

Distribution of 1995, 1996, 1997, and 1998 Digital Audio Recording Technology Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration.

SUMMARY: The Copyright Office of the Library of Congress is announcing initiation of the 180-day arbitration period for the distribution of the1995–98 digital audio recording technology ("DART") royalties in the Musical Works Funds.

EFFECTIVE DATE: April 10, 2000.

ADDRESSES: All hearings and meetings for the 1995–98 DART distribution proceeding shall take place in the James Madison Memorial Building, Room LM–414, First and Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 251.72 of 37 CFR provides:

> If the Librarian determines that a controversy exists among claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the **Federal Register** a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

The notice published today fulfills the requirements of § 251.72 for the distribution of DART royalties in the Musical Works Funds for the years 1995, 1996, 1997, and 1998.

On May 4, 1999, the Copyright Office published a notice in the **Federal Register** requesting comment as to the existence of a controversy concerning the distribution of the 1995, 1996, 1997, and 1998 DART royalty fees in the Musical Works Funds and consolidating the consideration of the distribution of the 1995–98 Musical Works Funds into a single proceeding. 64 FR 23875 (May 4, 1999). The following parties filed comments and Notices of Intent to Participate: Carl DeMonbrun/ Polyphonic Music, Inc. ("DeMonbrun"); Broadcast Music, Inc. ("BMI"), the American Society of Composers, Authors and Publishers ("ASCAP"), SESAC, Inc. ("SESAC"), the Harry Fox Agency ("HFA"), the Songwriters Guild of America ("SGA"), and Copyright Management, Inc. ("CMI") (collectively the "Settling Parties"); James Cannings/ Can Can Music ("Cannings"); Alicia Carolyn Evelyn ("Evelyn"); and Eugene "Lambchops" Curry/ TaJai Music, Inc. ("Curry").

On September 21, 1999, the Office issued an Order announcing the precontroversy discovery schedule for the proceeding, beginning on November 15, 1999. See Order in Docket No. 99–3 CARP DD 95–98 (September 21, 1999). Prior to commencement of the 45-day precontroversy discovery period, the Office was notified that Cannings and DeMonbrun had settled their respective controversies with the Settling Parties. Thus, the parties who will appear before the CARP in the current proceeding are the Settling Parties, Evelyn, and Curry.

On November 15, 1999, the Settling Parties filed a motion requesting that the controversy be decided on the basis of written pleadings. The Office designated to the CARP the issue of whether to suspend formal hearings and decide the case on the written pleadings. See Order in Docket No. 99–3 CARP DD 95–98 (December 22, 1999).

The September 21, 1999, Order also set the initiation of the arbitration for February 28, 2000. However, the Office's duty to publish every two years a new list of arbitrators eligible to serve on a CARP rendered the February 28 initiation date unworkable. See 37 CFR 251.3. On January 14, 2000, in accordance with § 251.3(b), the Office published the list of arbitrators eligible to serve on a CARP initiated during 2000 and 2001. 65 FR 2439 (January 14, 2000). Because the time period between the publication of the arbitrator list and the February 28 initiation date was not sufficient to complete the selection of arbitrators for this proceeding, the Office reset the initiation of the arbitration to April 10, 2000. See Order in Docket No. 99–3 CARP DD 95–98 (March 14, 2000).

Selection of Arbitrators

Section 802(b) of the Copyright Act instructs the Librarian to select two arbitrators within 10 days of initiation of the proceeding. The Librarian has already completed this task, and the two arbitrators are:

The Honorable John B. Farmakides

The Honorable Harold E. Himmelman

The third arbitrator, who shall serve as Chairperson, will be selected in accordance with section 802(b).

Initiation of Proceeding

Pursuant to § 251.72 of 37 CFR, the Copyright Office of the Library of Congress is formally announcing the existence of controversies in the distribution of digital audio recording technology royalties in the Musical Works Funds for the years 1995, 1996, 1997, and 1998, and is initiating an arbitration proceeding under chapter 8 of title 17 of the United States Code to resolve distribution of these funds. The arbitration proceeding commences on April 10, 2000, and runs for a period of 180 days. The arbitrators shall file their written report with the Librarian of Congress by October 10, 2000, in accordance with § 251.53 of 37 CFR.

Scheduling of the 1995–98 DART royalty distribution proceeding is within the discretion of the CARP. The Library will publish the schedule of the proceedings, as required by 37 CFR 251.11(b), as soon as it is available.

Dated: April 4, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–8783 Filed 4–7–00; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 25, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the

schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Deputy Chief of Staff for Intelligence (N1–AU–99–12, 4 items, 4 temporary items). Records relating to Sensitive Compartmented Information (SCI) personnel matters, SCI contractor operations, SCI facility accreditations, and physical security. Files pertain to such subjects as personnel indoctrinations and debriefings, visit requests, periodic investigations, contract security classification specifications, facility assessments and risk analyses, and surveillance countermeasures inspections. Also included are electronic copies of records created using electronic mail and word processing. This schedule allows earlier disposal of recordkeeping copies of these files, which were previously approved for disposal.

2. Department of Commerce, Bureau of Export Administration (N1–476–00–1, 18 items, 18 temporary items). Administrative and operational records of the Information Technology Team that are used to support the processing of data declarations received from the U.S. chemical industry under the Chemical Weapons Convention. Records include chemical determinations, facility agreements, meeting minutes, administrative manuals, chronological files, working papers, and an information system containing data declarations from chemical facilities that have been imaged. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Health and Human Services, Centers for Disease Control (N1–442–99–2, 6 items, 4 temporary items). Input sources for the Longitudinal Study of Aging, 1984–1990, including interview questionnaire forms, electronic data extracted from Medicare and National Death Index databases, and software and computer manuals used to access and interpret the data. Proposed for permanent retention are the master data files and supporting documentation.

4. Department of the Interior, Bureau of Land Management (N1–49–99–1, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to mineral lease sale files. Also included are recordkeeping copies of files that relate to nominations for parcels that are unavailable for leasing. Recordkeeping copies of other mineral lease sale records were previously scheduled, including final reports and maps, which are scheduled for permanent retention.

5. Department of Justice, United States Marshals Service (N1–527–00–1, 2 items, 2 temporary items). Century Date Conversion (Y2K) records that pertain to Year 2000 efforts. Records relate to the development of plans and strategies, the review of computer systems and applications, remedial efforts, and program reviews. Included are plans, contracts, policy letters, and correspondence. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Justice, Drug Enforcement Administration (N1–170–00–1, 9 items, 6 temporary items). Chronological files of the Administrator and Deputy Administrator and records pertaining to the activities of the Executive Assistant and Special Assistant to the Administrator. Also included are electronic copies of documents created using electronic mail and word processing that are associated with files accumulated in the Office of the Administrator. Proposed for permanent retention are the Administrator's subject files, briefing books, appointment schedules, and committee and conference records.

7. Department of Justice, Justice Management Division (N1–60–00–7, 2 items, 2 temporary items). Century Date Conversion (Y2K) records that pertain to Year 2000 efforts. Records relate to the development of plans and strategies, the review of computer systems and applications, remedial efforts, and program reviews. Included are plans, contracts, policy letters, and correspondence. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, Federal Bureau of Prisons (N1–129–00–3, 5 items, 3 temporary items). Records accumulated in wardens' offices at correctional facilities. Included are strategic planning records and correspondence files pertaining to such matters as staff meetings, congressional inquiries stemming from inmate complaints, emergency guidelines, awards, program reviews, and weekly activities of component units of the facility. Also included are electronic copies of documents created using electronic mail and word processing. Audiovisual records, such as still and motion pictures, audio tapes, and video tapes, are proposed for permanent retention as are institution-specific supplements that adjust national

policies to meet the needs of individual facilities.

9. Department of Justice, Federal Bureau of Prisons (N1–129–00–4, 4 items, 4 temporary items). Records accumulated at correctional facilities consisting of chronological files, reference/subject files, and records relating to audits of the facility. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of Justice, Federal Bureau of Prisons (N1–129–00–7, 2 items, 2 temporary items). Chaplain records consisting of such files as correspondence with local churches and religious groups, meeting minutes, and lists of inmates' religious preferences. Also included are electronic copies of documents created using electronic mail and word processing.

11. Department of Justice, Federal Bureau of Prisons (N1–129–00–8, 7 items, 7 temporary items). Records relating to inmate education programs. Included are such records as enrollment listings, general equivalency diploma test scores, lesson plans, files documenting student progress, class transcripts, and minutes of meetings of education advisory committees. Also included are electronic copies of documents created using electronic mail and word processing.

12. Department of Labor, Office of Inspector General (N1–174–00–1, 14 items, 13 temporary items). Records relating to investigations of allegations of fraud, abuse, and violation of laws and regulations relating to agency personnel, programs, and operations. Included are investigative case files, an electronic case tracking system, and an electronic system containing information concerning alleged criminal activity. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative case files are proposed for permanent retention.

13. Department of State, Office of the Legal Adviser (N1–59–00–6, 2 items, 2 temporary items). Non-precedent and non-historical extradition case files that were accumulated prior to 1974. Also included are electronic copies of documents relating to extradition case files that are created using electronic mail and word processing. Recordkeeping copies of case files that are historically valuable or established precedents were previously approved for permanent retention. Recordkeeping copies of files postdating 1974 were previously approved for disposal.

14. Department of Transportation, Federal Highway Administration (N1–406–99–2, 2 items, 2 temporary items). Records relating to highway construction and rehabilitation projects on non-Federal property accumulated after 1966. Included are such records as letters of authorization, inspection reports, project agreements, project modification documents, and copies of construction contracts. Also included are electronic copies of documents created using electronic mail and word processing. Financial information concerning projects is included in the agency's Fiscal Management Information System, which was previously approved for permanent retention. Any individual project files identified as historically valuable by the agency will be appraised by NARA on a case-by-case basis.

15. Department of Transportation, Research and Special Programs Administration (N1–467–00–1, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with case files accumulated in connection with applications for relief from an agency regulation. This schedule also authorizes the agency to destroy paper records after they have been imaged and to retain scanned files longer than the previously approved retention period if they are needed for reference purposes.

16. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (N1–436–00–1, 1 item, 1 temporary item). Product Compliance Branch label applications records, including applications, denials, and related papers. This schedule reduces the retention period for these records, which were previously approved for disposal.

17. Department of the Treasury, Office of the Comptroller of the Currency (N1–101–97–1, 8 items, 8 temporary items). Electronic information systems of the Office of Bank Supervision Policy concerning the assessment and supervision of financial institutions. Included are master files and documentation for the Foreign Branches System, the National Bank Surveillance Video Display System, the Supervisory Monitoring System, and the Text Processing System.

18. Advisory Commission on Electronic Commerce, Agency-wide (N1–220–00–3, 17 items, 9 temporary items). Copies of **Federal Register** notices, video recordings of Commission meetings, press clippings, meeting arrangement files, financial records, research documents used to prepare the Commission's final report, public mail, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are such records as the Commission's charter and other records pertaining to its establishment and mission, transcripts of Commission meetings, chronological files, press releases, and the Commission's final report.

19. Armed Forces Retirement Home, Agency-wide (N1–231–00–1, 4 items, 4 temporary items). Records relating to the health care of residents of the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the United States Naval Home. Included are such records as forms, reports, x-rays, and laboratory findings. Also included are electronic copies of documents created using electronic mail and word processing.

20. Environmental Protection Agency, Agency-wide (N1–412–99–12, 2 items, 2 temporary items). Agendas, meeting minutes, reports, and other records relating to internal agency committees and non-rulemaking work groups, including electronic copies of documents created using electronic mail and word processing. The schedule makes minor changes in the disposition instructions for recordkeeping copies of these files, which were previously approved for disposal.

21. Environmental Protection Agency, Agency-wide (N1–412–99–10, 9 items, 7 temporary items). Electronic and paper records relating to the agency's responsibility under its acid rain program to monitor the emissions of utility plants and the compliance by the utilities with the Clean Air Act. Software associated with three electronic systems is proposed for disposal. Electronic data and related documentation for an electronic system used to document authorizations to emit sulfur dioxide are proposed for disposal as are the data and documentation for a system pertaining to acid rain. The documentation and electronic data associated with the Emissions Tracking System are proposed for permanent retention. This electronic system tracks emissions from utilities under the acid rain program.

22. Federal Energy Regulatory Commission, Agency-wide (N1–138–99–4, 3 items, 3 temporary items). Records relating to planning, administering, and conducting management studies and surveys. Files pertain to such subjects as staffing levels, turnover rates, reference room operations, and duplicating services. Included are final reports, briefing material, work papers, and project plans. Also included are electronic copies of documents created using

electronic mail and word processing. Recordkeeping copies of files relating to substantive organizational changes were previously approved for permanent retention.

23. Federal Retirement Thrift Investment Board, Office of General Counsel (N1–474–00–1, 3 items, 3 temporary items). Electronic copies of documents created using electronic mail and word processing that pertain to legal opinions. This schedule also proposes for disposal an electronic file that contains digests and scanned images of legal opinions and provides for a reduction in the retention period for recordkeeping copies of these opinions, which were previously approved for disposal.

24. National Archives and Records Administration, Agency-wide (N1–64–00–6, 6 items, 6 temporary items). Century Date Conversion (Y2K) policy, planning, and implementation records. Included are such records as project plans, minutes of meetings, decision documents, continuity and contingency plans, documents relating to specific applications and systems reviewed, implementation plans, budget files, and Inspector General inquiries. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: April 4, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services, Washington, DC.

[FR Doc. 00–8781 Filed 4–7–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC, Three Mile Island Nuclear Station, Unit 1; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–50 for Three Mile Island Nuclear Station, Unit 1 (TMI–1), held by AmerGen Energy Company, LLC (AmerGen), as the owner and licensed operator. The transfer would result from the acquisition of PECO Energy Company's (PECO's) existing interest in AmerGen by a new generation company. This company, presently referred to in the subject application described below as GENCO, is to be a subsidiary of a new holding company, Exelon Corporation, formed from the proposed merger between PECO and Unicom Corporation (Unicom). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. The facility is located in Dauphin County, Pennsylvania.

According to an application for approval filed by AmerGen, AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. British Energy, Inc., and PECO each own 50 percent of AmerGen. Following completion of the merger between Unicom and PECO, GENCO will acquire PECO's existing 50-percent ownership interest in AmerGen. AmerGen, as owned by GENCO and British Energy, Inc., will continue to be responsible for the operation, maintenance, and eventual decommissioning of TMI–1. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment to the operating license would add language to the license transfer conditions that were incorporated into the TMI–1 Operating License upon the initial transfer of the license to AmerGen to reflect the transfer of PECO's ownership interest in AmerGen to a new entity.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By May 1, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Kevin P. Gallen, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869 (phone 202–467–7462, fax 202–467–7176, or e-mail kpgallen@mlb.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 10, 2000, persons may submit

written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 28, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

Timothy Colburn,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8739 Filed 4–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Renewal Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of two years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on the Medical Uses of Isotopes for the two year period commencing on April 4, 2000, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; radiopharmacy; State medical regulation; patient's rights and care; health care administration; medical research; medical dosimetry, and Food and Drug Administration regulation.

FOR FURTHER INFORMATION CONTACT: Betty Ann Torres, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 415–0191.

Dated: April 4, 2000.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 00–8738 Filed 4–7–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Proposed New Appendix to Standard Review Plan (NUREG–0800), Chapter 19, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed new appendix to Chapter 19 of its Standard Review Plan (NUREG–0800). This chapter of the Standard Review Plan (SRP) identifies the roles and responsibilities of organizations in the NRC that participate in risk-informed reviews of licensees' proposals for changes to the licensing basis, identifies the types of information that may be used in fulfilling an organization's review responsibilities, and provides general guidance on how the information from a probabilistic risk assessment (PRA) can be combined with other pertinent information in the process of making a regulatory decision.

The proposed appendix is titled "Appendix D—Use of Risk Information in Review of Non-Risk Informed License Amendment Requests." The appendix is being developed to provide guidance to the NRC staff on the use of risk information in those rare instances where license amendment requests appear to meet regulatory requirements but raise significant risk concerns due to some special circumstances associated with the request. The appendix is based on the guidance contained in SECY–99–246, and approved by the Commission for interim use (Staff Requirements Memorandum dated January 5, 2000.)

DATES: The comment period expires May 31, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. The NRC is also planning to hold a public meeting in Rockville, Maryland, to discuss the proposed appendix before the close of the comment period. The time and location of the meeting will be announced at a later date.

ADDRESSES: Written comments may be submitted to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. You may also provide comments via the NRC's website at http://www.nrc.gov by using the e-mail link entitled "NRCREP."

FOR FURTHER INFORMATION CONTACT: Mr. Robert Palla, Office of Nuclear Reactor Regulation, Mail Stop O10H4, Washington, DC, 20555–0001; telephone (301) 415–1095; e-mail: rlp3@nrc.gov.

SUPPLEMENTARY INFORMATION: The guidance in the new appendix will be used by the NRC staff in its reviews of license amendment requests. The appendix is based on proposed guidance documented in SECY–99–246, "Proposed Guidelines for Applying Risk-Informed Decisionmaking in License Amendment Reviews." The Commission approved the use of this

guidance on an interim basis, and directed the staff to finalize the guidance and modify relevant guidance documents ensuring that stakeholders are engaged in this process (Staff Requirements Memorandum dated January 5, 2000.) The purpose of this notice is to inform the public of the proposed new appendix, and the opportunity to comment on the guidance. A final version will be issued upon resolution of public comments and review by the Director, Office of Nuclear Reactor Regulation, the NRC's Committee to Review Generic Requirements (CRGR), the Advisory Committee on Reactor Safeguards (ACRS), and the Commission. In a planned future revision to Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," the NRC plans to incorporate compatible guidance that conforms to the new SRP Appendix D.

The proposed new appendix to NUREG–0800, Chapter 19 follows:

Appendix D—Use of Risk Information in Review of Non-Risk-Informed License Amendment Requests

Areas of Review

When a license amendment request complies with the regulations and other license requirements, there is a presumption by the Commission of adequate protection of public health and safety (*Maine Yankee*, ALAB–161, 6 AEC 1003 (1973)). However, circumstances may arise in which new information reveals an unforeseen hazard or a substantially greater potential for a known hazard to occur, such as identification of an issue that substantially increases risk. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety. Section 182.a of the Atomic Energy Act of 1954, as amended, and as implemented by 10 CFR 2.102, gives the NRC the authority to require the submittal of information in connection with a license amendment request if NRC has reason to question adequate protection of public health and safety. The licensee may decline to submit such information, but it would risk having the amendment request denied if NRC cannot find that the requested amendment provides adequate protection of public health and safety.

Under unusual circumstances which could introduce significant and unanticipated risks, the NRC staff reviewers would assume the burden of demonstrating that the presumption of adequate protection is not supported by the bases for the existing staff positions despite the fact that currently specified regulatory requirements are met. Instances in which the reviewers would question licensees regarding risk are expected to be rare. The process used for identifying those situations in which risk implications are appropriate to consider and for deciding if undue risk exists is depicted in Figure 1. This process can be used in the review of both licensee-initiated risk-informed license amendment requests, as well as license amendment requests in which the licensee chooses to not submit risk information (*i.e.*, non-risk informed requests.)

License amendment requests will be screened for potential risk implications as part of the license amendment review process. Office-level license amendment review procedures provide guidance on which license amendment requests should be examined at the level of the integrated risk model due to the potential for significant impacts on plant risk [1]. In accordance with the guidance, the risk implications of a non-risk-informed submittal would be discussed with a risk analyst if the submittal:

- Significantly changes the allowed outage time (*e.g.*, outside the range previously approved at similar plants), probability of initiating event, probability of successful mitigative action, functional recovery time, or operator action requirement;
- Significantly changes functional requirements or redundancy;
- Significantly changes operations that affect the likelihood of undiscovered failures;
- Significantly affects the basis for successful safety function; or
- Could create "special circumstances" under which compliance with existing regulations may not produce the intended or expected level of safety, and plant operation may pose an undue risk to public health and safety.

Non-risk-informed license amendment requests judged to have the potential to significantly impact risk would be referred for a more detailed risk evaluation as part of the license amendment review.

Review Guidance and Procedures

For license amendment requests referred for a risk review, the reviewers should assess the requested changes, and the need for and effectiveness of any compensatory measures that might be warranted because of risk considerations, by evaluating the changes relative to the safety principles and integrated decisionmaking process defined in Regulatory Guide (RG) 1.174. The risk acceptance guidelines (Sections 2.2.4 and 2.2.5 of RG 1.174) describe acceptable levels of risk increase as a function of total core damage frequency (CDF) and large early release frequency (LERF) and the manner in which the acceptance guidelines should be applied in the review and decisionmaking process. Reviewers should note that the guidelines serve as a point of reference for gauging risk impact but are not legally binding requirements.

For non-risk informed license amendment requests, the preliminary assessment would be qualitative with a decision based on engineering judgment since quantitative risk information would not generally be presented in submittals that are not risk informed. If "special circumstances" are believed to exist, the reviewers will explore in more detail the underlying engineering issues contributing to the risk concern, and the potential risk significance of the license amendment request.

"Special circumstances" represent conditions or situations that would raise questions about whether there is adequate protection, and that could rebut the normal presumption of adequate protection from compliance with existing requirements. In such situations, undue risk may exist even when all regulatory requirements are satisfied. In general, these situations would not have been identified or specifically addressed in the development of the current set of regulations, and would be important enough to warrant the promulgation of a new regulation (*e.g.*, a risk-informed regulation) if such situations were encountered on a widespread basis. "Special circumstances" may include but not be limited to license amendment requests which, if approved, could:

- Substantially increase the likelihood or consequences of accidents that are risk-significant but beyond the design and licensing basis of the plant, for example: Proposed changes to steam generator (SG) allowable leak rates that meet Part 100 limits based on the design basis source term, but result in a large early release given a severe accident source term; or use of new materials for SG repairs that provide acceptable performance under normal and design basis accident conditions, but a reduced capability to maintain SG tube integrity in high temperature severe accident scenarios.
- Degrade multiple levels of defense, or cornerstones in the reactor oversight process, through plant operations or situations not explicitly considered in the development of the regulations, *e.g.*, advanced applications of digital instrumentation and controls without due consideration of defense-in-depth.
- Significantly reduce the availability/reliability of SSCs that are risk-significant but not required by regulations, *e.g.*, turbine driven AFW pumps provided in response to NUREG–0737, II.E.1.1, or hardened vents in Mark I containments that protect against containment over-pressure failures in accidents beyond the design basis.
- Involve changes for which the synergistic or cumulative effects could significantly impact risk, *e.g.*, large power uprate requests.

If upon further consideration it is believed that approval of the request would compromise the safety principles described in RG 1.174 and substantially increase risk relative to the risk acceptance guidelines contained in the RG, the reviewers should inform NRC management of the risk concerns, and the need to further evaluate the risk associated with the request. The general criteria that should be met are that: (1) The reviewer has knowledge that indicates that the risk impact associated with the requested change is not reflected by the licensing basis analysis, and (2) the reviewer has reason to believe that the magnitude of the risk increase may be sufficient to warrant denial of the request or to warrant attaching

[1] Following approval of the subject SRP changes, the staff will update the license amendment review procedures to include supplemental information on "special circumstances" and other conforming changes.

conditions to its approval of the request, if the request were evaluated in the context of the existing guidance for approval of risk-informed applications.

In such instances, the reviewers with management concurrence should ask the licensee to address the safety principles and the numerical guidelines for acceptable risk increases contained in RG 1.174 in their submittal. The reviewers may alternatively ask the licensee to submit the information needed for the NRC staff to make an independent risk assessment. If a licensee does not choose to address risk, the reviewers should not issue the requested amendment until they have assessed the risk implications sufficiently to determine that there is reasonable assurance that the public health and safety will be adequately protected if the amendment request is approved. A licensee's decision not to submit requested information could impede the staff's review and could also prevent the reviewers from reaching a finding that there is reasonable assurance of adequate protection. A licensee's failure to submit requested information could also be a basis for rejection pursuant to 10 CFR 2.108.

Evaluation Findings

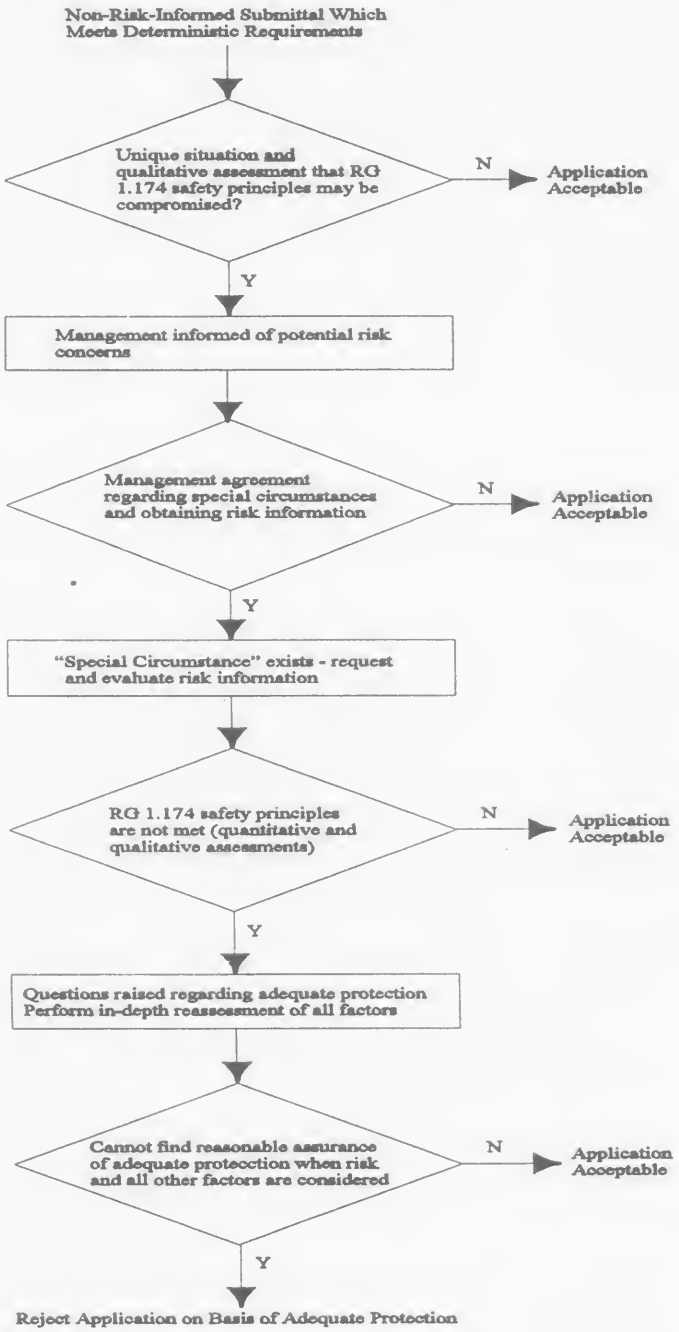
The numerical guidance for CDF and LERF provided in RG 1.174 is intended to provide a basis for finding that there is reasonable assurance of adequate protection. Therefore, situations that exceed these values or violate the other principles would constitute a trigger point at which questions are raised as to whether the proposed change provides reasonable assurance of adequate protection. A more in-depth assessment of the special circumstances, the safety principles, and the issues identified for management attention in Section 2.2.6 of RG 1.174 should then be made in order to reach a conclusion regarding the level of safety associated with the requested change.

In making this assessment, the reviewers should be mindful to clearly differentiate the concept of adequate protection from the numerical risk acceptance guidelines. The guidelines in themselves do not constitute a definition of adequate protection, but provide an appropriate set of criteria to be used in the process for evaluating adequate protection.

It is not the NRC's policy or within the NRC's technical capabilities to allow risk to increase to a point where protection is almost, but not quite, inadequate. As discussed in RG 1.174, the uncertainty in the analyses must be considered in any finding that adequate protection is achieved. The final acceptability of the proposed change should be based on a consideration of current regulatory requirements, as well as on adherence to the safety principles, and not solely on the basis of a comparison of quantitative PRA results with numerical acceptance guidelines. The authority provided by the Atomic Energy Act and current regulations requires rejection of a license amendment request if the NRC is unable to find that adequate protection is provided.

BILLING CODE 7590-01-P

Figure 1 - Process and Logic for Considering Risk in License Amendment Reviews



Dated at Rockville, Maryland, this 3rd day of April 2000.

For the Nuclear Regulatory Commission.

Timothy E. Collins,

Deputy Director, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8740 Filed 4–7–00; 8:45 am]

BILLING CODE 7590–01–C

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised and Expired Information Collection: OPM Form 1593

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for review of a revised and expired information collection. OPM Form 1593, Federal Employment Information Customer Survey, is used by the job seeking public to express their level of satisfaction with our employment information services. Participation is voluntary.

Approximately 245,000 surveys will be completed annually. We estimate it will take 1 minute to complete this form. The total annual burden is 4,083 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before June 9, 2000.

ADDRESSES: Send or deliver comments to Richard A. Whitford, Director, Washington Service Center/Employment, Information Office, Office of Personnel Management, 1900 E Street, NW, Room 2455, Washington, DC 20415.

Janice R. Lachance,

Director.

[FR Doc. 00–8839 Filed 4–7–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on March 23, 2000 (65 FR 15664). Individual authorities established or revoked under Schedules A and B and established under Schedule C between February 1, 2000, and February 29, 2000 appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during February 2000.

The following Schedule A authority was revoked:

Corporation for National and Community Service

All positions on the Staff of the Corporation for National Community Service. No new appointment may be under this authority after September 30, 1995. Effective February 30, 2000.

Schedule B

No Schedule B authorities were established or revoked during February 2000.

Schedule C

The following Schedule C authorities were established during February 2000.

Broadcasting Board of Governors

Development Officer to the Director, International Broadcasting Bureau. Effective February 4, 2000.

Confidential Assistant to the Director, Voice of America. Effective February 22, 2000.

Consumer Product Safety Commission

Special Assistant (Legal) to the Commissioner. Effective February 17, 2000.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Business Service. Effective February 8, 2000.

Staff Assistant to the Director, Legislative Liaison, Executive Secretariat and Public Affairs Staff. Effective February 9, 2000.

Senior Policy Director to the Deputy Under Secretary, Policy and Planning. Effective February 9, 2000.

Confidential Assistant to the Administrator, Rural Housing Service. Effective February 17, 2000.

Confidential Assistant Chief, Natural Resources Conservation Service. Effective February 29, 2000.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective February 29, 2000.

Department of Commerce

Special Assistant to the Under Secretary for Export Administration. Effective February 7, 2000.

Senior Advisor to the Director, Office of Sustainable Development and Intergovernmental Affairs. Effective February 14, 2000.

Special Counsel to the General Counsel. Effective February 16, 2000.

Department of Defense

Special Assistant to the Under Secretary of Defense for Industrial Affairs. Effective February 9, 2000.

Special Assistant for Counterterrorism/Crisis Management to the Assistant Secretary of Defense for Legislative Affairs. Effective February 10, 2000.

Assistant for Terrorism Consequence Management Policy and Programs to the Deputy Assistant Secretary of Defense. Effective February 10, 2000.

Department of Education

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective February 29, 2000.

Confidential Assistant to the Senior Advisor to the Secretary. Effective February 29, 2000.

Department of Energy

Senior Advisor to the Assistant Secretary for Fossil Energy. Effective February 24, 2000.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective February 25, 2000.

Senior Policy Advisor to the Secretary of Energy. Effective February 25, 2000.

Department of Health and Human Services

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective February 7, 2000.

Confidential Assistant to the Executive Secretary. Effective February 7, 2000.

Department of Housing and Urban Development

Special Assistant to the Advisor to the Deputy Secretary for Management Reform. Effective February 4, 2000.

Special Events Coordinator to the Advisor to the Deputy Secretary for Management Reform. Effective February 23, 2000.

Department of the Interior

Special Assistant to the Deputy Chief of Staff. Effective February 1, 2000.

Special Assistant to the Deputy Assistant Secretary, Policy and International Affairs. Effective February 1, 2000.

Administrative Aide to the Director of Intergovernmental Affairs. Effective February 24, 2000.

Department of Justice

Chief of Staff to the Director, Community Oriented Policing Services. Effective February 14, 2000.

Special Assistant to the Director, Community Oriented Policing Services. Effective February 18, 2000.

Staff Assistant to the Director, Office of Public Affairs. Effective February 24, 2000.

Secretary (OA) to the United States Attorney, Northern District of West Virginia. Effective February 29, 2000.

Department of Transportation

Deputy Director to the Director, Office of Congressional Affairs. Effective February 14, 2000.

Senior Advisor to the Administrator, Research and Special Programs Administration. Effective February 18, 2000.

Special Assistant to the Deputy Assistant Secretary for Aviation and International Affairs. Effective February 24, 2000.

Department of the Treasury

Attorney-Advisor to the General Counsel. Effective February 7, 2000.

Export-Import Bank of the United States

Special Assistant to the Chairman. Effective February 3, 2000.

Federal Communications Commission

Assistant Director to the Director, Office of Media Relations. Effective February 10, 2000.

Federal Emergency Management Agency

Director, Office of Public Affairs to the Director, Federal Emergency Management Agency. Effective February 17, 2000.

Federal Energy Regulatory Commission

Regulatory Policy Analyst to the Director, Office of Markets, Tariffs and Rates. Effective February 3, 2000.

Federal Maritime Commission

Special Assistant to the Commissioner. Effective February 10, 2000.

Federal Trade Commission

Confidential Assistant to the Commissioner. Effective February 14, 2000.

Office of Management and Budget

Legislative Analyst to the Associate Director for Legislative Affairs. Effective February 4, 2000.

Small Business Administration

Associate Director for Field Operations to the Associate Administrator for Field Operations. Effective February 1, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–8841 Filed 4–7–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Computer Matching Programs—OPM/Social Security Administration

AGENCY: Office of Personnel Management.

ACTION: Publication of notice of computer matching to comply with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting requirements of Public Law 100–503. The purpose of this match is for SSA to disclose benefit information to OPM to offset specific benefits.

DATES: The matching program will begin in March 2000, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. Any public comment on this matching program must be submitted within the 30 day public period, which begins on the publication date of this notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreeable between OPM and SSA after March 1, 2000, unless comments are received which will result in a contrary determination. Subsequent matches will take place on a recurring basis until one of the parties advises the other, in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to William J. Washington, Acting Assistant Director for Systems, Finance and Administration, 1900 E. Street NW., Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA intend to conduct a computer matching program. The purpose of this agreement is to establish the conditions under which SSA agrees to the disclosure of benefit information to OPM. The SSA records will be used in a matching program with OPM's records on surviving spouses who may be eligible to receive a Supplementary Annuity, disability retirees, and child survivor annuitants, under the Federal Employees' Retirement System (FERS). The benefits payable to these recipients are offset if paid while also in receipt of SSA benefits. OPM will use the SSA data to verify the earnings information provided directly to OPM by the recipients.

Office of Personnel Management.

Janice R. Lachance,

Director.

Report of Computer Matching Program Between the Office of Personnel Management and Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapter 84 of title 5, United States Code (U.S.C.), requires OPM to offset specific benefits by a percentage of benefits payable under Title II of the Social Security Act. The matching will enable OPM to compute benefits at the correct rate and determine eligibility for benefits.

C. Authority for Conducting the Match Program

Chapter 84, title 5, United States Code

D. Categories of Records and Individuals Covered by the Match

The two SSA records systems involved in the match are (1) Master Files of Social Security Number (SSN) Holders and SSN Applications, 09–60–0058 (SSA/OSR) last published on March 24, 1998 at 63 FR 14165 and (2) the Master Beneficiary Record, 09–60–0090 (SSA/OSR) last published January 6, 1995 at 60 FR 2144. The OPM records consist of annuity data from its system of records entitled OPM/Central 1–Civil Service Retirement and Insurance Records, last published on October 8, 1999 at 64 FR 54930.

E. Description of Matching Program

As frequently as daily, OPM will provide SSA with an extract from the annuity master file and from pending claims snapshot records via the File Transfer Management System (FTMS). The extracted file will contain identifying information concerning the disability annuitant, child survivor, or surviving spouse who may be eligible for an annuity under FERS. Each record will be matched to SSA's records and requested information transmitted back to OPM.

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the files transmitted are protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988". Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe. Records used during this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records. The records matched and records created by the match will be transported under appropriate safeguards. Both SSA and OPM have the right to make onsite inspection or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and the Congress. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either, and the mandatory 30-day public notice period for comments has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective on the date specified above. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552(a)(o)(2)(D).

[FR Doc. 00–8840 Filed 4–7–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF STATE

[Public Notice No. 3276]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting to Discuss Progress on International Harmonization of Chemical Hazard Classification and Labeling

SUMMARY: The United States Government, through an interagency working group, is preparing for a series of international meetings to further develop a harmonized system of chemical hazard classification and labeling, an effort referred to as the "globally harmonized system" or GHS. The Department of State is announcing a public meeting to review the progress since the last public meeting on October 6, 1999, and to outline the issues likely to arise in upcoming international meetings. The public meeting will take place on Thursday, April 27, 2000, from 10:00 am until noon in Room 311 of the U.S. Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Virginia. To facilitate entry, attendees should bring picture identification with them. No advance registration is necessary. For further information, please contact Marie Ricciardone, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington, DC 20520; telephone (202) 647–9799; fax (202) 647–5947; e-mail RicciardoneMD@state.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of State is issuing this notice to help ensure that interested organizations and individuals are aware of and knowledgeable about the effort to internationally harmonize chemical hazard classification and labeling, and have an opportunity to offer comments. Several agencies participate in the U.S. government interagency group, including: Department of State, Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, Consumer Product Safety Commission, Food and Drug Administration, Department of Commerce, Department of Agriculture, Office of the U.S. Trade Representative, and National Institute of Environmental Health Sciences. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

This meeting will provide an update on GHS activities since the previous public meeting on October 6, 1999 (see Department of State Public Notice 3121 on page 49834 of the **Federal Register** of September 14, 1999):

- Fourth Meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labor Organization (ILO) Working Group on Hazard Communication, November 1–4, 1999, Washington, DC;
- Fifteenth Consultation of the IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, November 5, 1999, Washington, DC;
- Fifth Meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Chemical Mixtures, November 8–9, 1999, Washington, DC;
- Seventeenth Session of the UN Subcommittee of Experts on the Transport of Dangerous Goods, December 6–16, 1999, Geneva, Switzerland;
- Fifth Meeting of the Expert Group on Aquatic Environmental Hazards, February 14–15, 2000, Paris, France;
- Third Meeting of the OECD Ad Hoc Expert Group on Target Organ/Systemic Toxicity of the Task Force on Harmonization of Classification and Labeling, February 16–17, 2000, Paris, France;

• Ninth Meeting of the OECD Task Force on Harmonization of Classification and Labeling, February 17–18, 2000, Paris, France.

Members of the interagency working group will also provide an overview of the U.S. preparations for upcoming international meetings:

• The Fifth Meeting of the IOMC/ILO Working Group of Hazard Communication, May 22–25, 2000, Geneva, Switzerland will consider hazard communication label elements for the public and specialized audiences, and material safety data sheets for workers;

• The Sixteenth Consultation of the IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, May 26, 2000, Geneva, Switzerland will consider GHS implementation issues;

• The Sixth Meeting of the OECD Expert Group on Classification Criteria for Chemical Mixtures, May 29–31, 2000, Paris, France will develop approaches and options for a harmonized system of classifying mixtures according to their health and environmental hazards;

• The Eighteenth Session of the UN Subcommittee on Experts on the Transport of Dangerous Goods, July 3–13, 2000, Geneva, Switzerland will consider classification criteria for flammable aerosols.

Interested organizations and individuals are invited to present their views orally and/or in writing at the public meeting. Those organizations/individuals that cannot attend the April 27, 2000 meeting, but wish to submit a written comment or remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (telephone 202–647–9266; fax 202–647–5947) with their statement and/or name, organization, address, telephone and fax numbers, and e-mail address. All written comments will be placed in the OSHA public docket (H–022H), which is open Monday through Friday, from 10 am until 4 pm, at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC; telephone 202–219–7894; fax: 202–219–5046. Interested organizations /individuals that wish to receive future notifications of GHS-related developments by email should contact Mary Frances Lowe of the U.S. Environmental Protection Agency at "lowe.maryfrances@epa.gov".

Dated: April 4, 2000.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 00–8782 Filed 4–7–00; 8:45 am]

BILLING CODE 4710–06–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Change in Meeting Time of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of change in meeting time.

SUMMARY: A notice was published in the **Federal Register** dated March 28, 2000, Volume 65, Number 60, page 16450, announcing a meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) scheduled for April 10, 2000, from 9:30 a.m. to 2:45 p.m. The meeting was to be opened to the public from 9:30 a.m. to 10:30 a.m. and again from 11 a.m. to 2:45 p.m. and closed to the public from 10:30 a.m. to 11 a.m. However, due to scheduling conflicts the meeting has been rescheduled from 9:15 a.m. to 3 p.m. The meeting will be closed to the public from 9:15 a.m. until 10 a.m. and opened to the public from 10 a.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Ladan Manteghi, Office of the United States Trade Representative, (202) 395–6120.

Pate Felts,

Assistant U.S. Trade Representative.

[FR Doc. 00–8844 Filed 4–7–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tampa International, Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 10, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Federal Aviation Administration, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Louis E. Miller, Executive Director of the Hillsborough County Aviation Authority at the following address: Tampa International Airport, Terminal Building, 3rd Level, Blue Side, Tampa, Florida 32622.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hillsborough County Aviation Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Susan A. Moore, Program Manager, Orlando Airports District Office, Federal Aviation Administration, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, extension 20. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 23, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Hillsborough County Aviation Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 7, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–04–C–00–TPA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: October 1, 2007.

Total estimated net PFC revenue: $124,728,400.

Brief description of proposed project(s): Airside E development; Departure level expansion and modernization; Purchase passenger loading bridges; Taxiway J extension; Reconstruct portion Taxiway A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at the Authority's main passenger terminal buildings, or (2) enplane less than 500 passengers per year at the Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hillsborough County Aviation Authority.

Issued in Orlando, Florida on March 23, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–7858 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Worcester and Auburn, Massachusetts

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Worcester and Auburn, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Jamie Sikora, Area Engineer, Federal Highway Administration, 55 Broadway, 10th Floor, Cambridge, MA 02142, Telephone: (617) 494–2481; or Michael E. Miller, Project Manager, Environmental Division, Massachusetts Highway Department, 10 Park Plaza, Boston, MA 02116, Telephone: (617) 973–8290.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Massachusetts Highway Department (MassHighway), will prepare an Environmental Impact Statement (EIS) on a proposal to study project alternatives potentially involving new roadway construction and major improvements to existing roads in the southwestern section of the City of Worcester and in the Town of Auburn, Massachusetts.

The project's goal is the resolution of long-standing accessibility limitations that impact local and regional travel conditions. It is intended that the project will provide improved conditions between Route 9 in the vicinity of Webster Square in Worcester and the Interstate Highway System (I–290 and I–90). It is anticipated that this improved accessibility will also benefit the on-going revitalization of the Worcester Regional Airport and the degree to which the airport can contribute to the regional airport system.

Alternatives under consideration include: (1) Taking no action (No Build); (2) the Webster Street alternative; (3) the Hope Avenue alternative; (4) the Oxford Street alternative; and (5) other feasible and prudent alternatives which may be identified during the course of the EIS. Build alternatives may include limited access highway construction on a new location, or an improvement to existing alignments.

Materials describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public forums will be held, beginning in late March 2000, and continue thru the course of the study. On January 10, 2000 a public scoping meeting was held by the Massachusetts Secretary of Environmental Affairs where comments on the scope of the study were heard, and the Secretary issued a Certificate on the Environmental Notification Form (ENF) and the scope for the Environmental Impact Report (EIR). A public meeting in April 2000 will also provide an opportunity for the public to comment on the scope for the study. Advance public notice of the time and place of this meeting will be given. A formal scoping meeting with the appropriate Federal agencies will also be held during this time frame. Upon completion of the Draft EIS, a Notice of Availability will be published in the **Federal Register** to provide information on the availability of the document for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interest parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: March 3, 2000.

Alexander Almeida,

Project Delivery Team Leader.

[FR Doc. 00–8818 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7184]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of a new information collection titled, "Voluntary Intermodal Sealift Agreement (VISA)."

DATES: Comments should be submitted on or before June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Raymond R. Barberesi, Director, Office of Sealift Support, MAR–630, Room 7307, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number: 202–366–2323 or fax 202–493–2180. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Intermodal Sealift Agreement (VISA).

Type of Request: Approval of a new information collection.

OMB Control Number: 2133–(NEW).

Form Number: MA–1020.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: This information collection is in accordance with Section 708, Defense Production Act, 1950, as amended, under which participants agree to provide commercial sealift capacity and intermodal shipping services and systems necessary to meet national defense requirements. In order to meet national defense requirements, the Government must assure the continued availability of commercial sealift resources.

Need and Use of the Information: The information collection is needed by MARAD and the Department of Defense (DOD), including representatives from the U.S. Transportation Command and its components, to evaluate and assess the applicants eligibility for participation in the VISA program. The information will be used by MARAD and the U.S. Transportation Command and its components to assure the continued availability of commercial sealift resources to meet the DOD's military requirements.

Description of Respondents: Operators of qualified dry cargo vessels.

Annual Responses: 40 responses.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.G. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., EDT. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: April 4, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–8731 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7185]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FAIR TRADES.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 10, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7185.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-build Requirement:

(1) Name of vessel and owner for which waiver is requested: Name of vessel: FAIR TRADES Owner: Michael and Frances Plitman.

(2) Size, capacity and tonnage of vessel: According to the Applicant "FAIR TRADES is 50 feet long, and has a gross tonnage of 35 tons as calculated pursuant to 46 U.S.C. 14502, berths for 8 passengers for overnight charters, and can comfortably accommodate up to 12 passengers for day charters."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "We intend to operate FAIR TRADES on day and overnight charter trips on the Chesapeake Bay and its tributaries for up to 12 passengers. We intend to specialize in providing combination sailing/golfing trips while also offering more traditional sailing cruises. FAIR TRADES is berthed in Annapolis and most charters will operate within 50 nautical miles of the mouth of the Severn River."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1990, place of construction: France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Approval of this waiver will have minimal impact on other commercial passenger vessel operators. Most U.S. built vessels engaged in similar types of charters offer some kind of unique facilities or layout. FAIR TRADES was originally built for the charter trade in the Caribbean and has a unique, 4 cabin layout ideally suited for golfing groups. There are very few similarly constructed U.S. built vessels which is why we chose to buy this French boat. The design has been immensely popular in the islands and we believe it will be successful here. FAIR TRADES will not be competing with the large majority of coastwise operators that offer daily excursions. We have absolutely no interest in providing hourly harbor tour type services. Rates for chartering FAIR TRADES will be based on comparable market prices for similar vessels regardless of place of construction, most of which are operated in "bareboat" charter. There will be no attempt to "undercut" competitors; in fact, we are seeking to make a profit based on quality of service—not volume. Therefore, our

rates will be comparable to other high end charters. There are many foreign-built and U.S.-built boats, including French-built BENETEAUs, that operate legally in the Bareboat trade. It is these types of vessels with which we will really compete and their owners are not truly in the commercial service—they are individuals looking to offset the high costs of boat ownership."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Any impact on domestic shipbuilders should be positive. In fact, successful operations with FAIR TRADES may stimulate interest among U.S. builders to design and construct similar type vessels. Since we purchased FAIR TRADES, we have spent over $50,000 for U.S. manufactured equipment to upgrade her thereby helping the local marine industry. All repair work contracted for has been performed by U.S. yards. It should be evident that FAIR TRADES is, in fact, stimulating many related marine industries."

Dated: April 4, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–8732 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on December 13, 1999 [64 FR 69582–69583].

DATES: Comments must be submitted on or before May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marvin Levy at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–5597, 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Five State Survey of Alcohol Targets of Opportunity.

OMB Number: 2127–New.

Type of Request: New information collection.

Abstract: The prevention of alcohol-impaired driving is one of NHTSA's top priorities in reducing deaths and injuries from motor-vehicle crashes. The Partners in Progress goal is to reduce the number of alcohol related fatalities from 15,935, in 1998 to 11,000 by the year 2005. In support of this goal, five states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with substantial publicity about these programs. These states were selected because of their potential for reducing the substantial number of percentage of alcohol related fatalities occurring each year within their state.

Affected Public: Those individuals and law enforcement officials from the five states evaluated to reducing driving after drinking.

Estimated Total Annual Burden: 2,499 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on April 4, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–8730 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7002]

Notice of Receipt of Petition for Decision that Nonconforming 1976–1985 Rolls Royce Corniche Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1976–1985 Rolls Royce Corniche passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1976–1985 Rolls Royce Corniche passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 10, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1976–1985 Rolls Royce Corniche passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1976–1985 Rolls Royce Corniche passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with lap belts at both rear outboard and rear center designated seating positions.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars must be reinforced or U.S.-model bumper components must be installed to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–8742 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S.

Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes.

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on April 4, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11767–N	Ausimont USA, Inc., Thorofare, NJ	1	05/31/2000
11862–N	The BOC Group, Murray Hill, NJ	4	05/31/2000
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	05/31/2000
12106–N	Air Liquide America Corporation, Houston, TX	4	05/31/2000
12125–N	Mayo Foundation, Rochester, MN	4	05/31/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	05/31/2000
12146–N	Luxfer Gas Cylinders, Riverside, CA	1	04/28/2000
12148–N	Eastman Kodak Company, Rochester, NY	4	05/31/2000
12158–N	Hickson Corporation, Conley, GA	4	05/31/2000
12181–N	Aristech, Pittsburgh, PA	4	05/31/2000
12205–N	Independent Chemical Corp., Glendale, NY	4	04/28/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	04/28/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	04/28/2000
12280–N	Combined Tactical Systems, Inc., Jamestown, PA	4	04/28/2000
12281–N	ABS Group, Inc., Houston, TX	4	04/28/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	04/28/2000
12992–N	Westway Trading Corporation, New Orleans, LA	4	04/28/2000
12293–N	Intercontinental Packaging Corp., Tuckahoe, NY	4	04/28/2000
12297–N	Applied Companies, Valencia, CA	1	05/31/2000
12301–N	Niklor Chemical Co., Long Beach, CA	4	04/28/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	05/31/2000
12316–N	The Dow Chemical Co., Channahon, IL	4	04/28/2000
12325–N	Lifeline Technologies, Inc., Sharon Hill, PA	4	04/28/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	04/28/2000
12333–N	BFI, Atlanta, GA	4	04/28/2000
12338–N	Aeronex, Inc., San Diego, CA	4	04/28/2000
12339–N	BOC Gases, Murray Hill, NJ	4	04/28/2000
12341–N	Space Systems/Loral, Palo Alto, CA	4	06/30/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	04/28/2000
12350–N	BAC Technologies, Ltd., West Liberty, OH	4	04/28/2000
12351–N	Nalco/Exxon Energy Chemicals, L.P., Freeport, TX	4	05/31/2000
12353–N	Monson Companies, South Portland, ME	4	05/31/2000
12355–N	Union Tank Car Company, East Chicago, IN	4	05/31/2000
12356–N	Memorial Healthcare System, Pembroke Pines, FL	4	05/31/2000
12359–N	Reilly Industries, Inc., Indianapolis, IN	4	04/28/2000
6611–M	Gardner Cryogenics, Lehigh Valley, PA	1	05/31/2000
6765–M	Gardner Cryogenics, Lehigh Valley, PA	1	05/31/2000
7277–M	Structural Composites Industries, Pomona, CA	4	05/31/2000
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	05/31/2000
8556–M	Gardner Cryogenics, Lehigh Valley, PA	4	04/28/2000
9266–M	ERMEWA, Inc., Houston, TX	4	05/31/2000
10480–M	Gardner Cryogenics, Lehigh Valley, PA	1	05/31/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	05/31/2000
10672–M	Burlington Packaging, Inc., Brooklyn, NY	4	05/31/2000
10821–M	BFI Waste Systems of North America, Inc., Atlanta, GA	4	05/31/2000
10921–M	The Procter & Gamble Company, Cincinnati, OH	1	05/31/2000
10962–M	International Compliance Center, Mississauga ON L4Z 1X8, CA	4	05/31/2000
10977–M	Federal Industries Corporation, Plymouth, MN	4	05/31/2000
10987–M	Air Products and Chemicals, Inc., Allentown, PA	4	04/28/2000
11186–M	Cryenco, Inc., Denver, CO	4	05/31/2000
11248–M	HAZMATPAC, Houston, TX	4	05/31/2000
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	05/31/2000
11406–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	04/28/2000
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	05/31/2000
11749–M	Union Tank Car Company, East Chicago, IN	4	05/31/2000
11769–M	Great Western Chemical Company, Portland, OR	4	05/31/2000
11769–M	Great Western Chemical Company, Portland, OR	4	04/28/2000
11769–M	Hydrite Chemical Company, Brookfield, WI	4	05/31/2000
11798–M	Air Products and Chemicals, Inc., Allentown, PA	1, 4	05/31/2000

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11903–M	Comptank Corporation, Bothwell, Ontario, CA	4	04/28/2000
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	04/28/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	04/28/2000

[FR Doc. 00–8729 Filed 4–7–00; 8:45 am]
BILLING CODE 4910–60–M

TRADE DEFICIT REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U. S. Trade Deficit Review Commission.

Name: Murray Weidenbaum, Chairman of the U.S. Trade Deficit Review Commission

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U. S. trade deficit. The purpose of this public hearing is to take testimony on (1) agricultural trade: its importance, opportunities, obstacles, and challenges for U.S. farmers and rural communities as well as its impacts; (2) U.S.-Canada trade issues; and (3) international trade for small businesses in the United States: its importance, opportunities, challenges and impacts. Witnesses will also be invited to propose policy changes.

Confirmed witnesses include Governor Mel Carnahan of Missouri and Governor Bill Graves of Kansas; Dr. Thomas M. Hoenig, President, and Dr. Alan Barkema, Vice President, of the Federal Reserve Bank of Kansas City; Leland Swenson, President of the National Farmers Union; Daniel Amstutz, President of the North American Export Grain Association; Roger Johnson, North Dakota Agriculture Commissioner; Professors Neil Harl and Dermot Hayes, Iowa State University; Professor Susan Feinberg, University of Maryland; and Professor Peter K. Kresl, Bucknell University.

Background

In fulfilling its statutory mission, the Commission is holding field hearings to collect input from industry and labor leaders, government officials, leading researchers, other informed witnesses, and the public. The Commission has already held hearings in Washington, D.C., Pittsburgh, San Francisco, Seattle, Dallas, and New York on various aspects of our trade relations. Information on these hearings can be obtained from the USTDRC website *www.ustdrc.gov*.

Professor Murray Wiedenbaum of Washington University, St. Louis, who is a former Chairman of the President's Council of Economic Advisors, chairs the Commission. The Vice Chairman is Professor Dimitri Papadimitriou, President of The Jerome Levy Economics Institute at Bard College, Annandale-on-Hudson, New York. The Kansas City, MO, hearing will be chaired by Commissioner Wayne D. Angell, Chief Economist and Senior Managing Director of Bear Stearns & Co., Inc., who is a former Vice Chairman of the Board of Governors at the Federal Reserve.

Purpose of Hearing

In light of the ongoing massive trade and current account deficits incurred by the United States, progress in improving U.S. exporters' access to foreign markets is critically important. The failure of the WTO Ministerial in Seattle to come up with a negotiating agenda for a new round of multilateral trade negotiations highlights how the consensus on reducing barriers to trade has fractured. Rebuilding the consensus on trade issues in the United States is of critical importance in addressing the large U. S. trade deficits. The work of the Commission, by analyzing the U.S. trade deficits in a non-partisan manner with the input of leading experts, will provide a reasoned and informed answer on how to respond to the trade deficit and its consequences. The findings of the Commission, while not binding, will likely form the basis for Congressional consensus building on trade policy as we enter the new century.

There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATES AND TIMES: Wednesday, April 26, 2000, 9:00 AM–5:30 PM Central Standard Time inclusive.

ADDRESSES: The hearing will be held at the Federal Reserve Bank of Kansas City, located at 925 Grand Boulevard, Kansas City, Missouri 64198. Public seating is limited to approximately 50 seats and will be on a first come first served basis. Commercial public parking lots are available within the vicinity of the Bank.

SECURITY REQUIREMENTS: The Federal Reserve Bank of Kansas City is a secure facility and everyone must abide by security procedures. Everyone entering the facility is required to have a picture identification.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contact Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1409; or via e-mail at: *kmichels@sso.org*.

PROVIDING ORAL OR WRITTEN COMMENTS AT THE KANSAS CITY HEARING: Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by April 17, 2000. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing.

Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Public Law No.105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the sixth in a series of field hearings to be conducted. The schedule of hearings is available at the US Trade Deficit Review Commission website <www.ustdrc.gov>.

For the U.S. Trade Deficit Review Commission.

Dated at Washington, DC, April 4, 2000.

Allan I. Mendelowitz,

Executive Director, Trade Deficit Review Commission.

[FR Doc. 00–8743 Filed 4–7–00; 8:45 am]

BILLING CODE 6820–46–P

Federal Register

Monday,
April 10, 2000

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6570–5]

RIN 2040–AD18

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing the Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule (LT1FBR). The purposes of the LT1FBR are to: Improve control of microbial pathogens in drinking water, including *Cryptosporidium*, for public water systems (PWSs) serving fewer than 10,000 people; prevent increases in microbial risk while PWSs serving fewer than 10,000 people control for disinfection byproducts, and; require certain PWSs to institute changes to the return of recycle flows within the treatment process to reduce the effects of recycle on compromising microbial control. Today's proposal addresses two statutory requirements of the 1996 Safe Drinking Water Act (SDWA) Amendments. First, it addresses the statutory requirement to establish a Long Term Final Enhanced Surface Water Treatment Rule (LTESWTR) for PWSs that serve under 10,000 people. Second, it addresses the statutory requirement to promulgate a regulation which "governs" the recycle of filter backwash within the treatment process of public utilities.

Today's proposed LT1FBR contains 5 key provisions for surface water and ground water under the direct influence of surface water (GWUDI) systems serving fewer than 10,000 people: A treatment technique requiring a 2-log (99 percent) *Cryptosporidium* removal requirement; strengthened combined filter effluent turbidity performance standards and new individual filter turbidity provisions; disinfection benchmark provisions to assure continued microbial protection is provided while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of GWUDI and in the watershed control requirements for unfiltered public water systems; and requirements for covers on new finished water reservoirs.

Today's proposed LT1FBR contains three key provisions for all conventional and direct filtration systems which recycle and use surface water or GWUDI: A provision requiring recycle flows to be introduced prior to the point of primary coagulant addition; a requirement for systems meeting criteria to perform a one-time self assessment of their recycle practice and consult with their primacy agency to address and correct high risk recycle operations; and a requirement for direct filtration systems to provide information to the State on their current recycle practice.

The Agency believes implementing the provisions contained in today's proposal will improve public health protection in two fundamental ways. First, the provisions will reduce the level of *Cryptosporidium* in filtered finished drinking water supplies through improvements in filtration and recycle practice resulting in a reduced likelihood of outbreaks of cryptosporidiosis. Second, the filtration provisions are expected to increase the level of protection from exposure to other pathogens (*i.e. Giardia* or other waterborne bacterial or viral pathogens). It is also important to note that while today's proposed rule contains new provisions which in some cases strengthen or modify requirements of the 1989 Surface Water Treatment Rule, each public water system must continue to comply with the current rules while new microbial and disinfectants/disinfection byproducts rules are being developed. In conjunction with the Maximum Contaminant Level Goal (MCLG) established in the Interim Enhanced Surface Water Treatment Rule, the Agency developed a treatment technique in lieu of a Maximum Contaminant Level (MCL) for *Cryptosporidium* because it is not economically and technologically feasible to accurately ascertain the level of *Cryptosporidium* using current analytical methods.

DATES: The Agency requests comments on today's proposal. Comments must be received or post-marked by midnight June 9, 2000. Comments received after this date may not be considered in decision making on the proposed rule.

ADDRESSES: Send written comments on today's proposed rule to the LT1FBR Comment Clerk: Water Docket MC 410, W–99–10, Environmental Protection Agency 401 M Street, S.W., Washington, DC 20460. Please submit an original and three copies of comments and enclosures (including references).

Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. For additional information on submitting electronic comments see Supplementary Information Section.

Public comments on today's proposal, other major supporting documents, and a copy of the index to the public docket for this rulemaking are available for review at EPA's Office of Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460 from 9:00 a.m. to 4:00 p.m., Eastern Time, Monday through Friday, excluding legal holidays. For access to docket materials or to schedule an appointment please call (202) 260–3027.

FOR FURTHER INFORMATION CONTACT: Technical inquiries on the rule should be directed to Jeffery Robichaud at 401 M Street, SW., MC4607, Washington, DC 20460 or (202) 260–2568. For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: Entities potentially regulated by the LT1FBR are public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI). The recycle control provisions are applicable to all PWSs using surface water or GWUDI, regardless of the population served. All other provisions of the LT1FBR are only applicable to PWSs serving under 10,000 people. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Public Water Systems that use surface water or ground water under the direct influence of surface water.
State, Local, Tribal or Federal Governments.	Public Water Systems that use surface water or ground water under the direct influence of surface water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the LT1FBR. This table lists the types of entities that EPA is now aware could potentially be regulated by this rule. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of public water system in § 141.3 of the Code of Federal Regulations and applicability criteria in §§ 141.76 and 141.501 of today's proposal. If you have questions regarding the applicability of the LT1FBR to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

Submitting Comments

Send an original and three copies of your comments and enclosures (including references) to W–99–10 Comment Clerk, Water Docket (MC4101), USEPA, 401 M Street, SW., Washington, D.C. 20460. Comments must be received or post-marked by midnight June 9, 2000. Note that the Agency is not soliciting comment on, nor will it respond to, comments on previously published regulatory language that is included in this document to ease the reader's understanding of the proposed language.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the proposed rule or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Electronic Comments

Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–99–10. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket number W–99–10, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M Street, SW., Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

List of Abbreviations Used in This Document

ASCE American Society of Civil Engineers
ASDWA Association of State Drinking Water Administrators
ASTM American Society for Testing Materials
AWWA American Water Works Association
AWWARF American Water Works Association Research Foundation
°C Degrees Centigrade
CCP Composite Correction Program
CDC Centers for Disease Control
CFE Combined Filter Effluent
CFR Code of Federal Regulations
COI Cost of Illness
CPE Comprehensive Performance Evaluation
CT The Residual Concentration of Disinfectant (mg/L) Multiplied by the Contact Time (in minutes)
CTA Comprehensive Technical Assistance
CWSS Community Water System Survey
DBPs Disinfection Byproducts
DBPR Disinfectants/Disinfection Byproducts Rule
ESWTR Enhanced Surface Water Treatment Rule
FACA Federal Advisory Committee Act
GAC Granular Activated Carbon
GAO Government Accounting Office
GWUDI Ground Water Under the Direct Influence of Surface Water
HAA5 Haloacetic acids (Monochloroacetic, Dichloroacetic, Trichloroacetic, Monobromoacetic and Dibromoacetic Acids)
HPC Heterotropic Plate Count
hrs Hours
ICR Information Collection Rule
IESWTR Interim Enhanced Surface Water Treatment Rule
IFA Immunofluorescence Assay
Log Inactivation Logarithm of (N_o/N_T)
Log Logarithm (common, base 10)
LTESWTR Long Term Enhanced Surface Water Treatment Rule
LT1FBR Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule
MCL Maximum Contaminant Level
MCLG Maximum Contaminant Level Goal
MGD Million Gallons per Day
M-DBP Microbial and Disinfectants/Disinfection Byproducts
MPA Microscopic Particulate Analysis
NODA Notice of Data Availability
NPDWR National Primary Drinking Water Regulation
N_T The Concentration of Surviving Microorganisms at Time T
NTTAA National Technology Transfer and Advancement Act
NTU Nephelometric Turbidity Unit
PE Performance Evaluation
PWS Public Water System
Reg. Neg. Regulatory Negotiation
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
RSD Relative Standard Deviation
SAB Science Advisory Board
SDWA Safe Drinking Water Act
SWTR Surface Water Treatment Rule
TC Total Coliforms
TCR Total Coliform Rule
TTHM Total Trihalomethanes
TWG Technical Work Group
TWS Transient Non-Community Water System
UMRA Unfunded Mandates Reform Act
URCIS Unregulated Contaminant Information System
x log removal Reduction to $1/10^x$ of original concentration

Table of Contents

I. Introduction and Background

A. Statutory Requirements and Legal Authority

The Safe Drinking Water Act (SDWA or the Act), as amended in 1986, requires U.S. Environmental Protection Agency (EPA) to publish a maximum contaminant level goal (MCLG) for each contaminant which, in the judgement of the EPA Administrator, "may have any adverse effect on the health of persons and which is known or anticipated to occur in public water systems' (Section 1412(b)(3)(A)). MCLGs are to be set at a level at which "no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety" (Section 1412(b)(4)).

The Act was again amended in August 1996, resulting in the renumbering and augmentation of certain sections with additional statutory language. New sections were added establishing new drinking water requirements. These modifications are outlined below.

The Act requires EPA to publish a National Primary Drinking Water Regulation (NPDWR) that specifies

either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1) and 1412(a)(3)) at the same time it publishes an MCLG, which is a non-enforceable health goal. EPA is authorized to promulgate a NPDWR "that requires the use of a treatment technique in lieu of establishing an MCL," if the Agency finds that "it is not economically or technologically feasible to ascertain the level of the contaminant." EPA's general authority to set MCLGs and NPDWRs applies to contaminants that may "have an adverse effect on the health of persons," that are "known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern," and for which "in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems" (SDWA Section 1412(b)(1)(A)).

The 1996 amendments, also require EPA, when proposing a NPDWR that includes an MCL or treatment technique, to publish and seek public comment on an analysis of health risk reduction and cost impacts. EPA is required to take into consideration the effects of contaminants upon sensitive subpopulations (i.e., infants, children, pregnant women, the elderly, and individuals with a history of serious illness), and other relevant factors (Section 1412(b)(3)(C)).

The amendments established a number of regulatory deadlines, including schedules for a Stage 1 Disinfection Byproduct Rule (DBPR), an Interim Enhanced Surface Water Treatment Rule (IESWTR), a Long Term Final Enhanced Surface Water Treatment Rule (LTESWTR), and a Stage 2 DBPR (Section 1412(b)(2)(C)). To provide additional time for systems serving fewer than 10,000 people to comply with the IESWTR provisions and also ensure these systems implement Stage 1 DBPR and the IESWTR provisions simultaneously, the Agency split the IESWTR into two rules: the IESWR and the LT1ESWTR. The Act as amended also requires EPA to promulgate regulations to "govern" the recycle of filter backwash within the treatment process of public utilities (Section 1412(b)(14)).

Under 1412(b)(4)(E)(ii), EPA must develop a Small System Technology List for the LT1FBR. The filtration technologies listed in the Small System Compliance Technology List for the Surface Water Treatment Rule and Total Coliform Rule (EPA–815–R–98–001, September 1998) are also the technologies which would achieve compliance with the provisions of the LT1FBR. EPA will develop a separate list for the LT1FBR as new technologies become available.

Although the Act permits small system variances for compliance with a requirement of a national primary drinking water regulation which specifies a maximum contaminant level or treatment technique, Section 1415(e)(6)(B) of SDWA, excludes variances for any national primary drinking water regulation for a microbial contaminant or an indicator or treatment technique for a microbial contaminant. LT1FBR requires treatment techniques to control *Cryptosporidium* (a microbial contaminant), and as such systems governed by the LT1FBR are ineligible for variances.

Finally, as part of the 1996 SDWA Amendments, recordkeeping requirements were modified to apply to every person who is subject to a requirement of this title or who is a grantee (Section 1445(a)(1)(A)). Such persons are required to establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation.

B. Existing Regulations and Stakeholder Involvement

1. 1979 Total Trihalomethane Rule

In November 1979 (44 FR 68624) (EPA, 1979) EPA set an interim MCL for total trihalomethanes (TTHM—the sum of chloroform, bromoform, bromodichloromethane, dibromochloromethane) of 0.10 mg/l as an annual average. Compliance is defined on the basis of a running annual average of quarterly averages for four samples taken in the distribution system. The value for each sample is the sum of the measured concentrations of chloroform, bromodichloromethane, dibromochloromethane and bromoform.

The interim TTHM standard applies to community water systems using surface water and/or ground water serving at least 10,000 people that add a disinfectant to the drinking water during any part of the treatment process. At their discretion, States may extend coverage to smaller PWSs; however, most States have not exercised this option. The Stage 1 DBPR (as discussed later) contains updated TTHM requirements.

2. Total Coliform Rule

The Total Coliform Rule (TCR) (54 FR 27544, June 29, 1989) (EPA, 1989a) applies to all public water systems. The TCR sets compliance with the Maximum Contaminant Level (MCL) for total coliforms (TC) as follows. For systems that collect 40 or more samples per month, no more than 5 percent of the samples may be TC-positive; for those that collect fewer than 40 samples, no more than one sample may be TC-positive. If a system has a TC-positive sample, it must test that sample for the presence of fecal coliforms or *E. coli*. The system must also collect a set of repeat samples, and analyze for TC (and fecal coliform or *E. coli* within 24 hours of the first TC-positive sample).

In addition, any fecal coliform-positive repeat sample, *E-coli*.-positive repeat sample, or any total-coliform-positive repeat sample following a fecal coliform-positive or *E-coli*-positive routine sample constitutes an acute violation of the MCL for total coliforms. If a system exceeds the MCL, it must notify the public using mandatory language developed by the EPA. The required monitoring frequency for a system depends on the number of people served and ranges from 480 samples per month for the largest systems to once annually for the smallest systems. All systems must have a written plan identifying where samples are to be collected.

The TCR also requires an on-site inspection (referred to as a sanitary survey) every 5 years for each system that collects fewer than five samples per month. This requirement is extended to every 10 years for non-community systems using only protected and disinfected ground water.

3. Surface Water Treatment Rule

Under the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989) (EPA, 1989b), EPA set maximum contaminant level goals of zero for *Giardia lamblia*, viruses, and *Legionella* and promulgated regulatory requirements for all PWSs using surface water sources or ground water sources under the direct influence of surface water. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to *Giardia* lamblia, viruses, and *Legionella*, as well as many other pathogenic organisms. Briefly, those requirements include (1) Requirements for maintenance of a disinfectant residual in the distribution system; (2) removal and/or inactivation of 3 log (99.9 percent) for *Giardia* and 4 log (99.99 percent) for viruses; (3) combined filter effluent turbidity performance standard of 5 nephelometric turbidity units (NTU) as a maximum and 0.5 NTU

at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (4) watershed protection and other requirements for unfiltered systems. Systems seeking to avoid filtration were required to meet avoidance criteria and obtain avoidance determination by December 30, 1991, otherwise filtration must have been provided by June 29, 1993. For systems properly avoiding filtration, later failures to meet avoidance criteria triggered a requirement that filtration be provided within 18 months.

4. Information Collection Rule

The Information Collection Rule (ICR), which was promulgated on May 14, 1996 (61 FR 24354) (EPA, 1996) applied to large public water systems serving populations of 100,000 or more. A more limited set of ICR requirements pertain to ground water systems serving between 50,000 and 100,000 people. About 300 PWSs operating 500 treatment plants were involved with the extensive ICR data collection. Under the ICR, these PWSs monitored for water quality factors affecting disinfection byproduct (DBP) formation and DBPs within the treatment plant and in the distribution system on a monthly basis for 18 months. In addition, PWSs were required to provide treatment train schematics, operating data and source water occurrence data for bacteria, viruses, and protozoa. Finally, a subset of PWSs performed treatment studies, using either granular activated carbon (GAC) or membrane processes, to evaluate DBP precursor removal and control of DBPs. Monitoring for treatment study applicability began in September 1996. The remaining occurrence monitoring began in July 1997 and concluded in December 1998.

The purpose of the ICR was to collect occurrence and treatment information to help evaluate the need for possible changes to the current microbial requirements and existing microbial treatment practices, and to help evaluate the need for future regulation of disinfectants and disinfection byproducts (DBPs). The ICR will provide EPA with additional information on the national occurrence in drinking water of (1) chemical byproducts that form when disinfectants used for microbial control react with naturally occurring compounds already present in source water; and (2) disease-causing microorganisms, including *Cryptosporidium*, *Giardia*, and viruses. Analysis of ICR data is not expected to be completed in the time frame necessary for inclusion in the LT1FBR, however if the data is available and has been quality controlled and peer reviewed during the necessary time frame, EPA will consider the datat as it refines its analysis for the final rule.

The ICR also required PWSs to provide engineering data on how they currently control for such contaminants. The ICR monthly sampling data will also provide information on the quality of the recycle waters via monthly monitoring (for 18 months) of pH, alkalinity, turbidity, temperature, calcium and total hardness, TOC, UV_{254}, bromide, ammonia, and disinfectant residual (if disinfectant is used). This data will provide some indication of the treatability of the water, the extent to which contaminant concentration effects may occur, and the potential for contribution to DBP formation. However, sampling to determine the occurrence of pathogens in recycle waters was not performed.

5. Interim Enhanced Surface Water Treatment Rule

Public water systems serving 10,000 or more people that use surface water or ground water under the direct influence of surface water (GWUDI) are required to comply with the IESWTR (63 FR 69477, December 16, 1998) (EPA, 1998a) by December of 2001. The purposes of the IESWTR are to improve control of microbial pathogens, specifically the protozoan *Cryptosporidium*, and address risk trade-offs between pathogens and disinfection byproducts. Key provisions established by the rule include: a Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium*; 2-log (99 percent) *Cryptosporidium* removal requirements for systems that filter; strengthened combined filter effluent turbidity performance standards of 1.0 NTU as a maximum and 0.3 NTU at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration; requirements for individual filter turbidity monitoring; disinfection benchmark provisions to assess the level of microbial protection provided as facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of GWUDI and in the watershed control requirements for unfiltered public water systems; requirements for covers on new finished water reservoirs; and sanitary surveys for all surface water systems regardless of size.

6. Stage 1 Disinfectants and Disinfection Byproduct Rule

The Stage 1 DBPR applies to all PWSs that are community water systems (CWSs) or nontransient noncommunity water systems (NTNCWs) that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems (TNCWSs). The Stage 1 DBPR (EPA, 1998c) was published at the same time as the IESWTR (63 FR 69477, December 16, 1998) (EPA, 1998a). Surface water and GWUDI systems serving at least 10,000 persons are required to comply with the Stage 1 Disinfectants and Disinfection Byproducts Rule by December 2001. Ground water systems and surface water and GWUDI systems serving fewer than 10,000 must comply with the Stage 1 Disinfectants and Disinfection Byproducts Rule by December 2003.

The Stage 1 DBPR finalizes maximum residual disinfectant level goals (MRDLGs) for chlorine, chloramines, and chlorine dioxide; MCLGs for four trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform), two haloacetic acids (dichloroacetic acid and trichloroacetic acid), bromate, and chlorite; and NPDWRs for three disinfectants (chlorine, chloramines, and chlorine dioxide), two groups of organic disinfection byproducts TTHMs and HAA5 and two inorganic disinfection byproducts, chlorite and bromate. The NPDWRs consist of maximum residual disinfectant levels (MRDLs) or maximum contaminant levels (MCLs) or treatment techniques for these disinfectants and their byproducts. The NPDWRs also include monitoring, reporting, and public notification requirements for these compounds. The Stage 1 DBPR includes the best available technologies (BATs) upon which the MRDLs and MCLs are based. EPA believes the implementation of the Stage 1 DBPR will reduce the levels of disinfectants and disinfection byproducts in drinking water supplies. The Agency believes the rule will provide public health protection for an additional 20 million households that were not previously covered by drinking water rules for disinfection byproducts.

7. Stakeholder Involvement

EPA conducted two stakeholder meetings to solicit feedback and information from the regulated community and other concerned stakeholders on issues relating to

today's proposed rule. The first meeting was held July 22 and 23, 1998 in Lakewood, Colorado. EPA presented potential regulatory components for the LT1FBR. Breakout sessions with stakeholders were held to generate feedback on the regulatory provisions being considered and to solicit feedback on next steps for rule development and stakeholder involvement. Additionally, information was presented summarizing ongoing research and data gathering activities regarding the recycle of filter backwash. The presentations generated useful discussion and provided substantial feedback to EPA regarding technical issues, stakeholder concerns, and possible regulatory options (EPA 1999k). The second stakeholder meeting was held in Dallas, Texas on March 3 and 4, 1999. EPA presented new analyses, summaries of current research, and revised regulatory options and data collected since the July stakeholder meeting. Regional perspectives on turbidity and disinfection benchmarking components were also discussed with presentations from EPA Region VI and the Texas Natural Resources Conservation Commission. Four breakout sessions were extremely useful and generated a wide range of information, issues, and technical input from a diverse group of stakeholders (EPA 1999j).

The Agency utilized the feedback received during these two stakeholder meetings in developing today's proposed rule. EPA also mailed a draft version of the preamble for today's proposed rule to the attendees of these meetings. Several of the options which are presented today represent modifications suggested by stakeholders.

II. Public Health Risk

The purpose of this section is to discuss the health risk associated with pathogens, particularly *Cryptosporidium*, in surface waters and GWUDI. More detailed information about such pathogens and other contaminants of concern may be found in an EPA criteria document for *Giardia* (EPA 1998d), three EPA criteria documents for viruses (EPA, 1985; 1999a; 1999b), the *Cryptosporidium* and *Giardia* Occurrence Assessment for the Interim Enhanced Surface Water Treatment Rule (EPA, 1998b) and the LT1FBR Occurrence and Assessment Document (EPA 1999c). EPA requests comment on today's proposed rule, the information supporting the proposal, and the potential impact of proposed regulatory provisions on public health risk.

A. Introduction

In 1990, EPA's Science Advisory Board (SAB), an independent panel of experts established by Congress, cited drinking water contamination as one of the most important environmental risks and indicated that disease-causing microbial contaminants (i.e., bacteria, protozoa and viruses) are probably the greatest remaining health risk management challenge for drinking water suppliers (EPA/SAB, 1990). Information on the number of waterborne disease outbreaks from the U.S. Centers for Disease Control and Prevention (CDC) underscores this concern. CDC indicates that, between 1980 and 1996, 401 waterborne disease outbreaks were reported, with over 750,000 associated cases of disease. During this period, a number of agents were implicated as the cause, including protozoa, viruses and bacteria.

Waterborne disease caused by *Cryptosporidium* is of particular concern, as it is difficult to inactivate *Cryptosporidium* oocysts with standard disinfection practices (unlike pathogens such as viruses and bacteria), and there is currently no therapeutic treatment for cryptosporidiosis (unlike giardiasis). Because *Cryptosporidium* is not generally inactivated in systems using standard disinfection practices, the control of *Cryptosporidium* is dependent on physical removal processes (e.g., filtration).

The filter effluent turbidity limits specified under the SWTR were created to remove large parasite cysts such as *Giardia* and did not specifically control for smaller *Cryptosporidium* oocysts. In addition, filter backwash water recycling practices such as adding recycled water to the treatment train after primary coagulant addition may overwhelm the plant and harm efforts to control *Giardia lamblia*, *Cryptosporidium*, and emerging pathogens. Despite filtration and disinfection, *Cryptosporidium* oocysts have been found in filtered drinking water (LeChevallier, et al., 1991a; EPA, 1999c), and many of the individuals affected by waterborne disease outbreaks caused by *Cryptosporidium* were served by filtered surface water supplies (Solo-Gabriele and Neumeister, 1996). Surface water systems that filter and disinfect may still be vulnerable to *Cryptosporidium*, depending on the source water quality and treatment effectiveness. EPA believes that today's proposal, however, will ensure that drinking water treatment is operating efficiently to control *Cryptosporidium* (see Sections IV.A and IV.D) and other microbiological contaminants of concern (*e.g., Giardia*).

In order to assess the public health risk associated with consumption of surface water or GWUDI from PWSs, EPA has evaluated information and conducted analysis in four important areas discussed in the following paragraphs. These areas are: (1) The health effects of cryptosporidiosis; (2) cryptosporidiosis waterborne disease outbreak data; (3) *Cryptosporidium* occurrence data from raw surface water, raw GWUDI, finished water, and recycle stream studies; and (4) an assessment of the current baseline surface water treatment required by existing regulations.

B. Health Effects of Cryptosporidiosis and Sources and Transmission of Cryptosporidium

Waterborne diseases are usually acute (*i.e.*, sudden onset and typically lasting a short time in healthy people), and most waterborne pathogens cause gastrointestinal illness, with diarrhea, abdominal discomfort, nausea, vomiting, and/or other symptoms. Some waterborne pathogens cause or are associated with more serious disorders such as hepatitis, gastric cancer, peptic ulcers, myocarditis, swollen lymph glands, meningitis, encephalitis, and many other diseases. Cryptosporidiosis is a protozoal infection that usually causes 7–14 days of diarrhea with possibly a low-grade fever, nausea, and abdominal cramps in healthy individuals (Juranek, 1995). Unlike giardiasis for which effective antibiotic therapy is available, an antibiotic treatment for cryptosporidiosis does not exist (Framm and Soave, 1997).

There are several species of *Cryptosporidium* which have been identified, including *C. baileyi* and *C. meleagridis* (bird host); *C. muris* (mouse host); *C. nasorum* (fish host), *C. parvum* (mammalian host), and *C. serpentis* (snake host). *Cryptosporidium* parvum was first recognized as a human pathogen in 1976 (Juranek, 1995). Recently, both the human and cattle types of *C. parvum* have been found in healthy individuals, and these types, *C. felis*, and a dog type have been found in immunocompromised individuals (Pieniazek et al., 1999). Transmission of cryptosporidiosis often occurs through the ingestion of infective *Cryptosporidium* oocysts from feces-contaminated food or water, but may also result from direct or indirect contact with infected persons or mammals (Casemore, 1990; Cordell and Addiss, 1994). Dupont, et. al., 1995, found through a human feeding study that a low dose of *C. parvum* is

sufficient to cause infection in healthy adults (Dupont et. al., 1995). Animal agriculture as a nonpoint source of *C. parvum* has been implicated as the source of contamination for the 1993 outbreak in Milwaukee, Wisconsin, the largest outbreak of waterborne disease in the history of the United States (Walker et al., 1998). Other sources of *C. parvum* include discharges from municipal wastewater treatment facilities and drainage from slaughterhouses. In addition, rainfall appears to increase the concentration of *Cryptosporidium* in surface water, documented in a study by Atherholt, et al. (1998).

There is evidence that an immune response to *Cryptosporidium* exists, but the degree and duration of this immunity is not well characterized (Fayer and Ungar, 1986). Recent work conducted by Chappell, *et al.* (1999) indicates that individuals with evidence of prior exposure to *Cryptosporidium parvum* have demonstrated immunity to low doses of oocysts (approximately 500 oocysts). The investigators found the 50 percent infectious dose for previously exposed individuals (possessing a pre-existing blood serum antibody) to be 1,880 oocysts compared to 132 oocysts for individuals without prior exposure, and individuals with prior exposure who became infected shed fewer oocysts. Because of this type of immune response, symptomatic infection in communities exposed to chronic low levels of oocysts will primarily be observed in newcomers (*e.g.*, visitors, young children) (Frost *et al.*, 1997; Okhuysen *et al.*, 1998).

Sensitive populations are more likely to become infected and ill, and gastrointestinal illness among this population may be chronic. These sensitive populations include children, especially the very young; the elderly; pregnant women; and the immunocompromised (Gerba *et al.*, 1996; Fayer and Ungar, 1986; EPA 1998e). This sensitive segment represents almost 20 percent of the population in the U.S. (Gerba *et al.*, 1996). EPA is particularly concerned about the exposure of severely immunocompromised persons to *Cryptosporidium* in drinking water, because the severity and duration of illness is often greater in immunocompromised persons than in healthy individuals, and it may be fatal among this population. For instance, a follow-up study of the 1993 Milwaukee, Wisconsin, waterborne disease outbreak reported that at least 50 *Cryptosporidium*-associated deaths occurred among the severely immunocompromised (Hoxie *et al.*, 1997).

Cases of illness from cryptosporidiosis were rarely reported until 1982, when the disease became prevalent due to the AIDS epidemic (Current, 1983). As laboratory diagnostic techniques improved during subsequent years, outbreaks among immunocompetent persons were recognized as well. Over the last several years there have been a number of documented waterborne cryptosporidiosis outbreaks in the U.S., United Kingdom, Canada and other countries (Rose, 1997, Craun *et al.*, 1998).

C. Waterborne Disease Outbreaks in the United States

The occurrence of outbreaks of waterborne gastrointestinal infections, including cryptosporidiosis, may be much greater than suggested by reported surveillance data (Craun and Calderon 1996). The CDC–EPA, and the Council of State and Territorial Epidemiologists have maintained a collaborative surveillance program for collection and periodic reporting of data on waterborne disease outbreaks since 1971. The CDC database and biennial CDC-EPA surveillance summaries include data reported voluntarily by the States on the incidence and prevalence of waterborne illnesses. However, the following information demonstrates why the reported surveillance data may under-report actual outbreaks.

The U.S. National Research Council strongly suggests that the number of identified and reported outbreaks in the CDC database (both for surface and ground waters) represents a small percentage of actual waterborne disease outbreaks National Research Council, 1997; Bennett *et al.*, 1987). In practice, most waterborne outbreaks in community water systems are not recognized until a sizable proportion of the population is ill (Perz *et al.*)

Healthy adults with cryptosporidiosis may not suffer severe symptoms from the disease; therefore, infected individuals may not seek medical assistance, and their cases are subsequently not reported. Even if infected individuals consult a physician, *Cryptosporidium* may not be identified by routine diagnostic tests for gastroenteritis and, therefore, tends to be under-reported in the general population (Juranek 1995). Such obstacles to outbreak reporting indicate that the incidence of disease and outbreaks of cryptosporidiosis may be much higher than officially reported by the CDC.

The CDC database is based upon responses to a voluntary and confidential survey that is completed by State and local public health officials. CDC defines a waterborne disease outbreak as occurring when at least two persons experience a similar illness after ingesting water (Kramer *et al.*, 1996). Cryptosporidiosis water system outbreak data from the CDC database appear in Table II.1 and Table II.2.

Table II.1 illustrates the reported number of waterborne disease outbreaks in U.S. community, noncommunity, and individual drinking water systems between 1971 and 1996. According to the CDC–EPA database, a total of 652 outbreaks and 572,829 cases of illnesses were reported between 1971 and 1996 (see Table II–1). The total number of outbreaks reported includes outbreaks resulting from protozoan contamination, virus contamination, bacterial contamination, chemical contamination, and unknown factors.

TABLE II.1.—COMPARISON OF OUTBREAKS AND OUTBREAK-RELATED ILLNESSES FROM GROUND WATER AND SURFACE WATER FOR THE PERIOD 1971–1996 [1]

Water source	Total outbreaks [2]	Cases of [2] illnesses	Outbreaks in CWSs	Outbreaks in NCWSs
Ground	371 (57%)	90,815 (16%).	113	258
Surface	223 (34%)	471,375 (82%).	148	43
Other	58 (9%)	10,639 (2%).	30	19

TABLE II.1.—COMPARISON OF OUTBREAKS AND OUTBREAK-RELATED ILLNESSES FROM GROUND WATER AND SURFACE WATER FOR THE PERIOD 1971–1996 [1]—Continued

Water source	Total outbreaks [2]	Cases of [2] illnesses	Outbreaks in CWSs	Outbreaks in NCWSs
All Systems [3]	652 (100%).	572,829 (100%).	291	320

[1] Craun and Calderon, 1994, CDC, 1998.
[2] Includes outbreaks in CWSs + NCWSs + Private wells.

Epidemiological investigations of outbreaks in populations served by filtered systems have shown that treatment deficiencies have resulted in the plants' failure to remove contamination from the water. Sometimes operational deficiencies have been discovered only during post-outbreak investigations. Rose (1997) identified the following types of environmental and operating conditions commonly present in filtered surface water systems at the time cryptosporidiosis outbreaks have occurred:

- Improperly-installed, -operated, -maintained, or -interpreted monitoring
- Equipment (*e.g.*, turbidimeters);
- Inoperable flocculators, chemical injectors, or filters;
- Inadequate personnel response to failures of primary monitoring equipment;
- Filter backwash recycle;
- High concentrations of oocysts in source water with no mitigative barrier;
- Flushing of oocysts (by heavy rain or snow melt) from land surfaces upstream of the plant intakes; and
- Altered or suboptimal filtration during periods of high turbidity, with turbidity spikes detected in finished water.

From 1984 to 1994, there have been 19 reported outbreaks of cryptosporidiosis in the U.S. (Craun *et al.*, 1998). As mentioned previously, C. parvum was not identified as a human pathogen until 1976. Furthermore, cryptosporidiosis outbreaks were not reported in the U.S. prior to 1984. Ten of these cryptosporidiosis outbreaks have been documented in CWSs, NCWSs, and a private water system (Moore *et al.*, 1993; Kramer *et al.*, 1996; Levy *et al.*, 1998; ; Craun *et al.*, 1998). The remaining nine outbreaks were associated with recreational activities (Craun *et al.*, 1998). The cryptosporidiosis outbreaks in U.S. drinking water systems are presented in Table II.2.

TABLE II.2.—CRYPTOSPORIDIOSIS OUTBREAKS IN U.S. DRINKING WATER SYSTEMS

Year	Location and CWS, NCWS, or private	Cases of illness (estimated)	Source water	Treatment	Suspected cause
1984	Braun Station, TX, CWS.	117 (2,000)	Well	Chlorination	Sewage-contaminated well.
1987	Carrollton, GA, CWS	(13,000)	River	Conventional filtration/chlorination; inadequate backwashing of some filters.	Treatment deficiencies.
1991	Berks County, PA, NCWS.	(551)	Well	Chlorination	Ground water under the influence of surface water.
1992	Medford (Jackson County), OR, CWS.	(3,000; combined total for Jackson County and Talent, below).	Spring/River	Chlorination/package filtration plant.	Source not identified.
1992	Talent, OR, CWS	see Medford, OR	Spring/River	Chlorination/package filtration plant.	Treatment deficiencies.
1993	Milwaukee, WI, CWS	(403,000)	Lake	Conventional filtration	High source water contamination and treatment deficiencies.
1993	Yakima, WA, private	7	Well	N/A	Ground water under the influence of surface water.
1993	Cook County, MN, NCWS.	27	Lake	Filtered, chlorinated	Possible sewage backflow from toilet/septic tank.
1994	Clark County, NV, CWS.	103; many confirmed for cryptosporidiosis were HIV positive.	River/Lake	Prechlorination, filtration and post-filtration chlorination.	Source not identified.
1994	Walla Walla, WA, CWS.	134	Well	None reported	Sewage contamination.

Craun, *et al.*, 1998.

Six of the ten cryptosporidiosis outbreaks reported in Table II.2 originated from surface water or possibly GWUDI supplied by public drinking water systems serving fewer than 10,000 persons. The first outbreak (117 known cases, 2,000 estimated cases of illness), in Braun Station, Texas in 1984, was caused by sewage leaking into a ground water well suspected to be under the influence of surface water. A second outbreak in Pennsylvania in 1991 (551 estimated cases of illness), occurred at a well also under the influence of surface water. The third and fourth (multi-episodic) outbreaks took place in Jackson County, Oregon in 1992 (3,000 estimated cases of illness) and were linked to treatment deficiencies in the Talent, OR surface water system. A fifth outbreak (27 cases of illness) in Minnesota, in 1993, occurred at a resort supplied by lake water. Finally, a sixth outbreak (134 cases of illness) in Washington in 1994, occurred due to sewage-contaminated wells at a CWS.

Three of the ten outbreaks (Carollton, GA (1987); Talent, OR (1992); Milwaukee, WI (1993)) were caused by water supplied by water treatment plants where the recycle of filter backwash was implicated as a possible cause of the outbreak. In total, the nine outbreaks which have taken place in PWSs have caused an estimated 419,939 cases of illness. These outbreaks illustrate that when treatment in place is not operating optimally or when source water is highly contaminated, *Cryptosporidium* may enter the finished drinking water and infect drinking water consumers, ultimately resulting in waterborne disease outbreaks.

D. Source Water Occurrence Studies

Cryptosporidium is common in the environment (Rose, 1988; LeChevallier et al., 1991b). Runoff from unprotected watersheds allows the transport of these microorganisms from sources of oocysts (*e.g.*, untreated wastewater, agricultural runoff) to water bodies used as intake sites for drinking water treatment plants. If treatment operates inefficiently, oocysts may enter the finished water at levels of public health concern. A particular public health challenge is that simply increasing existing disinfection levels above those most commonly practiced for standard disinfectants (i.e., chlorine or chloramines) in the U.S. today does not appear to be an effective strategy for controlling *Cryptosporidium*.

Cryptosporidium oocysts have been detected in wastewater, pristine surface water, surface water receiving agricultural runoff or contaminated by sewage, ground water under the direct influence of surface water (GWUDI), water for recreational use, and drinking water (Rose 1997, Soave 1995). Over 25 environmental surveys have reported *Cryptosporidium* source water occurrence data from surface water or GWUDI (presented in Tables II.3 and II.4), which typically involved the collection of a few water samples from a number of sampling locations having different characteristics (e.g., polluted vs. pristine; lakes or reservoirs vs. rivers). Results are presented as oocysts per 100 liters, unless otherwise marked.

Each of the studies cited in Tables II.3 and II.4 presents *Cryptosporidium* source water occurrence information, including (where possible): (1) The number of samples collected; (2) the number of samples positive; and (3) both the means and ranges for the concentrations of *Cryptosporidium* detected (where available). However, the immunofluorescence assay (IFA) method and other *Cryptosporidium* detection methods are inaccurate and lack adequate precision. Current methods do not indicate the species of *Cryptosporidium* identified or whether the oocysts detected are viable or infectious (Frey et al., 1997). The methods for detecting *Cryptosporidium* were modeled from *Giardia* methods, therefore recovery of *Cryptosporidium* is deficient primarily because *Cryptosporidium* oocysts are more difficult to capture due to their size (*Cryptosporidium* oocysts are 4–6μθ≧m; *Giardia* cysts are 8–12μθ≧m). In addition, it is a challenge to recover *Cryptosporidium* oocysts from the filters when they are concentrated, due to the adhesive character of the organisms. Other potential limitations to the protozoan detection methods include: (1) Filters used to concentrate the water samples are easily clogged by debris from the water sample; (2) interference occurs between debris or particulates that fluoresce due to cross reactivity of antibodies, which results in false positive identifications; (3) it is difficult to view the structure of oocysts on the membrane filter or slide, resulting in false negative determinations; and (4) most methods require an advanced level of skill to be performed accurately.

Despite these limitations, the occurrence information generated from these studies demonstrates that *Cryptosporidium* occurs in source waters. The source waters for which EPA has compiled information include rivers, reservoirs, lakes, streams, raw water intakes, springs, wells under the influence of surface water and infiltration galleries. The most comprehensive study in scope and national representation (LeChevallier and Norton, 1995) will be described in further detail following Tables II.3 and II.4.

TABLE II.3.—SUMMARY OF SURFACE WATER SURVEY AND MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* (percent)[a]	Range of oocyst conc. (oocysts/100L)	Mean (oocysts/100L)	Reference
Rivers	25	100	200–11,200	2510	Ongerth and Stibbs 1987.
River	6	100	200–580,000	192,000(a)	Madore et al. 1987.
Reservoirs/rivers (polluted)	6	100	19–300	99(a)	Rose 1988.
Reservoir (pristine)	6	83	1–13	2(a)	Rose 1988.
Impacted river	11	100	200–11,200[b]	2,500(g)	Rose et al. 1988a[b].
Lake	20	71	0–2200	58(g)	Rose et al. 1988b[b].
Stream	19	74	0–24,000	109(g)	Rose et al. 1988b[b]
Raw water	85	87	7–48,400	270(g) detectable.	LeChevallier et al. 1991c.
River (pristine)	59	32	NR	29(g)	Rose et al. 1991.
River (polluted)	38	74	<0.1–4,400[b]	66(g)	Rose et al. 1991.
Lake/reservoir (pristine)	34	53	NR	9.3(g)	Rose et al. 1991.
Lake/reservoir (polluted)	24	58	<0.1–380[b]	103(g)	Rose et al. 1991.

TABLE II.3.—SUMMARY OF SURFACE WATER SURVEY AND MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS—Continued

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* (percent)[a]	Range of oocyst conc. (oocysts/100L)	Mean (oocysts/100L)	Reference
River (all samples)	36	97	15–45 (pristine) 1000–6,350 (agricultural).	20 (pristine) 1,830 (agricultural).	Hansen and Ongerth 1991.
Protected drinking water supply (subset of all).	6	81	15–42	24(g)	Hansen and Ongerth 1991.
Pristine river, forestry area (subset of all).	6	100	46–697	162(g)	Hansen and Ongerth 1991.
River below rural community in forested area (subset of all).	6	100	54–360	107(g)	Hansen and Ongerth 1991.
River below dairy farming agricultural activities (subset of all).	6	100	330–6,350	1,072(g)	Hansen and Ongerth 1991.
Reservoirs	56	45	NR	NR	Consonery et al. 1992.
Streams	33	48	NR	NR	Consonery et al. 1992.
Rivers	37	51	NR	NR	Consonery et al. 1992.
Site 1—River source (high turbidity)	10	100	82–7,190	480	LeChevallier and Norton 1992.
Site 2—River source (moderate turbidity).	10	70	42–510	250	LeChevallier and Norton 1992.
Site 3—Reservoir source (low turbidity).	10	70	77–870	250	LeChevallier and Norton 1992.
Lakes	179	6	0–2,240	3.3 (median)	Archer et al. 1995.
Streams	210	6	0–2,000	7 (median)	Archer et al. 1995.
Finished water	262	13	0.29–57	33 (detectable)	LeChevallier and Norton 1995.
River/lake	262	52	6.5–6,510	240 (detectable)	LeChevallier and Norton 1995.
River/lake	147	20	30–980	200	LeChevallier et al. 1995.
River 1	15	73	0–2,230	188 (a) all samples 43 (g) detected.	States et al. 1995.
River 2	15	80	0–1,470	147 (a) all samples 61 (g) detected.	States et al. 1995.
Dairy farm stream	13	77	0–1,110	126 (a) all samples 55 (g) detected.	States et al. 1995.
Reservoir inlets	60	5	0.7–24	1.9(g) 1.6 (median).	LeChevallier et al. 1997b.
Reservoir outlets	60	12	1.2–107	6.1(g) 60 (median).	LeChevallier et al. 1997b.
River (polluted)	72	40	20–280	24(g)	LeChevallier et al. 1997a.
Source water	NR	24	1–5,390[c]	740(a)[c] 71(g)[c]	Swertfeger et al. 1997.
First flush (storm event)	20	35	0–41,700	NR	Stewart et al. 1997.
Grab (non-storm event)	21	19	0–650	NR	Stewart et al. 1997.
River 1	24	63	0–1,470	58(g)	States et al. 1997.
Stream by dairy farm	22	82	0–2,300	42(g)	States et al. 1997.
River 2 (at plant intake)	24	63	0–2,200	31(g)	States et al. 1997.
Reservoirs (unfiltered system)	NR	37–52[d]	15–43 (maxima)[d].	0.8–1.4[d]	Okun et al. 1997.
Raw water intakes	148	25	0.04–18	0.3	Consonery et al. 1997.
Raw water intakes (rural)	NR	NR	40–400	NR	Swiger et al. 1999.
Raw Water	100 plants	77	0.5–117	3(g)	McTigue, et al. 1998.
DE River, Winter	18	NR	NR	70 per 500L(g)	Atherholt, et al. 1998.
DE River, Spring	18	NR	NR	100 per 500L(g)	Atherholt, et al. 1998.
DE River, Summer	18	NR	NR	30 per 500L(g)	Atherholt, et al. 1998.
DE River, Fall	18	NR	NR	20 per 500L(g)	Atherholt, et al. 1998.

[a] Rounded to nearest percent.
[b] As cited in Lisle and Rose 1995.
[c] Based on presumptive oocyst count
[d] Combined monitoring results for multiple sites in large urban water supply.
[e] As cited in States et al. 1997.
(a) = arithmetic average.
(g) = geometric average.
NR = not reported, NA = not applicable.

TABLE II.4.—SUMMARY OF U.S. GWUDI MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* oocysts (percent)	Range of positive values (oocysts/100L)	Mean (oocysts/100L)[a]	Reference
Well	17 (6 wells) ..	(1 sample)	.085L	NA	Archer et al. 1995.
Ground water sources (all categories)	199 sites[b]	11[b]	0.002–0.45d	NR	Hancock et al. 1998.
Vertical wells (subcategory of above ground water sources).	149 sites[b]	5[b]	NR	NR	Hancock et al. 1998.
Springs (subcategory of above ground water sources).	35 sites[b]	20[b]	NR	NR	Hancock et al. 1998.
Infiltration galleries (subcategory of above ground water sources).	4 sites[b]	50[b]	NR	NR	Hancock et al. 1998.
Horizontal wells (subcategory of above ground water sources).	11 sites[b]	45[b]	NR	NR	Hancock et al. 1998.
Ground water	17	41.2	NR	NR	Rosen et al., 1996.
Ground water	18	5.6	.13	.13	Rose et al. 1991.
Springs	7 (4 springs)	57[b]	0.25–10	4	Rose et al. 1991.
Wells	5 sites	100	0.26–3	0.9	SAIC, 1997[c]
Vertical well Lemont Well #4 (Center Co., PA, Aug. 1992).	6	66.7	NR	NR	Lee, 1993.

[a] Geometric mean reported unless otherwise indicated.
[b] Data are presented as the percentage of positive sites.
[c] Data included are confirmed positive samples not reported in Hancock, 1998.
NA = not applicable.
NR = not reported.

The LeChevallier and Norton (1995) study collected the most samples and repeat samples from the largest number of surface water plants nationally. LeChevallier and Norton conducted the study to determine the level of *Cryptosporidium* in surface water supplies and plant effluent water. In total, surface water sources for 72 treatment plants in 15 States and 2 Canadian provinces were sampled. Sixty-seven surface water locations were examined. The generated data set covered a two-year monitoring period (March, 1991 to January, 1993) which was combined with a previous set of data (October, 1988 to June, 1990) collected from most of the same set of systems to create a database containing five samples (IFA) per site or more for 94 percent of the 67 systems sampled. *Cryptosporidium* oocysts were detected in 135 (51.5 percent) of the 262 raw water samples collected between March 1991 and January 1993, while 87 percent of the 85 samples were positive during the survey period from October, 1988 to June, 1990. The geometric mean of detectable *Cryptosporidium* was 240 oocysts/100L, with a range from 6.5 to 6510 oocysts/100L. When the 1991–1993 results (n=262) were combined with the previous results (n=85), *Cryptosporidium* was detected in 60.2 percent of the samples. The authors hypothesize the origin of the decrease in detections in the second round of sampling to be most probably linked to fluctuating or declining source water concentrations of *Cryptosporidium* oocysts from the first reporting period to the second.

LeChevallier and Norton (1995) also detected *Cryptosporidium* oocysts in 35 of 262 plant effluent samples (13.4 percent) analyzed between 1991 and 1993. When detected, the oocyst levels averaged 3.3 oocysts/100 L (range = 0.29 to 57 oocysts/100 L). A summary of occurrence data for all samples in filtered effluents for the years 1988 to 1993 showed that 32 of the water treatment plants (45 percent) were consistently negative for *Cryptosporidium*; 24 plants (34 percent) were positive once; and 15 plants (21 percent) were positive for *Cryptosporidium* two or more times between 1988 to 1993. Forty-four of the plants (62 percent) were positive for *Giardia*, *Cryptosporidium*, or both at one time or another (LeChevallier and Norton 1995).

The oocyst recoveries and densities reported by LeChevallier and Norton (1995) are comparable to the results of another survey of treated, untreated, protected (pristine) and feces-contaminated (polluted) water supplies (Rose et al. 1991). Six of thirty-six samples (17 percent) taken from potable drinking water were positive for *Cryptosporidium*, and concentrations in these waters ranged from .5 to 1.7 oocysts/100L. In addition, a total of 188 surface water samples were analyzed from rivers, lakes, or springs in 17 States. The majority of surface water samples were obtained from Arizona, California, and Utah (126 samples in all), with others from eastern States (28 samples), northwestern States (14 samples), southern States (13 samples), midwestern States (6 samples), and Hawaii (1 sample). Arithmetic average oocyst concentrations ranged from less than 1 to 4,400 oocysts/100 L, depending on the type of water analyzed. *Cryptosporidium* oocysts were found in 55 percent of the surface water samples at an average concentration of 43 oocysts/100 L.

The LeChevallier and Norton (1995) study collected the most samples and repeat samples from the most surface water plants on a national level. Therefore, the data from this study were analyzed by EPA (EPA, 1998n) to generate a distribution of source water occurrence, presented in Table II.5.

TABLE II.5.—BASELINE EXPECTED NATIONAL SOURCE WATER CRYPTOSPORIDIUM DISTRIBUTIONS

Percentile	Source water concentration (oocysts/100L)
25	103
50	231
75	516
90	1064
95	1641
Mean	470
Standard Deviation	841

Although limited by the small number of samples per site (one to sixteen samples; most sites were sampled five times), the mean concentration at the 69

sites from the eastern and central U.S. seems to be represented by a lognormal distribution.

In addition to the source water data, several studies have detected *Cryptosporidium* oocysts in finished water. The results of these studies have been compiled in Table II.6.

TABLE II.6.—SUMMARY OF U.S. FINISHED WATER MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* (percent)	Range of oocyst conc. (oocysts/100L)	Mean (oocysts/100L)	Reference
Filtered water	82	27	0.1–48	1.5	LeChevallier et al. 1991a.
Finished water (unfiltered)	6	33	0.1–1.7	0.2	LeChevallier et al. 1992.
Finished water	262	13	0.29–57	33 (detectable).	LeChevallier and Norton 1995.
Finished water (clearwell)	14	14	NR	NR	Consonery et al. 1992.
Finished water (filter effluents)	118	26	NR	NR	Consonery et al. 1992.
Site 1—Filter effluent	10	70	1–4	NR	LeChevallier and Norton 1992.
Site 2—Filter effluent	10	10	0.5	NA	LeChevallier and Norton 1992.
Site 3—Filter effluent	10	10	2	NA	LeChevallier and Norton 1992.
Finished water	1,237	7	NR	NR	Rosen et al. 1996.
Filtered (non-storm event)	87	10	0–420	NR	Stewart et al. 1997a.
Finished water	24	**8 ***13	0–0.6	0.5 (g)	States et al. 1997.
Finished water	155	2.5	0.02–0.8	0.2	Consonery et al. 1997.
Finished water	100	15	0.04–0.08	0.08 (g)	McTigue, et al. 1998.

*Plants
**Confirmed
***Presumed

These studies show that despite some treatment in place, *Cryptosporidium* may still pass through the treatment plant and into finished water.

In general, oocysts are detected more frequently and in higher concentrations in rivers and streams than in lakes and reservoirs (LeChevallier *et al.*, 1991b; Rose *et al.*, 1988a,b). Madore *et al.* (1987) found high concentrations of oocysts in a river affected by agricultural runoff (5800 oocysts/L). Such concentrations are especially significant if the contaminant removal process (*e.g.*, sedimentation, filtration) of the treatment plant is not operating effectively. Oocysts may pass through to the finished water, as LeChevallier and Norton (1995) and several other researchers also found, and infect drinking water consumers.

E. Filter Backwash and Other Process Streams: Occurrence and Impact Studies

Pathogenic microorganisms are removed during the sedimentation and/or filtration processes in a water treatment plant. Recycle streams generated during treatment, such as spent filter backwash water, sedimentation basin sludge, or thickener supernatant are often returned to the treatment train. These recycle streams, therefore, may contain high concentrations of pathogens, including chlorine-resistant *Cryptosporidium* oocysts. Recycle can degrade the treatment process, especially when entering the treatment train after the rapid mix stage, by causing a chemical imbalance, hydraulic surge and potentially overwhelming the plant's filtration capacity with a large concentration of pathogens. High oocyst concentrations found in recycle waters can increase the risk of pathogens passing through the treatment plant into finished water.

AWWA has compiled issue papers on each of the following recycle streams: Spent filter backwash water, sedimentation basin solids, combined thickener supernatant, ion-exchange regenerate, membrane concentrate, lagoon decant, mechanical dewatering device concentrate, monofill leachate, sludge drying bed leachate, and small-volume streams (*e.g.*, floor, roof, lab drains) (Environmental Engineering & Technology, 1999). In addition, EPA compiled existing occurrence data on *Cryptosporidium* in recycle streams. Through these efforts, *Cryptosporidium* occurrence data has been found for three types of recycle streams: Spent filter backwash water, sedimentation basin solids, and thickener supernatant.

Nine studies have reported the occurrence of *Cryptosporidium* for these process streams. Each study's scope and results are presented in Table II.7, and brief narratives on each major study follow the table. Note that the results of the studies, if not presented in the published report as oocysts/100L, have been converted into oocysts/100L.

TABLE II.7.—CRYPTOSPORIDIUM OCCURRENCE IN FILTER BACKWASH AND OTHER RECYCLE STREAMS

Name/location of study	Number of samples (n)	Type of sample	Cyst/oocyst concentration	Number of treatment plants sampled	Reference
Drinking water treatment facilities.	2	backflush waters from rapid sand filters.	sample 1: 26,000 oocysts/gal (calc. as 686,900 oocysts/100L). sample 2: 92,000 oocysts/gal (calc as 2,430,600 oocysts/100L)	2	Rose et al. 1986.

TABLE II.7.—CRYPTOSPORIDIUM OCCURRENCE IN FILTER BACKWASH AND OTHER RECYCLE STREAMS—Continued

Name/location of study	Number of samples (n)	Type of sample	Cyst/oocyst concentration	Number of treatment plants sampled	Reference
Thames, U.K.,	not reported	backwash water from rapid sand filter.	Over 1,000,000 oocysts/100L in backwash water on 2/19/89. 100,000 oocysts/100L in supernatant from settlement tanks during the next few days	1	Colbourne 1989.
Potable water supplies in 17 States.	not reported	filter backwash from rapid sand filters (10 to 40 L sample vol.).	217 oocysts/ 100 L (geometric mean).	not reported	Rose et al. 1991.
Name/location not reported.	not reported	raw water initial backwash water	7 to 108 oocysts/100L detected at levels 57 to 61 times higher than in the raw water.	not reported not reported	LeChevallier et al. 1991c.
Bangor Water Treatment Plant (PA).	*Round 1:* 1 (8-hour composite).	raw water filter backwash supernatant recycle 6 oocysts/100L.	902 oocysts/100L.	141 oocysts/ 100L. 1	Cornwell and Lee 1993.
	Round 2: 1 (8-hour composite).	raw water filter backwash supernatant recycle	140 oocysts/100L 850 oocysts/100L.	750 oocysts/ 100L. 1	Cornwell and Lee 1993.
Moshannon Valley Water Treatment Plant.	Round 1: 1 (8-hour composite).	raw water spent backwash supernatant recycle sludge 13 oocysts/ 100L.	16,613 oocysts/100L.	82 oocysts/ 100L.	2,642 oocysts/100L. 1 Cornwell and Lee 1993.
	Round 2: 1 (8-hour composite).	raw water supernatant recycle	20 oocysts/100L	420 oocysts/ 100L. 1	Cornwell and Lee 1993.
Plant "C"	11 samples using continuous flow centrifugation;.	39 samples using cartridge filters.	backwash water from rapid sand filters; samples collected from sedimentation basins during sedimentation phase of backwash water at depths of 1, 2, 3, and 3.3 m.	continuous flow: range 1 to 69 oocysts/100 L; 8 of 11 samples positive.	cartridge filters: ranges 0.8 to 252/100 L; 33 of 39 samples positive 1 Karanis et al. 1996.
Pittsburgh Drinking Water Treatment Plant.	24 (two years of monthly samples).	filter backwash	328 oocysts/ 100 L (geometric mean); (38 percent occurrence rate).	non-detect-13,158 oocysts/ 100L. 1	States et al. 1997.
"Plant Number 3"	not reported	raw water spent backwash	140 oocysts/100L	850 oocysts/ 100L.	not reported Cornwell 1997.
"Plant C" (see Karanis, et al., 1996).	12 50	raw water backwash water from rapid sand filters.	avg. 23.2 oocysts/100L (max. 109 oocysts/100L) in 8 of 12 samples.	avg. 22.1 oocysts/100L (max. 257 oocysts/ 100L) in 41 of 50 samples	1 Karanis et al 1998.
"Plant A"	1	rapid sand filter (sample taken 10 min. after start of backwashing).	150 oocysts/100L.		

The occurrence data available and reported are primarily for raw and recycle stream water. If filter backwash enters the treatment train as a slug load and disrupts the treatment process, it is possible its effects would not be readily seen in the finished water until several minutes or hours after returning the filter to service. In addition, the poor recovery efficiencies of the IFA *Cryptosporidium* detection method complicate measurements in dilute finished effluent waters.

As shown in Table II.7, the concentrations of oocysts in backwash water and other recycle streams are greater than the concentrations generally found in raw water. For example, four studies (Cornwell and Lee, 1993; States *et al.*, 1997; Rose *et al.*, 1986; and Colbourne, 1989) have reported *Cryptosporidium* oocyst concentrations in filter backwash water exceeding 10,000 oocysts/100L. Such concentrations illustrate that the treatment plant has been removing oocysts from the influent water during the sedimentation and/or filtration processes. As expected, the oocysts have concentrated on the filters and/or in the sedimentation basin sludge. Therefore, the recycling of such process streams (*e.g.*, filter backwash, thickener supernatant, sedimentation basin

sludge) re-introduces high concentrations of oocysts to the drinking water treatment train.

Recycle can potentially return a significant number of oocysts to the treatment plant in a short amount of time, particularly if the recycle is returned to the treatment process without prior treatment, equalization, or some other type of hydraulic detention. In addition, Di Giovanni, *et al.* (1999) presented data indicating that viable oocysts have been detected in filter backwash samples using a cell culture/polymerase chain reaction (PCR) method. Cell culture is a test of the viability/infectivity of the oocysts, while PCR identified the cells infected by *C. parvum*. Although recovery by IFA was poor (6 to 8 percent for backwash samples), 9 filter backwash recycle samples were found to contain viable and infectious oocysts, and the infectious agent was determined to be more than 98 percent similar in structure to *C. parvum*. Should filter backwash recycle disrupt normal treatment operations or should treatment not function efficiently due to other deficiencies, high concentrations of potentially viable, infectious oocysts may pass through the plant into finished drinking water. The recycle stream occurrence studies presented in Table II.7 are described in further detail in the following sections.

Thames, U.K. Water Utilities Experience with Cryptosporidium, Colbourne (1989)

In response to a cryptosporidiosis outbreak reported in February of 1989, Thames Water undertook an investigation of pathogen concentrations within the Farmoor conventional treatment plant's treatment train, finished and raw waters. The investigation occurred over a two month period, from February to April 1989 and included sampling of settled filter backwash, the supernatant from spent filter backwash, raw water, and water sampled at the end of various Thames distribution points.

On February 19, 1989 at the start of the outbreak investigation, a concentration of approximately 1,000,000 oocysts/100L was detected in the filter backwash water. During the first few days of the following investigation, the supernatant of the settled backwash water contained approximately 100,000 oocysts/100L. At the peak of the outbreak, thirty percent of Thames' distribution system samples were positive for oocysts, and ranged in concentration from 0.2 to 7700 oocysts/100L. Raw reservoir water contained oocyst concentrations ranging from .2 to 1400 oocysts/100L. After washing the filters twice in 24 hours, no oocysts were found in the settled backwash waters. Thames, U.K. Water Utilities determined that a storm causing intense precipitation and runoff resulted in elevated levels of oocysts in the source water which led to the high concentrations of oocysts entering the plant and subsequently deposited on the filters and recycled as filter backwash.

Survey of Potable Water Supplies for Cryptosporidium and Giardia, Rose, et al., 1991

In this survey, Rose, *et al.*, collected 257 samples from 17 States from 1985 to 1988. The samples were collected on cartridge filters and analyzed using variations of the IFA method. The reported percent recovery for the method was 29 to 58 percent. Filter backwash samples were a subset of the 257, 10 to 40 L samples were collected from rapid sand filters.

Rose, *et al.* reported the geometric mean of the backwash samples at 217 *Cryptosporidium* oocysts/100L. This was the highest reported average *Cryptosporidium* concentration of any of the water types tested, which included polluted and pristine surface and ground water sources, drinking water sources in addition to filter backwash recycle water.

Giardia and Cryptosporidium in Water Supplies, LeChevallier, et al. (1991c)

LeChevallier *et al.* conducted a study to determine "whether compliance with the SWTR would ensure control of *Giardia* in potable water supplies." Raw water and plant effluent samples were collected from 66 surface water treatment plants in 14 States and one Canadian province, although only selected sites were tested for *Cryptosporidium* oocysts in filter backwash and settled backwash water.

In the analysis of pathogen concentrations in the raw water and filter backwash water of the water treatment process, LeChevallier *et al.* (1991c) found very high oocyst levels in backwash water of utilities that had low raw water parasite concentrations. The pathogens were detected using a combined IFA method that the authors developed. *Cryptosporidium* levels in the initial backwash water were 57 to 61 times higher than in the raw water supplies. Raw water samples were found to contain from 7 to 108 oocysts/100L. LeChevallier *et al.* (1991c) also noted that when *Cryptosporidium* were detected in plant effluent samples (12 of 13 times), the organisms were also observed in the backwash samples. The study concluded that the consistency of these results shows that accumulation of parasites in the treatment filters (and subsequent release in the filter backwash recycle water) could be related to subsequent passage through treatment barriers.

Recycle Stream Effects on Water Treatment, Cornwell and Lee (1993, 1994)

The results described in Cornwell and Lee's 1993 American Water Works Association Research Foundation Report and 1994 Journal of the American Water Works Association article on the Bangor and Moshannon Valley, PA water treatment plants are consistent with the results of States *et al.* (1997). In total, Cornwell and Lee investigated eight water treatment plants, examining treatment efficiencies including several recycle streams and their impacts, and reporting a range of pathogen and other water quality data. All of the pathogen testing was conducted using the EPA IFA method refined by LeChevallier, *et al.* (1991c).

Cornwell and Lee (1993) conducted two rounds of sampling at both the Bangor and Moshannon plants, sampling the different recycle and treatment streams as eight-hour composites. They detected *Cryptosporidium* concentrations of over 16,500 *Cryptosporidium* oocysts/100L in the backwash water at an adsorption clarifier plant (Moshannon Valley) and over 850 *Cryptosporidium* oocysts/100L in backwash water from a direct filtration plant (Bangor). The parasite levels in the backwash samples were significantly higher than concentrations found in the raw source water, which contained *Cryptosporidium* oocyst concentrations of 13–20 oocysts/100L at the Moshannon Valley plant and 6–140 oocysts/100L at the Bangor plant.

In addition, Cornwell and Lee determined oocyst concentrations for two other recycle streams, combined thickener supernatant and sedimentation basin solids. The supernatant pathogen concentrations were reported at 141 *Cryptosporidium* oocysts/100L at the Bangor plant, and levels were reported at 82 to 420 oocysts/100L for the Moshannon plant in Rounds 1 and 2 of sampling, respectively. The sedimentation basin sludge was reported at 2,642 *Cryptosporidium* oocysts/100L in the clarifier sludge from the Moshannon Valley plant.

Giardia and Cryptosporidium in Backwash Water from Rapid Sand Filters Used for Drinking Water, Karanis et al. (1996) and Distribution and Removal of Giardia and Cryptosporidium in Water Supplies in Germany Karanis, et al. (1998)

Karanis *et al.* (1996 and 1998) conducted a four-year research study (samples collected from July, 1993–December, 1995) on the efficiency of *Cryptosporidium* removal by six different surface water treatment plants from Germany, all of which treat by conventional filtration. The method used was an IFA method dubbed the "EPA method", developed by Jakubowski and Ericksen, 1979.

Karanis et al. (1996) detected *Cryptosporidium* in 82 percent of the samples of backwash water from rapid sand filters of a water treatment plant ("Plant C") supplied by small rivers. Eight out of 12 raw water samples tested were positive for *Cryptosporidium* (range of 0.8 to 109 oocysts/100L). Backwash water samples collected by continuous flow centrifugation were positive for *Cryptosporidium* in 8 of 11 samples (range of 1 to 69/100L). Of 39 samples collected using cartridge filters, 33 were positive for *Cryptosporidium* (range of 0.8 to 252/100L). The authors called attention to the high detection rate of *Cryptosporidium* in the backwash waters (82 percent) of Plant C and to the fact that the supernatant following sedimentation was not free from cysts and oocysts (Karanis et al. 1996).

In the 1998 publication, Karanis et al. compiled the data from the 1996 study with more backwash occurrence data collected from another treatment plant ("Plant A"). The filter backwash of Plant A was sampled 10 minutes after the start of backwashing, and the backwash water was found to contain 150 *Cryptosporidium* oocysts/100L.

Protozoa in River Water: Sources, Occurrence, and Treatment, States, et al. (1997)

Over a two year period (July, 1994-June, 1996), States et al. sampled monthly for *Cryptosporidium* in the raw, settled, filtered and filter backwash water at the Pittsburgh Drinking Water Treatment Plant, in order to gauge the efficiency of pathogen removal at the plant. States et al. identified several sources contributing oocysts to the influent water, including sewage plant effluent, combined sewer overflows, dairy farm streams, and recycling of backwash water. All pathogen sampling was conducted with the IFA method. *Cryptosporidium* occurred in the raw Allegheny river water supplying the plant with a geometric mean of 31 oocysts/100L in 63 percent of samples collected, and ranged from non-detect to 2,333 oocysts/100L (see Table II.3 for source water information). Of the filter backwash samples, a geometric mean of 328 oocysts/100L was found at an occurrence rate of 38 percent of samples, with a range from non-detect to 13,158 oocysts/100L. The fact that the mean concentration of *Cryptosporidium* oocysts in backwash water can be substantially higher than the oocyst concentration in untreated river water suggests that recycling untreated filter backwash water can be a significant source of this parasite to water within the treatment process.

F. Summary and Conclusions

Cryptosporidiosis is a disease without a therapeutic cure, and its causative agent, *Cryptosporidium*, is resistant to chlorine disinfection. *Cryptosporidium* has been known to cause severe illness, especially in immunocompromised individuals, and can be fatal. Several waterborne cryptosporidiosis outbreaks have been reported, and it is likely that others have occurred but have gone unreported. *Cryptosporidium* has been detected in a wide range of source waters, documented in over 30 studies from the literature, and it has been found at levels of concern in filter backwash water and other recycle streams.

One of the key regulations EPA has developed and implemented to counter pathogens in drinking water is the SWTR (54 FR 27486, June 19, 1989). The SWTR requires that surface water systems have sufficient treatment to reduce the source water concentration of *Giardia* and viruses by at least 99.9 percent (3 log) and 99.99 percent (4 log), respectively. A shortcoming of the SWTR, however, is that the rule does not specifically control for *Cryptosporidium*. The first report of a recognized waterborne outbreak caused by *Cryptosporidium* was published during the development of the SWTR (D'Antonio et al. 1985).

In 1998, the Agency finalized the IESWTR that enhances the microbial pathogen protection provided by the SWTR for systems serving 10,000 or more persons. The IESWTR includes an MCLG of zero for *Cryptosporidium* and requires a minimum 2-log (99 percent) removal of *Cryptosporidium*, linked to enhanced combined filter effluent and individual filter turbidity control provisions.

Several provisions of today's proposed rule, the LT1FBR, are designed to address the concerns covered by the IESWTR, improving control of *Cryptosporidium* and other microbial contaminants, for the portion of the public served by small PWSs (i.e., serving less than 10,000 persons). The LT1FBR also addresses the concern that for all PWSs that practice recycling, *Cryptosporidium* (and other emerging pathogens resistant to standard disinfection practice) are reintroduced to the treatment process of PWSs by the recycle of spent filter backwash water, solids treatment residuals, and other process streams.

Insufficient treatment practices have been cited as the cause of several reported waterborne disease outbreaks (Rose, 1997). Rose (1997) also found that a reduction in turbidity is indicative of a more efficient filtration process. Therefore, the turbidity and filter monitoring requirements of today's proposed LT1FBR will ensure that the removal process necessary to protect the public from cryptosporidiosis is operating properly, and the recycle stream provisions will ensure that the treatment process is not disrupted or operating inefficiently. The LT1FBR requirements that address the potential for *Cryptosporidium* to enter the finished drinking water supply will be described in more detail in the following sections.

III. Baseline Information-Systems Potentially Affected By Today's Proposed Rule

EPA utilized the 1997 state-verified version of the Safe Drinking Water Information System (SDWIS) to develop the total universe of systems which utilize surface water or groundwater under the direct influence (GWUDI) as sources. This universe consists of 11,593 systems serving fewer than 10,000 persons, and 2,096 systems serving 10,000 or more persons. Given this initial baseline, the Agency developed estimates of the number of systems which would be affected by components of today's proposed rule by utilizing three primary sources: Safe Drinking Water Information Systems; Community Water Supply Survey; and Water: Stats. A brief overview of each of the data sources is described in the following paragraphs.

Safe Drinking Water Information System (SDWIS)

SDWIS contains information about PWSs including violations of EPA's regulations for safe drinking water. Pertinent information in this database includes system name and ID, population served, geographic location,

type of source water, and type of treatment (if provided).

Community Water System Survey (CWSS)

EPA conducted the 1995 CWSS to obtain data to support its development and evaluation of drinking water regulations. The survey consisted of a stratified random sample of 3,700 water systems nationwide (surface water and groundwater). The survey asked 24 operational and 13 financial questions.

Water:/Stats (WaterStats)

WaterStats is an in-depth database of water utility information compiled by the American Water Works Association. The database consists of 898 utilities of all sizes and provides a variety of data including treatment information.

Information regarding estimates of the number of systems which may potentially be affected by specific components of today's proposed rule can be found in the discussion of each proposed rule component in Section IV.

IV. Discussion of Proposed LT1FBR Requirements

A. Enhanced Filtration Requirements

As discussed earlier in this preamble, one of the key objectives of today's proposed rule is ensuring that an adequate level of public health protection is maintained in order to minimize the risk associated with *Cryptosporidium*. While the current SWTR provides protection from viruses and *Giardia*, it does not specifically address *Cryptosporidium*, which has been linked to outbreaks resulting in over 420,000 cases of gastrointestinal illness in the 1990s (403,000 associated with the Milwaukee outbreak). Because of *Cryptosporidium*'s resistance to disinfection practices currently in place at small systems throughout the country, the Agency believes enhanced filtration requirements are necessary to improve control of this microbial pathogen.

In the IESWTR, the Agency utilized an approach consisting of three major components to address *Cryptosporidium* at plants serving populations of 10,000 or more. The first component required systems to achieve a 2 log removal of *Cryptosporidium*. The second component consisted of strengthened turbidity requirements for combined filter effluent. The third component required individual filter turbidity monitoring.

In today's proposed rule addressing systems serving fewer than 10,000 persons, the Agency is utilizing the same framework. Where appropriate, EPA has evaluated additional options in an effort to alleviate burden on small systems while still maintaining a comparable level of public health protection.

The following sections describe the overview and purpose of each of the rule components, relevant data utilized during development, the requirements of today's proposed rule (including consideration of additional options where appropriate), and a request for comment regarding each component.

1. Two Log *Cryptosporidium* Removal Requirement

a. Two Log Removal

i. Overview and Purpose

The 1998 IESWTR (63 FR 69477, December 16, 1998) establishes an MCLG of zero for *Cryptosporidium* in order to adequately protect public health. In conjunction with the MCLG, the IESWTR also established a treatment technique requiring 2 log *Cryptosporidium* removal for all surface water and GWUDI systems which filter and serve populations of 10,000 or more people, because it was not economically and technologically feasible to accurately ascertain the level of *Cryptosporidium* using current analytical methods. The Agency believes it is appropriate and necessary to extend this treatment technique of 2 log *Cryptosporidium* removal requirement to systems serving fewer than 10,000 people.

ii. Data

As detailed later in this section, EPA believes that the data and principles supporting requirements established for systems serving populations of 10,000 or more are also applicable to systems serving populations fewer than 10,000. The following section provides information and data regarding: (1) the estimated number of small systems subject to the proposed 2 log *Cryptosporidium* removal requirement; and (2) *Cryptosporidium* removal using various filtration technologies.

Estimate of the Number of Systems Subject to 2 log Cryptosporidium Removal Requirement

Using the baseline described in Section III of today's proposed rule, the Agency applied percentages of surface water and GWUDI systems which filter (taken from the 1995 CWSS) in order to develop an estimate of the number of systems which filter and serve fewer than 10,000 persons. This resulted in an estimated 9,133 surface water and GWUDI systems that filter which may be subject to the proposed removal requirement. Table IV.1 provides this estimate broken down by system size and type.

TABLE IV.1.—ESTIMATE OF SYSTEMS SUBJECT TO 2 LOG CRYPTOSPORIDIUM REMOVAL REQUIREMENT [a]

System type	Population served					
	<100	101–500	501–1K [b]	1K–3.3K [b]	3.3K–10K [b]	Total #Sys.
Community	888	1453	950	2022	1591	6903
Non Community	1099	374	78	64	35	1649
NTNC	214	204	82	64	17	581
Total	2201	2031	1110	2150	1643	[b] 9134b

[a] Numbers may not add due to rounding
[b] K = thousands

Cryptosporidium Removal Using Conventional and Direct Filtration

During development of the LT1FBR, the Agency reviewed the results of several studies that demonstrated the ability of conventional and direct filtration systems to achieve 2 log removal of *Cryptosporidium* at well operated plants achieving low turbidity levels. Table IV.2 provides key information from these studies. A brief description of each study follows the table.

TABLE IV.2.—CONVENTIONAL AND DIRECT FILTRATION REMOVAL STUDIES

Type of treatment	Log removal	Experimental design	Researcher
Conventional	*Cryptosporidium* 4.2–5.2	Pilot plants	Patania *et al.* 1995
	Giardia 4.1–5.1	Pilot plants	Patania *et al.* 1995
	Cryptosporidium 1.9–4.0	Pilot-scale plants	Nieminski/Ongerth 1995
	Giardia 2.2–3.9	Pilot-scale plants	Nieminski/Ongerth 1995
	Cryptosporidium 1.9–2.8	Full-scale plants	Nieminski/Ongerth 1995
	Giardia 2.8–3.7	Full-scale plants	Nieminski/Ongerth 1995
	Cryptosporidium 2.3–2.5	Full-scale plants	LeChevallier and Norton 1992
	Giardia 2.2–2.8	Full-scale plants	
	Cryptosporidium 2–3	Pilot plants	LeChevallier and Norton 1992
	Giardia and Crypto 1.5–2	Full-scale plant (operation considered not optimized).	Foundation for Water Research, Britain 1994
	Cryptosporidium 4.1–5.2	Pilot Plant (optimal treatment)	Kelley *et al.* 1995
	Cryptosporidum .2–1.7	Pilot Plant (suboptimal treatment)	Dugan *et al.* 1999
			Dugan *et al.* 1999
Direct filtration	*Cryptosporidium* 2.7–3.1	Pilot plants	Ongerth/Pecaroro 1995
	Giardia 3.1–3.5	Pilot plants	Ongerth/Pecaroro 1995
	Cryptosporidium 2.7–5.9	Pilot plants	Patania *et al.* 1995
	Giardia 3.4–5.0	Pilot plants	Patania *et al.* 1995
	Cryptosporidium 1.3–3.8	Pilot plants	Nieminski/Ongerth 1995
	Giardia 2.9–4.0	Pilot plants	Nieminski/Ongerth 1995
	Cryptosporidium 2–3	Pilot plants	West *et al.* 1994
Rapid Granular Filtration (alone).	*Cryptosporidium* 2.3–4.9	Pilot plant	Swertfeger *et al.*, 1998
	Giardia 2.7–5.4		

Patania, Nancy L, et al. 1995

This study consisted of four pilot studies which evaluated treatment variables for their impact on *Cryptosporidium* and *Giardia* removal efficiencies. Raw water turbidities in the study ranged between 0.2 and 13 NTU. When treatment conditions were optimized for turbidity and particle removal at four different sites, *Cryptosporidium* removal ranged from 2.7 to 5.9 log and *Giardia* removal ranged from 3.4 to 5.1 log during stable filter operation. The median turbidity removal was 1.4 log, whereas the median particle removal was 2 log. Median oocyst and cyst removal was 4.2 log. A filter effluent turbidity of 0.1 NTU or less resulted in the most effective cyst removal, up to 1 log greater than when filter effluent turbidities were greater than 0.1 NTU (within the 0.1 to 0.3 NTU range). *Cryptosporidium* removal rates of less than 2.0 log occurred at the end of the filtration cycle.

Nieminski, Eva C. and Ongerth, Jerry E. 1995

This 2-year study evaluated *Giardia* and *Cryptosporidium* cyst removal through direct and conventional filtration. The source water of the full scale plant had turbidities typically between 2.5 and 11 NTU with a maximum of 28 NTU. The source water of the pilot plant typically had turbidities of 4 NTU with a maximum of 23 NTU. For the pilot plant achieving filtered water turbidities between 0.1–0.2 NTU, *Cryptosporidium* removals averaged 3.0 log for conventional treatment and 3.0 log for direct filtration, while the respective *Giardia* removals averaged 3.4 log and 3.3 log. For the full scale plant achieving similar filtered water turbidities, *Cryptosporidium* removal averaged 2.25 log for conventional treatment and 2.8 log for direct filtration, while the respective *Giardia* removals averaged 3.3 log for conventional treatment and 3.9 log for direct filtration. Differences in performance between direct filtration and conventional treatment by the full scale plant were attributed to differences in source water quality during the filter runs.

Ongerth, Jerry E. and Pecaroro, J.P. 1995

A 1 gallon per minute (gpm) pilot scale water filtration plant was used to measure removal efficiencies of *Cryptosporidium* and *Giardia* using very low turbidity source waters (0.35 to 0.58 NTU). With optimal coagulation, 3 log removal for both pathogens were obtained. In one test run, where coagulation was intentionally sub-optimal, the removals were only 1.5 log for *Cryptosporidium* and 1.3 log for *Giardia*. This demonstrates the importance of proper coagulation for cyst removal even though the effluent turbidity was less than 0.5 NTU.

LeChevallier, Mark W. and Norton, William D. 1992

The purpose of this study was to evaluate the relationships among *Giardia*, *Cryptosporidium*, turbidity, and particle counts in raw water and filtered water effluent samples at three different systems. Source water turbidities ranged from less than 1 to 120 NTU. Removals of *Giardia* and *Cryptosporidium* (2.2 to 2.8 log) were slightly less than those reported by other researchers, possibly because full scale plants were studied under less ideal conditions than the pilot plants. The participating treatment plants operated within varying stages of treatment optimization. The median removal achieved was 2.5 log for *Cryptosporidium* and *Giardia*.

LeChevallier, Mark W.; Norton, William D.; and Lee, Raymond G. 1991b

This study evaluated removal efficiencies for *Giardia* and *Cryptosporidium* in 66 surface water treatment plants in 14 States and 1 Canadian province. Most of the utilities achieved between 2 and 2.5 log removals for both *Giardia* and *Cryptosporidium*. When no oocysts were detected in the finished water, occurrence levels were assumed at the detection limit for calculating removal efficiencies.

Foundation for Water Research 1994

This study evaluated *Cryptosporidium* removal efficiencies for several treatment processes (including conventional filtration) using a pilot plant and bench-scale testing. Raw water turbidity ranged from 1 to 30 NTU. *Cryptosporidium* oocyst removal was between 2 and 3 log using conventional filtration. Investigators

concluded that any measure which reduced filter effluent turbidity should reduce risk from *Cryptosporidium*, and also showed the importance of selecting proper coagulants, dosages, and treatment pH. In addition to turbidity, increased color and dissolved metal ion coagulant concentration in the effluent are indicators of reduced efficiency of coagulation/flocculation and possible reduced oocysts removal efficiency.

Kelley, M.B. et al. 1995

This study evaluated two U.S. Army installation drinking water treatment systems for the removal of *Giardia* and *Cryptosporidium*. Protozoa removal was between 1.5 and 2 log. The authors speculated that this low *Cryptosporidium* removal efficiency occurred because the coagulation process was not optimized, although the finished water turbidity was less than 0.5 NTU.

West, Thomas; et al. 1994

This study evaluated the removal efficiency of *Cryptosporidium* through direct filtration using anthracite mono-media at filtration rates of 6 and 14 gpm/sq.ft. Raw water turbidity ranged from 0.3 to 0.7 NTU. Removal efficiencies for *Cryptosporidium* at both filtration rates were 2 log during filter ripening (despite turbidity exceeding 0.2 NTU), and 2 to 3 log for the stable filter run. Log removal declined significantly during particle breakthrough. When effluent turbidity was less than 0.1 NTU, removal typically exceeded 2 log. Log removals of *Cryptosporidium* generally exceeded that for particle removal.

Swertfeger et al., 1998

The Cincinnati Water Works conducted a 13 month pilot study to determine the optimum filtration media and depth of the media to replace media at its surface water treatment plant. The study investigated cyst and oocyst removal through filtration alone (excluding chemical addition, mixing, or sedimentation) and examined sand media, dual media, and deep dual media. Cyst and oocyst removal by each of the media designs was > 2.5 log by filtration alone.

Dugan et al., 1999

EPA conducted pilot scale experiments to assess the ability of conventional treatment to control *Cryptosporidium* oocysts under steady state conditions. The work was performed with a pilot plant designed to minimize flow rates and the number of oocysts required for spiking. With proper coagulation control, the conventional treatment process achieved at least 2 log removal of *Cryptosporidium*. In all cases where 2 log removal was not achieved, the plant also did not comply with the IESWTR filter effluent turbidity requirements.

All of the studies described above indicate that rapid granular filtration, when operated under appropriate coagulation conditions and optimized to achieve a filtered water turbidity level of less than 0.3 NTU, should achieve at least 2 log of *Cryptosporidium* removal. Removal rates vary widely, up to almost 6 log, depending upon water matrix conditions, filtered water turbidity effluent levels, and where and when removal efficiencies are measured within the filtration cycle. The highest log pathogen removal rates occurred in those pilot plants and systems which achieved very low finished water turbidities (less than 0.1 NTU). Other key points related to the studies include:

- As turbidity performance improves for treatment of a particular water, there tends to be greater removal of *Cryptosporidium*.
- Pilot plant study data in particular indicate high likelihood of achieving at least 2 log removal when plant operation is optimized to achieve low turbidity levels. Moreover, pilot studies represented in Table IV.2.a tend to be for low-turbidity waters, which are considered to be the most difficult to treat regarding particulate removal and associated protozoan removal.
- Because high removal rates were demonstrated in pilot studies using lower-turbidity source waters, it is likely that similar or higher removal rates can be achieved for higher-turbidity source waters.
- Determining *Cryptosporidium* removal in full-scale plants can be difficult due to the fact that data includes many non-detects in the finished water. In these cases, finished water concentration levels are assigned at the detection limit and are likely to result in over-estimation of oocysts in the finished water. This tends to under-estimate removal levels.
- Another factor that contributes to differences among the data is that some of the full-scale plant data comes from plants that are not optimized, but meet existing SWTR requirements. In such cases, oocyst removal may be less than 2 log. In those studies that indicate that full-scale plants are achieving greater than 2 log removal (LeChevallier studies in particular), the following characteristics pertain:

—Substantial numbers of filtered water measurements resulted in oocyst detections;

—Source water turbidity tended to be relatively high compared to some of the other studies; and

—A significant percentage of these systems were also achieving low filtered water turbidities, substantially less than 0.5 NTU.

- Removal of *Cryptosporidium* can vary significantly in the course of the filtration cycle (i.e., at the start-up and end of filter operations versus the stable period of operation).

Cryptosporidium Removal Using Slow Sand and Diatomaceous Earth Filtration

During development of the IESWTR, the Agency also evaluated several studies which demonstrated that slow sand and diatomaceous earth filtration were capable of achieving at least 2 log removal of *Cryptosporidium*. Table IV.3 provides key information from these studies. A brief description of each study follows the table.

TABLE IV.3.—SLOW SAND AND DIATOMACEOUS EARTH FILTRATION REMOVAL STUDIES

Type of treatment	Log removal	Experimental design	Researcher
Slow-sand filtration ..	Giardia & Cryptosporidium > 3	Pilot plant at 4.5 to 16.5°C.	Shuler and Ghosh 1991.
	Cryptosporidium 4.5	Full-scale plant	imms et. al. 1995.
Diatomaceous earth filtration.	Giardia & Cryptosporidium > 3	Pilot plant, ...	Shuler et. al. 1990.
	Cryptosporidium 3.3–6.68	Bench scale	Ongerth & Hutton, 1997.

Shuler and Ghosh 1991

This pilot study was conducted to evaluate the ability of slow sand filters to remove *Giardia*, *Cryptosporidium*, coliforms, and turbidity. The pilot study was conducted at Pennsylvania State University using a raw water source with a turbidity ranging from 0.2–0.4 NTU. Influent concentration of

Cryptosporidium oocysts during the pilot study ranged from 1,300 to 13,000 oocysts/gallon. Oocyst removal was shown to be greater than 4 log.

Timms et al 1995

This pilot study was conducted to evaluate the efficiency of slow sand filters at removing *Cryptosporidium*. A pilot plant was constructed of 1.13 m^2 in area and 0.5 m in depth with a filtration rate of 0.3m/h. The filter was run for 4–5 weeks before the experiment to ensure proper operation. *Cryptosporidium* oocysts were spiked to a concentration of 4,000/L. Results of the study indicated a 4.5 log removal of *Cryptosporidium* oocysts.

Shuler et al 1990

In this study, diatomaceous earth (DE) filtration was evaluated for removal of *Giardia*, *Cryptosporidium*, turbidity and coliform bacteria. The study used a 0.1m^2 pilot scale DE filter with three grades of diatomaceous earth (A, B, and C). The raw water turbidity varied between 0.1 and 1 NTU. Filter runs ranged from 2 days to 34 days. A greater than 3 log removal of *Cryptosporidium* was demonstrated in the 9 filter runs which made up the study.

Ongerth and Hutton, 1997

Bench scale studies were used to define basic characteristics of DE filtration as a function of DE grade and filtration rate. Three grades of DE were used in the tests. *Cryptosporidium* removal was measured by applying river water seeded with *Cryptosporidium* to Walton test filters. Tests were run for filtration rates of 1 and 2 gpm/sq ft. Each run was replicated 3 times. Approximately 6 logs reduction in the concentration of *Cryptosporidium* oocysts was expected under normal operating conditions.

Cryptosporidium Removal Using Alternative Filtration Technologies

EPA recognizes that systems serving fewer than 10,000 individuals employ a variety of filtration technologies other than those previously discussed. EPA collected information regarding several other popular treatment techniques in an effort to verify that these treatments were also technically capable of achieving a 2 log removal of *Cryptosporidium*. A brief discussion of these alternative technologies follows along with studies demonstrating effective *Cryptosporidium* removals.

Membrane Filtration

Membrane filtration (Reverse Osmosis, Nanofiltration, Ultrafiltration, and Microfiltration) relies upon pore size in order to remove particles from water. Membranes possess a pore size smaller than that of a *Cryptosporidium* oocyst, enabling them to achieve effective log removals. The smaller the pore size, the more effective the rate of removal. Typical pore sizes for each of the four types of membrane filtration are shown below:

- Microfiltration—1–0.1 microns (μm)
- Ultrafiltration—0.1–.01 (μm)
- Nanofiltration—.01–.001 (μm)
- Reverse Osmosis—<.001 (μm)

Bag Filtration

Bag filters are non-rigid, disposable, fabric filters where water flows from inside of the bag to the outside of the bag. One or more filter bags are contained within a pressure vessel designed to facilitate rapid change of the filter bags when the filtration capacity has been used up. Bag filters do not generally employ any chemical coagulation. The pore sizes in the filter bags designed for protozoa removal generally are small enough to remove protozoan cysts and oocysts but large enough that bacteria, viruses and fine colloidal clays would pass through. Bag filter studies have shown a significant range of results in the removal of *Cryptosporidium* oocysts (0.33–3.2 log). (Goodrich, 1995)

Cartridge Filtration

Cartridge filtration also relies on physical screening to remove particles from water. Typical cartridge filters are pressure filters with glass, fiber or ceramic membranes, or strings wrapped around a filter element housed in a pressure vessel (USEPA, 1997a).

The Agency evaluated several studies which demonstrate the ability of various alternative filtration technologies to achieve 2 log removal of *Cryptosporidium* (in several studies 2 log removal of 4–5 (μm) microspheres were used as a surrogate for *Cryptosporidium*). These studies demonstrate that 2 log removal was consistently achievable in all but bag filters. Table IV.4 provides key information from these studies. A brief description of each study follows:

TABLE IV.4.—ALTERNATIVE FILTRATION REMOVAL STUDIES

Type of treatment	Log removal	Experimental design	Researcher
Microfiltration	*Cryptosporidium* 4.2–4.9 log	Bench Scale	Jacangelo *et al.* 1997.
	Giardia 4.6–5.2 log		
	Cryptosporidium 6.0—7.0 log	Pilot Plant	
	Cryptosporidium 4.3—5.0 log	Pilot Plant	Drozd & Schartzbrod, 1997.
	Cryptosporidium 7.0–7.7 log	Bench Scale	Hirata & Hashimoto, 1998.
	Microspheres 3.57–3.71 log	Full Scale	Goodrich *et al.* 1995.
Ultrafiltration	*Cryptosporidium* 4.4—4.9 log	Bench Scale	Jacangelo *et al.* 1997.
	Giardia 4.7–5.2 log		
	Cryptosporidium 5.73–5.89 log	Bench Scale	Collins *et al.* 1996.
	Giardia 5.75–5.85 log		
	Cryptosporidium 7.1–7.4 log	Bench Scale	Hirata & Hashimoto, 1998.
	Cryptosporidium 3.5 log	pilot Plant	Lykins *et al.* 1994.
	Microspheres 3–4 log		
Reverse Osmosis	Cryptosporidium > 5.7 log	Pilot Scale	Adham *et al.* 1998
	Giardia > 5.7 log.		
Hybrid Membrane	Microspheres 4.18 log	Bench Scale	Goodrich et al. 1995
Bag Filtration	Microspheres .33–3.2 log	Pilot Plant	Goodrich et al. 1995
Cartridge filtration	Microspheres 3.52–3.68 log	Pilot Plant	Goodrich et al. 1995
	Particles (5–15 um) > 2 log	Bench Scale	Land, 1998.

Jacangelo et al., 1997

Bench scale and pilot plant tests were conducted with microfiltration and ultrafiltration filters (using six different membranes) in order to evaluate microorganism removal. Bench scale studies were conducted under worst case operating conditions (direct flow filtration at the maximum recommended transmembrane pressure using deionized water slightly buffered at pH 7). Log removal ranged from 4.7 to 5.2 log removal. Pilot plant results ranged from 6.0–7.0 log removal during worst-case operating conditions (*i.e.*, direct filtration immediately after backwashing at the maximum recommended operating transmembrane pressure).

Drozd and Schartzbrod, 1997

A pilot plant system was established to evaluate the removal of *Cryptosporidium* using crossflow microfiltration (.2 µm porosity). Results demonstrated *Cryptosporidium* log removals of 4.3 to greater than 5.5 with a corresponding mean filtrate turbidity of 0.25 NTU.

Collins et. al., 1996

This study consisted of bench scale testing of *Cryptosporidium* and *Giardia* log removals using an ultrafiltration system. Log removal of *Cryptosporidium* ranged from 5.73 to 5.89 log, while removal of *Giardia* ranged from 5.75 to 5.85 log.

Hirata & Hashimoto, 1998

Pilot scale testing using microfiltration (nominal pore size of .25 µm) and ultrafiltration (nominal cut-off molecular weight (MW) 13,000 daltons) was conducted to determine *Cryptosporidium* oocyst removal. Results conducted on the ultrafiltration units ranged from 7.1 to 7.5 logs of *Cryptosporidium* removal. Results of the microfiltration studies yielded log removals from 7.0 to 7.7 log.

Lykins et al., [1994]

An ultrafiltration system was evaluated for the removal of *Cryptosporidium* oocysts at the USEPA Test and Evaluation Facility in Cincinnati, Ohio. The filter run was just over 48 hours. A 3.5 log removal of *Cryptosporidium* oocysts was observed. Additionally, twenty-four experiments were performed using 4.5 µm polystyrene microspheres as a surrogate for *Cryptosporidium* because of a similar particle distribution. Log removal of microspheres ranged from 3 to 4 log.

Adham et al., 1998

This study was conducted to evaluate monitoring methods for membrane integrity. In addition to other activities, microbial challenge tests were conducted on reverse osmosis (RO) membranes to both determine log removals and evaluate system integrity. Log removal of *Cryptosporidium* and *Giardia* was >5.7 log in uncompromised conditions, and > 4.5 log in compromised conditions.

Goodrich et al., 1995

This study was conducted to evaluate removal efficiencies of three different bag filtration systems. Average filter pore size of the filters was 1 µm while surface area ranged from 35 to 47 sq ft. Bags were operated at 25, 50 and 100 percent of their maximum flow rate while spiked with 4.5 µm polystyrene microspheres (beads) as a surrogate for *Cryptosporidium*. Bead removal ranged from .33 to 3.2 log removal.

Goodrich et al 1995.

This study evaluated a cartridge filter with a 2 µm rating and 200 square feet of surface area for removal efficiency of *Cryptosporidium* sized particles. The filter was challenge tested with 4.5 µm polystyrene microspheres as a surrogate for *Cryptosporidium*. Flow was set at 25 gpm with 50 psi at the inlet. Results from two runs under the same conditions exhibited log removals of 3.52 and 3.68.

Land, 1998

An alternative technology demonstration test was conducted to evaluate the ability of a cartridge filter to achieve 2 log removal of particles in the 5 to 15 µm range. The cartridge achieved at least 2 log removal of the 5 to 25 µm particles 95 percent of the time up to a 20 psi pressure differential. The filter achieved at least 2 log removal of 5 to 15 µm particles up to 30-psi pressure differential.

While the studies above note that alternative filtration technologies have demonstrated in the lab the capability to achieve a 2 log removal of *Cryptosporidium*, the Agency believes that the proprietary nature of these technologies necessitates a more rigorous technology-specific determination be made. Given this issue, the Agency believes that its Environmental Technology Verification (ETV) Program can be utilized to verify the performance of innovative technologies. Managed by EPA's Office of Research and Development, ETV was created to substantially accelerate the entrance of new environmental technologies into the domestic and international marketplace. ETV consists of 12 pilot programs, one of which focuses on drinking water. The program contains a protocol for physical removal of microbiological and particulate contaminants, including test plans for bag and cartridge filters and membrane filters (NSF, 1999). These protocols can be utilized to determine whether a specific alternative technology can effectively achieve a 2 log removal of *Cryptosporidium*, and under what parameters that technology must be operated to ensure consistent levels of removal. Additional information on the ETV program can be found on the Agency's website at http://www.epa.gov/etv.

iii. Proposed Requirements

Today's proposed rule establishes a requirement for 2 log removal of *Cryptosporidium* for surface water and GWUDI systems serving fewer than 10,000 people that are required to filter under the SWTR. Compliance with the combined filter effluent turbidity requirements, as described later, ensures compliance with the 2 log removal requirement. The requirement for a 2 log removal of *Cryptosporidium* applies between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

iv. Request for Comments

EPA requests comment on the 2 log removal requirement as discussed. The Agency is also soliciting public comment and data on the ability of alternative filtration technologies to achieve 2 log *Cryptosporidium* removal.

2. Turbidity Requirements

a. Combined Filter Effluent

i. Overview and Purpose

In order to address concern with *Cryptosporidium*, EPA has analyzed log removal performance by well operated plants (as described in the previous section) as well as filter performance among small systems to develop an appropriate treatment technique requirement that assures an increased level of *Cryptosporidium* removal. In evaluating combined filter performance requirements, EPA considered the strengthened turbidity provisions within the IESWTR and evaluated whether these were appropriate for small systems as well.

ii. Data

In an effort to evaluate combined filter effluent (CFE) requirements, EPA collected data in several areas to

supplement existing data, and address situations unique to smaller systems. This data includes:

- An estimate of the number of systems subject to the proposed strengthened turbidity requirements;
- Current turbidity levels at systems throughout the U.S. serving populations fewer than 10,000;
- The ability of package plants to meet strengthened turbidity standards; and
- The correlation between meeting CFE requirements and achieving 2 log removal of *Cryptosporidium*.

Estimate of the Number of Systems Subject to Strengthened CFE Turbidity Standards

Using the estimate of 9,134 systems which filter and serve fewer than 10,000 persons (as described in Section IV.A.1 of today's proposal), the Agency used the information contained within the CWSS database to estimate the number of systems which utilized specific types of filtration. The data was segregated based on the type of filtration utilized and the population size of the system. Percentages were derived for each of the following types of filtration:

- Conventional and Direct Filtration;
- Slow Sand Filtration;
- Diatomaceous Earth Filtration; and
- Alternative Filtration Technologies.

The percentages were applied to the estimate discussed in Section IV.A.1 of today's proposal for each of the respective population categories. Based on this analysis, the Agency estimates 5,896 conventional and direct filtration systems will be subject to the strengthened combined filter effluent turbidity standards. EPA estimates 1,756 systems utilize slow sand or diatomaceous earth filtration, and must continue to meet turbidity standards set forth in the SWTR. The remaining 1,482 systems are estimated to use alternative filtration technologies and will be required to meet turbidity standards as set forth by the State upon analysis of a 2 log *Cryptosporidium* demonstration conducted by the system.

Current Turbidity Levels

EPA has developed a data set which summarizes the historical turbidity performance of various filtration plants serving populations fewer than 10,000 (EPA, 1999d). The data set represents those systems that were in compliance with the turbidity requirements of the SWTR during all months being analyzed. The data set consists of 167 plants from 15 States. Table IV.5 provides information regarding the number of plants from each State. The data set includes plants representing each of the five population groups utilized in the CWSS (25–100, 101–500, 501–1,000, 1,001–3,300, and 3,301–10,000). The Agency has also received an additional data set from the State of California (EPA, 2000). This data has not been included in the assessments described below. The California data demonstrates similar results to the larger data set discussed below.

TABLE IV.5.—SUMMARY OF LT1FBR TURBIDITY DATA SET

State	Number of Plants
Alabama	1
California	1
Colorado	16
Illinois	13
Kansas	20
Louisiana	6
Minnesota	3
Montana	2
North Carolina	16
Ohio	4
Pennsylvania	27
South Carolina	16
Texas	23
Washington	17
West Virginia	2
Total	167

(EPA, 1999d)

This data was evaluated to assess the national impact of modifying existing turbidity requirements. The current performance of plants was assessed with respect to the number of months in which selected 95th percentile and maximum turbidity levels were met. The data show that approximately 88 percent of systems are also currently meeting the new requirements of a maximum turbidity limit of 1 NTU (Figure IV.1). With respect to the 95th percentile turbidity limit, roughly 46 percent of these systems are currently meeting the new requirement of 0.3 NTU (Figure IV.2) while approximately 70 percent meet this requirement 9 months out of the year. Estimates for systems needing to make changes to meet a turbidity performance limit of 0.3 NTU were based on the ability of systems currently to meet a 0.2 NTU. This assumption was intended to take into account a utility's concern with possible turbidity measurement error and to reflect the expectation that a number of utilities will attempt to achieve finished water turbidity levels below the regulatory performance level to assure compliance.

As depicted in Figure IV.1 and IV.2, the tighter turbidity performance standards for combined filter effluent in today's proposed rule reflect the actual, current performance many systems already achieve nationally. Revising the turbidity criteria effectively ensures that these systems continue to perform at their current level while also improving performance of a substantial number of systems that currently meet existing SWTR criteria, but operate at turbidity levels higher than proposed in today's rule.

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FIGURE IV.1

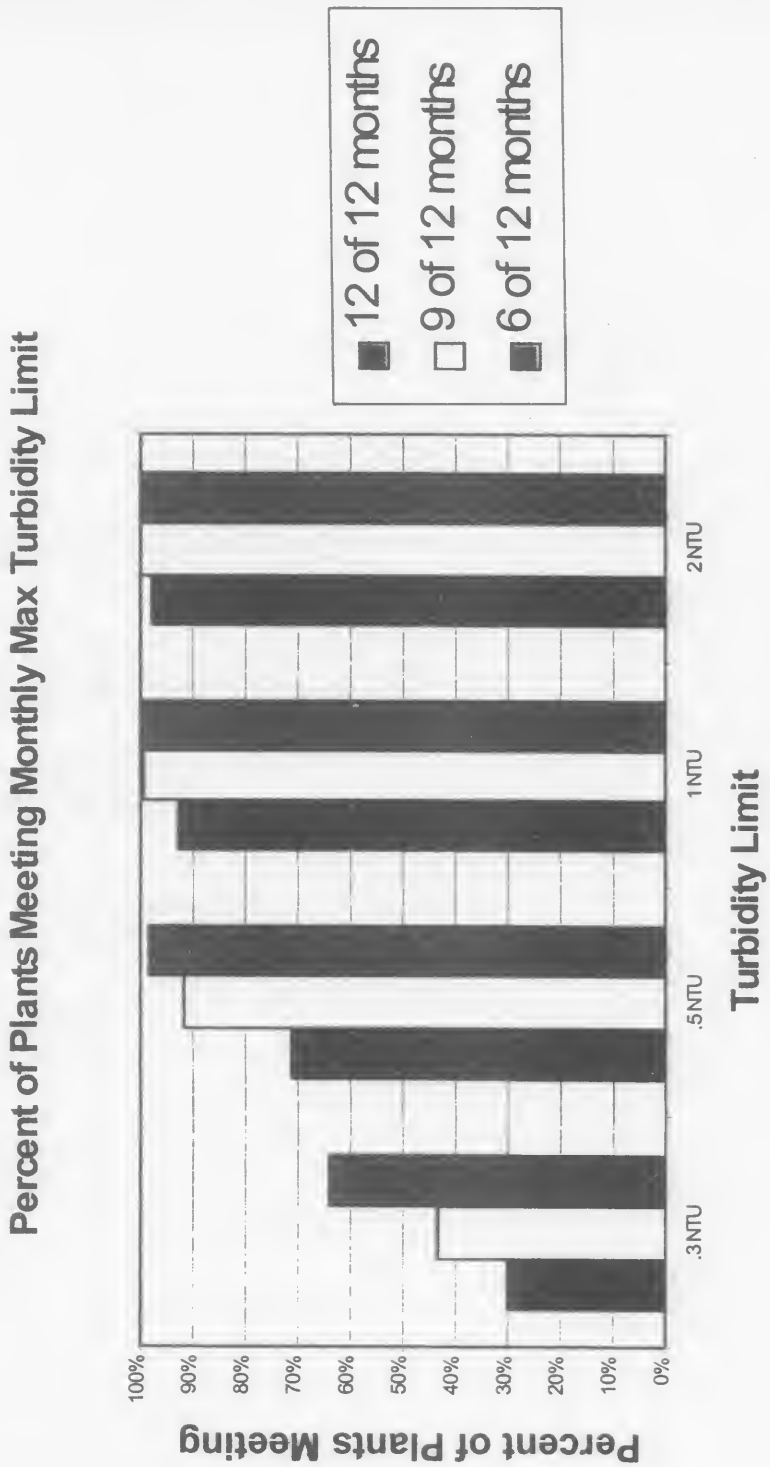
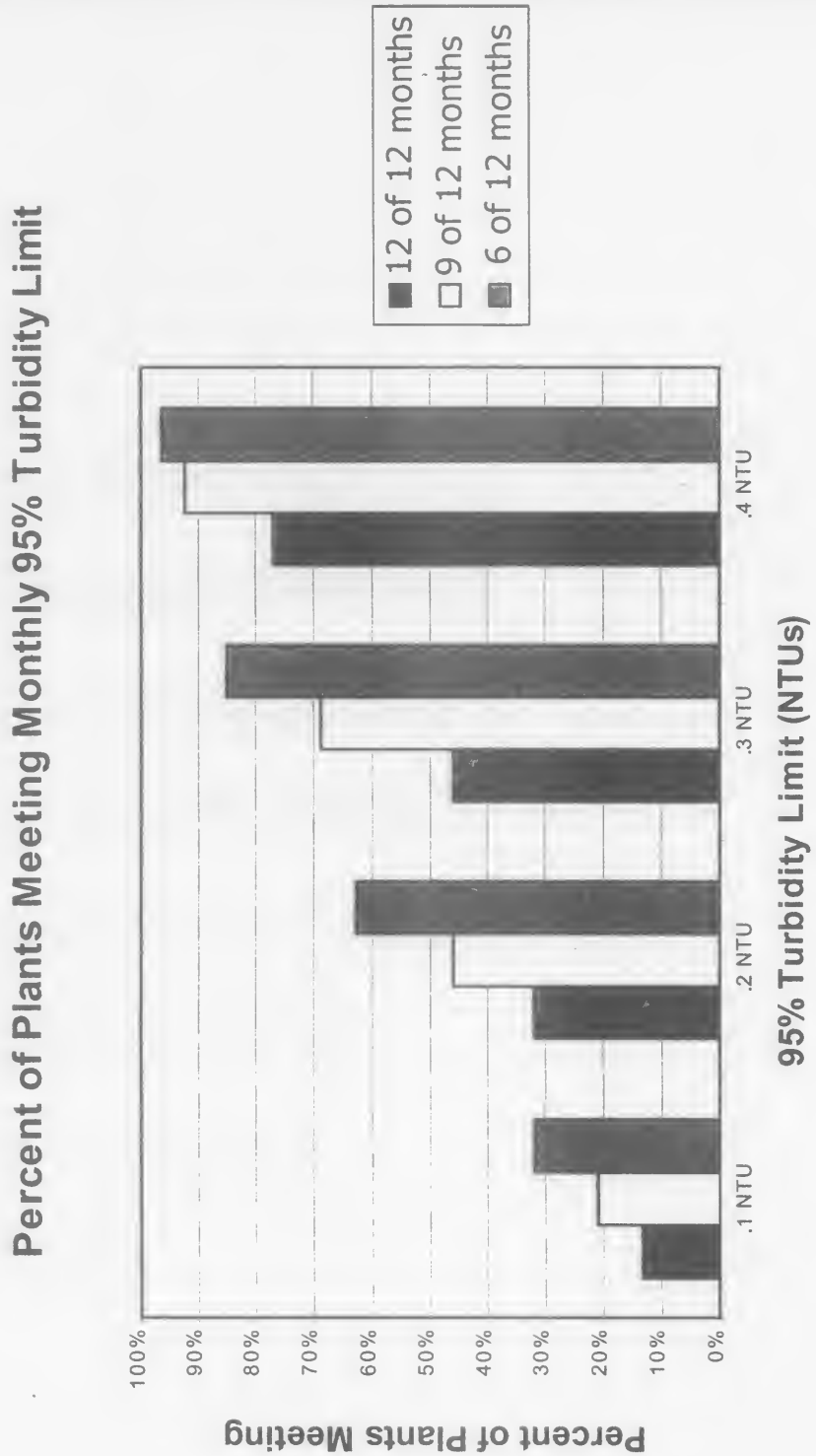

Percent of Plants Meeting Monthly Max Turbidity Limit
12 of 12 months
9 of 12 months
6 of 12 months
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percent of Plants Meeting
.3NTU
.5NTU
1NTU
2NTU
Turbidity Limit

FIGURE IV.2


Percent of Plants Meeting Monthly 95% Turbidity Limit
12 of 12 months
9 of 12 months
6 of 12 months
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Percent of Plants Meeting
.1 NTU
.2 NTU
.3 NTU
.4 NTU
95% Turbidity Limit (NTUs)

Package Plants

During development of today's proposed rule, some stakeholders expressed concern regarding the ability of "package plants" to meet the proposed requirements. EPA evaluated these systems by gathering data from around the country. The information affirms the Agency's belief that package plants can and currently do meet the turbidity limits in today's proposed rule.

Package plants combine the processes of rapid mixing, flocculation, sedimentation and filtration (rapid sand, mixed or dual media filters) into a single package system. Package Filtration Plants are preconstructed, skid mounted and transported virtually assembled to the site. The use of tube settlers, plate settlers, or adsorption clarifiers in some Package Filtration Plants results in a compact size and more treatment capacity.

Package Filtration Plants are appropriate for treating water of a fairly consistent quality with low to moderate turbidity. Effective treatment of source waters containing high levels of or extreme variability in turbidity levels requires skilled operators and close operational attention. High turbidity or excessive color in the source water could require chemical dosages above the manufacturer's recommendations for the particular plant. Excessive turbidity levels may require presedimentation or a larger capacity plant. Specific design criteria of a typical package plant and operating and maintenance requirements can vary, but an example schematic is depicted in Figure IV.3.

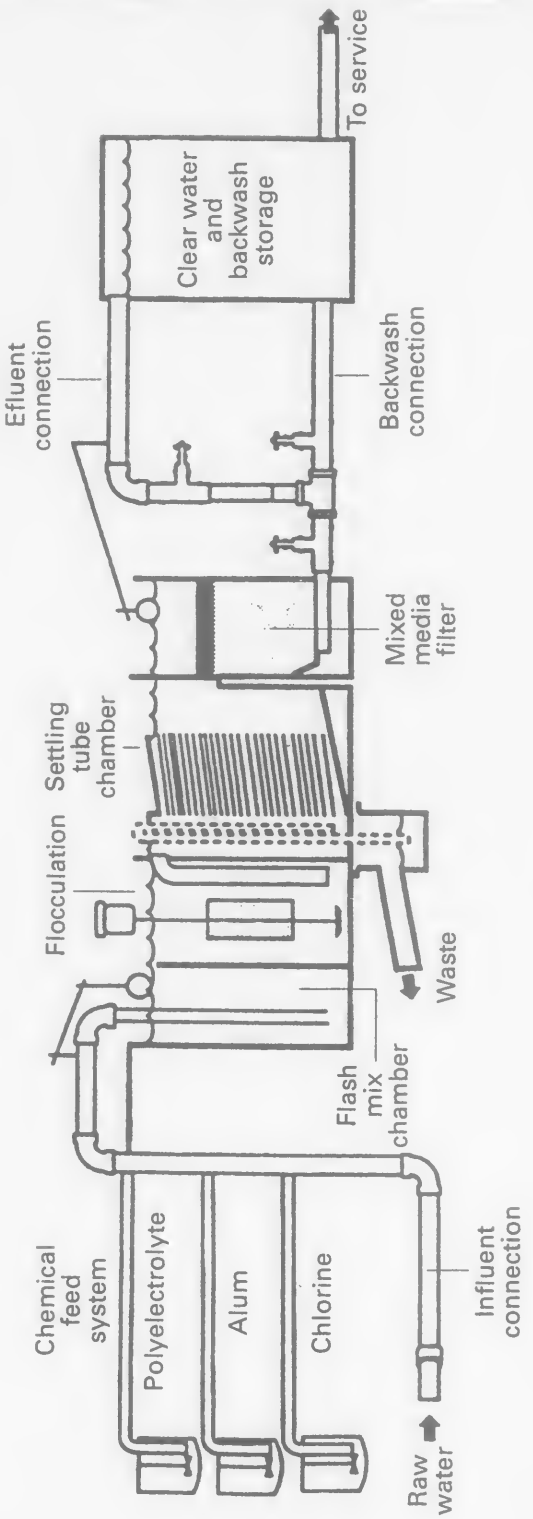


Figure IV.3 Example Package Plant Schematic

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The Agency believes that historic data show that package plants have a comparable ability to meet turbidity requirements as conventional or direct filtration systems.

A 1987 report of pilot testing using a trailer-mounted package plant system to treat raw water from Clear Lake in Lakeport, California demonstrates the ability of such systems to achieve low turbidity requirements. The raw water contained moderate to high turbidity (18 to 103 NTU). Finished water turbidities ranged from 0.07 to 0.11 NTU (EPA, 1987). Two previous studies (USEPA, 1980a,b and Cambell et al., 1995) also illustrate the ability of package systems throughout the country to meet historic turbidity performance criteria. These studies are described briefly:

Package Water Treatment Plant Performance Evaluation (USEPA, 1980a,b)

The Agency conducted a study of package water treatment systems which encompassed 36 plants in Kentucky, West Virginia, and Tennessee. Results from that study showed that the plants could provide water that met the existing turbidity limits established under the National Interim Primary Drinking Water Standards. Of the 31 plants at which turbidity measurements were made, 23 (75 percent) were found to be meeting existing standards. Of the 8 which did not meet requirements, one did not use chemical coagulants, and 6 operated less than four hours per day. (USEPA, 1980a, b)

Package Plants for Small Systems: A Field Study (Cambell et al, 1995)

This 1992 project evaluated the application of package plant technology to small communities across the U.S. The project team visited 48 facilities across the U.S. Of the 29 surface water and GWUDI systems, 21 (72 percent) had grab turbidity samples less than 0.5 NTU, the 95 percent limit which became effective in June of 1993. Twelve systems (41 percent) had values less than today's proposed 0.3 NTU 95 percent turbidity limit. (Cambell et al., 1995) It should be noted that today's rule requires compliance with turbidity limits based on 4 hour measurments.

The Agency recently evaluated Filter Plant Performance Evaluations (FPPEs) conducted by the State of Pennsylvania, in an effort to quantify the comparative abilities of package plants and conventional filtration systems to meet the required turbidity limits. The data set consisted of 100 FPPEs conducted at systems serving populations fewer than 10,000 (PADEP, 1999). Thirty-seven FPPEs were conducted at traditional conventional filtration systems while 37 were conducted at package plants or "pre-engineered" systems. The remaining 26 systems utilized other filtration technologies.

The FPPEs provided a rating of either acceptable or unacceptable as determined by the evaluation team. This rating was based on an assessment of the capability of individual unit processes to continuously provide an effective barrier to the passage of microorganisms. Specific performance goals were utilized to evaluate the performance of the system including the consistent ability to produce a finished water turbidity of less than 0.1 NTU, which is lower than the combined filter effluent turbidity requirement in today's proposed rule. Seventy-three percent of the traditional conventional filtration systems were rated acceptable and 89 percent of the package plants were rated acceptable.

The Agency also evaluated historic turbidity data graphs contained within each FPPE to provide a comparison of the ability of package plants and conventional systems to meet the 1 NTU max and 0.3 NTU 95 percent requirements that are contained in today's proposed rule. Sixty-seven percent of the conventional systems would meet today's proposed requirements while 74 percent of package systems in the data set would meet today's proposed requirements. The Agency believes that, when viewed alongside the aforementioned studies (USEPA, 1980a,b and Cambell et al., 1995), it is apparent that package systems have the ability to achieve more stringent turbidity limits.

Correlation Between CFE Requirements and 2-log Cryptosporidium Removal

Recent pilot scale experiments performed by the Agency assessed the ability of conventional treatment to control *Cryptosporidium* under steady state conditions. The work was performed with a pilot plant that was designed to minimize flow rates and as a result the number of oocyst required for continuous spiking. (Dugan et al. 1999)

Viable oocysts were fed into the plant influent at a concentration of 10^6/L for 36 to 60 hours. The removals of oocysts and the surrogate parameters turbidity, total particle counts and aerobic endospores were measured through sedimentation and filtration. There was a positive correlation between the log removals of oocysts and all surrogate parameters through the coagulation and settling process. With proper coagulation control, the conventional treatment process achieved the 2 log total *Cryptosporidium* removal required by the IESWTR. In all cases where 2 log total removal was not achieved, the plant also did not comply with the IESWTR's CFE turbidity requirements. Table IV.6 provides information on *Cryptosporidium* removals from this study.

TABLE IV.6.—LOG REMOVAL OF OOCYSTS (DUGAN ET AL. 1999)

Run	Log removal crypto	Exceeds CFE requirements
1	4.5	No.
2	5.2	No.
3	1.6	Yes, average CFE 2.1 NTU.
4	1.7	Yes, only 88% CFE under 0.3 NTU.
5	4.1	No.
6	5.1	No.
7	0.2	Yes, average CFE 0.5 NTU.
8	0.5	Yes, only 83% CFE under 0.3 NTU.
9	5.1	No.
10	4.8	No.

iii. Proposed Requirements

Today's proposed rule establishes combined filter effluent turbidity requirements which apply to all surface water and GWUDI systems which filter and serve populations fewer than 10,000. For conventional and direct filtration systems, the turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must not exceed 1 NTU at any time.

For membrane filtration, (microfiltration, ultrafiltration, nanofiltration, and reverse osmosis) the Agency is proposing to require that the turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must not exceed 1 NTU at any time. EPA included turbidity limits for membrane systems to allow such systems the ability to opt out of a possible costly demonstration of the ability to remove *Cryptosporidium*. The studies displayed previously in Table IV.4, demonstrate the ability of these technologies to achieve log-removals in excess of 2 log. In lieu of these turbidity limits, a public water system which utilizes membrane filtration may demonstrate to the State for purposes of membrane approval (using pilot plant studies or other means) that membrane filtration in combination with disinfection treatment consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts. For each approval, the State will set turbidity performance requirements that the system must meet at least 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts.

Systems utilizing slow sand or diatomaceous earth filtration must continue to meet the combined filter effluent limits established for these technologies under the SWTR (found in § 141.73 (b) and (c)). Namely, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month and the turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU.

For all other alternative filtration technologies (those other than conventional, direct, slow sand, diatomaceous earth, or membrane), public water systems must demonstrate to the State for purposes of approval (using pilot plant studies or other means), that the alternative filtration technology in combination with disinfection treatment, consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts. For each approval, the State will set turbidity performance requirements that the system must meet at least 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts.

iv. Request for Comments

EPA solicits comment on the proposal to require systems to meet the proposed combined filter effluent turbidity requirements. Additionally, EPA solicits comment on the following:

- The ability of package plants and/or other unique conventional and/or direct systems to meet the combined filter effluent requirements;
- Microbial attachment to particulate material or inert substances in water systems may have the effect of providing "shelter" to microbes by reducing their exposure to disinfectants (USEPA, 1999e). While inactivation of *Cryptosporidium* is not a consideration of this rule, should maximum combined filter effluent limits for slow sand and diatomaceous earth filtration systems be lowered to 1 or 2 NTU and/or 95th percentile requirements lowered to 0.3 NTU to minimize the ability of turbidity particles to "shelter" *Cryptosporidium* oocysts?
- Systems which practice enhanced coagulation may produce higher turbidity effluent because of the process. Should such systems be allowed to apply to the State for alternative exceedance levels similar to the provisions contained in the rule for systems which practice lime softening?
- Issues specific to small systems regarding the proposed combined filter effluent requirements;
- Establishment of turbidity limits for alternative filtration technologies;
- Allowance of a demonstration to establish site specific limits in lieu of generic turbidity limits, including components of such demonstration; and
- The number of small membrane systems employed throughout the country.

The Agency also requests comment on establishment of turbidity limits for membrane systems. While integrity of membranes provides the clearest understanding of the effectiveness of membranes, turbidity has been utilized as an indicator of performance (and corresponding *Cryptosporidium* log removal) for all filtration technologies. EPA solicits comment on modifying the requirements for membrane filters to meet integrity testing, as approved by the State and with a frequency approved by the State.

b. Individual Filter Turbidity

i. Overview and Purpose

During development of the IESWTR, it was recognized that performance of individual filters within a plant were of paramount importance to producing low-turbidity water. Two important concepts regarding individual filters were discussed. First, it was recognized that poor performance (and potential pathogen breakthrough) of one filter could be masked by optimal performance in other filters, with no discernable rise in combined filter effluent turbidity. Second, it was noted that individual filters are susceptible to turbidity spikes (of short duration) which would not be captured by four-hour combined filter effluent measurements. To address the shortcomings associated with individual filters, EPA established individual filter monitoring requirements in the IESWTR. For the reasons discussed below, the Agency believes it appropriate and necessary to extend individual filter monitoring requirements to systems serving populations fewer than 10,000 in the LT1FBR.

ii. Data

EPA believes that the support and underlying principles regarding the IESWTR individual filter monitoring requirements are also applicable for the LT1FBR. The Agency has estimated that 5,897 conventional and direct filtration systems will be subject to today's proposed individual filter turbidity requirements. Information regarding this estimate is found in Section IV.A.2.a of today's proposal. The Agency has analyzed information regarding turbidity spikes and filter masking which are presented next.

Turbidity Spikes

During a turbidity spike, significant amounts of particulate matter (including *Cryptosporidium* oocysts, if present) may pass through the filter. Various factors affect the duration and amplitude of filter spikes, including sudden changes to the flow rate through the filter, treatment of the filter backwash water, filter-to-waste capability, and site-specific water quality conditions. Recent experiments have suggest that surging has a significant effect on rapid sand filtration performance (Glasgow and Wheatley, 1998). An example filter profile depicting turbidity spikes is shown in Figure IV.4.

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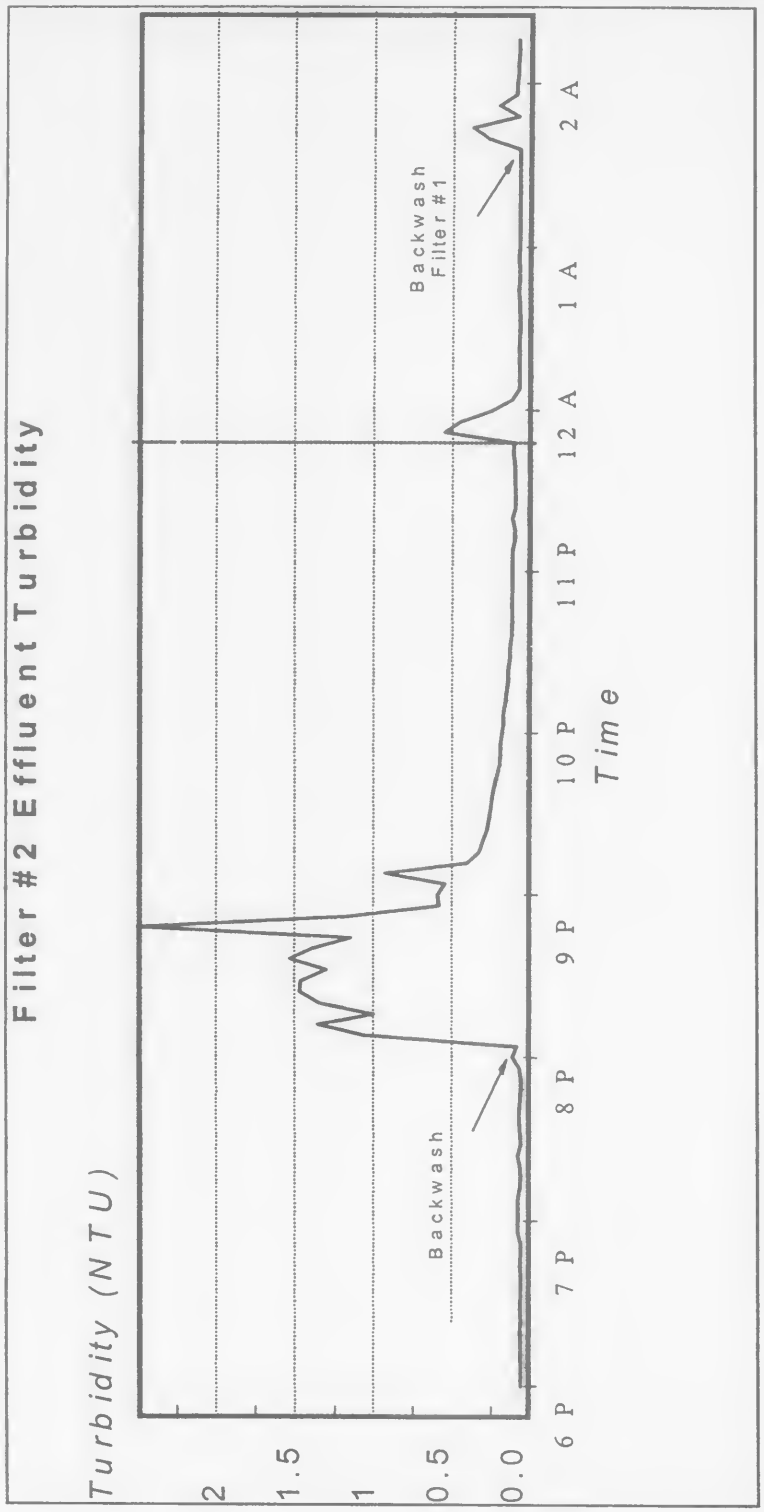

Figure IV.4. Example Filter Profile Depicting Turbidity Spikes

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Studies considered by both EPA and the M–DBP Advisory Committee noted that the greatest potential for a peak in turbidity (and thus, pathogen breakthrough) is near the beginning of the filter run after filter backwash or start up of operation (Amirtharajah, 1988; Bucklin, et al. 1988; Cleasby, 1990; and Hall and Croll, 1996). This phenomenon is depicted in Figure IV.4. Turbidity spikes also may occur for a variety of other reasons. These include:

- Outages or maintenance activities at processes within the treatment train;
- Coagulant feed pump or equipment failure;
- Filters being run at significantly higher loading rates than approved;
- Disruption in filter media;
- Excessive or insufficient coagulant dosage; and
- Hydraulic surges due to pump changes or other filters being brought on/off-line.

A recent study was completed which evaluated particle removal by filtration throughout the country. While the emphasis of this study was particle counting and removal, fifty-two of the 100 plants surveyed were also surveyed for turbidity with on-line turbidimeters. While all of the plants were able to meet 0.5 NTU 95 percent of the time, it was noted that there was a significant occurrence of spikes during the filter runs. These were determined to be a major source of raising the 95th percentile value for most of the filter runs. (McTigue *et al.* 1998)

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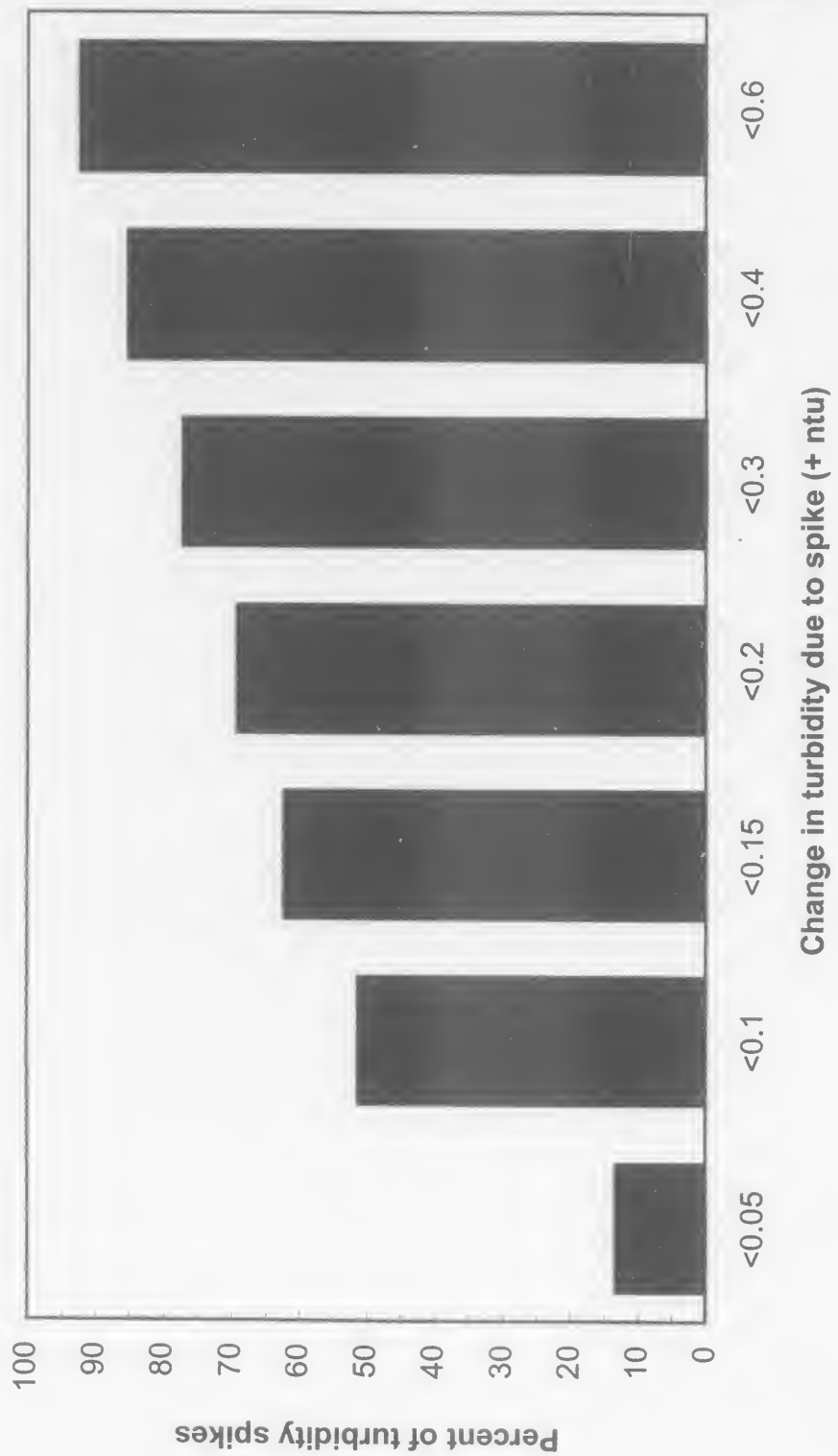

Figure IV.5a Results of Filter Turbidity Spike Analysis - Ripening Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

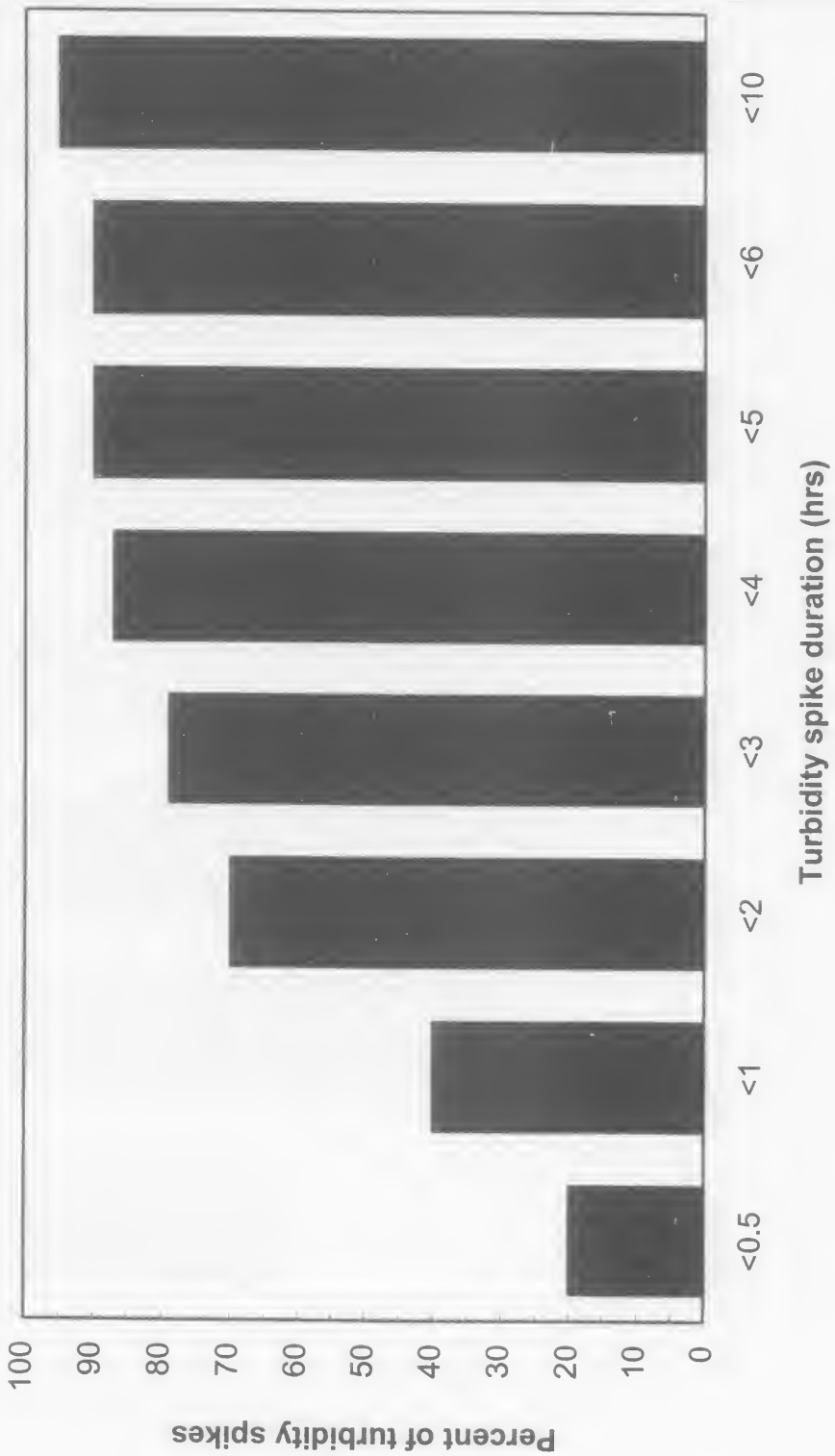

Figure IV.5b Results of Filter Turbidity Spike Analysis - Ripening Spikes by Duration (McTigue 1998, Photorevised EPA 2000)

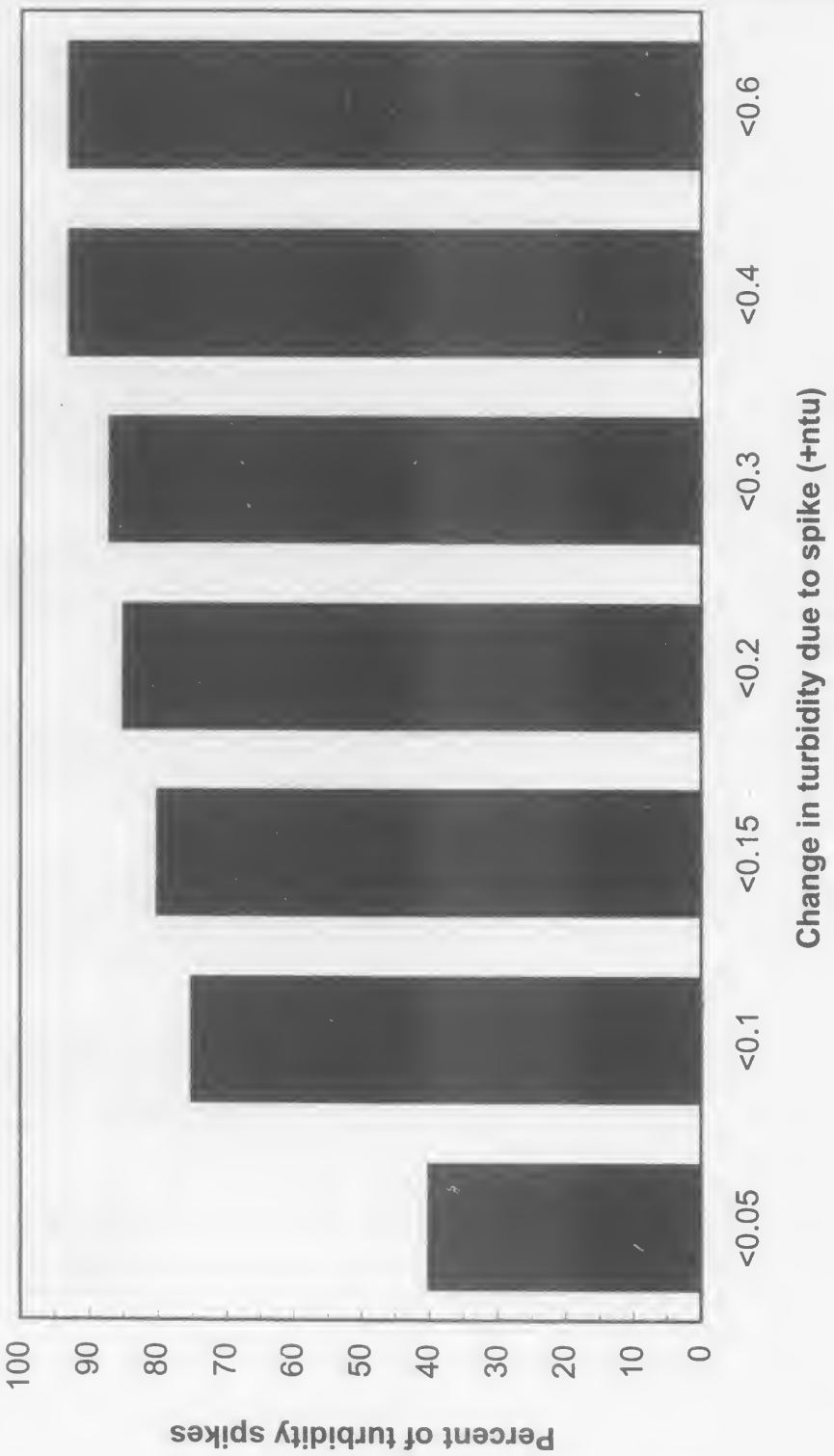

Figure IV.5c Results of Filter Turbidity Spike Analysis - Middle of Run Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

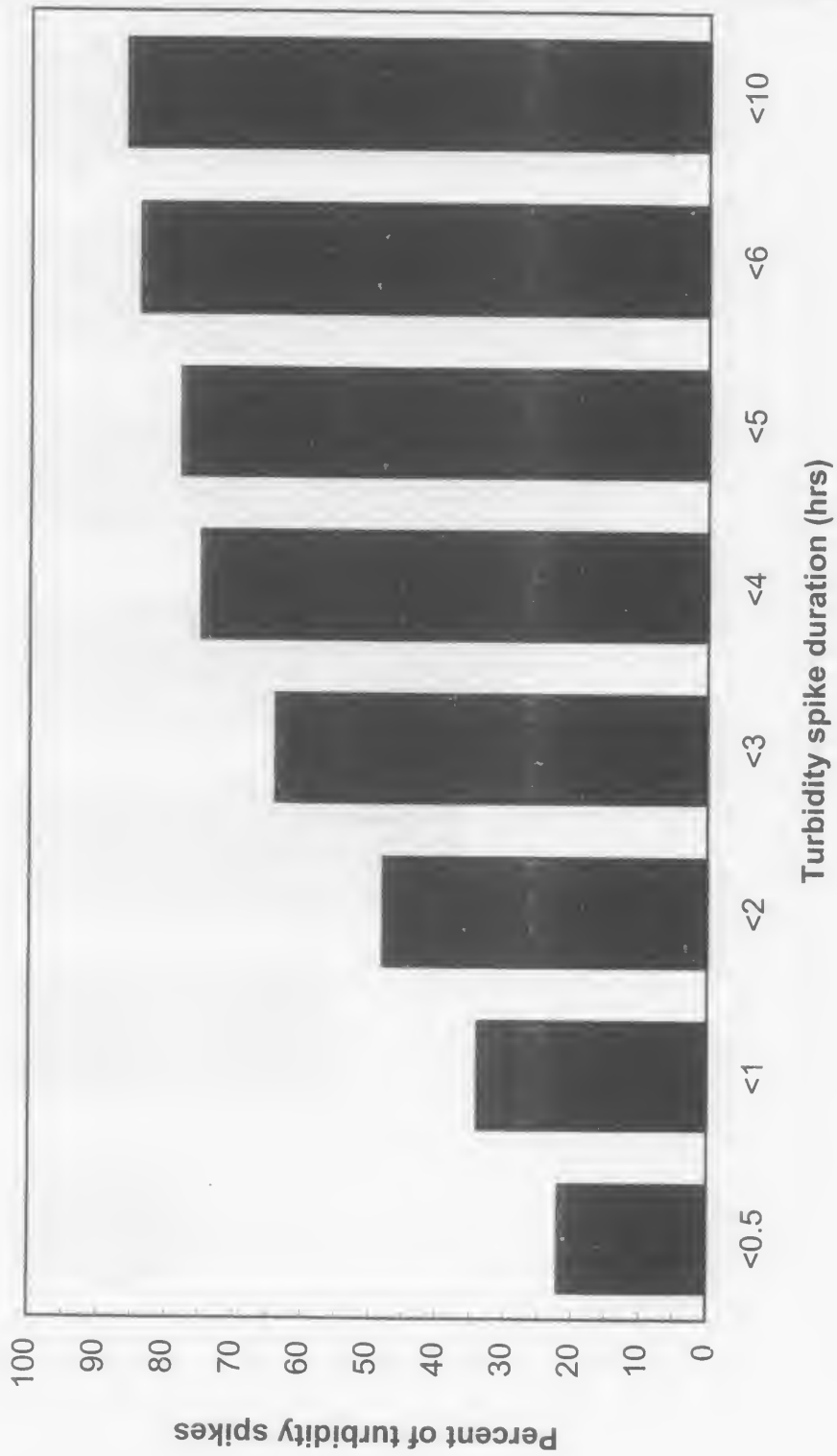

Figure IV.5d Results of Filter Turbidity Spike Analysis - Middle of Run Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

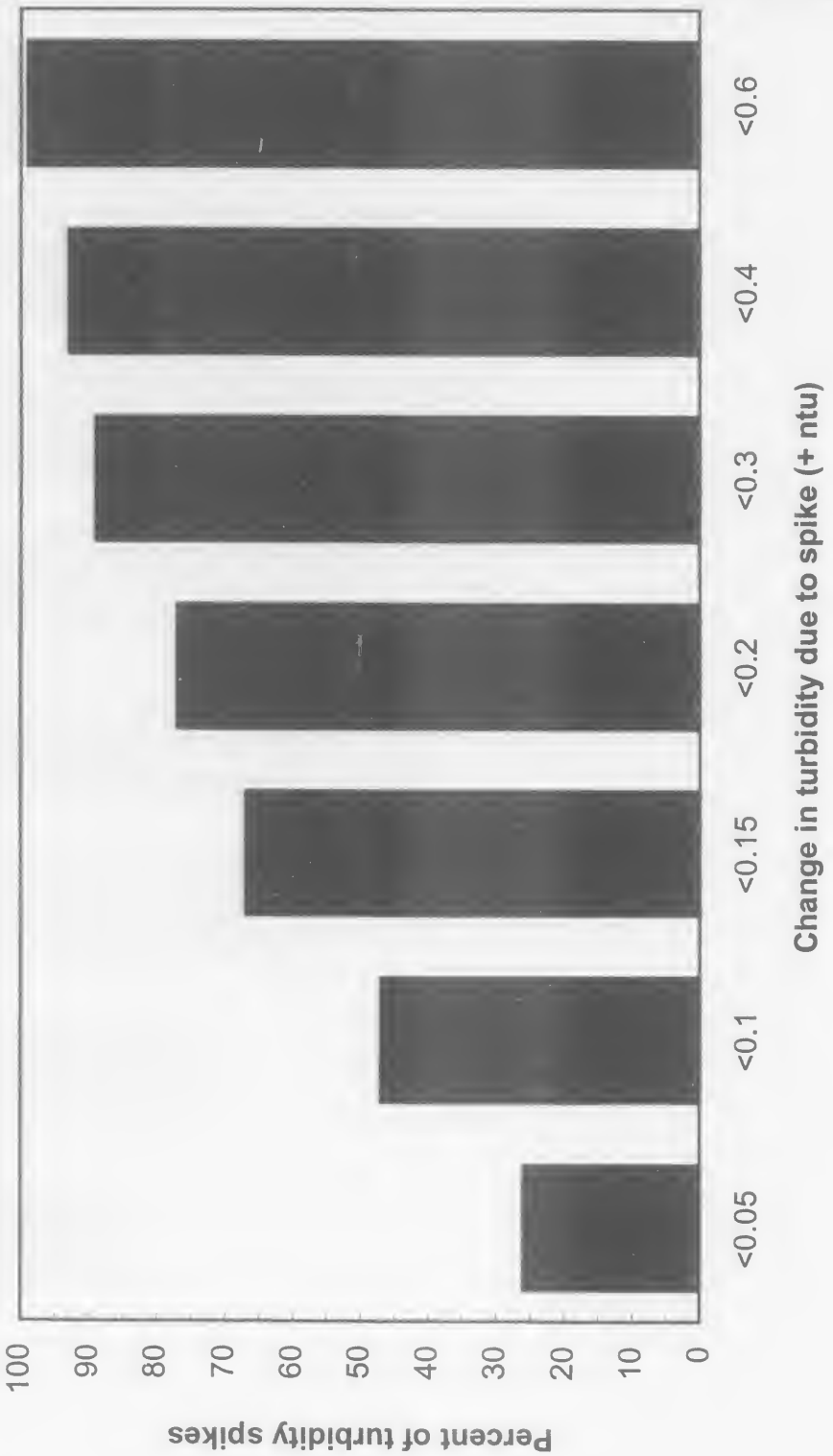

Figure IV.5e Results of Filter Turbidity Spike Analysis - End of Run Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

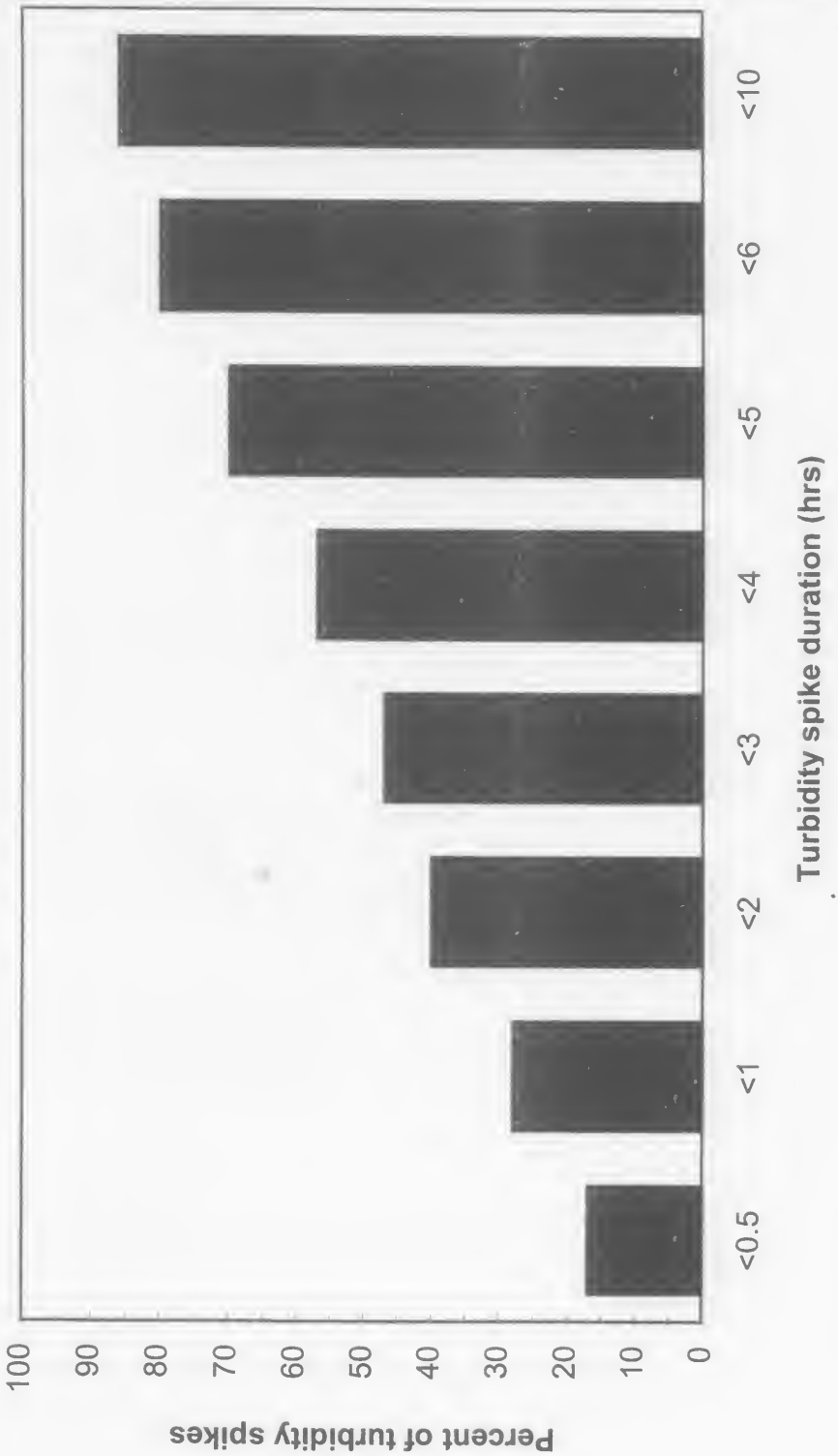

Figure IV.5f Results of Filter Turbidity Spike Analysis - End of Run Spikes by Duration (McTigue 1998, Photorevised EPA 2000)

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Masking of Filter Performance

Combined Filter Effluent monitoring can mask poor performance of individual filters which may allow passage of particulates (including *Cryptosporidium* oocysts). One poorly performing filter, can be effectively "masked" by other well operated filters because water from each of the filters is combined before an effluent turbidity measurement is taken. The following example illustrates this phenomenon.

The fictitious City of "Smithville" (depicted in Figure IV.6) operates a conventional filtration plant with four rapid granular filters as shown below. Filter number 1 has significant problems because the depth and placement of the media are contributing to elevated turbidities. Filters 2, 3, and 4 do not have these problems and are operating properly.

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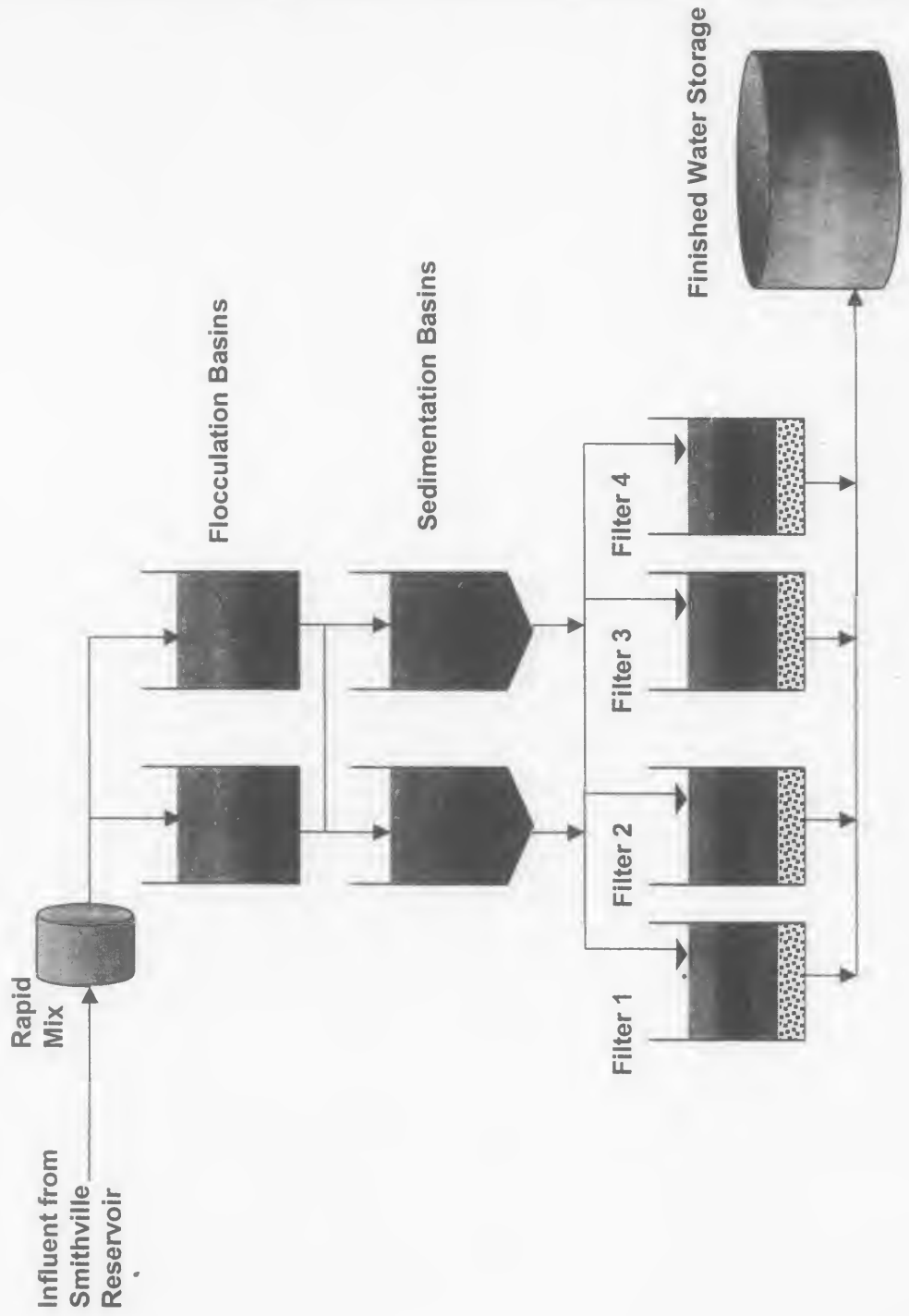

Figure IV.6 Schematic of Conventional Treatment Plant

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Turbidity measurements taken at the clearwell indicate 0.3 NTU. Filter 4 produces water with a turbidity of 0.08 NTU, Filter 3 a turbidity of 0.2 NTU, Filter 2 a turbidity of 0.1 NTU, and Filter 1 a turbidity of 0.9 NTU. Each filter contributes an equal proportion of water, but each is operating at different turbidity levels which contributes to the combined filter effluent of 0.32 NTU. ([0.08+0.2+0.1+0.9]÷4 = 0.32 NTU)

As discussed previously in Section IV.2.a, the Agency believes that a system must meet 0.3 NTU 95 percent of the time an appropriate treatment technique requirement that assures an increased level of *Cryptosporidium* removal. While the fictitious system described above would barely meet the required CFE turbidity, it is entirely possible that they would not be achieving an overall 2 log removal of *Cryptosporidium* with one filter achieving considerably less than 2-log removal. This issue highlights the importance of understanding the performance of individual filters relative to overall plant performance.

iii. Proposed Requirements

Today's proposed rule establishes an individual filter turbidity requirement which applies to all surface water and GWUDI systems using filtration and which serve populations fewer than 10,000 and utilize direct or conventional filtration. In developing this requirement, the Agency evaluated several alternatives (A, B and C) in an attempt to reduce the burden faced by small systems while still providing: (1) A comparable level of public health protection as that afforded to systems serving 10,000 or more people and (2) an early-warning tool systems can use to detect and correct problems with filters.

Alternative A

The first alternative considered by the Agency was requiring direct and conventional filtration systems serving populations fewer than 10,000 to meet the same requirements as established for systems serving 10,000 or more people. This alternative would require that all conventional and direct filtration systems must conduct continuous monitoring of turbidity (one turbidity measurement every 15 minutes) for each individual filter. Systems must provide an exceptions report to the State as part of the existing combined filter effluent reporting process for any of the following circumstances:

(1) Any individual filter with a turbidity level greater than 1.0 NTU based on two consecutive measurements fifteen minutes apart;

(2) Any individual filter with a turbidity greater than 0.5 NTU at the end of the first four hours of filter operation based on two consecutive measurements fifteen minutes apart;

(3) Any individual filter with turbidity levels greater than 1.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of three consecutive months (the system must, in addition to filing an exceptions report, conduct a self-assessment of the filter); and

(4) Any individual filter with turbidity levels greater than 2.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of two consecutive months (the system must file an exceptions report and must arrange for a comprehensive performance evaluation (CPE) to be conducted by the State or a third party approved by the State).

Under the first two circumstances identified, a system must produce a filter profile if no obvious reason for the abnormal filter performance can be identified.

Alternative B

The second alternative considered by the Agency represents a slight modification from the individual filter monitoring requirements of large systems. The 0.5 NTU exceptions report trigger would be omitted in an effort to reduce the burden associated with daily data evaluation. Additionally, the filter profile requirement would be removed. Requirement language was slightly modified in an effort to simplify the requirement for small system operators. This alternative would still require that all conventional and direct filtration systems conduct *continuous* monitoring (one turbidity measurement every 15 minutes) for each individual filter, but includes the following three requirements:

(1) A system must provide an exceptions report to the State as part of the existing combined effluent reporting process if any individual filter turbidity measurement exceeds 1.0 NTU (unless the system can show that the next reading is less than 1.0 NTU);

(2) If a system is required to submit an exceptions report for the same filter in three consecutive months, the system must conduct a self-assessment of the filter.

(3) If a system is required to submit an exceptions report for the same filter in two consecutive months which contains an exceedance of 2.0 NTU by the same filter, the system must arrange for a CPE to be conducted by the State or a third party approved by the State.

Alternative C

The third alternative considered by the Agency would include new triggers for reporting and follow-up action in an effort to reduce the daily burden associated with data review. This alternative would still require that all conventional and direct filtration systems must conduct *continuous* monitoring (one turbidity measurement every 15 minutes) for each individual filter, but would include the following three requirements:

(1) A system must provide an exceptions report to the State as part of the existing combined effluent reporting process if filter samples exceed 0.5 NTU in at least 5 percent of the measurements taken each month and/or any individual filter measurement exceeds 2.0 NTU (unless the system can show that the following reading was < 2.0 NTU).

(2) If a system is required to submit an exceptions report for the same filter in three consecutive months the system must conduct a self-assessment of the filter.

(3) If a system is required to submit an exceptions report for the same filter in two consecutive months which contains an exceedance of 2.0 NTU by the same filter, the system must arrange for a CPE to be conducted by the State or a third party approved by the State.

For all three alternatives the requirements regarding self assessments and CPEs are the same. If a CPE is required, the system must arrange for the State or a third party approved by the State to conduct the CPE no later than 30 days following the exceedance. The CPE must be completed and submitted to the State no later than 90 days following the exceedance which triggered the CPE. If a self-assessment is required it must take place within 14 days of the exceedance and the system must report to the State that the self-assessment was conducted. The self assessment must consist of at least the following components:

- assessment of filter performance;
- development of a filter profile;
- identification and prioritization of factors limiting filter performance;
- assessment of the applicability of corrections; and
- preparation of a filter self assessment report.

In considering each of the above alternatives, the Agency attempted to reduce the burden faced by small systems. Each of the three alternatives was judged to provide levels of public health protection comparable to those in the IESWTR for large systems. Alternative A, because it contains the

same requirements as IESWTR, was expected to afford the same level of public health protection. Alternative B, (which removes the four-hour 0.5 NTU trigger and the filter profile requirement) was expected to afford comparable health protection because the core components which provide the overwhelming majority of the public health protection (monitoring frequency, trigger which requires follow-up action, and the follow-up actions) are the same as the IESWTR. Alternative C was expected to provide comparable health protection because follow-up action is the same as under the IESWTR and a 0.5 NTU 95percent percentile trigger was expected to identify the same systems which the triggers established under the IESWTR would identify. All three were also considered useful diagnostic tools for small systems to evaluate the performance of filters and correct problems before follow-up action was necessary. The first alternative was viewed as significantly more challenging to implement and burdensome for smaller systems due to the amount of required daily data review. This evaluation was also echoed by small entity representatives during the Agency's SBREFA process as well as stakeholders at each of the public meetings held to discuss issues related to today's proposed rule. While Alternative C reduced burden associated with daily data review, it would institute a very different trigger for small systems than established by the IESWTR for large systems. This was viewed as problematic by several stakeholders who stressed the importance of maintaining similar requirements in order to limit transactional costs and additional State burden. Therefore, the Agency is proposing Alternative B as described above, which allows operators to expend less time to evaluate their turbidity data. Alternative B maintains a comparable level of public health protection as those afforded large systems, reduces much of the burden associated with daily data collection and review (removing the requirement to conduct a filter profile allows systems to review data once a week instead of daily if they so choose), yet still serves as a self-diagnostic tool for operators and provides the mechanism for State follow-up when significant performance problems exist.

iv. Request for Comments

The individual filter monitoring provisions represent a challenging opportunity to provide systems with a useful tool for assessing filters and correcting problems before State intervention is necessary or combined filter turbidity is affected and treatment technique violations occur. The Agency is actively seeking comment on this provision. Because of the complexity of this provision, specific requests for comment have been broken down into five distinct areas.

Comments on the Alternatives

EPA requests comment on today's proposed individual filter requirement and each of the alternatives as well as additional alternatives for this provision such as establishing a different frequency for individual filter monitoring (*e.g.*, 60 minute or 30 minute increments). The Agency also seeks comment or information on:

- Tools and or guidance which would be useful and necessary in order to educate operators on how to comply with individual filter provisions and perform any necessary calculations;
- Data correlating individual filter performance relative to combined filter effluent;
- Contributing factors to turbidity spikes associated with reduced filter performance;
- Practices which contribute to poor individual filter performance and filter spikes; and
- Any additional concerns with individual filter performance.

Modifications to the Alternatives

The Agency also seeks comment on a variety of proposed modifications to the individual filter monitoring alternatives discussed which could be incorporated in order to better address the concerns and realities of small surface water systems. These modifications include:

- Modification of the alternatives to include a provision which would require systems which do not staff the plant during all hours of operation, to utilize an alarm/phone system to alert off-site operators of significantly elevated turbidity levels and poor individual filter performance;
- A modification to allow conventional and direct filtration systems with either 2–3 or less filters to sample combined filter effluent continuously (every 15 minutes) in lieu of monitoring individual filter turbidity. This modification would reduce the data collection/analysis burden for the smallest systems while not compromising the level of public health protection;
- A modification to lengthen the period of time (120 days or a period of time established by the State but not to exceed 120 days) for completion of the CPE and/or a modification to lengthen the requirement that a CPE must be conducted no later than 60 or 90 days following the exceedance; and
- A modification to require systems to notify the State within 24 hours of triggering the CPE or IFA. This would inform States sooner so they can begin to work with systems to address performance of filters and conduct CPEs and IFAs as necessary.

Establishment of Subcategories

The Agency is also evaluating the need to establish subcategories in the final rule for individual filter monitoring/reporting. EPA is currently considering these three categories:

1. Systems serving populations of 3,300 or more persons;
2. Systems with more than 2 filters, but less than 3,300 persons; and
3. Systems with 2 or fewer filters serving populations fewer than 3,300 persons.

Individual filter monitoring requirements would also be based on these subcategories. Systems serving 3,300 or greater would be required to meet the same individual turbidity requirements as the IESWTR (Alternative A as described above). Systems serving fewer than 3,300 but using more than 2 filters would be required to meet a modified version of the IESWTR individual filter requirements (Alternative B as described above). Systems serving fewer than 3,300 and using 2 or fewer filters would continue to monitor and report only combined filter effluent turbidity at an increased frequency (once every 15 minutes, 30 minutes, or one hour).

Input and or comment on cut-offs for subcategories and how to apply subcategories to Alternatives is requested. The Agency would also like to take comment on additional strategies to tailor individual filter monitoring for the smallest systems while continuing to maintain an adequate level of public health protection. Such possible strategies include:

- Since small systems are often understaffed one approach would require those systems utilizing only two or fewer filters to utilize, maintain, and continually operate an alarm/phone system during all hours of operation, which alert off-site operators of significantly elevated turbidity levels and poor individual filter performance and/or automatically shuts the system down if turbidity levels exceed a specified performance level. This modification would be in addition to the proposed requirements.
- Establishing a more general modification which would require systems which do not staff the plant during all hours of operation to utilize

an alarm/phone system to alert off-site operators of significantly elevated turbidity levels and poor individual filter performance, and/or to automatically shut the system down if turbidity levels exceed a specified performance level.

• If systems with 2 or fewer filters is allowed to sample combined filter effluent in lieu of individual filter effluent with a frequency of a reading every hour and combined filter effluent turbidity exceeds 0.5 NTU, should the system be required to take grab samples of individual filter turbidity for all filters every 15 minutes until the results of those samples are lower than 0.5 NTU?

Reliability

Maintaining reliable performance at systems using filtration requires that the filters be examined at intervals to determine if problems are developing. This can mean that a filter must go off-line for replacement or upgrades of media, underdrains, backwash lines etc. In order to provide adequate public health protection at small systems, the lack of duplicate units can be a problem. EPA is considering requiring any system with only one filter to install an additional filter. The schedule would be set by the primacy agency, but the filter would have to be installed no later than 6 years after promulgation. EPA is requesting comment on this potential requirement.

Data Gathering Recordkeeping and Reporting

The Agency is evaluating data gathering/reporting requirements for systems. A system collecting data at a frequency of once every 15 minutes, (and operating) 24 hours a day, would record approximately 2800 data points for *each* filter throughout the course of the month. Although the smallest systems in operation today routinely operate on the average of 4 to 12 hours a day (resulting in 480 to 1400 data points per filter), these systems do not typically use sophisticated data recording systems such as SCADAs. The lack of modern equipment at small systems may result in difficulty with retrieving and analyzing data for reporting purposes. While the Agency intends to issue guidance targeted at aiding these systems with the data gathering requirements, EPA is also seeking feedback on a modification to the frequency of data gathering required under each of the aforementioned options. Specifically, the Agency would like to request comment on modifying the frequency for systems serving fewer than 3,300 to continuous monitoring on a 30 or 60 minute basis. EPA also requests comment on the availability and practicality of data systems that would allow small systems, State inspectors, and technical assistance providers to use individual filter turbidity data to improve performance, perform filter analysis, conduct individual filter self assessments, etc. The Agency is interested in *specific* practical combinations of data recorders, charts, hand written recordings from turbidimeters, that would accomplish this.

Failure of Continuous Turbidity Monitoring

Under today's proposed rule, the Agency requires that if there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. A system has five working days to resume continuous monitoring before a violation is incurred. EPA would like to solicit comment on modifying this component to require systems to take grab samples at an increased frequency, specifically every 30 minutes, 1 hour, or 2 hours.

B. Disinfection Benchmarking Requirements

Small systems will be required to comply with the Stage 1 Disinfection Byproduct Rule (Stage 1 DBPR) in the first calendar quarter of 2004. The Stage 1 DBPR set Maximum Contaminant Levels (MCLs) for Total Trihalomethanes (chloroform, bromodichloromethane, chlorodibromomethane, and bromoform), and five Haloacetic Acids (i.e., the sum of the concentrations of mono-, di-, and trichloroacetic acids and mono- and dibromoacetic acids.) The LT1FBR follows the principles set forth in earlier FACA negotiations, i.e., that existing microbial protection must not be significantly reduced or undercut as a result of systems taking the necessary steps to comply with the MCL's for TTHM and HAA5 set forth in Stage 1 DBPR. The disinfection benchmarking requirements are designed to ensure that risk from one contaminant is not increased while risk from another contaminant is decreased.

The Stage 1 DBPR was promulgated because disinfectants such as chlorine can react with natural organic and inorganic matter in source water and distribution systems to form disinfection byproducts (DBPs). Results from toxicology studies have shown several DBPs (e.g., bromodichloromethane, bromoform, chloroform, dichloroacetic acid, and bromate) to potentially cause cancer in laboratory animals. Other DBPs (e.g., certain haloacetic acids) have been shown to cause adverse reproductive or developmental effects in laboratory animals. Concern about these health effects may cause public water utilities to consider altering their disinfection practices to minimize health risks to consumers.

A fundamental principle, therefore, of the 1992–1993 regulatory negotiation reflected in the 1994 proposal for the IESWTR was that new standards for control of DBPs must not result in significant increases in microbial risk. This principle was also one of the underlying premises of the 1997 M–DBP Advisory Committee's deliberations, i.e., that existing microbial protection must not be significantly reduced or undercut as a result of systems taking the necessary steps to comply with the MCL's for TTHM and HAA5 set forth in Stage 1 DBPR. The Advisory Committee reached agreement on the use of microbial profiling and benchmarking as a process by which a PWS and the State, working together, could assure that there would be no significant reduction in microbial protection as the result of modifying disinfection practices in order to comply with Stage 1 DBPR.

The process established under the IESWTR has three components: (1) Applicability Monitoring; (2) Disinfection Profiling; and (3) Disinfection Benchmarking. These components have the following three goals respectively: (1) determine which systems have annual average TTHM and HAA5 levels close enough to the MCL (e.g., 80 percent of the MCL) that they may need to consider altering their disinfection practices to comply with Stage 1 DBPR; (2) those systems that have TTHM and HAA5 levels of at least 80 percent of the MCLs must develop a baseline of current microbial inactivation over the period of 1 year; and (3) determine the benchmark, or the month with the lowest average level of microbial inactivation, which becomes the critical period for that year.

The aforementioned components were applied to systems serving 10,000 or more people in the IESWTR and were carried out sequentially. In response to concerns about early implementation (any requirement which would require action prior to 2 years after the promulgation date of the rule), the Agency is considering modifying the IESWTR approach for small systems, as described in the following section. Additionally, the specific provisions have been modified to take into account

specific needs of small systems. EPA's goal in developing these requirements is to recognize the specific needs of small system and States, while providing small systems with a useful means of ensuring that existing microbial protection must not be significantly reduced or undercut as a result of systems taking the necessary steps to comply with the MCL's for TTHM and HAA5 set forth in Stage 1 DBPR.

The description of the disinfection benchmarking components of today's proposed rule will be broken into the three segments: (1) Applicability Monitoring; (2) Disinfection Profiling; and (3) Disinfection Benchmarking. Each section will provide an overview and purpose, data, a description of the proposed requirements and request for comment.

1. Applicability Monitoring

a. Overview and Purpose

The purpose of the TTHM and HAA5 applicability monitoring is to serve as an indicator for systems that are likely to consider making changes to their disinfection practices in order to comply with the Stage 1 DBPR. TTHM samples which equal or exceed 0.064 mg/L and/or HAA5 samples equal or exceed 0.048 mg/L (80 percent of their respective MCLs) represent DBP levels of concern. Systems with TTHM or HAA5 levels exceeding 80 percent of the respective MCLs may consider changing their disinfection practice in order to comply with the Stage 1 DBPR.

b. Data

In 1987, EPA established monitoring requirements for 51 unregulated synthetic organic chemicals. Subsequently, an additional 113 unregulated contaminants were added to the monitoring requirements. Information on TTHMs has become available from the first round of monitoring conducted by systems serving fewer than 10,000 people.

Preliminary analysis of the data from the Unregulated Contaminant Information System (URCIS, Data) suggest that roughly 12 percent of systems serving fewer than 10,000 would exceed 64 µ/L or 80 percent of the MCL for TTHM (Table IV.7). This number is presented only as an indicator, as it represents samples taken at the entrance to distribution systems. In general, TTHMs and HAA5s tend to increase with time as water travels through the distribution system. The Stage 1 Disinfection Byproducts Rule estimated 20 percent of systems serving fewer than 10,000 would exceed 80 percent of the MCLs for either TTHMs or HAA5s or both. EPA is working to improve the knowledge of TTHM and HAA5 formation kinetics in the distribution systems for systems serving fewer than 10,000 people. EPA is currently developing a model to predict the formation of TTHM and HAA5 in the distribution system based on operational measurements. This model is not yet available. In order to develop a better estimate of the percent of small systems that would be triggered into the profiling requirements (i.e., develop a profile of microbial inactivation over a period of 1 year) EPA is considering the following method:

- Use URCIS data to show how many systems serving 10,000 or more people have TTHM levels at or above 0.064 mg/L;
- Compare those values to the data received from the Information Collection Rule for TTHM average values taken at representative points in the distribution system;
- Determine the mathematical factor by which the two values differ; and
- Apply that factor to the URCIS data for systems serving fewer than 10,000 people to estimate the percent of those systems that would have TTHM values at or above 0.064mg/L as an average of values taken at representative points in the distribution system.

TABLE IV.7.—TTHM LEVELS AT SMALL SURFACE SYSTEMS

[Data from Unregulated Contaminant Database, 1987–92 [1]]

System size (population served)	Total number of systems	Number of systems w/ ave. TTHM ≥ 64 µg/L (80 % of MCL)	Maximum level of ave. TTHM (µg/L)
<500	74	0 (0%)	56
501–1,000	44	6 (13.6%)	222
1,001–3,300	114	12 (10.5%)	172
3,301–10,000	116	25 (21.6%)	279
Total	348	43 (12.4%)	279

[1] In Unregulated Contaminant Database (1987–1992), there are ten States (*i.e.*, CA, DE, IN, MD, MI, MO, NC, NY, PR, WV). However, only eight of them can be identified with the data of both population and TTHM for systems serving fewer than 10,000 people (See next page).

The Agency requests comment on this approach to estimating TTHM levels in the distribution system based on TTHM levels at the entry point to the distribution system. The Agency also requests comment on the relationship of HAA5 formation relative to TTHM formation in the distribution system. Specifically, is there data to support the hypothesis that HAA5s do not peak at the same point in the distribution system as TTHMs?

The Agency also received two full years of TTHM data for seventy-four systems in the State of Missouri (Missouri, 1998). This data consisted of quarterly TTHM data, which was converted into an annual average. The data (presented in Table IV.8) demonstrates a very different picture than that displayed by the URCIS data described above. In 1996, 88 percent of the systems exceeded 64 µg/L, while in 1997, 85 percent exceeded 64 µg/L. Figure IV.7 graphically displays this data set.

TABLE IV.8.—TTHM LEVELS AT SMALL SURFACE SYSTEMS IN THE STATE OF MISSOURI

[State of Missouri, 1996, 1997]

Year	Total number of systems	Number of systems w/ ave. TTHM ≥ 64 µg/L (80 percent of MCL)	Maximum Level of Ave. TTHM (µg/L)
1996	74	65 (88%)	276
1997	75	64 (85%)	251
All years	149	129 (87%)	276

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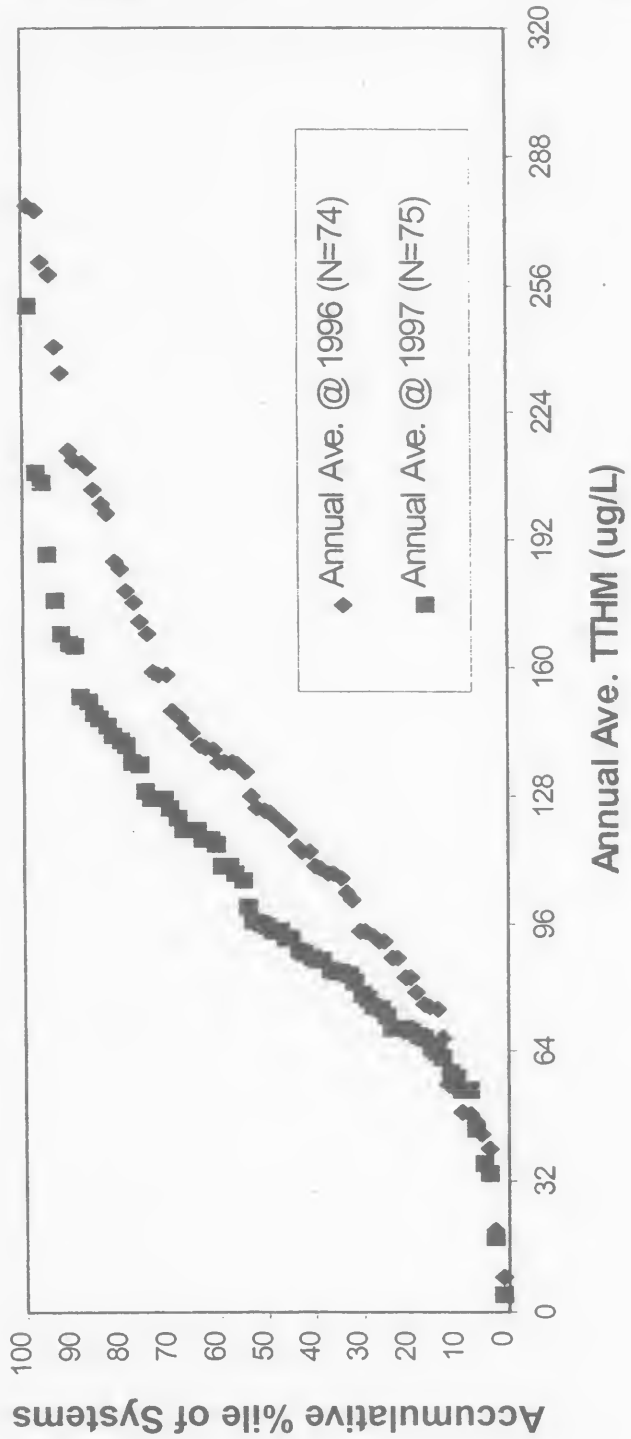
Figure IV.7 Distribution of Annual Ave. TTHM for Small SW Systems (<10,000) in Missouri



There are several potential reasons for the differences between the data shown in Tables IV.7 and IV.8. Data in Table IV.7 contains zero values which may be indicative of no sample being taken rather than a sample with a value of zero. Additionally, data shown in IV.8 was collected within the distribution system, while data in Table IV.7 was taken at the entry point to the distribution system. The data collection method used in collecting the data

shown in Table IV.8 is similar to the methodology required under the Stage 1 DBPR.

c. Proposed Requirements

EPA considered four alternatives for systems to use TTHM and HAA5 data to determine which systems whether they would be required to develop a disinfection profile. In today's proposed rule, EPA is proposing Alternative 4.

Alternative 1

The IESWTR required that systems monitor for TTHMs at four points in the distribution system each quarter. At least one of those samples must be taken at a point which represents the maximum residence time of the water in the system. The remaining three must be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed. The results of all analyses per quarter are averaged and reported to the State.

EPA considered applying this alternative to systems serving fewer than 10,000 people and requested input from small system operators and other interested parties, including the public. Based on the feedback EPA received, two other alternatives were developed for consideration (listed as Alternatives 2 and 3).

Alternative 2

EPA considered requiring systems serving fewer than 10,000 people to monitor for TTHM and HAA5 at the point of maximum residence time according to the following schedule:

- No less than once per quarter per treatment plant operated for systems serving populations between 500 and 10,000 persons; and no less than once per year per treatment plant during the month of warmest water temperature for systems serving populations less than 500. If systems wish to take additional samples, however, they would be permitted to do so.
- Systems may consult with States and elect not to perform TTHM and HAA5 monitoring and proceed directly with the development of a disinfection profile.

This alternative provides an applicability monitoring frequency identical to the DBP monitoring frequency under the Stage 1 DBPR that systems will have to comply with in 2004. In addition, it allows systems the flexibility to skip TTHM and HAA5 monitoring completely, pending State approval, and begin profiling immediately.

Alternative 3

EPA considered requiring all systems serving fewer than 10,000 people to monitor once per year per system during the month of warmest water temperature of 2002 and at the point of maximum residence time.

During the SBREFA process and during stakeholder meetings, EPA received some positive comments regarding Alternative 3 as the least burdensome approach. Other stakeholders, however, pointed out that Alternative 3 does not allow systems to measure seasonal variation as is done in Alternative 2 for systems serving populations between 500 and 10,000. Several stakeholders agreed that despite the costs, the information obtained from applicability monitoring will be useful. EPA agrees that it is valuable to systems to monitor and understand the seasonal variation in TTHM and HAA5 values, however, EPA has determined that requiring a full year of monitoring may place an excessive burden on both States and systems. In order to complete a full year of monitoring and another full year of disinfection data gathering, systems would have to start TTHM and HAA5 monitoring January of 2002.

Under SDWA, States have two years to develop their own regulations as part of their primacy requirements, EPA recognized that requiring Applicability Monitoring during this period would pose a burden on States. In response to these concerns, the Agency developed a new alternative, described in the following paragraph.

Alternative 4

Applicability Monitoring is optional and not a requirement under today's proposed rule. If a system has TTHM and HAA5 data taken during the month of warmest water temperature (from 1998–2002) and taken at the point of maximum residence time, they may submit this data to the State prior to [DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE]. If the data shows TTHM and HAA5 levels less than 80 percent of the MCLs, the system does not have to develop a disinfection profile. If the data shows TTHM and HAA5 levels at or above 80 percent of the MCLs, the system would be required to develop a disinfection profile in 2003 as described later in section IV.B.2. If the system does not have, or does not gather TTHM and HAA5 data during the month of warmest water temperature and at the point of maximum residence time in the distribution system as described, then the system would automatically be required to develop a disinfection profile starting January 1 of 2003. This option still provides systems with the necessary tools for assessing potential changes to their disinfection practice, (i.e. the generation of the profile), while not forcing States to pass their primacy regulations, contact all small systems within their jurisdiction, and set up TTHM and HAA5 monitoring all within the first year after promulgation of this rule. Systems will still be able to ensure public health protection by having the disinfection profile when monitoring under Stage 1 DBPR takes effect. It should be noted that EPA estimates the cost for applicability monitoring (as described in Alternative 4) and disinfection profiling (as described in Alternative 3 in Section IV.B.2.c of this preamble) are roughly equivalent. EPA anticipates that systems with known low levels of TOC may opt to conduct the applicability monitoring while the remaining systems will develop a disinfection profile.

d. Request for Comment

EPA requests comment on the proposed requirement, other alternatives listed, or other alternatives that have not yet been raised for consideration. The Agency also requests comment on approaches for determining the percent of systems that would be affected by this requirement. Specifically:

- With respect to Alternative 4, the Agency requests comment on approaches for determining the percent of systems that might demonstrate TTHM and HAA5 levels less than 80 percent of their respective MCLs and would therefore not develop a disinfection profile.
- The Agency requests additional information (similar to the State of Missouri data discussed previously) on the current levels of TTHM and HAA5s in the distribution systems of systems serving fewer than 10,000 people.
- The Agency requests comment on developing a TTHM and HAA5 monitoring scheme during the winter months as opposed to the current monitoring scheme based on the highest TTHM/HAA5 formation potential during the month of warmest water temperature. If a relationship can be established, and shown to be consistent through geographical variations, EPA would consider modifying an alternative so that applicability monitoring would occur during the 1st quarter of 2003.
- The Agency requests comment on modifying Alternative 3, to require systems to begin monitor for TTHMs and HAA5s during the warmest water temperature month of 2003. The results of this monitoring would be used to

determine whether a system would need to develop a disinfection profile during 2004. This option is closer in structure and timing to the IESWTR and has been included for comment. It should be noted, however, that postponing the disinfection profile until 2004 would prevent systems from having inactivation data prior to their compliance date with the Stage 1 DBPR, possibly compromising simultaneous compliance.

2. Disinfection Profiling

a. Overview and Purpose

The disinfection profile is a graphical representation showing how disinfection varies at a given plant over time. The profile gives the plant operator an idea of how seasonal changes in water quality and water demand can have a direct effect on the level of disinfection the plant is achieving.

The strategy of disinfection profiling and benchmarking stemmed from data provided to the EPA and M–DBP Advisory Committee by PWSs and reviewed by stakeholders. The microbial inactivation data (expressed as logs of *Giardia lamblia* inactivation) used by the M–DBP Advisory Committee demonstrated high variability. Inactivation varied by several log on a day-to-day basis at any particular treatment plant and by as much as tens of logs over a year due to changes in water temperature, flow rate (and, consequently, contact time), seasonal changes in residual disinfectant, pH, and disinfectant demand and, consequently, disinfectant residual. There were also differences between years at individual plants. To address these variations, M–DBP stakeholders developed the procedure of profiling inactivation levels at an individual plant over a period of at least one year, and then establishing a benchmark of minimum inactivation as a way to characterize disinfection practice. This approach makes it possible for a plant that may need to change its disinfection practice in order to meet DBP MCLs to determine the impact the change would have on its current level of disinfection or inactivation and, thereby, to assure that there is no significant increase in microbial risk. In order to develop the profile, a system must measure four parameters (EPA is assuming most small systems use chlorine as their disinfection agent, and these requirements are based on this assumption):

(1) Disinfectant residual concentration (C, in mg/L) before or at the first customer and just prior to each additional point of disinfectant addition;

(2) Contact time (T, in minutes) during peak flow conditions;

(3) Water temperature (°C); and

(4) pH.

Systems convert this operational data to a number representing log inactivation values for *Giardia* by using tables provided by EPA. Systems graph this information over time to develop a profile of their microbial inactivation. EPA will prepare guidance specifically developed for small systems to assist in the development of the disinfection profile. Several spreadsheets and simple programs are currently available to aid in calculating microbial inactivation and the Agency intends to make such spreadsheets available in guidance.

b. Data

Figure IV.8a depicts a hypothetical disinfection profile showing seasonal variation in microbial inactivation.

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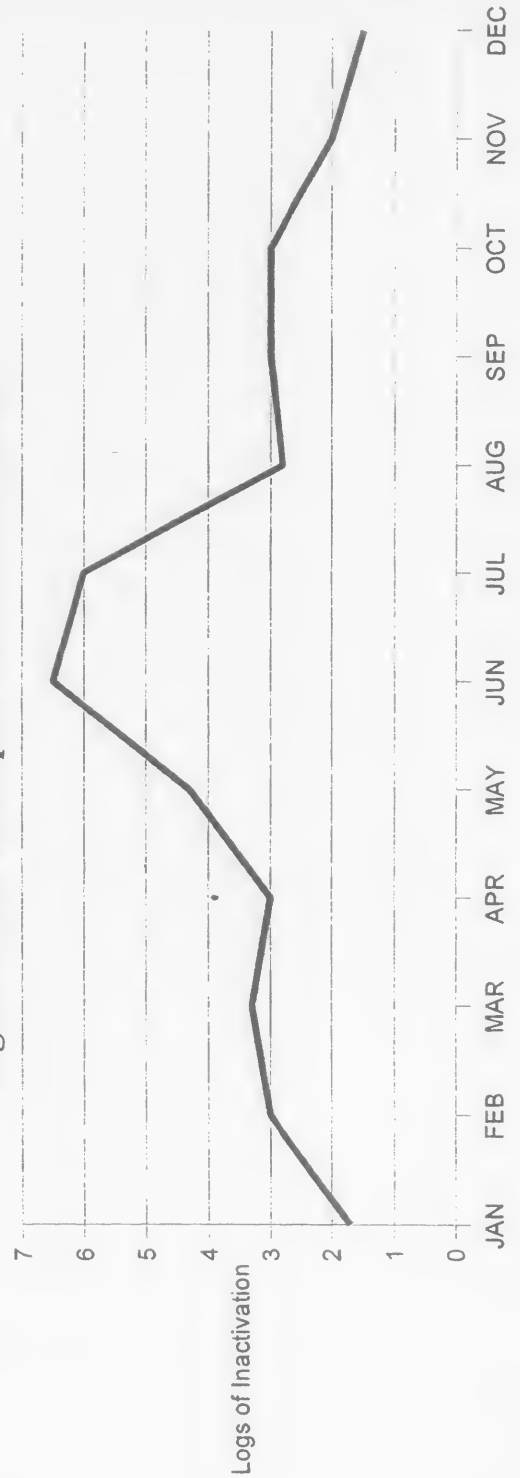
Figure IV.8a Example Disinfection Profile



c. Proposed Requirements

EPA considered four alternatives for requiring systems to develop the disinfection profile.

Alternative 1

The IESWTR requires systems serving 10,000 or more persons to measure the four parameters described above and develop a profile of microbial inactivation on a daily basis. EPA considered extending this requirement to systems serving fewer than 10,000 persons and requested input from small system operators and other interested stakeholders including the public. EPA received feedback that this requirement would place too heavy of a burden on the small system operator for at least two reasons:

- Small system operators are not present at the plant every day; and
- Small systems often have only one operator at a plant who is responsible for all aspects of maintenance, monitoring and operation.

Alternative 2

EPA also considered not requiring the disinfection profile at all. After consideration of the feedback of small system operators and other interested stakeholders, however, EPA believes that there is a strong benefit in the plant operator knowing the level of microbial inactivation, and that the principles developed during the regulation negotiation and Federal Advisory Committee prior to promulgation of the IESWTR could be applied to small systems for the purpose of public health protection. Recognizing the potential burdens the profiling procedures placed on small systems, EPA considered two additional alternatives.

Alternative 3

EPA considered requiring *all* systems serving fewer than 10,000 persons, to develop a disinfection profile based on *weekly* measurements for one year during or prior to 2003. A system with TTHM and HAA5 levels less than 80 percent of the MCLs (based on either required or optional monitoring as described in section IV.B.1) would not be required to conduct disinfection profiling. EPA believes this alternative would save the operator time (in comparison to Alternative 1), and still provide information on seasonal variation over the period of one year.

Alternative 4

Finally, EPA considered a monitoring requirement only during a one month critical monitoring period to be determined by the State. In general, colder temperatures reduce disinfection efficiency. For systems in warmer climates, or climates that do not change very much during the course of the year, the State would identify other critical periods or conditions. This alternative reduces the number of times the operator has to calculate the microbial inactivation.

EPA considered all of the above alternatives, and in today's proposed rule, EPA is proposing Alternative 3. First, this alternative does not require systems to begin monitoring before States have two years to develop their regulations as part of primacy requirements. Given early implementation concerns, the timing of this alternative appears to be the most appropriate in balancing early implementation issues with the need for systems to prepare for implementation of the Stage 1 DBPR and ensuring adequate and effective microbial protection. Second, it allows systems and States which have been proactive in conducting applicability monitoring to reduce costs for those systems which can demonstrate low TTHM and HAA5 levels. Third, this alternative allows systems and States the opportunity to understand seasonal variability in microbial disinfection. Finally, this alternative takes into account the flexibility needed by the smallest systems while maintaining comparable levels of public health protection with the larger systems.

Request for Comments

EPA requests comment on this proposed requirement as well as Alternatives 1,2, and 4. The Agency also requests comment on a possible modification to Alternatives 1, 3 and 4. Under this modification, systems serving populations fewer than 500 would have the opportunity to apply to the State to perform the weekly inactivation calculation (although data weekly data collection would still be required). If the system decided to make a change in disinfection practice, then the State would assist the system with the development of the disinfection profile.

The Agency also requests comment on a modification to Alternative 3 which would require systems to develop a disinfection profile in 2004 only if Applicability Monitoring conducted in 2003 indicated TTHM and HAA5 levels of 80 percent or greater of the MCL. This modification would be coupled with the applicability monitoring modification discussed in the previous section.

3. Disinfection Benchmarking

a. Overview and Purpose

The DBPR requires systems to meet lower MCLs for a number of disinfection byproducts. In order to meet these requirements, many systems will require changes to their current disinfection practices. In order to ensure that current microbial inactivation does not fall below those levels required for adequate *Giardia* and virus inactivation as required by the SWTR, a disinfection benchmark is necessary. A disinfection benchmark represents the lowest average monthly *Giardia* inactivation level achieved by a system. Using this benchmark States and systems can begin to understand the current inactivation achieved at the system, and estimate how changes to disinfection practices will affect inactivation.

b. Data

Based on the hypothetical disinfection profile depicted in Figure IV.8a, the benchmark, or critical period, is the lowest level of inactivation achieved by the system over the course of the year. Figure IV.8b shows that this benchmark (denoted by the dotted line) takes place in December for the hypothetical system.

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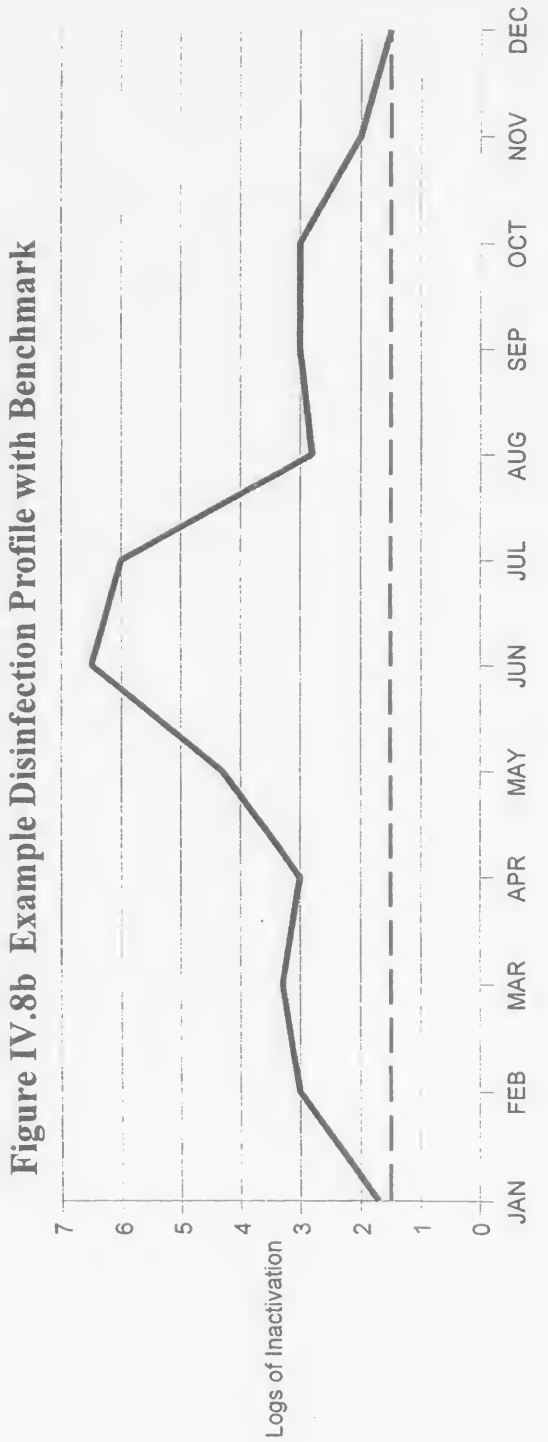

Figure IV.8b Example Disinfection Profile with Benchmark

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c. Proposed Requirements

If a system that is required to produce a disinfection profile decides to make a significant change in disinfection practice after the profile is developed, it must consult with the State and receive approval before implementing such a change. Significant changes in disinfection practice are defined as: (1) moving the point of disinfection (other than routine seasonal changes already approved by the State); (2) changing the type of disinfectant; (3) changing the disinfection process; or (4) making other modifications designated as significant by the State. Supporting materials for such consultation with the State must include a description of the proposed change, the disinfection profile developed under today's proposed rule for *Giardia lamblia* (and, if necessary, viruses for systems using ozone or chloramines), and an analysis of how the proposed change might affect the current level of *Giardia* inactivation. In addition, the State is required to review disinfection profiles as part of its periodic sanitary survey.

A log inactivation benchmark is calculated as follows:

(1) Calculate the average log inactivation for either each calendar month, or critical monitoring period (depending on final rule requirement for the profiling provisions).

(2) Determine the calendar month with the lowest average log inactivation; or lowest inactivation level within the critical monitoring period.

(3) The lowest average month, or lowest level during the critical monitoring period becomes the critical measurement for that year.

(4) If acceptable data from multiple years are available, the average of critical periods for each year becomes the benchmark.

(5) If only one year of data is available, the critical period (lowest monthly average inactivation level) for that year is the benchmark.

d. Request for Comments

EPA has included a requirement that State approval be obtained prior to making a significant change to disinfection practice. EPA requests comment on whether the rule should require State approval or whether only state consultation is necessary.

EPA also requests comment on providing systems serving fewer than 500 the option to provide raw data to the State, and allowing the State to determine the benchmark.

C. Additional Requirements

1. Inclusion of *Cryptosporidium* in definition of GWUDI

a. Overview and Purpose

Groundwater sources are found to be under the direct influence of surface water (GWUDI) if they exhibit specific traits. The SWTR defined ground waters containing *Giardia lamblia* as GWUDI. One such trait is the presence of protozoa such as *Giardia* which migrate from surface water to groundwater. The IESWTR expanded the SWTR's definition of GWUDI to include the presence of *Cryptosporidium*. The Agency believes it appropriate and necessary to extend this modification of the definition of GWUDI to systems serving fewer than 10,000 persons.

b. Data

The Agency issued guidance on the Microscopic Particulate Analysis (MPA) in October 1992 as the Consensus Method for Determining Groundwater Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (EPA, 1992). Additional guidance for making GWUDI determinations is also available (USEPA, 1994a,b). Since 1990, States have acquired substantial experience in making GWUDI determinations and have documented their approaches (Massachusetts Department of Environmental Protection, 1993; Maryland, 1993; Sonoma County Water Agency, 1991). Guidance on existing practices undertaken by States in response to the SWTR may also be found in the State Sanitary Survey Resource Directory, jointly published in December 1995 by EPA and the Association of State Drinking Water Administrators (EPA/ASDWA). AWWARF has also published guidance (Wilson et al., 1996).

Most recently, Hancock et al. (1997) used the MPA test to study the occurrence of *Giardia* and *Cryptosporidium* in the subsurface. They found that, in a study of 383 ground water samples, the presence of *Giardia* correlated with the presence of *Cryptosporidium*. The presence of both pathogens correlated with the amount of sample examined, but not with the month of sampling. There was a correlation between source depth and occurrence of *Giardia* but not *Cryptosporidium*. The investigators also found no correlation between the distance of the ground water source from adjacent surface water and the occurrence of either *Giardia* or *Cryptosporidium*. However, they did find a correlation between distance from a surface water source and generalized MPA risk ratings of high (high represents an MPA score of 20 or greater), medium or low, but no correlation was found with the specific numerical values that are calculated by the MPA scoring system. An additional two reports (SAIC 1997a and 1997b) provide data on wells with *Giardia* cyst and *Cryptosporidium* oocyst recovery and concurrent MPA analysis.

c. Proposed Requirements

In today's proposed rule, EPA is modifying the definition of GWUDI to include *Cryptosporidium* for systems serving fewer than 10,000 persons.

Under the SWTR, States were required to determine whether systems using ground water were using ground water under the direct influence of surface water (GWUDI). State determinations were required to be completed by June 29, 1994 for CWSs and by June 29, 1999 for NCWSs. EPA does not believe that it is necessary to make a new determination of GWUDI for this rule based on the addition of *Cryptosporidium* to the definition of "ground water under the direct influence of surface water". While a new determination is not required, States may elect to conduct a new analysis based on such factors as a new land use pattern (conversion to dairy farming, addition of septic tanks).

EPA does not believe that a new determination is necessary because the current screening methods appear to adequately address the possibility of *Cryptosporidium* in the ground water.

d. Request for Comments

The Agency requests comment on the proposal to modify the definition of GWUDI to include *Cryptosporidium* for systems serving fewer than 10,000 persons.

2. Inclusion of *Cryptosporidium* Watershed Requirements for Unfiltered Systems

a. Overview and Purpose

Existing SWTR requirements for unfiltered surface water and GWUDI systems require these systems to minimize the potential for source water contamination by *Giardia lamblia* and viruses. Because *Cryptosporidium* has proven resistant to levels of disinfection currently practiced at systems throughout the country, the Agency felt it imperative to include *Cryptosporidium* in the watershed control provisions wherever *Giardia lamblia* is mentioned. The IESWTR therefore, modified existing watershed regulatory requirements for unfiltered systems to include the control of

Cryptosporidium. The Agency believes it appropriate and necessary to extend this requirement to systems serving fewer than 10,000 persons.

It should be noted that today's proposed requirements do not replace requirements established for unfiltered systems under the SWTR. Systems must continue to maintain compliance with the requirements of the SWTR for avoidance of filtration. If an unfiltered system fails any of the avoidance criteria, that system must install filtration within 18 months, regardless of future compliance with avoidance criteria.

EPA anticipates that in the planned Long Term 2 Enhanced Surface Water Treatment rule, the Agency will reevaluate treatment requirements necessary to manage risks posed by *Cryptosporidium* and other microbial pathogens in both filtered and unfiltered surface water systems. In conducting this reevaluation, EPA will utilize the results of several large surveys, including the Information Collection Rule (ICR) and ICR Supplemental Surveys, to more fully characterize the occurrence of waterborne pathogens, as well as watershed and water quality parameters which might serve as indicators of pathogen risk level. The LT2ESWTR will also incorporate the results of ongoing research on removal and inactivation efficiencies of treatment processes, as well as studies of pathogen health effects and disease transmission. Promulgation of the LT2ESWTR is currently scheduled for May, 2002.

b. Data

Watershed control requirements were initially established in 1989 (54 FR 27496, June 29, 1989) (EPA, 1989b), as one of a number of preconditions that a public water system using surface water must meet to avoid filtration. The SWTR specifies the conditions under which a system can avoid filtration (40 CFR 141.71). These conditions include good source water quality, as measured by concentrations of coliforms and turbidity; disinfection requirements; watershed control; periodic on-site inspections; the absence of waterborne disease outbreaks; and compliance with the Total Coliform Rule and the MCL for TTHMs. The watershed control program under the SWTR must include a characterization of the watershed hydrology characteristics, land ownership, and activities which may have an adverse effect on source water quality, and must minimize the potential for source water contamination by *Giardia lamblia* and viruses.

The SWTR Guidance Manual (EPA, 1991a) identifies both natural and human-caused sources of contamination to be controlled. These sources include wild animal populations, wastewater treatment plants, grazing animals, feedlots, and recreational activities. The SWTR Guidance Manual recommends that grazing and sewage discharges not be permitted within the watershed of unfiltered systems, but indicates that these activities may be permissible on a case-by-case basis where there is a long detention time and a high degree of dilution between the point of activity and the water intake. Although there are no specific monitoring requirements in the watershed protection program, the non-filtering utility is required to develop State-approved techniques to eliminate or minimize the impact of identified point and non-point sources of pathogenic contamination. The guidance already suggests identifying sources of microbial contamination, other than *Giardia*, transmitted by animals, and points out specifically that *Cryptosporidium* may be present if there is grazing in the watershed.

c. Proposed Requirements

In today's proposed rule, EPA is extending the existing watershed control regulatory requirements for unfiltered systems serving fewer than 10,000 people to include the control of *Cryptosporidium*. *Cryptosporidium* will be included in the watershed control provisions for these systems wherever *Giardia lamblia* is mentioned.

Specifically, the public water system must maintain a watershed control program which minimizes the potential for contamination by *Giardia lamblia*, and *Cryptosporidium* oocysts and viruses in the water. The State must determine whether the watershed control program is adequate to meet this goal. The adequacy of a program to limit potential contamination by *Giardia lamblia* cysts, *Cryptosporidium* oocysts and viruses must be based on: The comprehensiveness of the watershed review; the effectiveness of the system's program to monitor and control detrimental activities occurring in the watershed; and the extent to which the water system has maximized land ownership and/or controlled land use within the watershed.

It should be noted that unfiltered systems must continue to maintain compliance with the requirements of the SWTR for avoidance of filtration. If an unfiltered system fails any of the avoidance criteria, that system must install filtration within 18 months, regardless of future compliance with avoidance criteria.

d. Request for Comments

EPA requests comment on the inclusion of these requirements for unfiltered systems serving fewer than 10,000 people.

3. Requirements for Covering New Reservoirs

a. Overview and Purpose

Open finished water reservoirs, holding tanks, and storage tanks are utilized by public water systems throughout the country. Because these reservoirs are open to the environment and outside influences, they can be subject to the reintroduction of contaminants which the treatment plant was designed to remove. The IESWTR contains a requirement that all newly constructed finished water reservoirs, holding tanks, and storage tanks be covered. The Agency believes it appropriate and necessary to extend this requirement to systems serving fewer than 10,000 people.

b. Data

Existing EPA guidelines recommend that all finished water reservoirs and storage tanks be covered (EPA, 1991b). The American Water Works Association (AWWA) also has issued a policy statement strongly supporting the covering of reservoirs that store potable water (AWWA, 1993). In addition, a survey of nine States was conducted in the summer of 1996 (Montgomery Watson, 1996). The States which were surveyed included several in the West (Oregon, Washington, California, Idaho, Arizona, and Utah), two States in the East known to have water systems with open reservoirs (New York and New Jersey), and one midwestern State (Wisconsin). Seven of the nine States which were surveyed require by direct rule that all new finished water reservoirs and tanks be covered.

Under the IESWTR, systems serving populations of 10,000 or greater were prohibited from constructing uncovered finished water reservoirs after February 16, 1999. The Agency developed an Uncovered Finished Water Reservoirs Guidance Manual (USEPA, 1999f) which provides a basic understanding of the potential sources of external contamination in uncovered finished water reservoirs. It also provides guidance to water treatment operators for evaluating and maintaining water quality in reservoirs. The document discusses:

- Existing regulations and policies pertaining to uncovered reservoirs;
- Development of a reservoir management plan;

- Potential sources of water quality degradation and contamination;
- Operation and maintenance of reservoirs to maintain water quality; and
- Mitigating potential water quality degradation.

As discussed in the 1997 IESWTR NODA (EPA, 1997b), when a finished water reservoir is open to the atmosphere it may be subject to some of the environmental factors that surface water is subject to, depending upon site-specific characteristics and the extent of protection provided. Potential sources of contamination to uncovered reservoirs and tanks include airborne chemicals, surface water runoff, animal carcasses, animal or bird droppings and growth of algae and other aquatic organisms due to sunlight that results in biomass (Bailey and Lippy, 1978). In addition, uncovered reservoirs may be subject to contamination by persons tossing items into the reservoir or illegal swimming (Pluntze 1974; Erb, 1989). Increases in algal cells, heterotrophic plate count (HPC) bacteria, turbidity, color, particle counts, biomass and decreases in chlorine residuals have been reported (Pluntze, 1974, AWWA Committee Report, 1983, Silverman et al., 1983, LeChevallier et al. 1997a).

Small mammals, birds, fish, and the growth of algae may contribute to the microbial degradation of an open finished water reservoir (Graczyk et al., 1996a; Geldreich, 1990; Fayer and Ungar, 1986;). In one study, sea gulls contaminated a 10 million gallon reservoir and increased bacteriological growth, and in another study waterfowl were found to elevate coliform levels in small recreational lakes by twenty times their normal levels (Morra, 1979). Algal growth increases the biomass in the reservoir, which reduces dissolved oxygen and thereby increases the release of iron, manganese, and nutrients from the sediments. This, in turn, supports more growth (Cooke and Carlson, 1989). In addition, algae can cause drinking water taste and odor problems as well as impact water treatment processes. A 1997 study conducted by the City of Seattle (Seattle Public Utilities, 1997) evaluated nutrient loadings by three groups of birds at Seattle's open reservoirs. Table IV.9 indicated the amount of soluble nutrient loadings estimated over the course of the year. It shows that bird feces may contribute nutrient loadings that can enhance algal growth in the reservoir.

TABLE IV.9.—1997 NUTRIENT LOADINGS BY BIRD GROUPS IN SEATTLE'S OPEN RESERVOIRS

Reservoir	Geese		Gulls		Ducks		Overall	
	Nitr. kg/yr	Phos. kg/yr	Nitr. kg/yr	Phos. kg/yr	Nitr. kg/yr	Phos. kg/yr	Total kg/yr	Conc. (mg/L)
Beacon Hill*	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bitter Lake	0.82	0.24	0.01	0.00	0.06	0.02	1.15	14.09
Green Lake	1.78	0.52	0.03	0.01	0.53	0.16	3.04	16.05
Lake Forest	2.23	0.65	0.36	0.11	0.07	0.02	3.43	15.09
Lincoln	0.00	0.00	0.24	0.07	0.01	0.00	0.31	3.96
Maple Leaf	2.16	0.63	0.13	0.04	0.35	0.10	3.42	15.43
Myrtle	0.00	0.00	0.08	0.02	0.01	0.00	0.12	4.35
Volunteer	0.00	0.00	0.01	0.00	0.01	0.00	0.03	0.42
West Seattle	0.40	0.12	0.38	0.11	0.02	0.01	1.03	4

c. Proposed Requirements

In today's proposed rule EPA is requiring surface water and GWUDI systems that serve fewer than 10,000 people to cover all new reservoirs, holding tanks or other storage facilities for finished water for which construction begins 60 days after the publication of the final rule in the **Federal Register**. Today's proposed rule does not apply these requirements to existing uncovered finished water reservoirs.

d. Request for Comments

EPA solicits comments regarding the requirement to require that all new reservoirs, holding tanks and storage facilities for finished water be covered.

D. Recycle Provisions for Public Water Systems Employing Rapid Granular Filtration Using Surface Water and GWUDI as a Source

Section 1412(b)(14) of the 1996 SDWA Amendments requires EPA to promulgate a regulation to govern the recycle of filter backwash within the treatment process of public water systems. The Agency is concerned that the recycle of spent filter backwash and other recycle streams may introduce additional *Cryptosporidium* oocysts to the treatment process. Adding oocysts to the treatment process may increase the risk oocysts will occur in finished water supplies and threaten public health. The Agency is further concerned because *Cryptosporidium* is not inactivated by standard disinfection practice, an important treatment barrier employed to control microbial pathogens. Oocysts returned to the plant by recycle flow therefore remain a threat to pass through filters into the finished water.

The Agency engaged in three primary information gathering activities to investigate the potential risk posed by returning recycle flows that may contain *Cryptosporidium* to the treatment process. First, the Agency performed a broad literature search to gather research papers and information on the occurrence of *Cryptosporidium* and organic and inorganic materials in recycle flows. The literature search also sought information regarding the potential impact recycle may have on plant treatment efficiency. Second, the Agency worked with AWWA, AWWSCo., and Cincinnati Water Works to develop twelve issue papers on commonly generated recycle flows (Environmental Engineering and Technology, Inc.,1999). These papers are summarized in the next section. Information from EPA's literature search was incorporated into the issue papers. Third, the Agency presented preliminary data and potential regulatory components to stakeholders, and solicited feedback, at public meetings in Denver, Colorado, and Dallas, Texas. EPA also received valuable input from representatives of small water systems through the SBREFA process.

Through the above activities, the Agency has identified four primary concerns regarding the recycle of spent filter backwash and other recycle streams within the treatment process of PWSs. The first concern is that some recycle flows contain *Cryptosporidium* oocysts, frequently at higher concentrations than plant source waters. Recycling these flows may increase the number of oocysts entering the plant and the number of oocysts reaching the filters. Loading more oocysts to the

filters could increase finished water oocyst concentrations. The second concern regards the location in the treatment process recycle flow is returned. The return of recycle at the point of primary coagulant addition or downstream of it may disrupt treatment chemistry by introducing residual coagulant or other treatment chemicals to the process stream and thereby lower plant treatment efficiency. Also, recycle flow returned to the clarification process may not achieve sufficient residence time for oocysts in the recycle flow to be removed, or it may create hydraulic currents that lower the unit's overall oocyst removal efficiency. The third concern regards direct filtration plants. Direct filtration plants do not employ clarification in their primary treatment process to remove suspended solids and oocysts; all oocyst removal is achieved by the filters. If the recycle flow is not treated before being returned to the plant, all of the oocysts captured by a filter during a filter run will be returned to the plant and again loaded to the filters. This may lead to ever increasing levels of oocysts being applied to the filters and could increase the concentration of oocysts in finished water. Therefore, it is important for direct filtration plants to provide adequate recycle flow treatment to remove oocysts and protect the integrity of the filters and finished water quality. Finally, the fourth concern is that the direct recycle of spent filter backwash without first providing treatment, equalization, or some form of hydraulic detention for the recycle flow, may cause plants to exceed State-approved operating capacity during recycle events. This can cause clarification and filter loading rates to be exceeded, which may lower overall oocyst removal provided by the plant and increase finished water oocyst concentrations.

EPA has particular concerns regarding the direct recycle of spent filter backwash water as it is produced (i.e., recycle flow is not retained in an equalization basin, treatment unit, or other hydraulic detention unit prior to reintroduction to the main treatment process) for the following reasons:

(1) Direct recycle may cause operating rates for clarification and filtration to be exceeded, which may lower overall *Cryptosporidium* removal;

(2) Direct recycle may hydraulically upset some plants, lowering overall plant treatment performance, and;

(3) Clarification and filtration operating rates may be exceeded at precisely the time recycle flow may be returning large numbers of oocysts to the treatment process.

The impact of direct recycle practice to smaller plants with few filters is of greatest concern because return of recycle flow can double or triple plant influent flow, which may hydraulically overload the plant and reduce oocyst removal.

Since standard disinfection practice does not inactivate *Cryptosporidium*, its control is entirely dependent on physical removal processes. The Agency is concerned that direct recycle may cause some plants to exceed operating capacity and thus lower their physical removal capabilities. This can increase the risk of oocysts entering the finished water and lead to an increased risk to public health.

The limited data (Cornwell and Lee, 1993) EPA has identified regarding plants with existing equalization and/or treatment indicates they may be at no greater risk of hydraulic upset or degradation of oocyst removal performance than non-recycle plants. Given current data limitations, it is reasonable to assume the presence and utilization of adequate recycle flow equalization and/or treatment processes will alleviate the potential for hydraulic disruptions and the impairment of treatment performance. Data suggesting otherwise is currently unavailable.

The potential for recycle to return significant numbers of oocysts to the treatment train does provide a general basis for concern regarding the impact of recycle practice to finished water quality. However, the Agency does not currently believe data warrants a national regulation requiring all recycle plants to provide recycle flow equalization or treatment for the following reasons:

(1) Data correlating oocyst occurrence in recycle streams to increased oocyst occurrence in finished water is unavailable;

(2) Data regarding the response of full-scale plants to recycle events is limited;

(3) Data is not available to determine the level of recycle flow equalization or treatment full-scale systems may need, if any, to control the risk of oocysts entering finished water, and;

(4) Whether and the extent to which oocyst occurrence in source water influences the necessary level of recycle treatment and equalization is unknown.

The Agency believes requiring plants that may be at greater risk due to recycle, such as direct recycle plants and direct filtration plants, to characterize their recycle practice and provide data to the State for its review provides a cost effective opportunity to increase public health protection and supply a measure of safety to finished drinking water supplies. EPA believes that today's proposal will address potentially higher risk recycle situations that may threaten the performance of some systems, and will do so by allowing State drinking water programs to consider site-specific treatment conditions and needs. The Agency believes these recycle provisions are needed to protect plant performance, the quality of finished water supplies, and to provide an additional measure of public health protection.

1. Treatment Processes That Commonly Recycle and Recycle Flow Occurrence Data

a. Treatment Processes That Commonly Recycle

The purpose of this section is to provide general background on common treatment plant processes, fundamental plant operations, and the origin of plant recycle streams. Detailed information on the specific recycle flows these processes generate are presented after this background discussion. Four general types of water treatment processes, conventional filtration, direct filtration, softening, and contact clarification, are discussed. Although there are numerous variations of these four treatment processes, only the most basic configurations are discussed here. The operation of package plants and options to returning recycle to the treatment process are also summarized.

i. Conventional Treatment Plants

Conventional water filtration plants are defined by the use of four essential unit processes: Rapid mix, coagulation/flocculation, sedimentation, and filtration. Sedimentation employs gravity settling to remove floc and particles. Particles not removed by sedimentation may be removed by the filters. Periodically, accumulated solids must be removed from the sedimentation unit. These solids, termed "residuals," are currently disposed to sanitary sewer, treated with gravity thickening, or some other process prior to returning them to plant headworks or other locations in the treatment train. Clarification processes other than sedimentation may also be used, and they also produce process residuals.

Clarification sludge may be processed on-site if the plant is equipped with solids treatment facilities. Commonly employed treatment processes include thickeners, dewatering equipment (*e.g.*, plate and frame presses, belt filter presses, or centrifuges), and lagoons. Each of these processes produces residual water streams that are currently returned to the treatment process at the

headworks or other locations prior to filtration. The volume of residuals produced by clarification depends upon the amount of solids present in the raw water, the dose and type of coagulant applied, and the concentration of solids in the treated water stream.

The one residual stream associated with filtration, spent filter backwash water, is produced during periodic backwashing events performed to remove accumulated solids from the filter. Spent filter backwash is frequently returned to the treatment process at the head of the plant, other locations prior to the filters, or disposed of to sanitary sewer or surface water. Some plants have the capability to send the filtrate produced during the filter ripening period to plant headworks, a raw water reservoir, or to a sanitary sewer or surface water rather than to the clear well as finished water. This practice, referred to as "filter-to-waste" is used to prevent solids, which pass through the filter more easily during the ripening period, from entering the finished water.

Filter backwash operations can differ significantly from plant to plant. The main variables are the time between backwashes (length of filter run), the rate of backwash flow, the duration of the backwash cycle, and the backwashing method. The time between filter backwashes is generally a function of either run time, headloss, or solids breakthrough. Both headloss and solids breakthrough can be dependent upon the quality of the sedimentation effluent. Regardless of the variable driving backwash frequency, the interval between backwashes typically vary from 24 to 72 hours. Recommended backwash frequency is every 24–48 hours (ASCE/AWWA, 1998).

There are a number of different methods that can be used to backwash a filter. These include: Upflow water only, upflow water with surface wash, and air/water backwash. Air/water backwash systems typically use 30–50 percent less water than the other two methods. The filter backwash flow rate can vary, depending on media type, water temperature, and backwash method, but generally has a maximum of 15–23 gpm/ft^2 (air/water backwash may have a lower maximum rate of 6–7 gpm/ft^2). A number of different backwash sequences are employed, but a typical backwash consists of a low rate wash (6–7 gpm/ft^2 for several minutes), followed by a high rate wash (15–23 gpm/ft^2 for 5–15 minutes), which is then followed by a final low rate wash (6–7 gpm/ft^2 for several additional minutes). Some treatment plants only use a high rate wash for 15 to 30 minutes. Backwash rates are significantly higher than filtration rates, which vary from 1 to 8 gpm/ft^2.

ii. Direct Filtration Plants

The direct filtration process is similar to conventional treatment, except the clarification process is not present. Direct filtration plants produce the same filter residual as conventional filtration plants, namely filter backwash, and may also generate a filter-to-waste flow. Direct filtration plants do not produce clarification residuals because clarification is not employed. Filter backwash may be either recycled to the head of the plant or discharged to surface waters or a sanitary sewer. Although direct filtration plants generally treat source waters that have low concentrations of suspended material, the solids loading to the filters may be higher than at conventional plants because solids are not removed in a clarification process prior to filtration. If spent filter backwash is not treated to remove solids prior to recycle, solids loading onto the filters will continue to increase over time, as an exit from the treatment process is unavailable. Filter run length may be shorter in some direct filtration plants relative to conventional plants because the solids loading to the filters may be higher due to the lack of a clarification process. The concentration of solids in the source water is a key variable in filter run length.

iii. Softening Plants

Softening plants utilize the same basic treatment processes as conventional treatment plants. Softening plants remove hardness (calcium and magnesium ions) through precipitation, followed by solids removal. Many softening plants employ a two-stage process, which consists of a rapid mix-flocculation-sedimentation sequence, in series, followed by filtration. Others use a single stage process, resembling conventional treatment plants. Precipitation of the calcium and magnesium ions is accomplished through the addition of lime (calcium hydroxide), with or without soda ash (sodium carbonate), which reacts with the calcium and magnesium ions in the raw water to form calcium carbonate and magnesium hydroxide. The precipitation of the calcium carbonate can be improved by recirculating some of the calcium carbonate sludge into the rapid mix unit because the additional solids provide nucleation points for the precipitation of calcium and magnesium. Without this recirculation, additional hydraulic detention time in the flocculation and sedimentation basins may be required to prevent excessive scale deposits in the plant clearwell or in the distribution system.

A softening plant generally has the same residual streams as a conventional plant: Filter backwash, sedimentation solids, and thickener supernatant and dewatering liquids. A filter-to-waste flow may also be generated. These residual streams are either disposed or recycled within the plant. A portion of the sedimentation basin solids are commonly recycled as the sedimentation basin solids contain significant quantities of precipitated calcium carbonate, recycle of these solids reduces the required chemical dose. Solids are generally recycled into the rapid mix chamber to maximize their effectiveness.

iv. Contact Clarification Plants

In the contact clarification process, the flocculation and clarification (and often the rapid mix) processes are combined in one unit, an upflow solids contactor or contact clarifier. Contact clarifiers are employed in both softening and non-softening processes. Raw water flows into the contact clarifier at the top of the central compartment, where chemical addition and rapid mix occurs. The water then flows underneath a skirt and into the outer sedimentation zone where solid separation occurs. A large portion of previously settled solids from the sedimentation zone is circulated to the mixing zone to enhance flocculation. The remainder of the solids are disposed to prevent their accumulation. Circulation and disposal of accumulated solids allows clarifier loading rates to be 10 to 20 times greater than loading rates for conventional sedimentation basins. Solids recirculation rates are generally different for softening and turbidity removal applications, with rates of up to 12 times the raw water flow for softening processes and up to 8 times the raw water flow for non-softening processes (ASCE/AWWA, 1998). Following clarification, treated water from the contactor is then filtered.

The residual streams from contact clarification plants are similar to those for conventional filtration plants. They include filter backwash, clarification solids, thickener supernatant, and dewatering liquids. The key operational consideration for these types of systems is the maintenance of a high concentration of solids within the skirt to allow high loading rates while maintaining adequate solids removal. Solids recirculation (*e.g.*, recycle) helps contact clarification processes maintain the necessary solids concentration.

Softening plants may also generate filter to waste flow.

v. Package Plants

Package plants are typically used to produce between a few thousand to 1 million gallons of water per day. Package plants can employ a conventional treatment train, as well as proprietary unit processes. Package plants typically include the same processes found in large plants, including coagulation, flocculation, clarification and filtration. The potential recycle streams are also comparable. The recycle of filter backwash may occur, however, the typical package plant may not be designed to convey process streams back into the plant as recycle.

vi. Summary of Recycle Disposal Options

Two recycle disposal options available to some plants are direct discharge to sanitary sewers or discharge to surface waters. Discharge of recycle waters to the municipal sewer system may occur when the treatment plant and Publicly Owned Treatment Works (POTW) are under the same authority or when the plant has access to a sanitary sewer and a POTW agrees to accept its discharge.

There may be a fee associated with discharge to a sanitary sewer system, and the total fee may vary with the volume of backwash effluent discharged as well as the amount of solids in the effluent (Cornwell and Lee, 1994). In addition to the fee requirement, discharging into the sewer system may require the plant to equalize the effluent prior to discharging to the POTW. The equalization process requires holding the effluent in tanks and gradually releasing it into the sanitary sewer system. The fee associated with sanitary sewer discharge may influence whether a plant recycles to the treatment process or discharges to a sanitary sewer.

Another option to recycle within the treatment process is the direct discharge of recycle flow to surface waters, such as creeks, streams, rivers, and reservoirs. Direct discharge is a relatively common method of disposal for water treatment plant flows. A National Pollutant Discharge Elimination System (NPDES) permit requires that certain water quality conditions be met prior to the discharge of effluent into surface waters. Treatment of the effluent prior to discharge may be required. The cost of effluent treatment may influence whether plants recycle within the treatment process or discharge to surface water.

b. Recycle Flow Occurrence Data

EPA has not regulated recycle flows in previous rulemakings. The 1996 SDWA Amendments have lead the Agency to perform an examination of recycle flow occurrence data for the first time. EPA discovered through its literature search and its work with AWWA, AWWSCo., and Cincinnati Water Works to develop the issue papers, that the amount of recycle stream occurrence data available is very limited, particularly for *Cryptosporidium*, the primary focus of this regulation. This may be because *Cryptosporidium* was identified as a contaminant of concern relatively recently and because currently available oocyst detection methods have limitations.

Twelve issue papers were developed to compile information on several commonly produced recycle streams. Each individual paper summarizes how the recycle stream is generated, the typical volume generated, characterizes the occurrence of various recycle stream constituents to the extent data allows, (*i.e.*, occurrence of *Cryptosporidium* and inorganic and organic material), and briefly discusses potential impacts of recycling the stream. The discussion of potential impacts is usually brief, due to overall data limitations and particularly due to a lack of data on *Cryptosporidium* occurrence. The 12 recycle streams examined include:

- untreated spent filter backwash water
- gravity settled spent filter backwash water
- combined gravity thickener supernatant (spent filter backwash and clarification process solids)
- gravity thickener supernatant from sedimentation basin solids
- mechanical dewatering device concentrate
- untreated basin solids
- lagoon decant
- sludge drying bed leachate
- monofill leachate membrane concentrate
- ion exchange regenerate
- minor streams

A total of 112 references were used to complete the issue papers, and AWWSCo. and Cincinnati Water Works performed sampling of non-microbial recycle stream constituents to supplement occurrence information.

Cryptosporidium occurrence data was only identified for five recycle streams, namely: untreated spent filter backwash water, gravity settled spent filter backwash water, untreated sedimentation basin solids, combined thickener supernatant, and sludge drying bed leachate. Oocysts may occur in the other recycle streams as well, but published occurrence data was not identified. The issue papers and supporting literature indicate data does not exist to correlate oocyst occurrence in recycle streams to the occurrence of oocysts in finished water. However, the issue papers did identify data showing that oocysts occur in recycle streams, often at concentrations higher than that of the source water.

Cryptosporidium is not the only constituent of recycle waters. Other common constituents are manganese, iron, aluminum, disinfection byproducts, organic carbon, *Giardia* lamblia and particles. EPA does not currently have data to indicate these constituents occur in recycle streams at levels which threaten treatment plant performance, finished water quality, or public health. Additionally, current regulations may largely control any minor risk these constituents may present. For example, organic matter in recycle flow may form disinfection byproducts in the presence of oxidants. The Stage 1 DBPR, which requires monitoring for disinfection byproducts, will identify systems experiencing disinfection byproduct occurrence above or near applicable MCLs through distribution system monitoring. Additionally, Secondary Maximum Contaminant Levels (SMCLs) have been promulgated to control occurrence of aluminum, iron, and manganese at levels of .05–.2 mg/l, .3 mg/l, and .05 mg/l, respectively. Particle levels are controlled by effluent turbidity standards and *Giardia* lamblia is controlled through a combination of disinfection and filtration requirements. EPA believes existing regulations control these recycle stream constituents. Therefore, their control is not a primary goal of today's proposal. Additionally, detailed discussion of these constituents is not provided in the below summary of the issue papers because: (1) control of *Cryptosporidium* is the focus of the recycle provisions, and; (2) concentrations of inorganic and organic materials reported in the issue papers are for recycle streams, not finished water occurrence. The recycle stream concentrations will be significantly diluted by mixing with source water.

The occurrence of recycle flow constituents other than *Cryptosporidium* is not discussed in today's preamble for the above reasons. The following discussion of recycle stream occurrence data covers only untreated spent filter backwash water, gravity settled spent filter backwash water, combined gravity thickener

supernatant (a combination of spent filter backwash and clarification process solids), gravity thickener supernatant from clarification process solids, and mechanical dewatering device liquids. These five recycle streams are discussed in detail because they are most likely to present a threat to treatment plant performance or finished water quality when recycled. For example, treated and untreated spent filter backwash water and thickener supernatant are the only two recycle streams of sufficient volume to cause plants to exceed their operating capacity during recycle events. The five recycle streams discussed below are also most likely to contain *Cryptosporidium*.

Copies of all the issue papers are available for public review in the Office of Water docket for this rulemaking. Portions of the following recycle stream descriptions use excerpts from the issue papers.

i. Untreated Spent Filter Backwash Water

Water treatment plants that employ rapid granular filtration (e.g., conventional, softening, direct filtration, contact clarification) generate spent filter backwash water. The backwash water is generated when water is forced through the filter, counter-current to the flow direction during treatment operations, to dislodge and remove accumulated particles and pathogens residing in the filter media. Backwash rates are typically five to eight times the process rate, and are used to clean the filter at the end of a filter run, which is generally 24 to 72 hours in length. Backwash operations usually last from 10 to 25 minutes. The flow rate and duration of backwashing are the primary factors that determine the volume of backwash water produced. Once the backwashing process is complete, the backwash water and entrained solids are either disposed of to a sanitary sewer, discharged to a surface water, or returned to the treatment process. Plants currently return spent filter backwash to the treatment process at a variety of locations, usually between plant headworks and clarification. Data regarding common recycle return locations is discussed in the next section of this preamble.

Spent filter backwash can be returned to the treatment process directly as it is produced, be detained in an equalization basin, or passed through a treatment process, such as clarification, prior to being returned to the plant. On a daily basis, spent filter backwash can range from 2 to 10 percent of plant production. Spent filter backwash is usually produced on an intermittent basis, but large plants with numerous filters may produce it continuously. At small and mid-size plants, large volume, short duration flows of spent filter backwash are usually produced. This may cause some plants, particularly smaller plants that recycle directly without flow equalization or treatment, to exceed their operating capacity or to experience hydraulic disruptions, both of which may negatively impact treatment efficiency and oocyst removal.

The concentrations of *Cryptosporidium* reported in the untreated spent filter backwash issue paper ranges from non-detect to a concentration of 18,421 oocysts per 100 L. This range is not amenable to formal statistical analysis, but rather provides a summary of minimum and maximum oocyst concentrations reported in available literature. Although a few studies report isolated data points of greater than 10,000 oocysts/100L for filter backwash water (Rose *et al.*, 1989; Cornwell and Lee, 1993; Colbourne, 1989), occurrence studies that collected the largest number of samples reported mean filter backwash oocyst occurrence concentrations of a few hundred oocysts per 100L (States *et al.*, 1997; Karanis *et al.*, 1996). The high concentration of oocysts found in some spent filter backwash samples is cause for concern, because oocysts are not inactivated by standard disinfection practice. They remain a threat to pass through the plant into the finished water if they are returned to the treatment process. However, current oocyst detection methods do not allow the occurrence of oocysts in spent filter backwash water to be correlated to finished water oocyst concentrations for a range of plant types, source water qualities, and recycle practices. Today's proposal does not require the installation of recycle equalization or treatment for spent filter backwash water on a national basis due to these data limitations.

The Agency is concerned that certain recycle practices, such as returning spent filter backwash to locations other than prior to the point of primary coagulant addition, or hydraulically overloading the plant with recycle flow so it exceeds its State approved operating capacity, may present risk to finished water quality and public health. Exceeding plant operating capacity during recycle events may cause greater risk to finished water quality, because plant performance is potentially being lowered at precisely the time oocysts are returned to the plant in the recycle flow. To address this concern, today's proposal requires that certain direct recycle plants that recycle spent filter backwash water and/or thickener supernatant to perform a self assessment of their recycle practice and report the results to the State. The self assessment requirements are discussed in detail later in this preamble.

ii. Gravity Settled Spent Filter Backwash Water

Gravity settled spent filter backwash water is generated by the same filter backwash process and is produced in the same volume as untreated spent filter backwash water. The difference between the two streams is that the former is treated by gravity settling prior to its return to the primary treatment process. Sedimentation treatment is usually accomplished by retaining the spent filter backwash water in a treatment unit for a period of time to allow suspended solids (including oocysts) to settle to the bottom of the basin. Polymer may be used to improve process efficiency. The water that leaves the basin is gravity settled spent filter backwash water. Removing solids from the spent filter backwash causes only a minor reduction in volume as the solids content of the untreated stream is low, usually below 1 percent.

Providing gravity settling for spent filter backwash is advantageous for two reasons. First, the sedimentation process detains the spent filter backwash in treatment basins for a period of hours, which lowers the possibility a large recycle volume will be returned to the plant in a short amount of time and cause the plant operating capacity to be exceeded. Second, treating the spent filter backwash flow can remove *Cryptosporidium* oocysts from the flow, which will reduce the number of oocysts returned to the plant.

Limited data show that sedimentation can effectively remove oocysts. Cornwell and Lee (1993) conducted limited sampling of spent filter backwash water at two plants prior to and after sedimentation treatment. The first facility practiced direct filtration and was sampled twice. The *Cryptosporidium* concentrations into and out of the sedimentation basin treating spent filter backwash were 900/100L and 140/100L, respectively, for the first sampling and 850/100L in the influent and 750/100L in the effluent for the second sampling. At the second plant a sludge settling pond received both sedimentation basin sludge and spent filter backwash, and the spent filter backwash oocyst concentration was 16,500/100L, and the treated recycle water concentration was 420/100L. In a study by Karanis (1996), *Cryptosporidium* was regularly detected in settled backwash waters. Of the 50

samples collected, 82 percent tested positive for *Cryptosporidium*. The mean value for *Cryptosporidium* was 22 oocysts/100L.

Sedimentation treatment can remove oocysts from spent filter backwash, but data indicate oocysts remain in gravity settled spent filter backwash water even after treatment. The Agency believes that sedimentation treatment for spent filter backwash waters is capable of removing oocysts and improving the quality of the water prior to recycle. However, given current data limitations, the Agency does not believe it is possible to specify, in a national regulation, the conditions (*e.g.*, source water oocyst concentrations, primary treatment train performance, concentration of oocysts in spent filter backwash, ability of sedimentation to remove oocysts under a range of conditions) under which sedimentation treatment of spent filter backwash water may be appropriate. This decision is best made by State programs to allow consideration of site-specific conditions and treatment needs.

iii. Combined Gravity Thickener Supernatant

Combined gravity thickener supernatant is derived from the treatment of filter backwash water and sedimentation basin solids in gravity thickener units. These two flows may not reside in the thickener at the same time or in equal volumes, depending on plant operations. The volume of thickener supernatant generated at a water treatment plant is a function of the type of flows it treats, the solids content of the influent stream, and the method of thickener operation. Regardless of whether a continuous or a batch process is used, a number of factors, including residuals production (a function of plant production, raw water suspended solids, and coagulant dose), volume of spent filter backwash water produced, and the level of treatment provided to thickener influent streams, directly affect the quantity of thickener supernatant produced.

The flow entering the thickener is primarily spent filter backwash water. Sedimentation basin solids is the second largest flow. Flow from dewatering devices, which is generated by the dewatering of residuals, may comprise a minor volume entering the thickener. Combined thickeners will have an influent that may be eighty-percent spent filter backwash or more by volume. About eighty-percent of the solids entering the thickener will be from the sedimentation basin sludge, as spent filter backwash water has a comparatively low solids concentration.

A recent FAX survey (AWWA, 1998) identified more than 300 water treatment plants in the United States with production capacities ranging from less than 2 mgd to greater than 50 mgd that recycle spent filter backwash water. Many of the survey respondents indicated that they recycle more than just spent filter backwash water. Based on the survey and published literature, thickener supernatant is probably the second largest and second most frequently recycled stream at water treatment facilities after spent filter backwash.

Data summarized in the issue paper showed that thickener supernatant quality varies widely, due in large part because the type and quality of recycle streams entering thickeners varies over time and from plant to plant. The turbidity, total suspended solids, and particle counts of thickener effluent are directly impacted by the quality of water loaded onto the thickener, thickener design, and thickener operation (e.g., residence time, use of polymer).

Data on the occurrence of *Cryptosporidium* was limited to two samples, with oocyst occurrence ranging from 82 to 420 oocysts per 100 L. Data is too limited, and practice varies too widely, to draw conclusions on the impact recycle of this flow may have on plant performance. However, given that the contents of the thickener have been treated and the amount of flow produced by gravity thickeners is relatively modest, it may be feasible to recycle the flow in a manner that minimizes adverse impact. Additionally, treatment plant personnel have a vested interest in optimizing thickener operation to minimize sludge dewatering and handling costs; optimization of thickener operation is likely to assist oocyst removal. However, additional data is needed to characterize the occurrence of *Cryptosporidium* and the potential impact recycle of combined thickener supernatant may have on finished water quality.

iv. Gravity Thickener Supernatant from Sedimentation Solids

Gravity settled sedimentation basin solids are sedimentation basin solids that have undergone settling to allow solid sludge components to settle to the bottom of a gravity thickener. The supernatant from the thickener is a potential recycle flow. The tank bottom is sloped to enhance solids thickening and collection and removal of settled solids is accomplished with a bottom scraper mechanism. If the supernatant is recycled, it can be returned to the plant continuously or intermittently, depending on whether the thickener is operated in batch mode. Thickeners may receive and treat both spent filter backwash water and sedimentation basin solids. For purposes of this discussion, and the data presented in the issue paper, the gravity thickener is only receiving sedimentation basin solids.

The volume of treated sedimentation basin solids supernatant generated is dependent on the amount of sludge produced in the sedimentation basin, the solids content of the sludge, and method of thickener operation. Sludge production is a function of plant production, raw water suspended solids, coagulant type, and coagulant dose. The quantity of sedimentation basin sludge supernatant is approximately 75 to 90 percent of the original volume of sedimentation basin sludge produced.

There is a very limited amount of data on the quality of thickener supernatant produced by gravity settling of only sedimentation basin solids (i.e., spent filter backwash and other flows are not added to the thickener), and no data was identified regarding the concentration of *Cryptosporidium* that occur in the supernatant. As is the case with combined gravity thickener supernatant, it is difficult to determine what impact, if any, the return of the supernatant may have on plant operations and finished water quality due to limited data. Additional data is necessary to determine the concentration of oocysts in this recycle stream, and to characterize the impact its recycle may have to plant performance.

v. Mechanical Dewatering Device Liquids

Water treatment plant residuals (usually thickened sludge) are usually dewatered prior to disposal to remove water and reduce volume. Two common mechanical dewatering devices used to separate solids from water are the belt filter press, which compresses the residuals between two continuous porous belts stretched over a series of rollers, and the centrifuge, which applies a strong centrifugal force to separate solids from water. The plate and frame press is another dewatering device that contains a series of filter plates, supported and contained in a structured frame, which separate sludge solids from water using a positive pressure differential as the driving force. Water removed from the solids with a belt filter press is called filtrate, from a filter press it is called pressate, and the water separated from the residuals with a centrifuge is referred to as centrate.

These streams will be collectively referred to as "dewatering liquid" for the following discussion.

The volume of dewatering liquid produced depends primarily on the volume and solids content of the thickened residuals fed to the mechanical dewatering device. Plants that produce small sludge volumes, and hence a low volume of thickener residuals, will process fewer residuals in the mechanical dewatering device and hence produce a smaller volume of dewatering liquid than a plant producing a large volume of solids, all else being equal. Since residuals are often thickened (typically to about 2 percent solids) prior to dewatering, the volume of the dewatering device feed stream is significantly lower than the volume of sedimentation basin residuals generated. If the sedimentation basin sludge flow is assumed to be 0.6 percent of plant production, then dewatering device flow may be approximately 0.1 to 0.2 percent of plant flow. Generally these streams are mixed in with other recycle streams prior to being returned to the plant. Mechanical dewatering devices may be operated intermittently, after a suitable volume of residuals have been produced for dewatering. The production of dewatering liquid and its recycle may not be a continuous process.

Data on the constituents in dewatering liquid were found in three references, one on belt filter press liquids, one on plate and frame pressate, and one on centrifuge centrate. Data on the occurrence of *Cryptosporidium* was not identified. Given the small, intermittent flow produced by mechanical dewatering devices, recycle flows from them are unlikely to cause plants to exceed operating capacity. However, it is possible that dewatering device liquid contains *Cryptosporidium* because it derived from solids likely to hold a large numbers of oocysts. Additional data is necessary to determine the concentration of oocysts in this recycle stream, and to characterize any impact its recycle may have to plant performance.

2. National Recycle Practices

a. Information Collection Rule

Public water systems affected by the ICR were required to report whether recycle is practiced and sample washwater (i.e., recycle flow) between the washwater treatment plant (if one existed) and the point at which recycle is added to the process train. Sampling of plant recycle flow was required prior to blending with the process train. Monthly samples were required for pH, alkalinity, turbidity, temperature, calcium and total hardness, TOC, UV_{254}, bromide, ammonia, and disinfectant residual if disinfectant was used. Systems were also required to measure recycle flow at the time of sampling, the twenty four hour average flow prior to sampling, and report whether treatment of the recycle was provided and, if so, the type of treatment. Reportable treatment types were plain sedimentation, coagulation and sedimentation, filtration, disinfection, or a description of an alternative treatment type. Plants were also required to submit a plant schematic to identify sampling locations. EPA used the sampling schematics and other reported information to compile a database of national recycle practice.

i. Recycle Practice

The Agency developed a database from the ICR sampling schematics and other reported information. Table IV.10 summarizes the plants in the database. Of the 502 plants in the database at the time the analysis was performed, 362 used rapid granular filtration.

TABLE IV.10.—RECYCLE PRACTICE AT ICR PLANTS

Plant classification	Number
All ICR plants	502
Filtration plants[a]	362
Filtration plants recycling[b]	226
Filtration plants treating recycle	148
Recycle plants serving ≥100,000	168
Recycle plants serving <100,000	58

[a] Defined as conventional, lime softening, other softening, and direct filtration plants.

[b] Plants report existence of a recycle stream, not its origin.

These plants are classified as conventional, lime softening, other softening, and direct filtration. The remaining 140 plants in the database do not employ rapid granular filtration capability and generally provide disinfection for ground water. Of the 362 filtration plants in the database, 226 (62.4 percent) reported recycling to the treatment process. Seventy-four percent of the plants that recycle serve populations greater than 100,000 and 26 percent serve populations below 100,000. Figure IV.9 shows the distribution of plants by treatment type and Figure IV.10 shows the distribution of plants by population served. Table IV.11 shows that 88 percent of ICR recycle plants use surface water. An additional one percent use GWUDI and another one percent use a combination of ground water and surface water. Therefore, 90 percent of ICR recycle plants use a source water that could contain *Cryptosporidium*.

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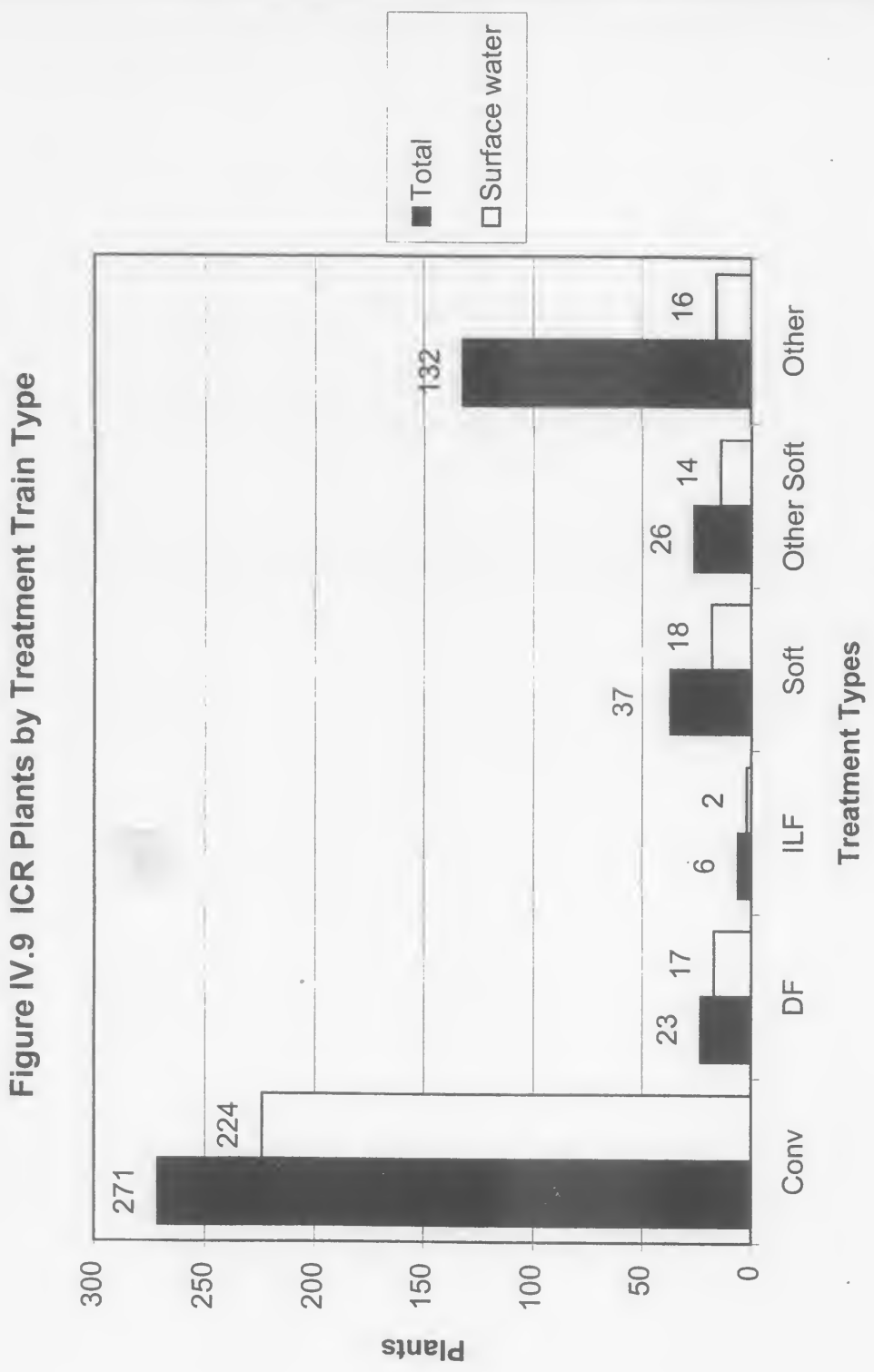

Figure IV.9 ICR Plants by Treatment Train Type

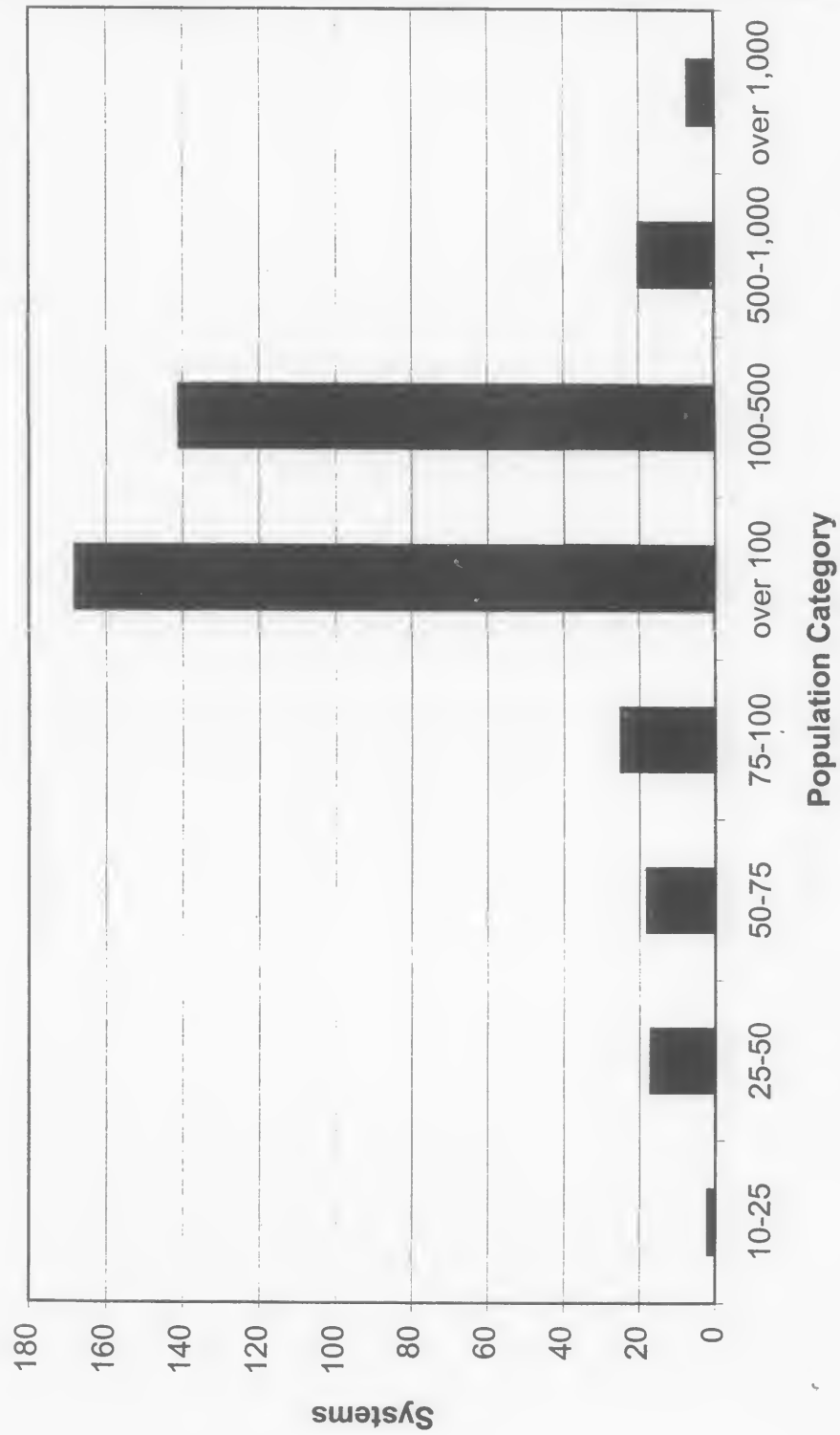

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TABLE IV.11.—SOURCE WATER USE BY ICR RECYCLE PLANTS

Source water type	Number of plants	Percent of recycle plants
Total number of recycle plants	226	100
Surface Water	199	88
Ground water under the influence	3	1
Ground water and surface water	2	1
Ground water only	22	10

Table IV.12 shows that 65 percent of ICR recycle plants report providing treatment for the recycle flow. The percentage of plants providing treatment is the same for the subsets of plants serving greater than and less than 100,000 people. Sedimentation is the most widely reported treatment method, as 77 percent of plants providing treatment employ it. The database does not provide information on the solids removal efficiency of the sedimentation units. All direct filtration plants practicing recycle reported providing treatment for the recycle flow.

TABLE IV.12.—TREATMENT OF RECYCLE AT ICR PLANTS [1]

ICR recycling plants	Number of plants	Percentage of recycle plants
Number of recycle plants	226	100
Practice recycle treatment	147	65
Use sedimentation	114	77
Use sedimentation/coagulation	14	10
Use two or more treatments	14	10
Other treatment	5	3

[1] Disinfection not counted as treatment because it does not inactivate *Cryptosporidium*.

Table IV.13 indicates that 75 percent of ICR recycle plants return recycle prior to rapid mix. Fifteen percent return it prior to sedimentation, and ten percent of plants return it prior to filtration. These percentages hold for the subsets of plants serving greater than and less than 100,000 people. The data indicate that introducing recycle prior to rapid mix may be a common practice. EPA believes that introducing recycle flow prior to the point of primary coagulant addition, is the best recycle return location because it limits the possibility residual treatment chemicals in the recycle flow will disrupt treatment chemistry.

TABLE IV.13.—RECYCLE RETURN POINT

Point of recycle return	Number of plants	percent of plants
Number of recycle plants	[1]224	100
Prior to point of primary coagulant addition	169	75
Prior to sedimentation	34	15
Prior to filtration	21	10

[1] Recycle return point could not be determined for two plants.

The data provides the following conclusions regarding the recycle practice of ICR plants: (1) The recycle of spent filter backwash and other process streams is a common practice; (2) the great majority of recycle plants in the database use filtration and surface water sources; (3) a majority of plants in the database that recycle provide treatment for recycle flow, and; (4) a large majority of plants in the database that recycle (approximately 3 out of 4) recycle prior to the point of primary coagulant addition.

b. Recycle FAX Survey

The AWWA sent a FAX survey (AWWA, 1998) to its membership in June 1998 to gather information on recycle practices. Plants were not targeted based on source water type, the type of treatment process employed, or any other factor. The survey was sent to the broad membership to increase the number of responses. Responses indicating a plant recycled spent filter backwash or other flows were compiled to create a database. The resulting database included 335 plants. The database does not contain information from respondents who reported recycle was not practiced. Data from some of the FAX survey respondents also populates the ICR database. Plants in the database are well distributed geographically and represent a broad range of plant sizes as measured by capacity. Figure IV.11 shows plant distribution by capacity and Figure IV.12 by geographic location. The following discussion of FAX survey data is divided into two sections. The first discusses national recycle practice and the second discusses options for recycle disposal in lieu of returning recycle to the treatment process.

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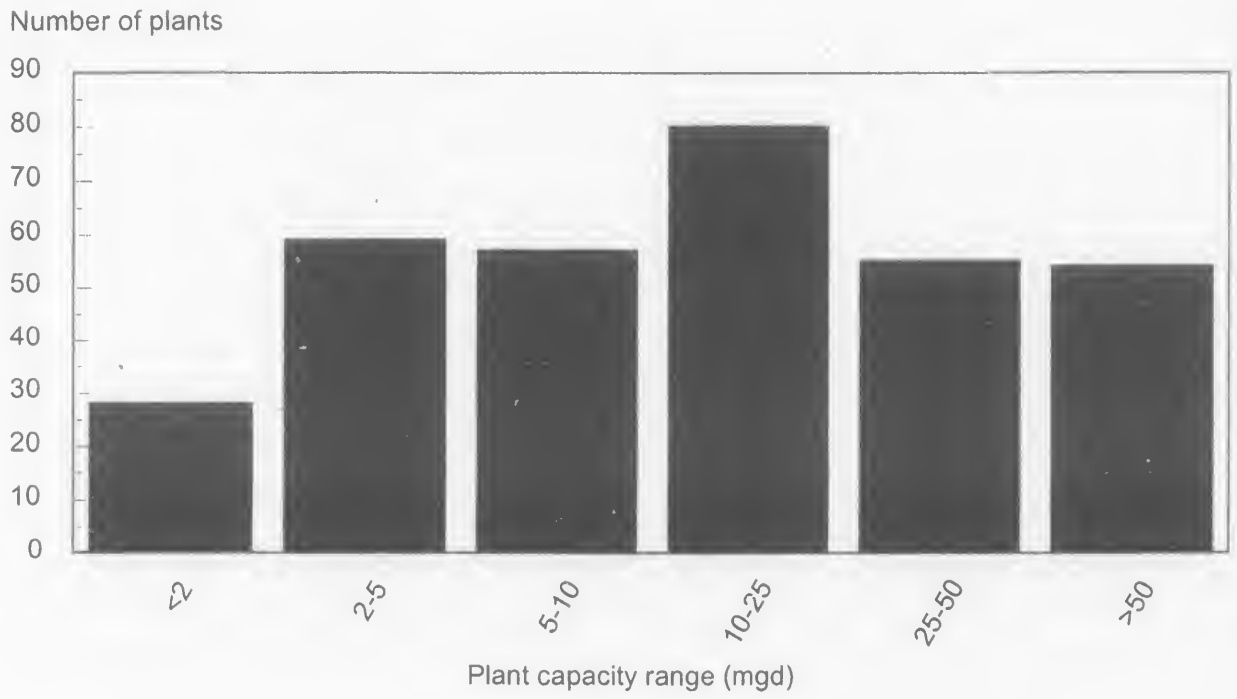
Figure IV.11 Distribution of Fax Survey Plants by Plant Capacity

(Environmental Engineering and Technology, Inc., 1998)



Number of plants bracketed by capacity

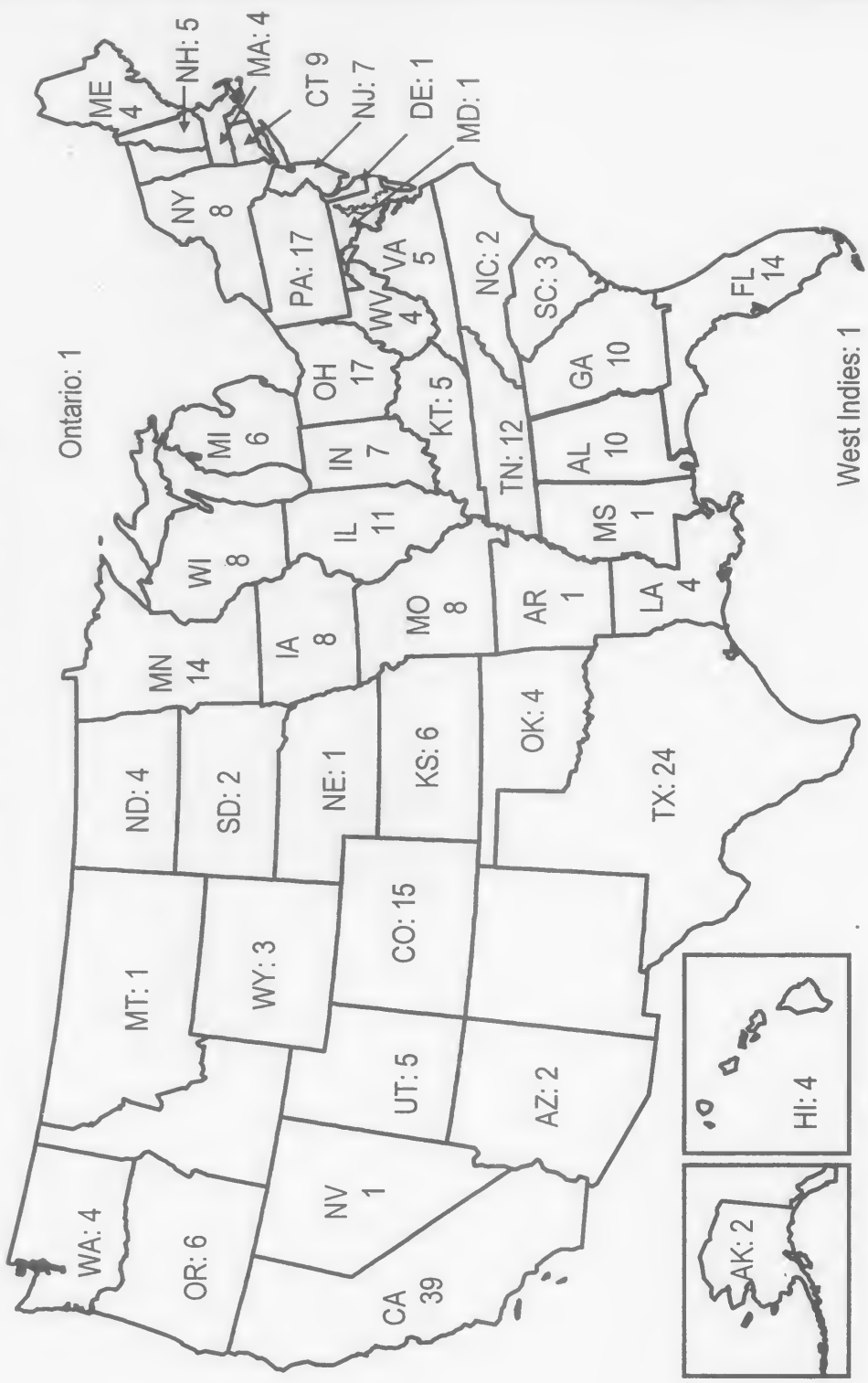


Figure IV.12 Number of Plants per State Included in AWWA Recycle Survey

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i. Recycle practice

Data summarized in Table IV.14 show that 78 percent of plants in the database rely on a surface water as their source. The percentage of plants using source water influenced by a surface water (which may contain *Cryptosporidium*) could be higher because the data do not report whether wells were pure ground water or GWUDI.

TABLE IV.14.—SOURCE WATER USED BY FAX SURVEY PLANTS

Source water type	Percent of plants
Surface Water	78
River	27
Reservoir	28
Lake	16
Other	7
Well [1]	22

[1] Wells sources not defined as either ground water or ground water under the direct influence of surface water.

Table IV.15 shows that a wide variety of treatment process types are included in the data, with conventional filtration (rapid mix, coagulation, sedimentation, filtration) representing over half of the plants submitting data. Upflow clarification is the second most common treatment process reported. Ten percent of plants in the database use direct filtration. Only four percent of plants do not use rapid granular filtration.

TABLE IV.15.—TREATMENT TRAINS OF FAX SURVEY PLANTS

Treatment process type	Percent of plants [1]
Rapid mix, coagulation, filtration	51
Upflow clarifier	21
Softening	14
Direct filtration	10
Other	4

[1] 96 percent of plant in the database provide filtration.

Table IV.16 indicates that a vast majority of plants recycle prior to the point of primary coagulant addition. Only six percent of plants returned recycle in the sedimentation basin or just prior to filtration.

TABLE IV.16.—RECYCLE RETURN POINT OF FAX SURVEY PLANTS

Return point	Percent of plants
Prior to point of primary coagulant addition	83
Pre-sedimentation (e.g., rapid mix)	11
Sedimentation basin	4
Before filtration	2

Table IV.17 shows that the majority of plants in the database provide some type of treatment for the recycle flow prior to its reintroduction to the treatment process. Approximately 70 percent of plants reported providing treatment, with sedimentation being employed by over half of these plants. Equalization, defined as a treatment technology by the survey, is practiced by 20 percent of plants in the database. Fourteen percent of plants reported using both sedimentation and equalization.

TABLE IV.17.—RECYCLE TREATMENT AT FAX SURVEY PLANTS

Treatment type	Percent of plants
No treatment	30
Treatment	70
Sedimentation	54
Equalization	20
Sedimentation and equalization	14
Lagoon	5
Others	7

Table IV.18 summarizes recycle treatment practice and frequency of direct recycle based on population served. The table illustrates that, for plants supplying data, treatment of recycle with sedimentation is provided more frequently as plant service population deceases. Plants serving populations of less than 10,000 recycle directly (27.5 percent) less frequently than plants serving populations greater than 100,000 (50 percent). The data indicate that a majority of small plants in the database may have installed equalization or sedimentation treatment to protect treatment process integrity from recycle induced hydraulic disruption. All direct filtration plants in the FAX survey provide recycle treatment or equalization.

TABLE IV.18.—RECYCLE PRACTICE BASED ON POPULATION SERVED [1]

Population served	Recycle practice			
	#Plants	Equalization	Sedimentation	Direct recycle
<10,000	43	9% (n=4)	67% (n=29)	23% (n=10)
10,000–50,000	79	10% (n=8)	57% (n=45)	33% (n=26)
50,000–100,000	35	17% (n=6)	54% (n=19)	29% (n=10)
100,000	65	35% (n=23)	23% (n=15)	42% (n=27)

[1] Based on 222 surface water plants suppling all necessary data to make determination.

FAX survey data support the following conclusions regarding the recycle practice of plants supplying data: (1) The recycle of spent filter backwash and other process streams is a common practice; (2) the majority of recycle plants use surface water as their source and are thereby at risk from *Cryptosporidium*; (3) a large majority of plants providing data recycle prior to the point of primary coagulant addition, and; (4) a majority of plants supplying data provide treatment for recycle waters prior to reintroducing them to the treatment plant. The FAX survey provides an informative snapshot of national recycle practices due to the number of recycle plants it includes, the geographic distribution of respondents, and the good representation of plants serving populations of less than 10,000 people.

ii. Options to recycle.

The FAX survey asked whether feasible alternatives to recycle are available (i.e., NPDES surface water discharge permit, pretreatment permit for discharge to POTW) and the importance of recycle to optimizing treatment performance and meeting production requirements. Responses to these questions is summarized in Table IV.19.

Table IV.19 shows that approximately 20 percent of respondents could not obtain either an NPDES surface water discharge permit or a pretreatment permit for discharge to a POTW. Approximately 90 percent of respondents stated that recycle flow is not important to meet typical demand.

Twenty-four percent of all respondents stated that returning recycle to the treatment process is important for optimal operation. "Optimal operation" was not defined by the survey and respondents may have considered not changing current plant operation (e.g., not changing current recycle practice) an aspect of optimal treatment, rather than addressing whether recycle practice is important for the plant to produce the highest quality finished water.

TABLE IV.19.—OPTIONS TO RECYCLE AS REPORTED BY FAX SURVEY PLANTS [1]

Question	Percent Yes	Percent No	Percent Unknown
Able to obtain NPDES surface discharge permit?	41% (n=131)	37% (n=120)	22% (n=70)
Able to obtain pretreatment permit for POTW discharge?	43% (n=137)	42% (n=136)	15% (n=48)
Can obtain either an NPDES or a POTW discharge permit?	60% (n=192)	19.5% (n=63)	20.5% (n=66)
Is recycle important to meet peak demand?	14% (n=44)	80% (n=257)	6% (n=20)
Is recycle important to meet typical demand?	9% (n=28)	85% (n=272)	6% (n=21)
Is recycle important to optimal operation? (All plants in survey)	24% (n=75)	70% (n=225)	6% (n=21)
Is recycle important to optimal operation? [2] (softening plants only)	13% (n=3)	83% (n=19)	4% (n=1)

[1] Number of plants varies from question to question due to different response rates.
[2] Optimal operation not defined by survey. May include overall plant operation rather than importance of recycle to producing highest possible quality finished water.

iii. Conclusions

The ICR and FAX survey data are complimentary, as the ICR data supplies a wealth of data regarding recycle practices at large capacity plants, while the FAX Survey provides data on recycle practices over a range of plant capacities. Taken together, the two data sets provide a good picture of current recycle practice. The data indicate that recycle is a common practice for plants sampled. Approximately half of the respondents providing data return recycle flow to the treatment process and 70 percent provide some type of recycle treatment. Sedimentation and equalization are the two most commonly employed treatment technologies for plants supplying data. Approximately 80 percent of plants sampled return recycle prior to the point of primary coagulant addition. Examining the recycle practices of plants in the ICR and FAX survey data show that small plants (*i.e.*, fewer than 10,000 people served) are more than twice as likely as large plants (*i.e.*, greater than 100,000 people served) to provide sedimentation for recycle treatment (58 versus 26 percent).

The FAX survey responses show that approximately half of plants providing data have an option to recycle return, whether it be an NPDES surface water discharge permit or discharge to a POTW. Eighty-five percent of respondents stated that recycle flow is not important to meet peak demand. Less than a quarter of respondents have monitored pathogen concentrations in backwash water and fewer than half have any monitoring data to characterize the quality of the backwash water.

3. Recycle Provisions for PWSs Employing Rapid Granular Filtration Using Surface Water or Ground Water Under the Direct Influence of Surface Water

a. Return Select Recycle Streams Prior to the Point of Primary Coagulant Addition

i. Overview and Purpose

Today's proposal requires that systems employing rapid granular filtration and using surface water or GWUDI as a source return filter backwash, thickener supernatant, and liquids from dewatering processes to the primary treatment process prior to the point of primary coagulant addition. The goal of this provision is to protect the integrity of chemical treatment and ensure these recycle streams are passed through as many physical removal processes as possible to provide maximum opportunity for removal of *Cryptosporidium* oocysts from the recycle flow. Since *Cryptosporidium* is resistant to standard disinfection practice, it is important that chemical treatment be optimized to protect treatment plant efficiency and that all available physical removal processes be employed to remove it.

Today's proposal requires these flows be returned prior to the point of primary coagulant addition because these streams are either of sufficient volume to cause hydraulic disruption within the treatment process when recycled and/or are likely to contain *Cryptosporidium* oocysts. Minor recycle streams, such as lab sample lines, pump packing water, and infrequent process overflows are not likely to threaten plants' hydraulic stability or contain appreciable numbers of oocysts.

Treatment plant types that need to return recycle to a location other than prior to the point of primary coagulant addition to maintain optimal treatment performance (optimal performance as indicated by finished water or intra-plant turbidity levels), plants that are designed to employ recycle flow as an intrinsic component of their operations, plants with very low influent turbidity levels that may need alternative recycle locations to obtain satisfactory suspended solids removal, or other types of plants constrained by unique treatment considerations, may apply to the State to recycle at an alternative location under today's proposal. Once approved by the State, plants may recycle to the specified location.

ii. Data

Data from the ICR and FAX Survey indicate that 75 and 78 percent of plants, respectively, return recycle prior to the point of primary coagulant addition. The "point of primary coagulant addition" was defined in both analyses as the return of recycle prior to the rapid mix unit. The FAX Survey data indicate that 77 percent of plants serving under 10,000 people recycle prior to the point of primary coagulant

addition. It also showed that 78 percent percent of all plants in the database return recycle there, which suggests that plants serving smaller populations may return recycle prior to the point of primary coagulant addition as frequently as plants serving larger populations. Other common recycle return locations are the rapid mix unit, between rapid mix and clarification, or into the clarification unit itself.

The Agency does not believe filter backwash, thickeners supernatant, or liquids from dewatering processes should be recycled at the point of primary coagulant addition or after it for three reasons:

(1) Addition of these recycle streams, which can contain residual coagulant and other treatment chemicals, after the location of primary coagulant addition, may render the chemical dose applied less effective, potentially harming the efficiency of subsequent treatment processes;

(2) Introduction of recycle into the flocculation unit or clarification unit may create hydraulic currents that exacerbate or create short circuiting, and;

(3) Recycle introduced into the clarification process may not experience sufficient residence time for adequate solids removal to occur.

The Agency is concerned that plants may not adjust chemical dosage during recycle events to account for: (1) The presence of a potentially significant amount of residual treatment chemical in recycle flow and changes in recycle flow quality, and; (2) potentially large fluctuations in plant influent flow during recycle events. EPA is concerned that changes in influent water quality and flow are not monitored on an instantaneous basis during recycle events. Since the chemistry of the recycle flow and source water may differ significantly, it is important plants mix source and recycle water to establish a uniform chemistry prior to applying treatment chemical so the dose is appropriate for the mixture. Additionally, wide fluctuation in plant influent flow during recycle events may cause chemical over-or under-dosing, which can lower overall oocyst removal efficiency. In an article concerning optimization of filtration performance, Lytle and Fox (1996) state, "The capability to instantaneously monitor treatment processes and rapidly and effectively respond to raw and filter effluent quality changes are important factors in consistently producing low turbidity water." Logdson (1987) further states, "For a plant to be operated properly, the total flow rate has to be known on an instantaneous basis or by volumetric measurement." EPA believes it is important plants diligently monitor the appropriateness of chemical dosing at all times, but particularly during recycle events, and strive for real-time chemical dose and influent flow management to optimize plant oocyst removal.

Pilot-scale research conducted by Patania *et al.* (1995) to examine the optimization of filtration found that chemical pretreatment was the most important variable determining oocyst removal by filtration. Edzwald and Kelley (1998) performed pilot-scale work to determine the ability of sedimentation, DAF, and filtration to remove *Cryptosporidium* and found that coagulation is critical to effective *Cryptosporidium* control by clarification and filtration. Bellamy *et al.* (1993) stated that the most important factor in plant performance is the use of optimal chemical dosages. Coagulation was recognized as the single most important step in the process of water clarification by Conley (1965). Ten pilot scale runs performed by Dugan *et al.* (1999) showed that coagulation has a large influence on the log removal of *Cryptosporidium* achieved by sedimentation. The importance of proper coagulation to filter performance was noted by Robeck *et al.* (1964) in pilot and full-scale work that showed proper coagulation is more important to the production of safe water than the filtration rate used. Results of direct filtration pilot studies, summarized by Trussell *et al.* (1980), showed that "effective coagulant is absolutely necessary if good effluent qualities are to be consistently produced."

Given the critical role proper chemical dosing plays in maintaining effective clarification and filtration processes, the Agency believes it is prudent and necessary to minimize the possibility recycle of spent filter backwash, thickener supernatant, and dewatering liquids will render chemical dosages applied during recycle events inaccurate, due to the presence of residual chemical or variations in influent flow, by requiring they be returned prior to the point of primary coagulant addition.

Finally, a fundamental tenet of water treatment is multiple treatment barriers should be provided to prevent microbial pathogens from entering finished water. To achieve this, conventional plants rely on coagulation, flocculation, clarification, and filtration as preventive microbial barriers. The Agency believes it is important that recycle waters be passed through each of these treatment processes to maximize the probability disinfection resistant oocysts will be removed in the plant and not enter the finished water supply.

iii. Proposed Requirements

Today's proposal requires that rapid granular filtration plants using surface water or GWUDI as a source return filter backwash, thickener supernatant, and liquids from dewatering processes prior to the point of primary coagulant addition. Plants that require an alternative recycle return location to maintain optimal finished water quality (as indicated by finished water or intra-plant turbidity levels), plants that are designed to employ recycle flow as an intrinsic component of the treatment process, or plants with unique treatment requirements or processes may apply to the State to return recycle flows to an alternative location. Plants may utilize this alternative location once granted by the State. EPA will develop detailed guidance and make it available to States and PWSs.

Softening systems may recycle process solids, but not spent filter backwash, thickener supernatant, or liquids from dewatering processes, at the point of lime addition immediately preceding the softening process to improve treatment efficiency. Literature establishes that return of process solids to point of lime addition decreases production of nuclei, increases the rate of crystallization, and increases crystal size, all of which enhance settling and process integrity (Randtke, 1999; Snoeyink and Jenkins, 1980). Contact clarification systems may recycle process solids, but not spent filter backwash, thickener supernatant, or liquids from dewatering processes, directly into the contactor to improve treatment efficiency.

iv. Request for Comments

EPA requests comment on the proposed requirements. The Agency also requests comment on the following aspects of this provision:

(1) What regulatory options are available to ensure direct recycle plants practice real-time chemical dose and influent flow management? Should flow-paced coagulant feed be required at direct recycle plants to minimize potential harmful impacts of recycle? What regulatory requirements may be applicable to ensure the integrity of the coagulation process?

(2) What treatment processes or treatment configurations may need an alternative recycle location to maintain optimal treatment?

(3) What alternative recycle locations are appropriate for such treatment configurations and what location may be inappropriate?

(4) Are there other reasons, beyond maintaining optimal treatment efficiency, to justify granting alternate recycle locations to plants? What are they?

(5) What criteria. operating practices, or other parameters should be evaluated to determine whether an alternative recycle return location should be granted?

(6) Does recycling at the point of primary coagulant addition, instead of prior to it, provide assurance that an appropriate dose of treatment chemicals will be consistently applied during recycle events? Is it necessary to mix the recycle and raw water prior to chemical addition to ensure a consistent water chemistry for chemical dosing?

(7) Are there circumstances where it would be appropriate to allow systems to recycle at the point of primary coagulant addition?

b. Recycle Requirements for Systems Practicing Direct Recycle and Meeting Specific Criteria

i. Overview and Purpose

Today's proposal requires that self assessments be performed at conventional filtration plants meeting all of the following criteria and the results of the self assessment reported to the State. The criteria are:

(1) Use of surface water or GWUDI as a source;

(2) Employ of 20 or fewer filters to meet production requirements during the highest production month in the 12 month period prior to LT1FBR's compliance date, and;

(3) Recycle spent filter backwash or thickener supernatant directly to the treatment process (*i.e.*, recycle flow is returned within the treatment process of a PWS without first passing the recycle flow through a treatment process designed to remove solids, a raw water storage reservoir, or some other structure with a volume equal to or greater than the volume of spent filter backwash water produced by one filter backwash event.)

The goal of the self assessment is to identify those direct recycle plants that exceed their State approved operating capacity, on an instantaneous basis, during recycle events. Plants are required to submit a monitoring plan to the State prior to conducting the month long self assessment monitoring. Results of self assessment monitoring must be reported to the State. The State is required to determine, by reviewing the self assessment, whether the plant's current recycle practice should be modified to protect plant performance and provide an additional measure of public health protection. The State is required to report its determination for each plant performing a self assessment to EPA and briefly summarize the reason(s) supporting each determination.

EPA selected the three aforementioned criteria to identify plants required to perform a self assessment for the following reasons. First, surface or GWUDI source waters may contain *Cryptosporidium*. Second, the hydraulic impact of recycle to plants typically employing more than 20 filters to meet production requirements should be dampened because plant influent flow is of significantly greater magnitude than the flow produced by a backwash event. Third, plants that practice direct recycle of filter backwash and/or thickener supernatant may exceed their operating capacity during recycle events due to the large volume of these streams.

ii. Data

Plants that recycle filter backwash and thickener supernatant, directly, without recycle flow equalization or treatment, may exceed their operating capacity during recycle events. Table IV.20 illustrates the magnitude by which direct recycle plants may exceed their operating capacity during recycle events. For purposes of the table, operating capacity is assumed to be either plant design flow or average flow (see example below). The values in the table are conservative, as they are likely to over predict the factor by which direct recycle plants will exceed operating capacity during recycle events. This conservatism is due to the assumed filter backwash rate of 15 gpm/ft^2 and the assumed backwash duration of 15 minutes, the minimum backwash rate and duration recommended by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (1997). Design and average flow values assumed for plant operating capacity were developed from equations presented in EPA's baseline handbook (1999g). For purposes of this example, plant design and average flow are assumed to equal State approved operating capacity to illustrate the potential for plants to exceed operating capacity during recycle events. Relevant equations and example calculations are shown below.

Example

(1) Design to average ratios:

design flow < .25 mgd; ratio design flow : average flow = 3.2:1

design flow > .25 mgd to 1 mgd; ratio design flow : average flow = 2.8:1

design flow > 1 mgd to 10 mgd; ration design flow : average flow = 2.4:1

design flow > 10 mgd; ratio design flow : average flow = 2.0:1

(2) Maximum filter size: 700 sq./ft^2 (EPA, 1998a)

(3) Backwash volume calculation:

Filter area (ft^2) × 15 gpm/ft^2 × 15 minutes = volume of one backwash

(4) Design and average capacity exceedence factors:

(Backwash flow + design (or average) flow) + design flow = exceedence factor

(5) Percent Influent that is recycle:

Backwash flow + (Backwash flow + design (or average flow)) = percent of influent that is backwash

(6) Design flow = State approved operating flow

TABLE IV.20.—IMPACT OF DIRECT RECYCLE

Design flow (MGD)	Number of filters	Area of one filter (sq. ft)	Volume of one backwash (gallons)	Backwash return flow (15 minute return; gpm)	Design flow (gpm)	Average flow (gpm)	Factor design flow is exceeded by during recycle (at design flow)	Percent influent that is recycle (at design flow) (percent)	Factor design flow is exceeded by during recycle (at average flow)	Percent influent that is recycle (at average flow) (percent)
.033	2	5	1,125	75	23	7	4.3	77	3.6	91
.669	4	50	11,250	750	465	166	2.6	62	2.0	82
2.02	6	100	22,500	1,500	1,403	584	2.1	52	1.5	72
8.8	8	320	72,000	4,800	6,111	2,546	1.8	44	1.2	65
14.5	10	425	95,625	6,375	10,069	5,135	1.6	39	1.1	55
42.44	18	700	157,500	10,500	29,472	14,736	1.4	26	.86	42
56.23	24	700	157,500	10,500	39,048	19,524	1.3	21	.77	35

The purpose of Table IV.20 is to illustrate the impact direct recycle can have on plant hydraulic loading and the factor by which plant operating capacity can be exceeded during recycle events. As shown in Table IV.20, a plant with two filters would process influent at over three times its operating capacity during a recycle event. Even if the plant reduced or eliminated its raw water influent flow for the duration of the event, the remaining filter would be subject to a loading rate that exceeds its operating capacity, which could harm finished water quality.

The amount of sedimentation basin or clarification process storage available during recycle events will have an impact on the hydraulic loading to the filters and the performance of the sedimentation or clarification process. The actual increase to filter loading rates may be less than predicted in Table IV.20 due to site-specific conditions. However, the potential for direct recycle plants to exceed operating capacity is cause for concern because oocyst removal can be compromised. The Agency believes 20 filters is an appropriate number for specifying which plants are required to perform a self assessment due to the results in Table IV.20 and the above considerations.

The importance of maintaining proper plant hydraulics has been acknowledged, notably by Logdson (1987) who wrote, "Both the quantity and quality of filtered water can be affected by plant hydraulics. Maximum hydraulic capacity is an obvious limitation. The adverse influences of rate of flow and flow patterns on water quality may not be so obvious, but they can be important." Fulton (1987) recognized that short circuiting can diminish the performance of settling basins, cause overloading of filters, and increase breakthrough of turbidity. Other publications (Cleasby, 1990) recognize that settled water quality deteriorates when the surface loading rate of sedimentation basins is increased. Direct recycle practice can give rise to short circuiting, cause plant operating capacity to be exceeded, and increase surface loading rates, all of which can be detrimental to *Cryptosporidium* removal.

Direct recycle practice can abruptly increase filter loading rates, which has been shown to lower filter performance. Cleasby et al. (1963) performed experimental runs with three pilot plant filters by increasing the filtration rate ten, twenty-five, and fifty-percent over various time periods and monitoring the passage of a target material during the rate increase. Conclusions drawn from the experiments were:

(1) Disturbance in filtration rate can cause filters to pass previously deposited material and the amount of material passed is dependent on the magnitude of the rate disturbance;

(2) More rapid disturbances cause more material to be flushed through the filter;

(3) The amount of material flushed through the filter is independent, or very nearly independent of disturbance's duration, and;

(4) The amount of material flushed through the filter following a disturbance is dependent on the type of material being filtered.

Pilot scale work was recently performed by Glasgow and Wheatley (1998) to investigate whether surges affect filtrate quality. Effluent turbidity and headloss within the filter media were monitored for two pilot filter columns that were surged at different magnitudes. The results were compared to control runs through the same pilot columns to determine the effect of the surge. Results indicated that surging may significantly affect full scale filter performance. Additional work is needed to confirm these results.

Recent pilot scale work by McTigue *et al.* (1998) examined the impact of doubling the filter loading instantaneously and gradually (over an 80 minute period) on pilot filters that had been in operation for a period of time or were "dirty." The experiments showed that *Cryptosporidium* removal achieved by the filters was lowered by changes in filtration rate regardless of whether loading rate was increased instantaneously or gradually. In the experiment, filter loading rates of 2 gpm/ft^2 and 4 gpm/ft^2 were doubled in six separate test runs to determine whether oocysts removal was affected. Results showed that log removal of oocysts was reduced by approximately 1.5 to 2.0 logs for when filter loading rates of 2 gpm/ft^2 and 4 gpm/ft^2 were either instantaneously and gradually doubled. The report states, "These data clearly demonstrate that any change in filter loading rate on a filter that is dirty presents a risk for breakthrough of *Giardia* and *Cryptosporidium* to the finished water, should these organisms be present in the filter." Effluent turbidity values remained low during increases in filter loading rates but particle count concentrations immediately increased with increases in loading rate. This may indicate that turbidity is not a good indicator of oocyst passage by dirty filters during filtration rate increases.

Results of three other pilot runs from the study showed that log removal of oocysts did not change when the influent oocyst concentration varied and all other treatment conditions were held constant. A four log removal of oocysts was obtained for all three runs despite influent oocyst concentrations of 4,610/L, 688/L, and 26/L. The report states, "This finding indicates that the risk for passage of large numbers of cysts to the finished water is greater when a water treatment plant receives a highly concentrated slug of cysts at its intake." The Agency believes this is an interesting conclusion, even though it is based on a limited number of pilot runs. If further pilot and full-scale work verifies this finding, it indicates that log removal of oocysts does not increase as more oocysts are loaded to plant. Recycle of flows containing oocysts would therefore increase the number of oocysts present in finished water, relative to the number of oocysts that would occur were recycle not practiced, because plant treatment efficiency would not increase to remove the additional oocysts returned by recycle.

In summary, the Agency is concerned that direct recycle of spent filter backwash, thickener supernatant, and liquids from dewatering process may increase the risk of oocyst occurrence in finished water for the following reasons:

(1) Sampling has established that oocysts occur in finished water supplies (see Table II.6 of this preamble);

(2) Data show that oocysts occur in recycle streams;

(3) Literature indicates that hydraulically overloading the sedimentation process, as may happen during direct recycle events, can harm sedimentation performance;

(4) Literature indicates increasing or abruptly changing filtration rates can lead to more material passing through filters, and;

(5) Recent pilot scale work by McTigue *et al.* (1998) and Glasgow and Wheatley (1998) indicates that filter performance can be harmed by surges and changes to filtration rate.

The Agency encourages the States to closely examine recycle self assessments performed by direct recycle plants to determine whether direct recycle poses an unacceptable risk to finished water quality and public health and needs to be modified due to the considerations cited above.

Finally, EPA realizes that State programs may use different methodologies to set plant operating capacity. States may also apply safety factors of different magnitudes when determining operating capacity. The Agency does not believe it is

appropriate to erode any safety factor or margin of safety States provide when setting operating capacity. Safety factors are provided for a reason: to provide a margin of safety to public health protection efforts. The integrity and magnitude of a safety factor should be maintained, as it is in and of itself integral to adequate public health protection. The fact a safety factor is applied when plant operating capacity is set is not a justification, *a priori,* for allowing plants to operate above said operating capacity during recycle events.

EPA also acknowledges that States may use different methodologies to set plant operating capacity. The Agency is confident that the State programs, its partners in public health protection, set plant capacity to provide necessary level of public health protection. The fact that some State programs may set plant operating capacities with different methodologies likely reflects geographical conditions and public expectations unique to certain States and sections of the country. EPA believes methodologies employed by the States results in establishment of operating capacities necessary to protect public health, meet regulatory requirements, and satisfy unique treatment needs and considerations where they exist.

iii. Proposed Requirements

Self assessments must be performed at plants meeting all of the following criteria and the results of the self assessment reported to the State:

(1) Use surface water or GWUDI as a source and employ conventional rapid granular filtration treatment;

(2) Employ of 20 or fewer filters to meet production requirements during the highest production month in the 12 month period prior to LT1FBR's compliance date, and;

(3) Recycle spent filter backwash or thickener supernatant directly to the treatment process (*i.e.*, recycle flow is returned within the treatment process of a PWS without first passing the recycle flow through a treatment process designed to remove solids, a raw water storage reservoir, or some other structure with a volume equal to or greater than the volume of spent filter backwash water produced by one filter backwash event).

Systems are required to develop and submit a recycle self assessment monitoring plan to the State no later than three months after the rule's compliance date for each plant the requirements are applicable to. At a minimum, the monitoring plan must identify the month during which monitoring will be conducted, contain a schematic identifying the location of raw and recycle flow monitoring devices, describe the type of flow monitoring devices to be used, and describe how data from the raw and recycle flow monitoring devices will be simultaneously retrieved and recorded.

The self assessment of recycle practices shall consist of the following five steps:

(1) From historical records, identify the month in the calendar year preceding LT1FBR's effective date with the highest water production.

(2) Perform the monitoring described below in the twelve month period following submission of the monitoring plan to the State.

(3) For each day of the month identified in (1), separately monitor source water influent flow and recycle flow before their confluence during one filter backwash recycle event per day, at three minute intervals during the duration of the event. Monitoring must be performed between 7:00 a.m. and 8:00 p.m. Systems that do not have a filter backwash recycle event every day between 7:00 am and 8:00 p.m. must monitor one filter backwash recycle event per day, any three days of the week, for each week during the month of monitoring, between 7:00 a.m. and 8:00 p.m. Record the time filter backwash was initiated, the influent and recycle flow at three minute intervals during the duration of the event, and the time the filter backwash recycle event ended. Record the number of filters in use when the filter backwash recycle event is monitored.

(4) Calculate the arithmetic average of all influent and recycle flow values taken at three minute intervals in (3). Sum the arithmetic average calculated for raw water influent and recycle flows. Record this value and the date the monitoring was performed. This value is referred to as event flow.

(5) After monitoring is complete, order the event flow values in increasing order, from lowest to highest, and identify the monitoring events in which plant operating capacity is exceeded.

Systems are required to submit a self assessment report to the State within one month of completing the self assessment monitoring. At a minimum, the report must provide the following information:

(1) All source and recycle flow measurements taken and the dates they were taken. For all events monitored, report the times the filter backwash recycle event was initiated, the flow measurements taken at three minute intervals, and the time the filter backwash recycle event ended. Report the number of filters in use when the backwash recycle event is monitored.

(2) All data and calculations performed to determine whether the plant exceeded its operating capacity. Report the number of event flows that exceed State approved operating capacity.

(3) A plant schematic showing the origin of all recycle flows, the hydraulic conveyance used to transport them, and their final destination in the plant

(4) A list of all the recycle flows and the frequency at which they are returned to the plant.

(5) Average and maximum backwash flow through the filters and the average and maximum duration of backwash events in minutes, for each monitoring event, and;

(6) Typical filter run length, number of filters typically employed, and a written summary of how filter run length is determined (preset run time, headloss, turbidity level).

EPA is proposing that the State review all self assessments submitted by PWSs and report to the Agency the below information as it applies to individual plants:

(1) A finding that modifications to recycle practice are necessary, followed by a brief description of the required change and a summary of the reason(s) the change is required, or;

(2) A finding that changes to recycle practice are not necessary and a brief description of the reason(s) this determination was made.

The Agency also considered requiring all recycle plants without existing recycle flow equalization or treatment to install recycle flow equalization. As summarized in Table IV.21, several recommendations for recycle equalization and treatment have been provided. However, these recommendations are based on theoretical calculations and/or limited pilot-scale data that has not been verified by full-scale plant performance data. The Agency currently believes insufficient data is available to determine whether recycle flow equalization is necessary to protect finished water quality, and, if it is, the level of equalization required to provide protection to finished water supplies for a wide variety of source water qualities, treatment process types, and levels of treatment effectiveness. The Agency does not believe it is appropriate at this time to propose a national recycle flow equalization requirement for the following reasons:

(1) Data on the occurrence of oocysts in recycle streams, and their impact to

finished water quality upon recycle, is very limited;

(2) Data that establishes the magnitude of hydraulic disruption caused by direct recycle events for a variety of plant types, designs, and operational practices has not been identified; without this data, it is not possible to quantify how much treatment efficiency is reduced by the hydraulic disruption and the number of oocysts in the recycle flow that will enter the finished water due to the disruption. Without this information, it is not possible to specify the level of equalization necessary to control hydraulic disruption for a variety of plant configurations and operational practices with any degree of certainty and cost effectiveness, and;

(3) A uniform, national equalization standard may not be appropriate because it would not allow consideration of site-specific factors such as plant treatment efficiency, loading capacity of clarification and filtration units, source water quality, and other site-specific factors that influence the level of equalization a plant may need to control recycle event induced hydraulic disruption.

EPA believes some plants can realize substantial benefit by installing recycle flow equalization and will review data to determine the need for an equalization requirement when it becomes available. The Agency requests that commenters submit the following pilot or full-scale data to assist its effort to conduct a thorough analysis of equalization based upon the best available science:

(1) Data on the magnitude of hydraulic disruption caused by recycle events and its affect on finished water turbidity and particle count levels;

(2) Data that correlate hydraulic disruption to increased oocyst concentration in finished water, and;

(3) Any other data commenters believe that may be appropriate to analyze the need for equalization, and;

(4) Whether the regulation should require States to specify modifications to recycle practice, for all plants that exceed operating capacity during monitoring, to ensure said plants' remain below their State approved operating capacity during recycle events.

TABLE IV.21—RECOMMENDED EQUALIZATION PERCENTAGES

Source of recommendation [a]	Equalization Percentage	Is recycle treatment recommended?
Recommended Standards for Water Works. Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. 1997. Albany: Health Education Services.	10%	No.
Removal of *Cryptosporidium* Oocysts by Water Treatment Process. Foundation for Water Research Limited, United Kingdom (1994).	10%	Yes. Turbidity less than 5.0 NTU or residual of 10mg/L suspended solids in treated recycle flow.
Recycle Stream Effects on Water Treatment. Cornwell, D., and R. Lee. 1993. Denver: AWWARF.	Use equalized, continuous recycle.	Use proper waste stream treatment prior to recycle.

[a] See the reference list at the end of the preamble for complete citations.

Finally, the Agency considered requiring conventional filtration plants that recycle within the treatment process to provide sedimentation or more advanced recycle treatment and concluded a national treatment requirement is inappropriate at this time due data deficiencies. The Agency believes the following data is necessary to determine whether recycle flow treatment is necessary to protect public health and the requisite level of treatment:

(1) Significant amounts of additional data on the occurrence of oocysts for a complete range of recycle streams generated by a wide variety of source water qualities, treatment plant types, plant operational and recycle practices, and plant treatment efficiencies;

(2) Data that correlates recycle stream oocyst occurrence to finished water occurrence;

(3) Additional data on the ability of full-scale sedimentation basins to remove oocysts during normal operation and during recycle events. The Agency has identified only three full-scale studies, States *et al.* (1995), Baudin and Laîné (1998), and Kelly *et al.* (1995), that allow quantification of oocyst removal by sedimentation basins. Pilot scale work, such as Edzwald and Kelley (1998) and Dugan *et al.* (1999) is also available, but the number of studies is not extensive. The removal achieved by sedimentation and other clarification processes is critical for determining the number of oocysts loaded to the filters, the likely concentration of oocysts in various recycle streams, and the impact recycle may have on intra-plant oocyst concentrations. Good oocyst removal in the clarification process will remove a large percentage of oocysts from recycle and source water flows before they reach the filters. The amount of removal provided by primary clarification therefore has a large influence on the level of recycle flow treatment that may be needed to mitigate risk to finished water quality. Given that data on oocyst removal by sedimentation and other clarification processes is very limited, the Agency does not believe it is possible to assess the need for recycle treatment and specify a minimum treatment level that is meaningful for a wide variety of plant types and recycle practices;

(4) Data regarding the ability of DAF and other clarification processes to remove oocysts from recycle flow is very limited. This data is important, because the Agency anticipates plants may respond to any recycle treatment requirement by using DAF to treat recycle flow because of the advantages it provides relative to sedimentation. However, EPA has only identified four studies, Hall *et al.* (1995), Plummer *et al.* (1995), Edzwald and Kelley (1998), and Alvarez *et al.* (1999), that determined the ability of DAF to remove oocysts from source water. One study, by Grubb *et al.* (1997), addresses the ability of DAF to treat filter backwash waters has been identified, but sampling for oocyst removal was not performed, although turbidity and color removal were monitored and good results obtained. Additional data is needed to characterize the ability of DAF to remove oocysts from recycle flow before it can be used to meet any recycle treatment requirement;

(5) Full-scale data on the ability of sedimentation and other clarification processes to remove oocysts from recycle streams before they are returned to the plant is very limited. EPA has identified two studies, one by Cornwell and Lee (1993) and a study by Karanis *et al.* (1998) that provide data regarding

sedimentation's ability to remove oocysts from recycle flows. Additional information is needed to establish lower and upper bounds on the oocyst removal sedimentation can achieve; without this data, it is difficult to specify a feasible level of oocyst removal in a recycle flow treatment requirement;

(6) Microfiltration and ultrafiltration membranes appear to be very reliable at removing *Cryptosporidium* from source waters (Jacangelo *et al.*, 1995). However, the Agency has identified limited data regarding the ability of membranes to effectively treat recycle flow, and treatment of backwash with membranes may not be appropriate at all locations (Thompson *et al.*, 1995) due to incompatibility between membrane filter material and residual treatment chemical(s) in the backwash water. Additional information regarding the ability of microfiltration and ultrafiltration membranes to treat recycle flow is necessary to comprehensively evaluate their applicability, and;

(7) EPA is not aware of a surrogate, including turbidity, particle counts, or any other common and easy to measure parameter, that can serve as an indicator of the log removal of *Cryptosporidium* recycle flow treatment units achieve. The Agency does not believe it is economically or technically feasible to directly monitor oocyst removal by treatment units. Without an accurate, easy to measure surrogate for *Cryptosporidium* removal, the Agency does not believe it is possible to ascertain the level of treatment recycle flow treatment units achieve during routine operations.

Given the above limiting factors, the Agency does not believe it is prudent to establish a national recycle flow treatment requirement until additional data becomes available. EPA requests the following data be submitted:

(1) Data regarding intra-plant and recycle stream occurrence of oocysts;

(2) Information on the ability of individual treatment units of the primary treatment train to remove oocysts during normal, hydraulically challenged, and suboptimal chemical dose operations;

(3) Data on the ability of sedimentation and other clarification processes to remove oocysts from a wide range of recycle streams;

(4) Data on the compatibility of specific ultrafiltration and microfiltration membrane materials with residual chemicals that occur in recycle streams and data regarding the performance of these membrane materials at full and pilot scale, and;

(5) Information on potential surrogates that can be easily measured and can accurately establish the log removal of oocysts removed by recycle flow treatment processes.

iv. Request for Comments

EPA requests comment on the proposed requirements. The Agency also requests comment on the following:

(1) What other parameters could be monitored or what other overall monitoring schemes could be employed to assess whether a plant is exceeding its operating capacity?

(2) What data should the plant report to the State as part of its self assessment, beyond the monitoring data and other information listed above?

(3) Is monitoring during the highest flow month appropriate? Is monitoring during additional months necessary? Is daily monitoring necessary or would less frequent monitoring during the month be sufficient?

(4) Should systems be required to monitor and report turbidity measurements from a representative filter taken immediately preceding and after recycle events monitored during the self assessment to help characterize the impact of recycle on plant performance?

(5) Is limiting the self assessment to plants with 20 or less filters appropriate? Should the number of filters be less or greater than 20? What is the appropriate number of filters?

(6) Should systems be required to monitor sedimentation overflow rates or clarification loading rates while the recycle flow monitoring is performed?

(7) EPA requests comment on criteria that may identify recycle plants that could receive substantial benefit from implementing recycle equalization or treatment as a standard practice.

(8) What type and amount of data is required to determine whether recycle flow equalization would provide a benefit to finished water quality? What methodology could be used to determine an appropriate recycle flow equalization percentage, and how relevant are turbidity and particle counts, at various locations in a plant, to assessing an appropriate equalization percentage for a single plant or a plant type?

d. Requirements for Direct Filtration Plants that Recycle Using Surface Water or GWUDI

i. Overview and Purpose

Today's proposal requires direct filtration plants that recycle to report to the State whether flow equalization or treatment is provided for recycle flow prior to its return to the treatment process. The purpose of today's proposed requirement is to assess whether the existing recycle practice of direct filtration plants addresses potential risks. The Agency believes that direct filtration plants need to remove oocysts from recycle flow prior to reintroducing it to the treatment process.

ii. Data

Twenty-three direct filtration plants that used surface water responded to the FAX Survey (AWWA, 1998). In the FAX survey, plants could report whether they provide recycle flow equalization, sedimentation, or some other type of treatment. Of the respondents, 21 reported providing treatment for the recycle flow and two plants reported providing only equalization. In the ICR database, there were 23 direct filtration plants and fourteen of them recycled to the treatment process. All fourteen plants provide recycle treatment. It is not possible to determine the level of oocyst removal FAX survey and ICR plants achieve with available data.

The treatment train of a direct filtration plant does not have a clarification process to remove *Cryptosporidium* before they reach the filters; all oocyst removal is achieved by the filters. If recycle flow treatment is not provided, all of the oocysts captured in the filters will be returned to the treatment process in the recycle flow. Because a primary clarification process is not present to remove recycled oocysts, they are caught in a closed "loop" from which the only exit is passage through the filters into the distribution system. The Agency believes direct filtration plants should provide solids removal treatment for recycle flows to limit the number of oocysts returned to the treatment plant.

iii. Proposed Requirements

EPA is proposing that PWSs using direct filtration that recycle to the treatment process and utilize surface water or GWUDI as a source report data to the State that describes their current recycle practice. Plants should report the following information to the State:

(1) Whether recycle flow treatment or equalization is in place;

(2) The type of treatment provided for the recycle flow;

(3) If equalization, sedimentation, or some type of clarification process is used, the following information should be provided: a) physical dimensions of the unit (length, width, (or circumference) depth,) sufficient to allow calculation of volume and the

type, typical dose, and frequency with which treatment chemicals are used;

(4) The minimum and maximum hydraulic loading the treatment unit experiences, and;

(5) Maximum backwash rate, duration, typical filter run length, and the number of filters at the plant.

The State should use the above information to determine which plants need to modify recycle practice to provide additional public health protection. States are required to report to EPA whether they required individual direct filtration plants to modify recycle practice and provide a brief explanation of the reason(s) for the decision.

The Agency also considered requiring that all direct filtration plants provide a specific level of treatment for the recycle flow. However, data necessary to determine the appropriate level of treatment is unavailable. Specifically, the following data is needed:

(1) Data on the on the occurrence of oocysts in the spent filter backwash of direct filtration plants. Direct filtration plants generally use higher quality source water than conventional plants (AWWA, 1990) and it would be inaccurate to use spent filter backwash occurrence data from conventional plants to assess the level of treatment direct recycle plants may need;

(2) Data regarding the ability of sedimentation and other clarification processes to remove oocysts from recycle flows is needed to determine what may be a feasible level of treatment. This data need was treated to a detailed discussion in the previous section of the preamble;

(3) An easy to measure and accurate surrogate for oocyst removal is currently unavailable; without such a surrogate, it is not feasible to monitor the performance of recycle treatment units, and;

(4) Data on the applicability of microfiltration and ultrafiltration for treating spent filter backwash produced by direct filtration plants. This data need was discussed in detail in the previous section.

Given the lack of oocyst occurrence data for direct filtration recycle streams, and limited knowledge of the level of treatment clarification processes can achieve, the Agency does not currently believe it is possible to identify a treatment standard for direct filtration plants.

iv. Request for Comments

EPA requests comment on the proposed requirements. The Agency also requests comment on the following:

(1) Whether direct filtration plants should be required to provide treatment for recycle flows;

(2) The level of treatment direct filtration plants should achieve;

(3) Data that establishes turbidity, particle counting, or some other surrogate as an appropriate indicator of oocyst removal achieved by recycle treatment units, and;

(4) Data on the ability of clarification processes to remove oocysts and criteria that can be used to determine the applicability of specific membrane materials for treatment of spent filter backwash produced by direct filtration plants.

d. Request for Additional Comment

EPA requests comment on the following:

(1) Should the recycle of untreated clarification sludges be allowed to continue, or should the Agency ban this practice? What affect would a ban have on the operation of specific plant types, such as softening plants?

(2) Is it appropriate to apply regulatory requirements to the combined recycle flow rather than stipulating requirements for individual recycle flows? Which flows should be regulated individually and why?

V. State Implementation and Compliance Schedules

This section describes the regulations and other procedures and policies States have to adopt, or have in place, to implement today's proposed rule. States must continue to meet all other conditions of primacy in 40 CFR part 142.

Section 1413 of the SDWA establishes requirements that a State or eligible Indian tribe must meet to maintain primary enforcement responsibility (primacy) for its public water systems. These include: (1) Adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under sections 1412(a) and 1412(b) of the Act, (2) adopting and implementing adequate procedures for enforcement, (3) keeping records and making reports available on activities that EPA requires by regulation, (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by sections 1415 and 1416, and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision program, as authorized under section 1413 of the Act. In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required by 40 CFR 142.12 to include these regulation-specific provisions in an application for approval of their program revisions. These State primacy requirements apply to today's proposed rule, along with the special primacy requirements discussed below.

To implement today's proposed rule, States are required to adopt revisions to § 141.2—definitions; § 141.32—public notification; § 141.70—general requirements; § 141.73—filtration; § 141.76—recycle; § 141.153—content of the reports; § 141.170—general requirements; § 142.14—records kept by States; § 142.16—special primacy requirements; and a new subpart T, consisting of § 141.500 to § 141.571.

A. Special State Primacy Requirements

In addition to adopting drinking water regulations at least as stringent as the Federal regulations listed above, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA. This information advises the regulated community of State requirements and helps EPA in its oversight of State programs. States which require without exception subpart H systems (all public water systems using a surface water source or a ground water source under the direct influence of surface water) to provide filtration, need not demonstrate that the State program has provisions that apply to systems which do not provide filtration treatment. However, such States must provide the text of the State statutes or regulations which specifies that public water systems using a source water must provide filtration.

EPA is currently developing, with stakeholders input, several guidance documents to aid the States and water systems in implementing today's proposed rule. This includes guidance for the following topics: Disinfection benchmarking and profiling, Turbidity, and Filter Backwash and Recycling. EPA will also work with States to develop a State implementation guidance manual.

To ensure that the State program includes all the elements necessary for a complete enforcement program, the State's application must include the

following in order to obtain EPA's approval for implementing this rule:

(1) Adoption of the promulgated LT1FBR.

(2) Description of the procedures the State will use to determine the adequacy of changes in disinfection process by systems required to profile and benchmark under § 142.16(h)(2)(ii) and how the State will consult with PWSs to approve modifications to disinfection practice.

(3) Description of existing or adoption of appropriate rules or other authority under § 142.16(h)(1) to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, and the performance improvement phase of the Composite Correction Program (CCP).

(4) Description of how the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines or ozone for primary disinfection.

(5) For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration or diatomaceous earth filtration, a description of how the State will determine under § 142.16(h)(2)(iii), that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with the disinfection treatment that meets the requirements of Subpart T of this title, consistently achieves 99.9 percent removal and/or inactivation of *Giardia* lamblia cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts; and a description of how, for the system that makes this demonstration, the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia* lamblia cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

(6) Description of the criteria the State will use under § 142.16(b)(2)(vi) to determine whether public water systems completing self assessments under § 141.76 (c) are required to modify recycle practice and the criteria that will be used to specify modifications to recycle practice.

(7) Description of the criteria the State will use under § 142.16(b)(2)(vii) to determine whether direct filtration systems reporting data under § 141.76 (d) are required to change recycle practice and the criteria that will be used to specify changes to recycle practice.

(8) The application must describe the criteria the State will use under § 142.16(b)(2)(viii) to determine whether public water systems applying for a waiver to return recycle to a location other than prior to the point of primary coagulant addition, will be granted the waiver for an alternative recycle location.

B. State Recordkeeping Requirements

Today's rule includes changes to the existing record-keeping provisions to implement the requirements in today's proposed rule. States must maintain records of the following: (1) Turbidity measurements must be kept for not less than one year;

(2) disinfectant residual measurements and other parameters necessary to document disinfection effectiveness must be kept for not less than one year; (3) decisions made on a system-by-system basis and case-by-case basis under provisions of part 141, subpart H or subpart P or subpart T; (4) records of systems consulting with the State concerning a modification of disinfection practice (including the status of the consultation);

(5) records of decisions that a system using alternative filtration technologies can consistently achieve a 99 percent removal of *Cryptosporidium* oocysts as well as the required levels of removal and/or inactivation of *Giardia* and viruses for systems using alternative filtration technologies, including State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised and the State must provide a copy of the decision to the system, and; (6) records of systems required to do filter self-assessments, CPE or CCP. These decision records must be kept for 40 years (as currently required by § 142.14 for other State decision records) or until a subsequent determination is made, whichever is shorter.

C. State Reporting Requirements

Currently States must report to EPA information under 40 CFR 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. Today's proposal requires States to report a list of direct recycle plants performing self assessments, whether the State required these systems to modify recycle practice, and the reason(s)modifications were or were not required and a list of direct filtration plants performing self assessments, whether the State required these systems to modify recycle practice, and the reason(s) modifications were or were not required

D. Interim Primacy

On April 28, 1998, EPA amended its State primacy regulations at 40 CFR 142.12 (63 FR 23362) (EPA 1998i) to incorporate the new process identified in the 1996 SDWA amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review. The new process grants interim primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. This interim enforcement authority begins on the date of the primacy application submission or the effective date of the new or revised State regulation, whichever is later, and ends when EPA makes a proposed determination. However, this interim primacy authority is only available to a State that has primacy for every existing national primary drinking water regulation in effect when the new regulation is promulgated.

As a result, States that have primacy for every existing NPDWR already in effect may obtain interim primacy for this rule, beginning on the date that the State submits its final application for primacy for this rule to EPA, or the effective date of its revised regulations, whichever is later. Interim primacy is available for the following rules:

- Stage 1 Disinfectants and Disinfection Byproducts Rule (December 16, 1998)(EPA,1998c)
- Interim Enhanced Surface Water Treatment Rule (EPA,1998a)
- Consumer Confidence Report Rule (EPA, 1998f)
- Variances and Exemptions Rule (EPA, 1998g)
- Drinking Water Contaminant Candidate List (EPA, 1998h)
- Revisions to State Primacy Requirements (EPA,1998i)
- Public Notification Rule (EPA, 1999i)

In addition, a State which wishes to obtain interim primacy for future NPDWRs must obtain primacy for this rule. After the effective date of the final rule, any State that does not have primacy for this rule cannot obtain interim primacy for future rules.

E. Compliance Deadlines

Section 1412(b)(10) of SDWA provides that drinking water rules become effective 36 months after promulgation unless the Administrator

determines that an earlier time is practicable. The Administrator may also extend the effective date by an additional 24 months if capital improvements are necessary. The Agency believes the three year effective date is appropriate for all of the provisions in today's notice except for those provisions that address the return of recycle flows. The Agency believes providing a five year compliance period for systems making modifications to recycle practice is appropriate and warranted under 1412(b)(10). To effectively modify recycle practice, capital improvements, such as installing additional equipment and/or constructing new facilities, will likely be required. Specific examples of potential capital improvements are installing new piping and pumps to convey recycle flow prior to the point of primary coagulant addition and constructing equalization basins or recycle flow treatment facilities. A limited number of systems may be able to make operational modifications, per the State's determination, that will effectively address potential risks. However, the Agency believes the great majority of systems required to either relocate their recycle return location or modify recycle practice as directed by the State will need to perform capital improvements. The capital improvement process is lengthy; systems will need to engage in preliminary planning activities, consult with State and local officials, develop engineering and construction designs, obtain financing, and construct the facilities. The Agency believes the widespread need that systems making modifications to recycle practice will have for capital improvements warrants the additional 24 months for compliance purposes. The Agency solicits comment on the appropriateness of providing an additional two years for compliance with the recycle provisions. EPA seeks comment on extending the compliance deadline an extra two years because systems are expected to make capital improvements to address recycle practice. EPA also seeks comment on a similar two year extension to comply with the turbidity provisions of today's proposed rule.

II. Economic Analysis

This section summarizes the Health Risk Reduction and Cost Analysis in support of the Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule (LT1FBR) as required by Section 1412(b)(3)(C) of the 1996 Amendments to the SDWA. In addition, under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of LT1FBR in a Regulatory Impact Analysis (RIA) and submit the analysis to the Office of Management and Budget (OMB) in conjunction with publication of the proposed rule. EPA has prepared an RIA to comply with the requirements of this Order and the SDWA Health Risk Reduction and Cost Analysis (EPA, 1999h). The RIA has been published on the Agency's web site, and can be found at *http://www.epa.gov/safewater*. The RIA can also be found in the docket for this rulemaking.

The goal of the following section is to provide an analysis of the costs, benefits, and other impacts of the proposed rule to support future decisions regarding the development of the LT1FBR.

A. Overview

The analysis for this rule examines the costs and benefits for five rule provisions: filter effluent turbidity, applicability monitoring, disinfection benchmark profiling, uncovered finish water reservoirs, and recycle. Several options were considered for each provision. Costs were estimated for three individual turbidity options, three profiling options, and three applicability monitoring options. In addition, costs were estimated for four different recycle options. All four recycle options require spent filter backwash, thickener supernatant, and liquids from dewatering be returned to the treatment process prior to the point of primary coagulant addition. The extent of modifications to recycle practice varies among the rule options.

The value of health benefits from the turbidity provision was estimated for the preferred option. The benefits from the other rule provisions are described qualitatively. Several non-health benefits from this rule were also considered by EPA but were not monetized. The non-health benefits of this rule include: avoided outbreak response costs and possibly reduced uncertainty and averting behavior costs. By adding the non-monetized benefits with those that are monetized, the overall benefits of these rule options increase beyond the dollar values reported.

Additional analysis was conducted by EPA to look at the incremental impacts of the various rule options, impacts on households, benefits from reductions in co-occurring contaminants, and possible increases in risk from other contaminants. Finally, the Agency evaluated the uncertainty regarding the risk, benefits, and cost estimates.

B. Quantifiable and Non-Quantifiable Costs

In estimating the costs of each rule option, the Agency considered impacts on public water systems and on States (including territories and EPA implementation in non-primacy States). The LT1FBR will result in increased costs to public water systems for improved turbidity treatment, applicability monitoring, disinfection benchmarking, covering new finished water reservoirs and modification to recycle practice. States will also face implementation costs. Most of the provisions of this rule, except the recycle provision, apply to systems using surface water or ground water under the direct influence of surface water that serve less than 10,000 people. The recycle provisions, however, apply to all surface water systems that recycle filter backwash, thickener supernatant, or liquids from dewatering.

1. Total Annual Costs

EPA estimates that the annualized cost of the preferred alternatives for the proposed rule will be $97.5 million. This estimate includes capital costs for treatment changes and start-up labor costs for monitoring and reporting activities that have been annualized assuming a 7% discount rate and a 20-year amortization period. Other cost estimates reported in this section also use these same amortization assumptions. The estimated cost of the preferred alternatives also includes annual operating and maintenance costs for treatment changes and annual labor for turbidity monitoring activities.

The turbidity provisions (including treatment changes, monitoring, and exceptions reporting) account for 70% ($68.6million annually) of total costs and the recycling provisions (*i.e.*, recycle to headworks, self assessment, and direct filtration) account for 25% ($24.5 million annually) of total costs. Utility expenditures for all provisions equal almost 93% ($90.2 million annually) of total costs; State expenditures make up the other 7% ($6.7 million annually).

To reduce the potential cost to small systems, EPA developed and evaluated the cost implications of several regulatory alternatives for four of the proposed LT1FBR provisions: individual filter turbidity monitoring, applicability monitoring, disinfection benchmark profiling, and recycle. Many of these alternatives reduce the labor burden on small systems relative to what it would be if the proposed rule used the same requirements as lESWTR. The total national costs previously

discussed only included the costs of the preferred alternatives. The following section will describe the cost estimates for each provision and discuss the cost of other alternatives that were considered.

2. Annual Costs of Rule Provisions

The national estimate of annual utility costs for the proposed turbidity provisions is based on estimates of system-level costs for the various provisions of the rule and estimates of the number of systems expected to incur each type of cost. The following paragraphs describe the cost estimates for each of the rule provisions.

Turbidity Provision Costs

The turbidity provisions are estimated to cost $69.0 million annually. This cost is associated with three primary activities that result from this provision: treatment changes, monitoring, and exceptions reporting.

The treatment costs associated with meeting the revised turbidity standard of 0.3 NTU or less are the main costs associated with the turbidity provision. EPA estimates that 2,406 systems will modify their turbidity treatment in response to this rule. These costs are estimated to be $52.2 million annually. O&M expenditures account for 59% of annual costs and the remain 41% percent is annualized capital costs.

In addition to the turbidity treatment costs, turbidity monitoring costs apply to all small surface water or GWUDI systems using conventional or direct filtration methods. There are an estimated 5,896 systems that fall under this criteria. EPA estimated the costs to utilities for three turbidity monitoring alternatives. Alternative B, the preferred alternative, excludes the exceptions report for an individual filter exceeding 0.5 NTU in two consecutive measurements, enabling systems to shift from daily to weekly analysis and review of the monitoring data. The annualized individual filter turbidity cost to public water systems for this preferred option is approximately $10.1 million. In contrast, under the IESWTR monitoring requirements of Alternative A, small systems would expend $63.3 million annually for turbidity monitoring. Alternative C, which only requires monthly analysis is estimated to cost $5.6 million annually. The total state turbidity start-up and monitoring annual costs are $4.98 million annually and is assumed to be the same for all of the three alternatives.

In addition to the turbidity treatment and monitoring costs, individual filter turbidity exceptions are estimated to cost utilities $120 thousand annually for the preferred option. State costs will be approximately $1.17 million. This cost includes the annual exception reports and annual individual filter self assessment costs. Costs are slightly higher for the other two alternative individual filter turbidity monitoring options because they result in increased number of exception reports.

Disinfection Benchmarking Costs

Disinfection benchmarking involves three components: profiling, applicability monitoring, and benchmarking. Four options were costed for applicability monitoring. Alternative 3, which uses the critical monitoring period, is estimated to cost less than $0.4 million annually. This is substantially lower than the $6.0 million estimated for Alternative 1, which has the same requirements as IESWTR. Alternative 2 requires sampling once per quarter for 4 quarters for systems serving 501–10,000, but allows systems under 500 to sample once during the critical monitoring period. This option has an annualized cost of $1.1 million. The preferred option, Alternative 4, makes it optional to sample during the critical monitoring period and is estimated to cost $0.04 million annualized.

Three options were considered for disinfection profiling and benchmarking. They differed in the frequency and duration of data collection. The preferred alternative, Alternative 2, requires weekly monitoring for one year and is estimated to have an annualized cost of $0.8 million. In comparison, Alternative 1 which requires daily data collection for one year, has an annualized cost of approximately $1.3 million. The final option, Alternative 3, requires daily monitoring for 1 month and has an estimated annualized cost of $0.5 million.

State disinfection benchmarking annualized costs are estimated to be $0.4 million. This estimate includes start-up, compliance tracking/recordkeeping, and benchmark related costs.

Covered Finished Water Reservoir Provision Costs

The proposed LT1FBR requires that new systems cover all finished water reservoirs, holding tanks, or other storage facilities for finished water. Historical construction rates suggest that new reservoirs over the next 20 years will roughly equal to five percent of the existing number of systems. Assuming then that 580 new uncovered finished water reservoirs would be built in the next 20 years, total annual costs, including annualized capital costs and one year of O&M costs are expected to be $2.6 million for this provision using a 7% discount rate. This estimate is calculated from a projected construction rate of new reservoirs and unit cost assumptions for covering new finished water reservoirs.

Recycle Provision Cost

EPA considered four different regulatory options for recycle. Each of the four options requires spent filter backwash, thickener supernatant, and liquids from dewatering be returned prior to the point of primary coagulant addition. Alternative 1, is estimated to result in an annualized cost of $16.7 million. Of the total costs of this alternative, State start-up and review costs for this alternative are only $20 to $30 thousand annually.

Alternative 2, the preferred option. further requires that conventional rapid granular filtration plants using surface water or GWUDI perform a self assessment if they recycle spent filter backwash and thickener supernatant, employ 20 or less filters, and practice direct recycle (treatment for the recycle flow or equalization in a basin that has a volume equal to the volume of spent filter backwash produced by a single filter backwash event is not provided). The results of the self assessment are reported to the State, and it specifies whether modifications to recycle practice are necessary. PWSs are required to implement the modification specified by the State. Under Alternative 2, direct filtration plants are required to submit data to the State on current recycle practice, and the State specifies whether changes to recycle practice are required. The total annualized cost of Alternative 2 is $17.4 to $24.5 million. $0.4 to $5.9 million of the total annualized cost is for the direct recycle component, $0.1 to $1.7 million is for the direct filtration component, and the remaining cost is for the requirement to return recycle prior to the point of primary coagulant addition. Of the total costs of this alternative, State start-up, review, and self assessment costs for this alternative is only $115 thousand annually.

Alternative 3 contain the same requirements for direct filtration plants and also requires the three recycle flows mentioned above be returned prior to the point of primary coagulant addition. Direct recycle plants are required to install equalization basins with a volume equal to or greater than the volume produced by two filter backwash events. The annualized cost of Alternative 3 is $55.0 to $56.7 million. Of this range, $38.1 million of

the annualized cost is directly associated with requiring direct recycle plants to install equalization, and $0.1 to $1.7 million is associated with the direct filtration component. State start-up and self assessment costs for this alternative is $95 thousand annually.

Alternative 4 requires the three recycle flows mentioned above be returned prior to the point of primary coagulant addition and also requires that all systems that recycle (conventional and direct systems) install sedimentation basins for recycle flow treatment. Systems may also install recycle flow treatment technologies that provide treatment capability equivalent or superior to sedimentation. For cost estimation purposes, sedimentation basins with tube settlers and polymer addition where used. The Agency approximated the annualized costs of this option to be $151.8 million. The sedimentation basin treatment requirement for conventional and direct filtration plants is 88% ($133.3 million) of the total annualized cost of Alternative 4. State start-up and self assessment costs for this alternative is $100 thousand annually.

3. Non-Quantifiable Costs

Although EPA has estimated the cost of all the rule's components on drinking water systems and States, there are some costs that the Agency did not quantify. These non-quantifiable costs result from uncertainties surrounding rule assumptions and from modeling assumptions. For example, EPA did not estimate a cost for systems to acquire land if they needed to build a treatment facility or significantly expand their current facility. This was not costed because many systems will be able to construct new treatment facilities on land already owned by the utility. In addition, if the cost of land was prohibitive, a system may choose another lower cost alternative such as connecting to another source. A cost for systems choosing this alternative is unquantified in our analysis.

C. Quantifiable and Non-Quantifiable Health Benefits

The primary benefits of today's proposed rule come from reductions in the risks of microbial illness from drinking water. In particular, LT1FBR focuses on reducing the risk associated with disinfection resistant pathogens, such as *Cryptosporidium*. Exposure to other pathogenic protozoa, such as *Giardia*, or other waterborne bacteria, viral pathogens, and other emerging pathogens are likely to be reduced by the provisions of this rule as well but are not quantified. In addition, LT1FBR produces nonquantifiable benefits associated with the risk reductions that result from the recycle provision, uncovered reservoirs provision, including *Cryptosporidium* in GWUDI definition, and including *Cryptosporidium* in watershed requirements for unfiltered systems.

1. Quantified Health Benefits

a. Turbidity Provisions

The quantification of benefits from this rule is focused solely on reductions in the risk of cryptosporidiosis. Cryptosporidiosis is an infection caused by *Cryptosporidium* which is an acute, self-limiting illness lasting 7 to 14 days with symptoms that include diarrhea, abdominal cramping, nausea, vomiting and fever (Juranek, 1995). The cost of illness avoided of cryptosporidiosis is estimated to have a mean of $2,016 (Harrington et al., 1985; USEPA 1999h)

The benefits of the turbidity provisions of LT1FBR come from improvements in filtration performance at water systems. The benefits analysis attempts to take into account some of the uncertainties in the analysis by estimating benefits under two different current treatment and three improved removal assumptions. The benefits analysis also used Monte Carlo simulations to derive a distribution of estimates, rather than a single point estimate.

The benefits analysis focused on estimating changes in incidence of cryptosporidiosis that would result from the rule. The analysis included estimating the baseline (pre-LT1FBR) level of exposure from *Cryptosporidium* in drinking water, reductions in such exposure resulting from treatment changes to comply with the LT1FBR, and resultant reductions of risk.

Baseline levels of *Cryptosporidium* in finished water were estimated by assuming national source water occurrence distribution (based on data by LeChevallier and Norton, 1995) and a national distribution of *Cryptosporidium* removal by treatment.

In the LT1FBR RIA, the following two assumptions were made regarding the current *Cryptosporidium* oocyst performance to estimate finished water *Cryptosporidium* concentrations. First, based on treatment removal efficiency data presented in the 1997 IEWSTR, EPA assumed a national distribution of physical removal efficiencies with a mean of 2.0 logs and a standard deviation of ± 0.63 logs. Because the finished water concentrations of oocysts represent the baseline against which improved removal from the LT1FBR is compared, variations in the log removal assumption could have considerable impact on the risk assessment. Second, to evaluate the impact of the removal assumptions on the baseline and resulting improvements, an alternative mean log removal/inactivation assumption of 2.5 logs and a standard deviation of ± 0.63 logs was also used to calculate finished water concentrations of *Cryptosporidium*.

For each of the two baseline assumptions, EPA assumed that a certain number of plants would show low, mid or high improved removal, depending upon factors such as water matrix conditions, filtered water turbidity effluent levels, and coagulant treatment conditions. As a result, the RIA considers six scenarios that encompass the range of endemic health damages avoided based on the rule.

The finished water *Cryptosporidium* distributions that would result from additional log removal with the turbidity provisions, were derived assuming that additional log removal was dependent on current removal, i.e., that sites currently operating at the highest filtered water turbidity levels would show the largest improvements or high improved removal assumption (e.g., plants now failing to meet a 0.4 NTU limit would show greater removal improvements than plants now meeting a 0.3 NTU limit).

Table VI.1 indicates estimated annual benefits associated with implementing the LT1FBR. The benefits analysis quantitatively examines endemic health damages avoided based on the LT1FBR for each of the six scenarios mentioned above. For each of these scenarios, EPA calculated the mean of the distribution of the number of illnesses avoided. The 10th and 90th percentiles imply that there is a 10 percent chance that the estimated value could be as low as the 10th percentile and there is a 10 percent chance that the estimated value could be as high as the 90th percentile. EPA's Office of Water has evaluated drinking water consumption data from USDA's 1994–1996 Continuing Survey of Food Intakes by Individuals (CSFII) Study. EPA's analysis of the CSFII Study resulted in a daily water ingestion lognormally distributed with a mean of 1.2 liters per person (EPA, 2000a). The risk and benefit analysis contained within the RIA reflects this distribution.

TABLE VI.1.—NUMBER AND VALUE OF ILLNESSES AVOIDED ANNUALLY FROM TURBIDITY PROVISIONS [a]

[Dollar amounts in billions]

Improved Log-Removal Assumption	Daily Drinking Water Ingestion and Baseline *Cryptosporidium* Log-Removal Assumptions (Mean = 1.2 Liters per person)	
	2.0 log	2.5 log
Illnesses Avoided with Low Improved *Cryptosporidium* Removal Assumption:		
Mean	62,800.0	22,800.0
10th Percentile	0.0	0.0
90th Percentile	152,000.0	43,900.0
COI Avoided with Low Improved *Cryptosporidium* Removal Assumption:		
Mean	$150.3	$53.9
10th Percentile	$0.0	$0.0
90th Percentile	$288.2	$81.4
Illnesses Avoided with Mid Improved *Cryptosporidium* Removal Assumption:		
Mean	77,500.0	27,900.0
10th Percentile	0.0	.00
90th Percentile	184,000.0	52,900.0
COI Avoided with Mid Improved *Cryptosporidium* Removal Assumption:		
Mean	$185.3	$66.2
10th Percentile	$0.0	$0.0
90th Percentile	$350.9	$98.8
Illnesses Avoided with High Improved *Cryptosporidium* Removal Assumption:		
Mean	83,600.0	30,000.0
10th Percentile	0.0	0.0
90th Percentile	196,000.0	56,500.0
COI Avoided with High Improved *Cryptosporidium* Removal Assumption:		
Mean	$199.5	$71.1
10th Percentile	$0.0	$0.0
90th Percentile	$376.7	$105.8

[a] All values presented are in January 1999 dollars.

According to the RIA performed for the LT1FBR published today, the rule is estimated to reduce the mean annual number of illnesses caused by *Cryptosporidium* in water systems with improved filtration performance by 22,800 to 83,600 cases depending upon which of the six baseline and improved *Cryptosporidium* removal assumptions was used, and assuming the 1.2 liter drinking water consumption distribution. Based on these values, the mean estimated annual benefits of reducing the illnesses ranges from $54 million to $200 million per year. The RIA also indicated that the rule could result in a mean reduction of 3 to 10 fatalities each year, depending upon the varied baseline and improved removal assumptions. Using a mean value of $5.7 million per statistical life saved, reducing these fatalities could produce benefits in the range of $16.0 million to $60 million.

Combining the value of illnesses and mortalities avoided, the total benefits range from $70 million to $260 million assuming a 1.2 liter drinking water consumption distribution.

b. Sensitivity Analysis for Recycle Provisions

Available literature research demonstrates that increased hydraulic loading or disruptive hydraulic currents, such as may be experienced when plants exceed State-approved operating capacity or when recycle is returned directly into the sedimentation basin, can disrupt filter (Cleasby, 1963; Glasgow and Wheatley, 1998; McTigue et al, 1998) and sedimentation (Fulton, 1987; Logsdon, 1987; Cleasby, 1990) performance. However, the literature does not quantify the extent to which performance can be lowered and, more specifically, does not quantify the log reduction in *Cryptosporidium* removal that may be experienced during direct recycle events.

In the absence of quantified log reduction data, the Agency performed a sensitivity analysis to estimate a range of potential benefit provided by the recycle provisions. The analysis assumes a baseline *Cryptosporidium* log removal value of 2.0. The analysis estimates the effect of recycle by reducing the average baseline log removal by a range of values (reduction ranged from 0.05 to 0.50 log) to account for the reduction in removal performance plants may experience if they exceed State-approved operating capacity or return recycle to the sedimentation basin. The installation of equalization to eliminate exceedence of State-approved operating capacity or moving the recycle return location from the sedimentation basin to prior to the point of primary coagulant addition will result in the health benefit. The benefit estimate is conservative, because it does not account for the fact that recycle returns additional oocysts to the plant.

Benefits are estimated by assuming that the installation of equalization or moving the recycle return point prior to the point of primary coagulant addition will return the plant to the baseline *Cryptosporidium* removal of 2.0 log. The difference between the number of illnesses that result from the baseline situation and the reduced performance is used to calculate the monetary benefit. The benefit is compared to the cost of returning recycle prior to the point of primary coagulant additional and the cost of installing equalization for two service populations. Service populations of 1,900 persons, which represents a plant serving fewer than 10,000 people, and a service population of 25,108, which represents a plant serving greater than 10,000 people, are used. Results are summarized in Tables IV.2 and IV.3 below.

TABLE IV.2.—BENEFIT FOR SERVICE POPULATION OF 1,900

Log removal reduction	Benefit[a] for population of 1,900	Cost[a] of moving recycle return	Cost[a] of installing equalization
0.05	$1,400	$5,200	$25,200
0.50	30,700	5,200	25,200

[a] Cost and benefit are annualized with a 7% capital cost over 20 years.

TABLE IV.3.—BENEFIT RANGE FOR SERVICE POPULATION OF 25,108

Log removal reduction	Benefit[a] for population of 25,108	Cost[a] of moving recycle return	Cost[a] of installing rqualization
0.05	$18,700	$18,700	$57,200
0.50	405,800	18,700	57,200

[a] Cost and benefit are annualized with a 7% capital cost over 20 years.

Although literature research does not quantify the log reduction caused by specific recycle practices, the results of the sensitivity analysis show that the benefit a plant serving 25,108 people would realize by improving its baseline performance to 2.0 logs would range from $18,700 to $405,800. $27,256 Benefits would range from $1,400 to $30,700 for a plant serving 1,900. This benefit range supports the Agency's determination that unquantified benefits will justify costs. The determination is discussed in the Benefit Cost Determination section.

2. Non-Quantified Health and Non-Health Related Benefits

a. Recycle Provisions

The benefits associated with the filter backwash provision are unquantified because of data limitations. Specifically, there is a lack of treatment performance data to accurately model the oocysts removal achieved by individual full-scale treatment processes and the impact recycle may have on treatment unit performance and finished water quality. Additional data on the ability of unit processes (sedimentation, DAF, contact clarification, filtration) to remove oocysts from source and recycle flows, the extent to which recycle may generate hydraulic surge within plants and lower the performance of individual treatment processes, data on the potential for recycle to threaten the integrity of chemical treatment, and additional information on the occurrence of oocysts in recycle streams are all needed before an impact model can be calibrated and used as a predictive tool.

However, available data demonstrate that oocysts occur in recycle streams, often at concentrations higher than found in source water, and returning recycle streams to the plant will increase intra-plant oocyst concentrations. Data also shows that oocysts frequently occur in the finished water of treatment plants that are not operating under stressed conditions. Engineering literature also shows that proper coagulation and the maintenance of balanced hydraulic conditions within the plant (*i.e.,* not exceeding State approved sedimentation/clarification and filtration operating rates) are important to protect the integrity of the entire treatment process. Some recycle practices, such as direct recycle, can potentially upset coagulation and the proper hydraulic operation of sedimentation/clarification and filtration processes. The benefits of the recycle provisions are derived from protecting the coagulation process and the hydraulic performance of sedimentation/clarification and filtration processes. Today's recycle provisions reduce the risk posed by recycle and provided additional public health protection in the following ways:

(1) Returning spent filter backwash, thickener supernatant, and liquids from dewatering into, or downstream of, the point of primary coagulant addition may disrupt treatment chemistry by introducing residual coagulant or other treatment chemicals to the process stream. The wide variation in plant influent flow can also result in chemical over-or under-dosing if chemical dosage is not adjusted to account for flow variation. Returning the above flows prior to the point of primary coagulant addition will help protect the integrity of coagulation and protect the performance of downstream unit processes, such as clarification and filtration, that require proper coagulation be conducted to maintain proper performance. This will provide an additional measure of public health protection.

(2) The direct recycle of spent filter backwash without first providing treatment, equalization, or some form of hydraulic detention for the flow, may cause plants to exceed State-approved operating capacity during recycle events. This may lead to lower overall oocyst removal performance due to the hydraulic overload unit processes (i.e., clarification and filtration) experience and increase finished water oocyst concentrations. The self assessment provision in today's rule will help the States identify direct recycle systems that may experience this problem so modifications to recycle practice can be made to protect public health.

(3) Direct filtration plants do not employ a sedimentation basin in their primary treatment process to remove solids and oocysts; all oocyst removal is achieved by the filters. If treatment for the recycle flow is not provided prior to its return to the plant, all of the oocysts captured by a filter during a filter run will be returned to the plant and again loaded to the filters. This may lead to ever increasing levels of oocysts being applied to the filters and could increase the concentration of oocysts in finished water. Today's provision for direct recycle systems will help States identify those systems that are not obtaining sufficient oocyst removal from the recycle flow. Public health protection will be increased when systems implement modifications to recycle practice specified by the State.

The goal of the recycle provisions is to reduce the potential for oocysts getting into the finished water and causing cases of cryptosporidiosis. Other disinfection resistant pathogens may also be removed more efficiently due to implementation of these provisions.

b. Issues Associated With Unquantified Benefits

The monetized benefits from filter performance improvements are likely not to fully capture all the benefits of the turbidity provisions. EPA monetized the benefits from reductions in cryptosporidiosis by using cost-of-illness (COI) estimates. This may underestimate the actual benefits of these reductions because COI estimates do not include pain and suffering. In general, the COI approach is considered a lower bound estimate of willingness-to-pay (WTP) to avoid illnesses. EPA requests comment on the use of an appropriate WTP study to calculate the benefits of this rule.

Several non-health benefits from this rule were also considered by EPA but were not monetized. The non-health benefits of this rule include avoided outbreak response costs and possibly reduced uncertainty and averting behavior costs. By adding the non-monetized benefits with those that are monetized, the overall benefits of this rule would increase beyond the dollar values reported.

D. Incremental Costs and Benefits

EPA evaluated the incremental or marginal costs of today's proposed turbidity option by analyzing various turbidity limits, 0.3 NTU, 0.2 NTU, and 0.1 NTU. For each turbidity limit, EPA developed assumptions about which process changes systems might implement to meet the turbidity level and how many systems would adopt each change. The comparison of total compliance cost estimates show that costs are expected to increase significantly across turbidity limits. The total cost of a 0.1 NTU limit, $404.6 million, is almost eight times higher than the cost of the 0.3 NTU limit, which is $52.2 million. Similarly, the total cost of the 0.2 NTU limit, $134.1 million, is more than twice as great as the 0.3 NTU cost.

Analytical limitations in the estimation of the benefits of LT1FBR prevent the Agency from quantitatively describing the incremental benefits of alternatives. The Agency requests comment on how to analyze and the appropriateness of analyzing incremental benefits and costs for treatment techniques that address microbial contaminants.

E. Impacts on Households

The cost impact of LT1FBR at the household level was also assessed. Household costs are a way to represent water system treatment costs as costs to the system's customers. As expected, costs per household increase as system size decreases. Costs to households are higher for households served by smaller systems than larger systems for two reasons. First, smaller systems serve far fewer households than larger systems, and consequently, each household must bear a greater percentage share of capital and O&M costs. Second, filter backwash recycling may pose a greater risk because the flow of water from filter backwash recycling is a larger portion of the total water flow in smaller systems. This greater risk potential in small systems makes it more likely that some form of recycle treatment might be needed.

The average (mean) annual cost for the turbidity, benchmarking, and covered finished water provision per household is $8.66. For almost 86 percent of the 6.6 million households affected by these provisions, the per-household costs are $10 per year or less, and costs of $120 per year (i.e., $10 per month) or less for approximately 99 percent of the households. Costs exceeding $500 per household occur only for the smallest size category, and the number of affected households represent about 34 of the smallest systems. The highest per-household cost estimate is $2,177. This extreme estimate, however, is an artifact of the way the system cost distribution was generated. It is unlikely that any small system will incur annual costs of this magnitude because less costly options are available.

The average household cost for the recycle provisions is $1.80 per year for households that are served by systems that recycle. The cost per household is less than $10 per year for almost 99% of 12.9 million households potentially affected by the proposed rule. The cost per household exceeds $120 per year for less than 1800 households and it exceeds $500 per year for approximately 100 households. The maximum cost of $1,238 per year would only be incurred if a direct filtration system that serves less than 100 customers installed a sedimentation basin for backwash treatment.

There are approximately 1.5 million households served by small drinking water systems that may be affected by the recycling provisions in addition to the turbidity, benchmarking, and covered finished water provisions. The expected aggregate annual cost to these households can be approximated by the sum of the expected cost for each distribution, which is $10.45 per year.

The assumptions and structure of this analysis tend to overestimate the highest costs. To face the highest household costs, a system would have to implement all, or almost all, of the treatment activities. These systems, however, might seek less costly alternatives, such as connecting into a larger regional water system.

F. Benefits From the Reduction of Co-Occurring Contaminants

If a system chooses to install treatment, it may choose a technology that would also address other drinking water contaminants. For example, some membrane technologies installed to remove bacteria or viruses can reduce or eliminate many other drinking water contaminants including arsenic.

The technologies used to reduce individual filter turbidities have the potential to reduce concentrations of other pollutants as well. Reduction in turbidity that result from today's proposed rule are aimed at reducing *Cryptosporidium* by physical removal. It is reasonable to assume that similar microbial contaminants will also be reduced as a result of improvements in turbidity removal. Health risks from *Giardia lamblia* and emerging disinfection resistant pathogens, such as microsporidia, *Toxoplasma,* and *Cyclospora,* are also likely to be reduced as a result of improvements in turbidity removal and recycle practices. The frequency and extent that LT1FBR would reduce risk from other contaminants has not been quantitatively evaluated because of the Agency's lack of data on the removal efficiencies of various technologies for emerging pathogens and the lack of co-occurrence data for microbial pathogens and other contaminants from drink water systems.

G. Risk Increases From Other Contaminants

It is unlikely that LT1FBR will result in any increased risk from other contaminants. Improvements in plant turbidity performance will not result in any increases in risk. In addition, the benchmarking and profiling provisions were designed to minimize the potential reductions in microbial disinfection in order to lower disinfection byproduct levels to comply with the Stage 1 Disinfection Byproducts Rule. Furthermore, the filter backwash provision does not potentially increase the risk from other contaminants.

H. Other Factors: Uncertainty in Risk, Benefits, and Cost Estimates

There is uncertainty in the baseline number of systems, the risk calculation, and the cost estimates. Many of these uncertainties are discussed in more detail in previous sections of today's proposal.

First, the baseline number of systems is uncertain because of data limitation problems in SDWIS. For example, some systems use both ground and surface water but because of other regulatory requirements are labeled in SDWIS as surface water. Therefore, EPA does not have a reliable estimate of how many of these mixed systems exist. The SDWIS data on non-community water systems does not have a consistent reporting convention for population served. Some states may report the population served over the course of a year, while others may report the population served on an average day. Also, SDWIS does not require states to provide information on current filtration practices and, in some cases, it may overestimate the daily population served. For example, a park may report the population served yearly instead of daily. EPA is looking at new approaches to address these issues and both are discussed below in request for comment.

Second, there are several important sources of uncertainty that enter the benefits assessment. They include the following:

- Occurrence of *Cryptosporidium* oocysts in source waters
- Baseline occurrence of *Cryptosporidium* oocysts in finished waters
- Reduction of *Cryptosporidium* oocysts due to improved treatment, including filtration and disinfection
- Viability of *Cryptosporidium* oocysts after treatment
- Infectivity of *Cryptosporidium*
- Incidence of infections (including impact of under reporting)
- Characterization of the risk Willingness-to-pay to reduce risk and avoid costs.
- The baseline water system treatment efficiency for the removal of *Cryptosporidium* is uncertain. Turbidity measurements have been used as a means of estimating removal treatment efficiency (*i.e.* log removal). In addition to the baseline treatment efficiency estimates, improvements in treatment efficiency for *Cryptosporidium* removal that result from this rule are uncertain.

The benefit analysis incorporates all of the uncertainties associated with the benefits assessment in either the Monte Carlo simulations or the assumption of two baselines—2.0 log removal and 2.5 log removal. The results in table VI.1 show that benefits are more sensitive to the baseline log removal assumptions than the range of low to high improved removal assumptions. Third, some costs of today's proposed rule are uncertain because of the diverse nature of the modifications that may be made to address turbidity limits. Cost analysis uncertainties are primarily caused by assumptions made about how many systems will be affected by various provisions and how they will likely respond. Capital and O&M expenditures account for a majority of total costs. EPA derived these costs for a "model" system in each size category using engineering models, best professional judgement, and existing cost and technology documents. Costs for systems affected by the proposed rule could be higher or lower, which would affect total costs. Also, the filter backwash provision's flexibility for States to assess plants' need to modify recycle practices leads to some uncertainty in the estimates of how many plants will have to potentially install some form of recycle equalization or treatment. These uncertainties could either under or overestimate the costs of the rule.

I. Benefit Cost Determination

The Agency has determined that the benefits of the LT1FBR justify the costs. EPA made this determination for both the LT1 and the FBR portions of the rule separately as described below.

The Agency has determined that the benefits of the LT1 provisions justify their costs on a quantitative basis. The LT1 provisions include enhanced filtration, disinfection benchmarking and other non-recycle related provisions. The quantified benefits of $70 million to $259.4 million annually exceed the costs of $73 million at the seven percent cost of capital over a substantial portion of the range of benefits. In addition, the non-quantified benefits include avoided outbreak response costs and possibly reduced uncertainty and averting behavior costs.

The Agency has determined that the benefits of the recycle provisions (FBR) justify their cost on a qualitative basis. The recycle provisions will reduce the potential for certain recycle practices to lower or upset treatment plant performance during recycle events; the provisions will therefore help prevent *Cryptosporidium* oocysts from entering finished drinking water supplies and will increase public health protection.

The Agency strongly believes that returning *Cryptosporidium* to the treatment process in recycle flows, if performed improperly, can create additional public health risk. The Agency holds this belief for three reasons. First, returning recycle flow directly to the plant, without equalization or treatment, can cause large variations in the influent flow magnitude and influent water quality. If chemical dosing is not adjusted to reflect this, less than optimal chemical dosing can occur, which may lower the performance of sedimentation and filtration. Returning recycle flows prior to the point of primary coagulant addition will help diminish the risk of less than optimal chemical dosing and diminished sedimentation and filtration performance. Second, exceeding State-approved operating capacity, which is likely to occur if recycle equalization or treatment is not in place, can hydraulically overload plants and diminish the ability of individual unit processes to remove *Cryptosporidium*. Exceeding approved operating capacity violates fundamental engineering principles and water treatment objectives. States set limits on plant operating capacity and loading rates for individual unit processes to ensure treatment plants and individual treatment processes are operated to within their capabilities so that necessary levels of public health protection are provided. Third, returning recycle flows directly into flocculation or sedimentation basins, which can generate disruptive hydraulic currents, may lower the performance of these units and increase the risk of *Cryptosporidium* in finished water supplies.

The recycle provisions in today's proposal are designed to address those recycle practices that are inconsistent with fundamental engineering and water treatment principles. The objective of the provisions is to eliminate practices that are counter to common sense, sound engineering judgement, and that create additional and preventable risk to public health. EPA believes the public health protection benefit provided by the recycle provisions justifies their cost because they are based upon sound engineering principles and are designed to eliminate recycle practices that are very likely to create additional public health risk.

J. Request for Comment

Pursuant to Section 3142(b)(3)(C), the Agency requests comment on all aspects of the rule's economic impact analysis. Specifically, EPA seeks input into the following two issues.

NTNC and TNC Flow Estimates

As part of the total cost estimates for LT1FBR, EPA estimated the cost of the rule on NTNC and TNC water systems by using flow models. However, these flow models were developed to estimate flows only for CWS and they may not accurately represent the much smaller flows generally found in NTNC and TNC systems. The effect of the overestimate in flow would be to inflate

the cost of the rule for these systems. The Agency requests comment on an alternative flow analysis for NTNC and TNC water systems described below.

Instead of using the population served to determine the average flow for use in the rule's cost calculations, this alternative approach would re-categorize NTNC and TNC water systems based on service type (*e.g.*, restaurants or parks). Service type would be obtained from SDWIS data. However, service type data is not always available because it is a voluntary SDWIS data field. Where unavailable, the service type would be assigned based on statistical analysis. Estimates of service type design flows would be obtained from engineering design manuals and best professional judgement if no design manual specifications exist.

In addition, each service type category would also have corresponding rates for average population served and average water consumption. These would be used to determine contaminant exposure which is used in the benefit determination. For example, schools and churches would be two separate service type categories. They each would have their own corresponding average design flow, average population served (rather than the population as reported in SDWIS), and average water consumption rates. These elements could be used to estimate a rule's benefits and costs for the average church and the average school.

Mixed Systems

Current regulations require that all systems that use any amount of surface water as a source be categorized as surface water systems. This classification applies even if the majority of water in a system is from a ground water source. Therefore, SDWIS does not provide the Agency with information to identify how many mixed systems exist. This information would help the Agency to better understand regulatory impacts.

EPA is investigating ways to identify how many mixed systems exist and how many mix their ground and surface water sources at the same entry point or at separate entry points within the same distribution systems. For example, a system may have several plants/entry points that feed the same distribution system. One of these entry points may mix and treat surface water with ground water prior to its entry into the distribution system. Another entry point might use ground water exclusively for its source while a different entry point would exclusively use surface water. However, all three entry points would supply the same system classified in SDWIS as surface water.

One method EPA could use to address this issue would be to analyze CWSS data then extrapolate this information to SDWIS to obtain a national estimate of mixed systems. CWSS data, from approximately 1,900 systems, details sources of supply at the level of the entry point to the distribution system and further subdivides flow by source type. The Agency is considering this national estimate of mixed systems to regroup surface water systems for certain impact analyses when regulations only impact one type of source. For example, surface water systems that get more than fifty percent of their flow from ground water would be counted as a ground water system in the regulatory impact analysis for this rule. The Agency requests comment on this methodology and its applicability for use in regulatory impact analysis.

VII. Other Requirements

A. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

1. Background

The RFA, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

2. Use of Alternative Definition

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

EPA is proposing the LT1FBR which contains provisions which apply to small PWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations, EPA requested comment on an alternative definition of "small entity" in the preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998). EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this proposed rulemaking.

In accordance with Section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket and is summarized below.

3. Initial Regulatory Flexibility Analysis

As part of the 1996 amendments to the Safe Drinking Water Act (SDWA), Congress required the U.S. Environmental Protection Agency (EPA) to develop a Long Term Stage 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) under Section 1412(b)(2)(C) which focuses on surface water drinking water systems that serve fewer than 10,000 persons. Congress also required EPA to develop a companion Filter Backwash Recycle Rule (FBRR) under Section 1412(b)(14) which will require that all surface water public water systems, regardless of size, meet new requirements governing the recycle of filter backwash within the drinking water treatment process. The goal of both the LT1ESWTR and the related FBRR is to provide additional protection from disease-causing microbial pathogens for community and non-community public water systems (PWSs) utilizing surface water.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined by systems serving fewer than 10,000 people. The small entities directly regulated by this proposed rule are surface water and systems using ground water under the direct influence of surface water (GWUDI), using filtration and serving fewer than 10,000 people. We have determined that the final rule would result in approximately 2,400 systems needing capital improvement to meet the turbidity requirements, approximately 3,360 systems would need to significantly change their

disinfection practices, and approximately 790 systems would need to make capital improvements to change the location of return of their filter backwash recycle stream. A discussion of the impacts on small entities is described in more detail in chapters six and seven of the Regulatory Impact Analysis of the LT1FBR (EPA, 1999).

The following recordkeeping and reporting burdens were projected in the IRFA:

Turbidity Monitoring and Reporting Costs

Utility monitoring activities at the plant level include data collection, data review, data reporting and monthly reporting to the State. The labor burden hours for data collection and review were calculated under the assumption that plants are using on-line monitoring, in the form of a SCADA or other automated data collection system. The data collection process requires that a plant engineer gather and organize turbidimeter readings from the SCADA output and enter them into either a spreadsheet or a log once per 8-hour shift (three times per day).

After data retrieval, the turbidity data from each turbidimeter will be reviewed by a plant engineer once per 8-hour shift (three times per day) to ensure that the filters are functioning properly and are not displaying erratic or exceptional patterns. A monthly summary data report would be prepared. This task involves the review of daily spreadsheets and the compilation of a summary report. It is assumed to take one employee 8 hours per month to prepare. Recordkeeping is expected to take 5 hours per month. Recordkeeping entails organizing daily monitoring spreadsheets and monthly summary reports.

Plant-level data will also be reviewed monthly at the system level to ensure that each plant in a system is in compliance with the rule. A system-level manager or technical worker will review the daily monitoring spreadsheets and monthly summary reports that are generated at the plant level. This task is estimated to take about 4 hours per month. Once the plant-level data have been reviewed, the system manager or technical worker will also compile a monthly system summary report. These reports are estimated to take 4 hours each month to prepare.

Disinfection Benchmarking Monitoring and Reporting Costs

It is assumed that all Subpart H systems currently collect the daily inactivation data required to generate a disinfection profile, in either an electronic or paper format, and therefore would not incur additional data collection expenses due to microbial profiling. Costs per plant are divided into costs per plant using paper data, costs per plant using mainframe data and costs per plant using PC data. Plants with paper data were assumed to represent half of the number of plants needing benchmarking, while plants with mainframe and plants with PC data each represent a quarter.

Filter Backwash Monitoring and Reporting Costs

The proposed requirements are as follows: All subpart H systems, regardless of size, that use conventional rapid granular filtration, and that return spent filter backwash, thickener supernatant, or liquids from dewatering process to submit a schematic diagram to the State showing their intended changes to move the return location above the point of primary coagulant addition.

All subpart H systems, regardless of size, that use conventional rapid granular filtration and employ 20 or fewer filters during the highest production month and that use direct recycling, to perform a self assessment of their recycle practice and report the results to the State.

All subpart H systems, regardless of system size that use direct filtration must submit a report of their recycling practices to the State. The State would then determine whether changes in recycling practices were warranted.

EPA believes that the skill level required for compliance with all of the above recordkeeping, reporting and other compliance activities are similar or equivalent to the skill level required to pass the first level of operator certification required by most States.

Relevant Federal Rules

EPA has issued a Stage 1 Disinfectants/Disinfection Byproducts Rule (DBPR) along with an Interim Enhanced Surface Water Treatment Rule (IESWTR) in December 1998, as required by the Safe Drinking Water Act Amendments of 1996. EPA proposed these rules in July 1994. The Stage 1 DBPR includes a THM MCL of 0.080 mg/L (reduced from the existing THM MCL of 0.10 mg/L established in 1979) and an MCL of 0.060 mg/L for five haloacetic acids (another group of chlorination) as well as MCLs for chlorite (1.0 mg/L) and bromate (0.010 mg/L) byproducts. The Stage 1 DBPR also finalized MRDLs for chlorine (4 mg/L as Cl_2), chloramine (4 mg/L as Cl_2) and chlorine dioxide (0.8 mg/L as ClO_2).

In addition, the Stage 1 DBPR includes requirements for enhanced coagulation to reduce the concentration of TOC in the water and thereby reduce DBP formation potential. The IESWTR was proposed to improve control of microbial pathogens and to control potential risk trade-offs related to the need to meet lower DBP levels under the Stage 1 DBPR.

None of these regulations duplicate, overlap or conflict with this proposed rule.

Significant Alternatives

As a result of consultations during the SBREFA process, and public meetings held subsequently, EPA has developed several alternative options to those presented in the IRFA, and has selected preferred alternatives for each of the turbidity, disinfection benchmarking and filter backwash recycle provisions. These alternatives were developed based on feedback from small system operators and trade associations and are designed to protect public health, while minimizing the burden to small systems. In summary, the proposed turbidity requirements are structured to require recordkeeping once a week as opposed to daily which was written in the IRFA; the proposed disinfection profile requirements are structured to be taken once per week, as opposed to daily which was written in the IRFA; and the filter backwash requirements have been scaled back significantly from those included in the IRFA, *i.e.* a ban on recycle is no longer being considered, nor are several treatment techniques now being considered that were in the IRFA prior to discussions with stakeholders. The provisions being proposed are: systems that recycle will be required to return recycle flows prior to the rapid mix unit; direct recycle systems will need to perform a self assessment to determine whether capacity is exceeded during recycle events, and States will determine whether recycle practices need to be changed based on the self-assessment; and direct filtration systems will need to report their recycle practices to the State, which will determine whether changes to recycle practices are required.

4. Small Entity Outreach and Small Business Advocacy Review Panel

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's

requirements. The SBAR Panel produced two final reports; one for the LT1 provisions and the other for the filter backwash provisions. Although the LT1 and filter backwash provisions have since been combined into the same rule, the projected economic impact of the provisions have not significantly changed, and the relevance of SERs' comments has not been affected.

The Agency invited 24 SERs to participate in the SBREFA process, and 16 agreed to participate. The SERs were provided with background information on the Safe Drinking Water Act and the LT1FBR in preparation for a teleconference on April 28, 1998. This information package included data on options as well as preliminary unit costs for treatment enhancements under consideration. Eight SERs provided comments on these materials.

On August 25, 1998, EPA's Small Business Advocacy Chair person convened the Panel under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consisted of the Director of the Standards and Risk Management Division of the Office of Ground Water and Drinking Water within EPA's Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration. The SBAR Panels reports, Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule: Long Term 1 Enhanced Surface Water Treatment (EPA, 1998k) and the Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule: Filter Backwash Recycling (EPA, 1998l), contain the SERs comments on the components of the LT1FBR.

The SERs were provided with additional information on potential costs related to LT1FBR regulatory options during teleconferences on September 22 and 25, 1998. Nine SERs provided additional comments during the September 22 teleconference, four SERs provided additional comments during the September 25 teleconference, and three SERs provided written comment on these materials.

In general, the SERs that were consulted on the LT1FBR were concerned about the impact of the proposed rule on small water systems (because of their small staff and limited budgets), small systems' ability to acquire the technical and financial capability to implement requirements, and maintaining flexibility to tailor requirements to the needs and limitations of small systems. Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. The background information provided to the SBAR Panel and the SERs are available for review in the water docket. A copy of the Panel report is also included in the docket for this proposed rule. The Panel's recommendations to address the SERs concerns are described next.

a. Number of Small Entities Affected

When the IRFA was prepared, EPA initially estimated that there were 5,165 small public water systems that use surface water or GWUDI. A more detailed discussion of the impact of the proposed rule and the number of entities affected is found in Section VI. None of the commenters questioned the information provided by EPA on the number and types of small entities which may be impacted by the LT1FBR. This information is based upon the national Safe Drinking Water Information System (SDWIS) database, which contains data on all public water systems in the country. The Panel believed this was a reasonable data source to characterize the number and types of systems impacted by the proposed rule.

b. Recordkeeping and Reporting

The Panel noted that some small systems are operated by a sole, part time operator with many duties beyond operating and maintaining the drinking water treatment system and that several components of the proposed rule may require significant additional operator time to implement. These included disinfection profiling, individual filter monitoring, and ensuring that short-term turbidity spikes are corrected quickly.

One SER stated that assumptions can be made that small systems will have to add an additional person to comply with the monitoring and recordkeeping portions of the rule. Another SER commented that the most viable and economical option would be to use circuit riders (a trained operator who travels between plants) to fill staffing needs, but the LT1FBR would increase the amount of time that a circuit rider would be required to spend at each plant. An additional option recommended by several SERs to reduce monitoring burden and cost was to allow the use of one on-line turbidimeter to measure several filters. This would entail less frequent monitoring of each filter but might still be adequate to ensure that individual filter performance is maintained.

The proposed LT1FBR takes into consideration the recordkeeping and reporting concerns identified by the Panel and the SERs. For example, initially the Agency considered requiring systems to develop a profile of individual filter performance. Based on concerns from the SERs this requirement was eliminated. In addition, the Agency initially considered requiring operators to record pH, temperature, residual chlorine and peak hourly flow every day. This requirement has been scaled back to once per week to meet difficulties faced by small system operators. Finally, in today's proposed rule the Agency is requesting comment on a modification to allow one on-line turbidimeter instead of several to be used at the smallest size systems (systems serving fewer than 100 people).

c. Interaction With Other Federal Rules

The Panel noted that the LT1FBR and Stage 1 DBP rules will affect small systems virtually simultaneously and that the Agency should analyze the net impact of these rules and consider regulatory options that would minimize the impact on small systems.

One SER commented that any added responsibility or workload due to regulations will have to be absorbed by him and his staff. He noted that many systems, including his own, are losing staff through attrition and are unable to hire replacements. The SER stated that he hoped the Panel was aware of the volume of rules and regulations to which small systems are currently subject. As an example, the SER stated that he had spent a week's time collecting samples for the mandated tests of the Lead and Copper rule. He noted that the sampling had delayed important maintenance to his system by over a month.

The Agency considered these comments when developing the requirements of today's proposed rule, and developed the alternatives with the realization that small systems will be required to implement several rules in a short time frame. In today's proposed rule, the preferred options attempt to minimize the impact on small systems by reducing the amount of monitoring and the amount of operator's time necessary to collect and analyze data. For example, under the IESWTR, large systems are required to monitor disinfection byproducts for 1 year to determine whether or not they must develop a disinfection profile (based on

daily measurements of operating conditions). In response to SERs concerns, the Agency is proposing to eliminate the requirement for disinfection byproduct monitoring all together. Under the proposed requirements, all systems would develop a disinfection profile based on weekly measurements of operating parameters for 1 year. Overall, this will save small system operators both time and money. The proposed rule also requests comment on several additional strategies for reducing impacts.

d. Significant Alternatives

During the SBAR panel several alternatives were discussed with the Panel and SERs. These alternatives and the Panel's recommendations are discussed next.

i. Turbidity Provisions

During the SBAR Panel, the Agency presented the IESWTR turbidity provisions as appropriate components for the LT1FBR. The Panel noted that one SER commented that it was a fair assumption that turbidity up to 1 NTU maximum and 0.3 NTU in 95% of all monthly samples is a good indicator of two log removal of *Cryptosporidium*, but stressed the need to allow operators adequate time to respond to exceedances in automated systems. They were referring to the fact the small system operators are often away from the plant performing other duties, and cannot respond immediately if the turbidity levels exceed a predetermined level. The Panel recommended that EPA consider this limitation when developing reporting and recordkeeping requirements.

The Panel also noted that another SER agreed that lowered turbidity level is a good indicator of overall plant performance but thought the 0.3 NTU limit for the 95th percentile reading was too low in light of studies which appear to show variability and inaccuracies in low level turbidity measurements. This SER referenced specific data suggesting that current equipment used to measure turbidity levels below the 0.3 NTU may nonetheless give readings above 0.3 which would put the system out of compliance. EPA has evaluated this issue in the context of the 1997 IESWTR FACA negotiations and believes that readings below the 0.3 NTU are reliable. Moreover, EPA notes that the SERs' concern was based on raw performance evaluation data that had not been fully analyzed.

Finally, the Panel recognized that several SERs supported individual filter monitoring, provided there was flexibility for short duration turbidity spikes. Other SERs, however, noted that the assumption that individual filter monitoring was necessary was unreasonable. The Panel recommended that EPA consider the likelihood and significance of short duration spikes (*i.e.*, during the first 15–30 minutes of filter operation) when evaluating the frequency of individual filter monitoring and reporting requirements and the number and types of exceedances that will trigger requirements for Comprehensive Performance Evaluations (CPEs). The Panel also noted the concern expressed by several SERs that individual filter monitoring may not be practical or feasible in all situations.

The Agency has structured today's proposed rule with an emphasis on providing flexibility for small systems. The individual filter provisions have been tailored to be easier to understand and implement and require less data analysis. For example, the operator can look at monitoring data once per week under this rule, as opposed to having to review turbidity data every day as the larger systems are required to do. The proposed rule also requests comment on several modifications to provide additional flexibility to small systems.

ii. Disinfection Benchmarking: Applicability Monitoring Provisions

None of the SERs commented specifically on the applicability monitoring provisions which are designed to identify systems that may consider cutting back on their disinfection doses in order to avoid problems with disinfection byproducts formation. The Panel noted, however, that burden on small systems might be reduced if alternative applicability monitoring provisions were adopted. In consideration of the Panel's suggestions, the Agency first considered limiting the applicability monitoring, and has now eliminated this requirement from the proposal. It is optional, however, for systems who believe their disinfection byproduct levels are below 80% of the MCL—as required under the Stage 1 DBPR.

The Panel noted SER comments that monitoring and computing *Giardia lamblia* inactivation on a daily basis for a year would place a heavy burden on operators that may only staff the plant for a few hours per day. The Panel therefore recommended that EPA consider alternative profiling strategies which ensure adequate public health protection, but will minimize monitoring and recordkeeping requirements for small system operators.

The Agency considered several alternatives to the profile development strategies, and decided to propose that systems perform the necessary monitoring and record the results once per week, instead of every day as the larger systems are required to do. This will significantly reduce burden and costs for small systems.

iii. Recycling Provisions

During the SBAR Panel, the Agency proposed several alternatives for consideration in the LT1FBR including a ban on recycle, a requirement to return recycle flow to the head of the plant, recycle flow equalization, and recycle flow treatment. The Panel noted the concern of the SERs regarding a ban on the recycle of filter backwash water. These concerns included the expense of filter backwash disposal and the economic and operational concerns of western and southwestern drinking water systems which depend on recycled flow to maintain adequate supply. The Panel strongly recommended that EPA explore alternatives to an outright ban on the recycle of filter backwash and other recycle flows.

The Panel noted that SERs supported a requirement that all recycled water be reintroduced at the head of the plant. This was considered an element of sound engineering practice. The Panel recommended that EPA consider including such a requirement in the proposed rule, and investigate whether there are small systems for which such a requirement would present a significant financial and operational burden.

The Panel noted that SERs agreed with the appropriateness of flow equalization for filter backwash. The Panel supported the concept of flow equalization as a means to minimize hydraulic surges that may be caused by recycle and the reintroduction of a large number of *Cryptosporidium* oocysts or other pathogenic contaminants to the plant in a brief period of time. The Panel noted that there are various ways of achieving flow equalization and suggested that specific requirements remain flexible.

The Panel noted the concerns of SERs regarding installation of treatment, solely for the purpose of treating filter backwash water and/or recycle streams may be costly and potentially prohibitive for small systems. The Agency addressed this concern by allowing the States to determine whether recycle flow equalization or treatment is necessary based on the results of the self assessment prepared by the system rather than requiring universal flow equalization or treatment. This will allow site-specific

factors to be considered and help minimize cost and burden.

e. Other Comments

The Panel also noted the concern of several SERs that flexibility be provided in the compliance schedule of the rule. SERs noted the technical and financial limitations that some small systems will have to address, the significant learning curve for operators with limited experience, and the need to continue providing uninterrupted service as reasons why additional compliance time may be needed for small systems. The panel encouraged EPA to keep these limitations in mind in developing the proposed rule and provide as much compliance flexibility to small systems as is allowable under the SDWA. We invite comments on all aspects of the proposal and its impacts on small entities.

The Agency structured the timing of the LT1ESWTR provisions specifically to follow the promulgation of the IESWTR. Since the IESWTR served as a template for the establishment of the LT1ESWTR provisions, the Agency decided that small systems would have an advantage by giving them an opportunity to see what was in the rule, and how it was implemented by larger systems.

Under SDWA, systems have 3 years to comply with the requirements of the final rule. If capital improvements are necessary for a particular PWS, a State may allow the system up to an additional 2 years to comply with the regulation. The Agency is developing guidance manuals to assist the compliance efforts of small entities.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1928.01) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. For technical information about the collection contact Jini Mohanty by calling (202) 260–6415.

The information collected as a result of this rule will allow the States and EPA to determine appropriate requirements for specific systems, in some cases, and to evaluate compliance with the rule. For the first three years after the effective date (six years after promulgation) of the LT1FBR, the major information requirements are (1) monitor filter performance and submit any exceedances of turbidity requirements (*i.e.* exceptions reports) to the State; (2) develop a 1 month recycle monitoring plan and submit both plan and results to the State; (3) submit flow monitoring plan and results to the State; and (4) report data on current recycle treatment (self assessment) to the State. The information collection requirements in Part 141, for systems, and Part 142, for States are mandatory. The information collected is not confidential.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The preliminary estimate of aggregate annual average burden hours for LT1FBR is 311,486. Annual average aggregate cost estimate is $10,826,919 for labor, $2,713,815 for capital, and $1,898,595 for operation and maintenance including lab costs which is a purchase of service. The burden hours per response is 18.9. The frequency of response (average responses per respondent) is 2.7 annually. The estimated number of likely respondents is 6,019 (the product of burden hours per response, frequency, and respondents does not total the annual average burden hours due to rounding). Most of the regulatory provisions discussed in this notice entail new reporting and recordkeeping requirements for States, Tribes, and members of the regulated public. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 10, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by May 10, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Unfunded Mandates Reform Act

1. Summary of UMRA requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notification to potentially affected small governments, enabling officials of

affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Written Statement for Rules With Federal Mandates of $100 Million or More

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for the State, local and Tribal governments, in the aggregate, or the private sector in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, since the estimate of annual impact is close to $100 million under certain assumptions EPA has prepared a written statement, which is summarized below, even though one is not required. A more detailed description of this analysis is presented in EPA's Regulatory Impact Analysis of the LT1FBR (EPA, 1999h) which is available for public review in the Office of Water docket under docket number W–99–10. The document is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located in room EB 57, USEPA Headquarters, 401 M St. SW, Washington, D.C. 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

a. Authorizing Legislation

Today's rule is proposed pursuant to Section 1412 (b)(2)(C) and 1412(b)(14) of the SDWA. Section 1412 (b)(2)(C) directs EPA to establish a series of regulations including an interim and final enhanced surface water treatment rule. Section 1412(b)(14) directs EPA to promulgate a regulation to govern the recycling of filter backwash water. EPA intends to finalize the LT1FBR in the year 2000 to allow systems to consider the dual impact of this rule and the Stage 1 DBP rule on their capital investment decisions.

b. Cost Benefit Analysis

Section VI of this preamble discusses the cost and benefits associated with the LT1FBR. Also, the EPA's Regulatory Impact Analysis of the LT1FBR (EPA, 1999h) contains a detailed cost benefit analysis. Today's proposal is expected to have a total annualized cost of approximately $ 97.5 million using a 7 percent discount rate. At a 3 percent discount rate the annualized costs drop to $87.6 million. The national cost estimate includes cost for all of the rule's major provisions including turbidity monitoring, disinfection benchmarking monitoring, disinfection profiling, covered finished storage, and recycling. The majority of the costs for this rule will be incurred by the public sector. A more detailed discussion of these costs is located in Section VI of this preamble.

In addition, the regulatory impact analysis includes both monetized benefits and descriptions of unquantified benefits for improvements to public health and safety the rule will achieve. Because of scientific uncertainty regarding LT1FBR's exposure and risk assessment, the Agency has used Monte Carlo methods and sensitivity analysis to assess the quantified benefits of today's rule. The monetary analysis was based upon quantification of the number of cryptosporidiosis illnesses avoided due to improved particulate removal that results from the turbidity provisions. The Agency was not able to monetize the benefits from the other rule provisions such as disinfection benchmarking and covered finished storage. The monetized annual benefits of today's rule range from $70.1 million to $259.4 million depending on the baseline and removal assumptions. Better management of recycle streams required by the proposal also result in nonquantifiable health risk reductions from disinfection resistant pathogens. The rule may also decrease illness caused by *Giardia* and other emerging disinfection resistant pathogens, further increasing the benefits.

Several non-health benefits from this rule were also identified by EPA but were not monetized. The non-health benefits of this rule include outbreak response costs avoided, and possibly reduced uncertainty and averting behavior costs. By adding the non-monetized benefits with those that are monetized, the overall benefits of this rule increase beyond the dollar values reported.

Various Federal programs exist to provide financial assistance to State, local, and Tribal governments in complying with this rule. The Federal government provides funding to States that have primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision Grants program. Additional funding is available from other programs administered either by EPA, or other Federal Agencies. These include EPA's Drinking Water State Revolving Fund (DWSRF), U.S. Department of Agriculture's Rural Utilities' Loan and Grant Program, and Housing and Urban Development's Community Development Block Grant Program.

For example, SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF helps public water systems finance the cost of infrastructure necessary to achieve or maintain compliance with SDWA requirements. Each State has considerable flexibility to design its program and to direct funding toward the most pressing compliance and public health protection needs. States may also, on a matching basis, use up to ten percent of their DWSRF allotments each fiscal year to run the State drinking water program.

Furthermore, a State can use the financial resources of the DWSRF to assist small systems. In fact, a minimum of 15% of a State's DWSRF grant must be used to provide infrastructure loans to small systems. Two percent of the State's grant may be used to provide technical assistance to small systems. For small systems that are disadvantaged, up to 30% of a State's DWSRF may be used for increased loan subsidies. Under the DWSRF, Tribes have a separate set-aside which they can use. In addition to the DWSRF, money is available from the Department of Agriculture's Rural Utility Service (RUS) and Housing and Urban Development's Community Block Grant (CDBG) program. RUS provides loans, guaranteed loans, and grants to improve, repair, or construct water supply and distribution systems in rural areas and towns up to 10,000 people. In fiscal year 1997, the RUS had over $1.3 billion in available funds. Also, three sources of funding exist under the CDBG program to finance building and improvements of public faculties such as water systems. The three sources of funding include: (1) Direct grants to communities with populations over 200,000; (2) direct grants to States, which they in turn award to smaller communities, rural areas, and colonias in Arizona, California, New Mexico, and Texas; and (3) direct grants to US. Territories and Trusts. The CDBG budget for fiscal year 1997 totaled over $4 billion dollars.

c. Estimates of Future Compliance Costs and Disproportionate Budgetary Effects

To meet the UMRA requirement in section 202, EPA analyzed future compliance costs and possible disproportionate budgetary effects. The Agency believes that the cost estimates, indicated previously and discussed in

more detail in Section VI of this preamble, accurately characterize future compliance costs.

In analyzing the disproportionate impacts, EPA considered four measures:

(1) The impacts of small versus large systems and the impacts within the five small system size categories;

(2) The costs to public versus private water systems;

(3) The costs to households, and;

(4) The distribution of costs across States.

First, small systems will experience a greater impact than large systems under LT1FBR because large systems are subject only to the recycle provisions. The Interim Enhanced Surface Water Treatment Rule (IESWTR) promulgated turbidity, benchmarking, and covered finished storage provisions for large systems in December, 1998. However, small systems have realized cost savings over time due to their exclusion from the IESWTR. Also, some provisions in the LT1FBR have been modified so they would not be as burdensome for small systems. Further information on these changes can be found in section VII.A.3.of this proposal.

The second measure of impact is the relative total cost to privately owned water systems compared to the incurred by publicly owned water systems. A majority of the systems are publicly owned (60 percent of the total). As a result, publicly owned systems will incur a larger share of the total costs of the rule.

The third measure, household costs, is described in further detail in VI.E of this preamble. The fourth measure, distribution of costs across States, is described in greater detail in the RIA for today's proposed rule (EPA, 1999h). There is nothing to suggest that costs to individual systems would vary significantly from State to State, but as expected, the States with the greatest number of systems experience the greatest costs.

d. Macro-Economic Effects

As required under UMRA Section 202, EPA is required to estimate the potential macro-economic effects of the regulation. These types of effects include those on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 1998, real GDP was $7,552 billion. This proposal would have to cost at least $18 billion to have a measurable effect. A regulation of less cost is unlikely to have any measurable effect unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from LT1FBR should not have a measurable effect because the total annual cost of the preferred option is approximately $ 97.5 million per year (at a seven percent discount rate). The costs are not expected to be highly focused on a particular geographic region or sector.

e. Summary of EPA's Consultation with State, Local, and Tribal Governments and Their Concerns

Consistent with the intergovernmental consultation provisions of section 204 of UMRA EPA has already initiated consultation with the governmental entities affected by this rule.

EPA began outreach efforts to develop the LT1FBR in the summer of 1998. Two public stakeholder meetings, which were announced in the **Federal Register**, were held on July 22–23, 1998, in Lakewood, Colorado, and on March 3–4, 1999, in Dallas, Texas. In addition to these meetings, EPA has held several formal and informal meetings with stakeholders including the Association of State Drinking Water Administrators. A summary of each meeting and attendees is available in the public docket for this rule. EPA also convened a Small Business Advocacy Review (SBAR) Panel in accordance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns including those of small local governments. The SBAR Panel allows small regulated entities to provide input to EPA early in the regulatory development process. In early June, 1999, EPA mailed an informal draft of the LT1FBR preamble to the approximately 100 stakeholders who attended one of the public stakeholder meetings. Members of trade associations and the SBREFA Panel also received the draft preamble. EPA received valuable comments and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. The majority of concerns dealt with reducing burden on small systems and maintaining flexibility. After receipt of comments, EPA made every effort to make modifications to address these concerns.

To inform and involve Tribal governments in the rulemaking process, EPA presented the LT1FBR at three venues: the 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the OGWDW/Inter Tribal Council of Arizona, Inc. tribal consultation meeting. Over 900 attendees representing tribes from across the country attended the National Indian Health Board's Consumer Conference and over 100 tribes were represented at the annual conference of the National Tribal Environmental Council. At both conferences, an OGWDW representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1FBR.

At the OGWDW/Inter Tribal Council of Arizona meeting, representatives from 15 tribes participated. The presentation materials and meeting summary were sent to over 500 tribes and tribal organizations. Additionally, EPA contacted each of our 12 Native American Drinking Water State Revolving Fund Advisors to invite them, and representatives of their organizations to the stakeholder meetings described previously. A list of tribal representatives contacted can be found in the docket for this rule.

The primary concern expressed by State, local and Tribal governments is the difficulty the smallest systems will encounter in adequately staffing drinking water treatment facilities to perform the monitoring and reporting associated with the new requirements. Today's proposal attempts to minimize the monitoring and reporting burden to the greatest extent feasible and still accomplish the rule's objective of protecting public health. The Agency believes the monitoring and reporting requirements are necessary to ensure consumers served by small systems receive the same level of public health protection as consumers served by large systems. Summaries of the meetings have been included in the public docket for this rulemaking.

f. Regulatory Alternatives Considered

As required under Section 205 of the UMRA, EPA considered several regulatory alternatives for individual filter monitoring and disinfection benchmarking, as well as several alternative strategies for addressing recycle practices. A detailed discussion of these alternatives can be found in Section IV and also in the RIA for today's proposed rule (EPA, 1999h). Today's proposal also seeks comment on several regulatory alternatives that EPA will consider for the final rule.

g. Selection of the Least Costly, Most-Cost Effective or Least Burdensome Alternative That Achieves the Objectives of the Rule

As discussed previously, EPA has considered and requested comment on various regulatory options that would reduce *Cryptosporidium* occurrence in the finished water of surface water systems. The Agency believes that the preferred option for turbidity performance, disinfection benchmarking, and recycle management are the most cost effective combination of options to achieve the rule's objective; the reduction of illness and death from *Cryptosporidium* occurrence in the finished water of PWSs using surface water. The Agency will carefully review comments on the proposal and assess suggested changes to the requirements.

3. Impacts on Small Governments

In developing this proposal, EPA consulted with small governments to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. As discussed previously, a variety of stakeholders, including small governments, were provided the opportunity for timely and meaningful participation in the regulatory development process through the SBREFA panel, public stakeholder and Tribal meetings. EPA used these processes to notify potentially affected small governments of regulatory requirements being considered and provided officials of affected small governments with an opportunity to have meaningful and timely input to the regulatory development process.

In addition, EPA will educate, inform, and advise small systems, including those run by small governments, about LT1FBR requirements. One of the most important components of this outreach effort will be the Small Entity Compliance Guide, required by the Small Business Regulatory Enforcement Fairness Act of 1996. This plain-English guide will explain what actions a small entity must take to comply with the rule. Also, the Agency is developing fact sheets that concisely describe various aspects and requirements of the LT1FBR and detailed guidance manuals to assist the compliance effort of PWSs and small government entities.

D. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule requires the use of previously approved technical standards for the measurement of turbidity. In previous rulemakings, EPA approved three methods for measuring turbidity in drinking water. These can be found in 40 CFR, Part 141.74 (a). Turbidity is a method-defined parameter and therefore modifications to any of the three approved methods requires prior EPA approval. One of the approved methods was published by the Standard Methods Committee of American Public Health Association, the American Water Works Association, and the Water Environment Federation, the latter being a voluntary consensus standard body. That method, Method 2130B (APHA, 1995), is published in Standard Methods for the Examination of Water and Wastewater (19th ed.). Standard Methods is a widely used reference which has been peer-reviewed by the scientific community. In addition to this voluntary consensus standard, EPA approved two additional methods for the measurement of turbidity. One is the Great Lakes Instrument Method 2, which can be used as an alternate test procedure for the measurement of turbidity (Great Lakes Instruments, 1992). Second, the Agency approved revised EPA Method 180.1 for turbidity measurement in August 1993 in Methods for the Determination of Inorganic Substances in Environmental Samples (EPA–600/R–93–100) (EPA, 1993).

In 1994, EPA reviewed and rejected an additional technical standard, a voluntary consensus standard, for the measurement of turbidity, the ISO 7027 standard, an analytical method which measures turbidity at a higher wavelength than the approved test measurement standards. ISO 7027 measures turbidity using either 90° scattered or transmitted light depending on the turbidity concentration evaluated. Although instruments conforming to ISO 7027 specifications are similar to the GLI instrument, only the GLI instrument uses pulsed, multiple detectors to simultaneously read both 90° scattered and transmitted light. EPA has no data upon which to evaluate whether the separate 90° scattered or transmitted light measurement evaluations, according to the ISO 7027 method, would produce results that are equivalent to results produced using GLI Method 2, Standard Method 2130B (APHA, 1995), or EPA Method 180.1 (EPA, 1993).

Today's proposed rule also requires continuous individual filter monitoring for turbidity and requires PWSs to calibrate the individual turbidimeter according to the turbidimeter manufacturer's instructions. These calibration instructions may constitute technical standards as that term is defined in the NTTAA. EPA has looked for voluntary consensus standards with regard to calibration of turbidimeters. The American Society for Testing and Materials (ASTM) is developing such voluntary consensus standards, however, there do not appear to be any voluntary consensus standards available at this time. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

EPA plans to implement in the future a performance-based measurement system (PBMS) that would allow the option of using either performance criteria or reference methods in its drinking water regulatory programs. The Agency is currently determining the specific steps necessary to implement PBMS in its programs and preparing an implementation plan. Final decisions have not yet been made concerning the implementation of PBMS in water programs. However, EPA is currently evaluating what relevant performance characteristics should be specified for monitoring methods used in the water programs under a PBMS approach to ensure adequate data quality. EPA would then specify performance requirements in its regulations to ensure that any method used for determination of a regulated analyte is at least equivalent to the performance achieved by other currently approved methods.

Once EPA has made its final determinations regarding implementation of PBMS in programs under the Safe Drinking Water Act, EPA would incorporate specific provisions of PBMS into its regulations, which may include specification of the performance characteristics for measurement of regulated contaminants in the drinking water program regulations.

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or;

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

This preamble has discussed many times how the IESWTR served as a template for the development of the LT1FBR. As such, the Agency also built on the efforts conducted during the IESWTRs development to comply with E.O. 12898. On March 12, 1998, the Agency held a stakeholder meeting to address various components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. The major objectives for the March 12, 1998 meeting were:

(1) Solicit ideas from stakeholders on known issues concerning current drinking water regulatory efforts;

(2) Identify key issues of concern to stakeholders, and;

(3) Receive suggestions from stakeholders concerning ways to increase representation of communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

The LT1FBR applies to community water systems, non-transient non-community water systems, and transient non-community water systems that use surface water or ground water under the direct influence (GWUDI) as their source water for PWSs serving less than 10,000 people. The recycle provisions apply to all conventional and direct surface water or GWUDI systems regardless of size.

EPA believes this rule will provide equal health protection for all minority and low-income populations served by systems regulated under this rule from exposure to microbial contamination. These requirements will also be consistent with the protection already afforded to people being served by systems with larger population bases.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: 1) is determined to be economically significant as defined under E.O. 12866, and; 2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined by E.O. 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, EPA evaluated available data on the health effect of *Cryptosporidium* on children. The results of this evaluation are contained in Section II.B of this preamble and in the LT1FBR RIA (EPA, 1999h). A copy of the RIA and supporting documents is available for public review in the Office of Water docket at 401 M St. SW, Washington, D.C.

The risk of illness and death due to cryptosporidiosis depends on several factors, including the age, nutrition, exposure, and the immune status of the individual. Information on mortality from diarrhea shows the greatest risk of mortality occurring among the very young and elderly (Gerba et al., 1996). Specifically, young children are a vulnerable population subject to infectious diarrhea caused by *Cryptosporidium* (CDC 1994). Cryptosporidiosis is prevalent worldwide, and its occurrence is higher in children than in adults (Fayer and Ungar, 1986).

Cryptosporidiosis appears to be more prevalent in populations that may not have established immunity against the disease and may be in greater contact with environmentally contaminated surfaces, such as infants (DuPont, et al., 1995). Once a child is infected it may spread the disease to other children or family members. Evidence of such secondary transmission of cryptosporidiosis from children to household and other close contacts has been found in many outbreak investigations (Casemore, 1990; Cordell et al., 1997; Frost et al., 1997). Chapell et al., 1999, found that prior exposure to *Cryptosporidium* through the ingestion of a low oocyst dose provides protection from infection and illness. However, it is not known whether this immunity is life-long or temporary. Data also indicate that either mothers confer short term immunity to their children or that babies have reduced exposure to *Cryptosporidium*, resulting in a decreased incidence of infection during the first year of life. For example, in a survey of over 30,000 stool sample analyses from different UK patients, the 1–5 year age group suffered a much higher infection rate than individuals less than one year of age. For children under one year of age, those older than

six months of age showed a higher rate of infection than individuals aged fewer than six months (Casemore, 1990).

EPA has not been able to quantify the differential health effects for children as a result of *Cryptosporidium*-contaminated drinking water. However, the result of the LT1FBR will be a reduction in the risk of illness for the entire population, including children. Furthermore, the available anecdotal evidence indicates that children may be more vulnerable to cryptosporidiosis than the rest of the population. The LT1FBR would, therefore, result in greater risk reduction for children than for the general population.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to *Cryptosporidium*.

H. Consultations with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the SDWA, the Agency will consult with the National Drinking Water Advisory Council (NDWAC) and the Secretary of Health and Human Services and request comment from the Science Advisory Board on the proposed LT1FBR.

I. Executive Order 13132: Executive Orders on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the final rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has concluded that this proposed rule may have federalism implications since it may impose substantial direct compliance costs on local governments, and the Federal government will not provide the funds necessary to pay those cost. Accordingly, EPA provides the following FSIS as required by section 6(b) of Executive Order 13132.

As discussed further in section VII.C.2.e, EPA met with a variety of State and local representatives, who provided meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public record for this proposed rulemaking. EPA consulted extensively with State, local, and tribal governments. For example, two public stakeholder meetings were held on July 22–23, 1998, in Lakewood, Colorado, and on March 3–4, 1999, in Dallas, Texas. Several key issues were raised by stakeholders regarding the LT1 provisions, many of which were related to reducing burden and maintaining flexibility. The Office of Water was able to significantly reduce burden and increase flexibility by tailoring requirements to reduce monitoring, reporting, and recordkeeping requirements faced by small systems. These modifications and others aided in lowering the cost of the LT1FBR by $87 million (from $184.5 million to $97.5 million). It should be noted that this rule is important because it will reduce the level of *Cryptosporidium* in filtered finished drinking water supplies through improvements in filtration and recycle practices resulting in a reduced likelihood of outbreaks of cryptosporidiosis. The rule is also expected to increase the level of protection from exposure to other pathogens (i.e., *Giardia* and other waterborne bacterial or viral pathogens). Because consultation on this proposed rule occurred before the November 2, 1999 effective date of Executive Order 13132, EPA will initiate discussions with State and local elected officials regarding the implications of this rule during the public comment period.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

EPA has concluded that this rule may significantly or unique affect the communities of Indian tribal governments. It may also impose substantial direct compliance costs on such communities. The Federal government will not provide the funds necessary to pay all the direct costs incurred by the Tribal governments in complying with the rule. In developing this rule, EPA consulted with representatives of Tribal governments pursuant to UMRA and Executive Order 13084. EPA held extensive meetings that provided Indian Tribal governments the opportunity for meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public docket for this rulemaking. EPA's consultation, the nature of the government's concerns, and the position supporting the need for

this rule are discussed in Section VII.C.2.e, which addresses compliance with UMRA.

K. Likely Effect of Compliance with the LT1FBR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. This analysis can be found in the LT1FBR RIA (EPA, 1999h).

Overall water system capacity is defined in EPA guidance (EPA, 1998j) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: technical, managerial, and financial.

Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. A water system's technical capacity can be determined by examining key issues and questions, including:

- *Source water adequacy.* Does the system have a reliable source of drinking water? Is the source of generally good quality and adequately protected?
- *Infrastructure adequacy.* Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including well(s) or source water intakes, treatment, storage, and distribution? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
- *Technical knowledge and implementation.* Is the system's operator certified? Does the operator have sufficient technical knowledge of applicable standards? Can the operator effectively implement this technical knowledge? Does the operator understand the system's technical and operational characteristics? Does the system have an effective operation and maintenance program?

Managerial capacity is the ability of a water system to conduct its affairs to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Managerial capacity can be assessed through key issues and questions, including:

- *Ownership accountability.* Are the system owner(s) clearly identified? Can they be held accountable for the system?
- *Staffing and organization.* Are the system operator(s) and manager(s) clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?
- *Effective external linkages.* Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?

Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements. Financial capacity can be assessed through key issues and questions, including:

- *Revenue sufficiency.* Do revenues cover costs? Are water rates and charges adequate to cover the cost of water?
- *Credit worthiness.* Is the system financially healthy? Does it have access to capital through public or private sources?
- *Fiscal management and controls.* Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

Systems not making significant modifications to the treatment process to meet LT1FBR requirements are not expected to require significantly increased technical, financial, or managerial capacity.

L. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write its rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example: Have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that is not clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? Would shorter sections make the final rule easier to understand? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

VIII. Public Comment Procedures

EPA invites you to provide your views on this proposal, approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. Many of the sections within today's proposed rule contain "Request for Comment" portions which the Agency is also interested in receiving comment on.

A. Deadlines for Comment

Send your comments on or before June 9, 2000. Comments received after this date may not be considered in decision making on the proposed rule. Again, comments must be received or post-marked by midnight June 9, 2000.

B. Where To Send Comment

Send an original and 3 copies of your comments and enclosures (including references) to W–99–10 Comment Clerk, Water Docket (MC4101), USEPA, 401 M, Washington, D.C. 20460. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–99–10. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov.

C. Guidelines for Commenting

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Note that the Agency is not soliciting comment on, nor will it respond to, comments on previously published regulatory language that is included in this notice to ease the reader's understanding of proposed language. You may find the following

suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this proposed rule.
8. At the beginning of your comments (*e.g.,* as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the proposed rule, along with the name, date, and **Federal Register** citation.

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List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

4. Section 141.2 is amended by revising the definition of "Ground water under the direct influence of surface water" and "Disinfection profile" and adding the following definitions in alphabetical order to read as follows:

§ 141.2 Definitions.

* * * * *

Direct recycle is the return of recycle flow within the treatment process of a public water system without first passing the recycle flow through a treatment process designed to remove solids, a raw water storage reservoir, or some other structure with a volume equal to or greater than the volume of spent filter backwash water produced by one filter backwash event.

* * * * *

Disinfection profile is a summary of *Giardia* lamblia inactivation through the treatment plant, from the point of disinfectant application to the first customer. The procedure for developing a disinfection profile is contained in § 141.172 (Disinfection profiling and benchmarking) in subpart P and §§ 141.530–141.536 (Disinfection profile) in subpart T of this part.

* * * * *

Equalization is the detention of recycle flow in a structure with a volume equal to or greater than the volume of spent filter backwash produced by one filter backwash event.

* * * * *

Ground water under the direct influence of surface water (GWUDI) means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

* * * * *

Membrane Filtration means any filtration process using tubular or spiral wound elements that exhibits the ability to mechanically separate water from other ions and solids by creating a pressure differential and flow across a membrane with an absolute pore size <1 micron.

* * * * *

Operating capacity is the maximum finished water production rate approved by the State drinking water program.

* * * * *

Recycle is the return of any water, solid, or semisolid generated by plant treatment processes, operational processes, maintenance processes, and residuals treatment processes into a PWS's primary treatment processes.

* * * * *

5. Section 141.32 is amended by revising paragraph (e)(10) to read as follows:

§ 141.32 Public notification.

* * * * *

(e) * * *

(10) *Microbiological contaminants* (for use when there is a violation of the treatment technique requirements for filtration and disinfection in subpart H, subpart P, or subpart T of this part). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

* * * * *

6. Section 141.70 is amended by revising paragraph (b)(2) and adding paragraph (e) to read as follows:

§ 141.70 General requirements.

* * * * *

(b) * * *

(2) It meets the filtration requirements in § 141.73, the disinfection

requirements in § 141.72(b) and the recycle requirements in § 141.76.

* * * * *

(e) *Additional requirements for systems serving fewer than 10,000 people.* In addition to complying with requirements in this subpart, systems serving fewer than 10,000 people must also comply with the requirements in subpart T of this part.

7. Section 141.73 is amended by adding paragraph (a)(4) and revising paragraph (d) to read as follows:

§ 141.73 Filtration.

* * * * *

(a) * * *

(4) Beginning [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], systems serving fewer than 10,000 people must meet the turbidity requirements in §§ 141.550 through 141.553.

* * * * *

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a) through (c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply. Beginning December 17, 2001, systems serving at least 10,000 people must meet the requirements for other filtration technologies in paragraph (b) of this section. Beginning [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], systems serving fewer than 10,000 people must meet the requirements for treatment technologies in §§ 141.550 through141.553.

8. Subpart H is amended by adding a new § 141.76 to subpart H to read as follows:

§ 141.76 Recycle Provisions.

(a) Public water systems employing conventional filtration or direct filtration that use surface water or ground water under the direct influence of surface water and recycle within the treatment process must meet all applicable requirements of this section. Requirements are summarized in the following table.

RECYCLE PROVISIONS FOR SUBPART H SYSTEMS

If you are a . . .	You are required to meet the requirements in . . .
(1) subpart H public water system employing conventional or direct filtration returning spent filter backwash, thickener supernatant, or liquids from dewatering processes concurrent with or downstream of the point of primary coagulant addition.	§ 141.76 (b).
(2) Plant that is part of a subpart H public water system, employ conventional filtration treatment, practice direct recycle, employ 20 or fewer filters to meet production requirements during the highest production month in the 12 month period [date 60 months after publication of final rule], and recycle spent filter backwash or thickener supernatant to the treatment process.	§ 141.76 (c).
(3) subpart H public water system practicing direct filtration and recycling to the treatment process.	§ 141.76 (d).

(b) Recycle return location. All subpart H systems employing conventional filtration or direct filtration and returning spent filter backwash, thickener supernatant, or liquids from dewatering processes at or after the point of primary coagulant addition must return these recycle flows prior to the point of primary coagulant addition by [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]. The system must apply to the State for approval of the change in recycle location before the system implements it.

(1) All subpart H systems employing conventional filtration or direct filtration, returning spent filter backwash, thickener supernatant, or liquids from dewatering processes at or after the point of primary coagulant addition must submit a plant schematic to the State by [DATE 42 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] showing the current recycle return location(s) for the recycle stream(s) and the new return location that will be used to establish compliance. The system must keep the plant schematic on file for review during sanitary surveys.

(2) Softening systems may recycle process solids at the point of lime addition preceding the softening process to improve treatment efficiency. Process solids may not be returned prior to the point of lime addition. Softening systems shall not return spent filter backwash, thickener supernatant, or liquids from dewatering processes to a location other than prior to the point of primary coagulant addition unless an alternate location is granted by the State.

(3) Contact clarification systems may recycle process solids directly into the contactor. Contact clarification systems shall not return spent filter backwash, thickener supernatant, or liquids from dewatering processes to a location other than prior to the point of primary coagulant addition unless an alternate location is granted by the State.

(4) Systems may apply to the State to return spent filter backwash, thickener supernatant, or liquids from dewatering processes to an alternate location other than prior to the point of primary coagulant addition.

(c) Plants that are part of subpart H public water systems that employ conventional rapid granular filtration, practice direct recycle, employ 20 or fewer filters to meet production requirements during the highest production month in the 12 month period prior to [DATE 60 MONTHS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and recycle spent filter backwash or thickener supernatant to the primary treatment process shall complete a recycle self assessment, as stipulated in paragraphs(c)(1) and (c)(2) by [Date 51 Months After Date of Publication of Final Rule in the **Federal Register**]. Systems required to perform the self assessment shall:

(1) Submit a recycle self assessment monitoring plan to the State no later than [Date 39 Months After Date of Publication of Final Rule in the **Federal Register**]. At a minimum, the monitoring plan must identify the highest water production month during

which monitoring will be conducted, contain a schematic identifying the location of raw and recycle flow monitoring devices, describe the type of flow monitoring devices to be used, identify the system's State approved operating capacity, and describe how data from the raw and recycle flow monitoring devices will be simultaneously retrieved and recorded.

(2) Implement the following recycle self assessment monitoring and analysis steps:

(i) *Steps for Implementation of Recycle Self Assessment:*

(A) Identify the highest water production month during the 12 month period preceding [Date 36 Months After Date of Publication of Final Rule in the **Federal Register**].

(B) Perform the monitoring described in paragraph (c)(2)(i)(C) of this section during the 12 month period after submission of the monitoring plan to the State. The twelve month period must begin no later than [Date 39 Months After Date of Publication of Final Rule in the **Federal Register**].

(C) For each day of the month identified in paragraph (c)(2)(i)(A) of this section, separately monitor source water influent flow and recycle flow before their confluence during one filter backwash recycle event per day, at three minute intervals during the duration of the event. Monitoring must be performed between 7:00 a.m. and 8:00 p.m. Systems that do not have a filter backwash recycle event every day between 7:00 am and 8:00 p.m. must monitor one filter backwash recycle event per day, any three days of the week, for each week during the month of monitoring, between 7:00 a.m. and 8:00 p.m. Record the time filter backwash was initiated, the influent and recycle flow at three minute intervals during the duration of the event, and the time the filter backwash recycle event ended. Record the number of filters in use when the filter backwash recycle event is monitored.

(D) Calculate the arithmetic average of all influent and recycle flow values taken at three minute intervals in paragraph (c)(2)(i)(c) of this section. Sum the arithmetic average calculated for raw water influent and recycle flows. Record this value and the date the monitoring was performed. This value is referred to as event flow.

(E) After the month of monitoring is complete, order the event flows in a list of increasing order, from lowest to highest. Highlight the event flows that exceed State approved operating capacity and then sum the number of event flows highlighted.

(ii) [Reserved]

(3) Subpart H systems performing recycle self assessments are required to report the results of the self assessment and supporting documentation to the State within one month of completing raw water influent and recycle flow monitoring. The report must be submitted no later than [DATE 52 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]. If the State determines the self assessment is incomplete or inaccurate, it may require the system to correct deficiencies or perform an additional self assessment. At a minimum, the report must contain the following information:

(i) *Minimum Information Included in Recycle Assessment Report to State:*

(A) All source and recycle flow measurements taken and the dates they were taken. For all events monitored, report the times the filter backwash recycle event was initiated, the flow measurements taken at three minute intervals, and the time the filter backwash recycle event ended. Report the number of filters in use when the backwash recycle event is monitored.

(B) All data used and calculations performed to determine whether the system exceeded operating capacity during monitored recycle events and the number of event flow values that exceeded State approved operating capacity.

(C) A plant schematic showing the origin of all recycle flows, the hydraulic conveyance used to transport them, and their final destination in the plant.

(D) A list of all the recycle flows and the frequency at which they are returned to the plant's primary treatment process.

(E) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process, in minutes.

(F) Typical filter run length and a written summary of how filter run length is determined (preset run time, headloss, turbidity breakthrough, *etc.).*

(ii) [Reserved]

(4) All subpart H systems performing self assessments are required to modify their recycle practice in accordance with the State determination by [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] and keep a copy of the self assessment report submitted to the State on file for review during sanitary surveys.

(d) Subpart H public water systems practicing direct filtration and recycling to the primary treatment process are required to submit data to the State on their current recycle treatment no later than [DATE 42 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER.]

(1) Direct filtration systems submitting data to the State shall report the following information, at a minimum:

(i) *Data Submitted to States by Direct Filtration Systems:*

(A) A plant schematic showing the origin of all recycle flows, the hydraulic conveyance used to transport them, and their final destination in the plant.

(B) The number of filters used at the plant to meet average daily production requirements and average and maximum backwash flow rate through the filter and the average and maximum duration of the filter backwash process, in minutes.

(C) Whether recycle flow treatment or equalization is in place.

(D) The type of treatment provided for the recycle flow.

(E) For recycle equalization and treatment units: data on the physical dimensions of the unit (length, width (or circumference), depth,) sufficient to allow calculation of volume; typical and maximum hydraulic loading rate; type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed from the unit, if applicable.

(ii) [Reserved]

(2) All direct filtration systems submitting data to the State are required to modify their recycle practice in accordance with the State determination no later than [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] and keep a copy of the report submitted to the State on file for review during sanitary surveys.

9. Section 141.153 is amended by revising the first sentence of paragraph (d)(4)(v)(C) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(v) * * *

(C) When it is reported pursuant to § 141.73 or § 141.173 or § 141.551: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in § 141.73 or § 141.173, or § 141.551 for the filtration technology being used.

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10. The heading to Subpart P is revised as follows:

Subpart P—Enhanced Filtration and Disinfection-Systems Serving 10,000 or More People

* * * * *

11. Section 141.170 is amended by adding paragraph (d) to read as follows:

§ 141.170 General requirements.

* * * * *

(d) Subpart H systems that did not conduct applicability monitoring under § 141.172 because they served fewer than 10,000 persons when such monitoring was required but serve more than 10,000 persons prior to [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] must comply with §§ 141.170, 141.171, 141.173, 141.174, and 141.175. These systems must also consult with the State to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice, as described in § 141.172(c)(1)(i) through (iv) must consult with the State prior to making such change.

* * * * *

12. Part 141 is amended by adding a new subpart T to read as follows:

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People

Sec.

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

§ 141.500 General requirements.

The requirements of subpart T constitute national primary drinking water regulations. These regulations establish requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required under subpart H of this part. The regulations in this subpart establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*, *Cryptosporidium* and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) At least 99 percent (2 log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems.

(b) Compliance with the profiling and benchmark requirements in §§ 141.530 through 141.544.

§ 141.501 Who is subject to the requirements of subpart T?

You are subject to these requirements if your system:

(a) Is a public water system;

(b) Uses surface water or GWUDI as a source; and

(c) Serves fewer than 10,000 persons annually.

§ 141.502 When must my system comply with these requirements?

You must comply with these requirements beginning [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] except where otherwise noted.

§ 141.503 What does subpart T require?

There are six requirements of this subpart which your system may need to comply with. These requirements are discussed in detail later in this subpart. They are:

(a) Any finished water reservoir for which construction begins on or after [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] must be covered;

(b) Unfiltered systems must comply with updated watershed control requirements;

(c) All systems subject to the requirements of this subpart must develop a disinfection profile;

(d) All systems subject to the requirements of this subpart that are considering a significant change to their disinfection practice must develop a disinfection benchmark and receive State approval before changing their disinfection practice;

(e) Filtered systems must comply with specific combined filter effluent turbidity limits and monitoring and reporting requirements; and

(f) Filtered systems using conventional or direct filtration must

comply with individual filter turbidity limits and monitoring and reporting requirements.

Finished Water Reservoirs

§ 141.510 Is my system subject to the new finished water reservoir requirements?

All subpart H systems which serve populations fewer than 10,000 are subject to this requirement.

§ 141.511 What is required for new finished water reservoirs?

If your system initiates construction of a finished water reservoir after [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER the reservoir must be covered. Finished water reservoirs constructed prior to [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER are not subject to this requirement.

Additional Watershed Control Requirements

§ 141.520 Is my system subject to the updated watershed control requirements?

If you are a subpart H system serving fewer than 10,000 persons which does not provide filtration, you must continue to comply with all of the watershed control requirements in § 141.71, as well as the additional watershed control requirements in § 141.521.

§ 141.521 What additional watershed control requirements must my system comply with?

Your system must also maintain the existing watershed control program to minimize the potential for contamination by *Cryptosporidium* oocysts in the source water. Your system's watershed control program must, for *Cryptosporidium*:

(a) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(b) Monitor the occurrence of activities which may have an adverse effect on source water quality.

§ 141.522 How does the State determine whether my system's watershed control requirements are adequate?

During an onsite inspection conducted under the provisions of § 141.71(b)(3), the State must determine whether your watershed control program is adequate to limit potential contamination by *Cryptosporidium* oocysts. The adequacy of the program must be based on the comprehensiveness of the watershed review; the effectiveness of your program to monitor and control detrimental activities occurring in the watershed; and the extent to which your system has maximized land ownership and/or controlled land use within the watershed.

Disinfection Profile

§ 141.530 Who must develop a Disinfection Profile and what is a Disinfection Profile?

All subpart H community and non-transient non-community water systems which serve fewer than 10,000 persons must develop a disinfection profile. A disinfection profile is a graphical representation of your system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. Your system must develop a disinfection profile unless you can demonstrate to the State that your TTHM and HAA5 levels are less than 0.064 mg/l and 0.048 mg/l respectively, prior to January 7, 2003.

§ 141.531 How does my system demonstrate TTHM and HAA5 levels below 0.064 mg/l and 0.048 mg/l respectively?

In order to demonstrate that your TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively your system must have collected one TTHM and one HAA5 sample taken between 1998–2002. Samples must have been collected during the month with the warmest water temperature, at the point of maximum residence time in your distribution system which indicate TTHM levels below 0.064 mg/l and HAA5 levels below 0.048 mg/L. By January 7, 2003, you must submit a copy of the results to the State along with a letter indicating your intention to forgo development of a disinfection profile because of the results of the sampling. This letter, along with a copy of your TTHM and HAA5 sample lab results must be kept on file for review by the State during a sanitary survey. If the data you have collected is either equal to or exceeds either 0.064 mg/l for TTHM and/or 0.048 mg/l for HAA5s, you must develop a disinfection profile.

§ 141.532 How does my system develop a Disinfection Profile and when must it begin?

A disinfection profile consists of three steps:

(a) First, your system must collect measurements for several treatment parameters from the plant as discussed in § 141.533. Your system must begin this monitoring no later than January 7, 2003.

(b) Second, your system must use these measurements to calculate inactivation ratios as discussed in §§ 141.534 and 141.535; and

(c) Third, your system must use these inactivation ratios to develop a disinfection profile as discussed in § 141.536.

§ 141.533 What measurements must my system collect to calculate a Disinfection Profile?

Your system must monitor the parameters necessary to determine the total inactivation ratio using analytical methods in § 141.74 (a), once per week on the same *calendar* day each week as follows:

(a) The temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow;

(b) If the system uses chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow;

(c) The disinfectant contact time(s) ("T") must be determined during peak hourly flow; and

(d) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection must be measured during peak hourly flow.

§ 141.534 How does my system use these measurements to calculate an inactivation ratio?

Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

If a system...	The system must determine...
(a) Uses only one point of disinfectant application	(1) One inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow, or

If a system...	The system must determine...
	(2) Successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine (Σ ($CTcalc/CT_{99.9}$)). You may use a spreadsheet that calculates CT and/or contains the necessary inactivation tables.
(b) Uses more than one point of disinfectant application before the first customer.	(1) The $CTcalc/CT_{99.9}$ value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow using the procedure described in the above paragraph.

§ 141.535 How does my system develop a Disinfection Profile if we use chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses either chloramines, ozone or chlorine dioxide for primary disinfection, you must also calculate the logs of inactivation for viruses. You must develop an additional disinfection profile for viruses using a method approved by the State.

§ 141.536 If my system has developed an inactivation ratio, what must we do now?

Each inactivation ratio serves as a data point in your disinfection profile. Your system will have obtained 52 measurements (one for every week of the year). This will allow your system and the State the opportunity to evaluate how microbial inactivation varied over the course of the year by looking at all 52 measurements (your Disinfection Profile). Your system must retain the Disinfection Profile data in graphic form, as a spreadsheet, or in some other format acceptable to the State for review as part of sanitary surveys conducted by the State. Your system will need to use this data to calculate a benchmark if considering changes to disinfection practices.

Disinfection Benchmark

§ 141.540 Who has to develop a Disinfection Benchmark?

If you are a subpart H system required to develop a disinfection profile under §§ 141.530 through 141.536, your system must develop a Disinfection Benchmark if you decide to make a significant change to disinfection practice. State approval must be obtained before you can implement a significant disinfection practice change.

§ 141.541 What are significant changes to disinfection practice?

Significant changes to disinfection practice are:

(a) Changes to the point of disinfection;

(b) Changes to the disinfectant(s) used in the treatment plant;

(c) Changes to the disinfection process; or

(d) Any other modification identified by the State.

§ 141.542 How is the Disinfection Benchmark Calculated?

If your system is making a significant change to its disinfection practice, it must calculate a disinfection benchmark using the following procedure:

(a) To calculate a disinfection benchmark a system must perform the following steps:

Step 1: Using the data your system collected to develop the Disinfection Profile, determine the average *Giardia lamblia* inactivation for each calender month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.

Step 2: Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

(b) [Reserved]

§ 141.543 What if my system uses chloramines or ozone for primary disinfection?

If your system uses chloramines, ozone or chlorinated dioxide for primary disinfection your system must calculate the disinfection benchmark from the data your system collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under § 141.542. The disinfection benchmark must be calculated as described in § 141.542.

§ 141.544 What must my system do if considering a significant change to disinfection practices?

If your system is considering a significant change to the disinfection practice, it must complete a disinfection benchmark(s) as described in §§ 141.542 and 141.543 and provide the benchmark(s) to your State. Your system may only make a significant disinfection practice change after receiving State approval. The following information must be submitted to the State as part of their review and approval process:

(a) A description of the proposed change;

(b) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark;

(c) An analysis of how the proposed change will affect the current levels of disinfection; and

(d) Additional information requested by the State.

Combined Filter Effluent Requirements

§ 141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?

All subpart H systems which serve populations fewer than 10,000, and are required to filter, must meet combined filter effluent requirements. Unless your system consists of slow sand or diatomaceous earth filtration, you are required to meet the combined filter effluent turbidity limits in § 141.551. If your system uses slow sand or diatomaceous earth filtration you must continue to meet the combined filter effluent turbidity limits in § 141.73.

§ 141.551 What strengthened combined filter effluent turbidity limits must my system meet?

Your system must meet two strengthened combined filter effluent turbidity limits.

(a) The first combined filter effluent turbidity limit is a "95th percentile" turbidity limit which your system must meet in at least 95 percent of the turbidity measurements taken each month. Measurements must continue to be taken as described in § 141.74(a) and (c). The following table describes the required limits for specific filtration technologies.

If your system consists of . . .	Your 95th percentile turbidity value is . . .
(1) Conventional filtration or direct filtration	0.3 NTU.
(2) Membrane filtration	0.3 NTU or a value determined by the State (not to exceed 1 NTU) based on a demonstration conducted by the system as described in § 141.552.
(3) All other "alternative" filtration	A value determined by the State (not to exceed 1 NTU) based on the demonstration described in § 141.552.

(b) The second combined filter effluent turbidity limit is a "maximum" turbidity limit which your system may at no time exceed during the month. Measurements must continue to be taken as described in § 141.74(a) and (c). The following table describes the required limits for specific filtration technologies.

If your system consists of . . .	Your maximum turbidity value is . . .
(1) Conventional filtration or direct filtration	1 NTU.
(2) Membrane filtration	1 NTU or a value determined by the State (not to exceed 5 NTU) based on a demonstration conducted by the system as described in § 141.552.
(3) All other "alternative" filtration	A value determined by the State (not to exceed 5 NTU) based on the demonstration as described in § 141.552.

§ 141.552 If my system consists of "alternative filtration" and is required to conduct a demonstration, What is required of my system and how does the State establish my turbidity limits?

(a) If your system is required to conduct a demonstration (see tables in § 141.551), your system must demonstrate to the State, using pilot plant studies or other means, that your system's filtration, in combination with disinfection treatment, consistently achieves:

(1) 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts;

(2) 99.99 percent removal and/or inactivation of viruses; and

(3) 99 percent removal of *Cryptosporidium* oocysts.

(b) If the State approves your demonstration, it will set turbidity performance requirements that your system must meet:

(1) At least 95 percent of the time (not to exceed 1 NTU); and

(2) That your system must not exceed at any time (not to exceed 5 NTU).

§ 141.553 If my system practices lime softening, is there any special provision regarding my combined filter effluent?

If your system practices lime softening, you may acidify representative combined filter effluent turbidity samples prior to analysis using a protocol approved by the State.

Individual Filter Turbidity Requirements

§ 141.560 Is my system subject to individual filter turbidity requirements?

If your system is a subpart H system serving fewer than 10,000 people and utilizing conventional filtration or direct filtration, you must conduct continuous monitoring of turbidity for each individual filter at your system. The following requirements apply to individual filter turbidity monitoring:

(a) Monitoring must be conducted using an approved method in § 141.74(a);

(b) Calibration of turbidimeters must be conducted using procedures specified by the manufacturer;

(c) Results of individual filter turbidity monitoring must be recorded every 15 minutes;

(d) Monthly reporting must be completed according § 141.570; and

(e) Records must be maintained according to § 141.571.

§ 141.561 What happens if my system's turbidity monitoring equipment fails?

If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. A system has five working days to resume continuous monitoring before a violation is incurred.

§ 141.562 What follow-up action is my system required to take based on turbidity monitoring of individual filters?

Follow-up action is required according to the following tables:

If the turbidity of an individual filter exceeds...	The system must...
(a) If the turbidity of an individual filter exceeds 1.0 NTU (in two consecutive recordings).	Submit an exceptions report to the State by the 10th of the month which includes the filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU.

If an exceptions report is submitted for the same filter...	The system must...
(b) If an exceptions report is submitted for the same filter three months in a row.	Conduct a self-assessment of the filter within 14 days of the exceedance and report that the self assessment was conducted by the 10th of the following month. The self assessment must consist of at least the following components: Assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

If an exceptions report is submitted for the same filter...	The system must...
(c) If an exceptions report is submitted for the same filter two months in a row and both months contain exceedances of 2.0 NTU (in 2 consecutive recordings).	(1) Arrange to have a comprehensive performance evaluation (CPE) conducted by the State or a third party approved by the State no later than 30 days following the exceedance and have the evaluation completed and submitted to the State no later than 90 days following the exceedance, Unless— (2) A CPE has been completed by the State or a third party approved by the State within the 12 prior months or the system and State are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system.

§ 141.563 My system practices lime softening. Is there any special provision regarding my individual filter turbidity monitoring?

If your system utilizes lime softening, you may apply to the State for alternative turbidity exceedance levels for the levels specified in the table in § 141.562. You must be able to demonstrate to the State that higher turbidity levels in individual filters are due to lime carryover only, and not due to degraded filter performance.

Reporting and Recordkeeping Requirements

§ 141.570 What does subpart T require that my system report to the State?

This subpart T requires your system to report several items to the State. The following table describes the items which must be reported and the frequency of reporting. Your system is required to report the information described below, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of information to report	Frequency
(a) Combined Filter Effluent Requirements.	(1)The total number of filtered water turbidity measurements taken during the month.	By the 10th of the following month.
	(2) The number and percentage of filtered water turbidity measurements taken during the month which are greater than your system's required 95th percentile limit.	By the 10th of the following month.
	(3) The date and value of any turbidity measurements taken during the month which exceed the maximum turbidity value for your filtration system.	(i) Within 24 hours of exceedance and (ii) By the 10th of the following month.
(b) Individual Filter Turbidity Requirements.	(1) That your system conducted individual filter turbidity monitoring during the month.	By the 10th of the following month.
	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month..	By the 10th of the following month only if— (ii) 2 consecutive values exceeded 1.0 NTU.
	(3) That a self assessment was conducted within 14 days of the date it was triggered.	(i) By the 10th of the following month (or 14 days after the self assessment was triggered only if the self assessment was triggered during the last four days of the month) only if— (ii) A self-assessment is required.
	(4) That a CPE is required and the date that it was triggered	(i) By the 10th of the following month only if— (ii) A CPE is required.
	(5) Copy of completed CPE report	Within 90 days after the CPE was triggered.
(c) Disinfection Profiling	(1) Results of applicability monitoring which show TTHM levels <0.064 mg/l and HAA5 levels <0.048 mg/l. (Only if your system wishes to forgo profiling) or that your system has begun disinfection profiling.	No later than January 7, 2003.
(d) Disinfection Benchmarking	(1) A description of the proposed change in disinfection, your system's disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark, and an analysis of how the proposed change will affect the current levels of disinfection.	Anytime your system is considering a significant change to its disinfection practice.

§ 141.571 What records does subpart T require my system to keep?

Your system must keep several types of records based on the requirements of subpart T. The following table describes the necessary records, the length of time these records must be kept, and for which requirement the records pertain. Your system is required to maintain records described in this table, if it is subject to the specific requirement shown in the first column. For example, if your system uses slow sand filtration, you would not be required to keep individual filter turbidity records:

Corresponding requirement	Description of necessary records	Duration of time records must be kept
(a) Individual Filter Turbidity Requirements.	Results of individual filter monitoring	At least 3 years.
(b) Disinfection Profiling	Results of Profile (including raw data and analysis)	Indefinitely.
(c) Disinfection Benchmarking	Benchmark (including raw data and analysis)	Indefinitely.
(d) Covered Reservoirs	Date of construction for all uncovered finished water reservoirs utilized by your system.	Indefinitely.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

13. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

14. Section 142.14 is amended by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(ii) introductory text, and (a)(7) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(3) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71, 141.73, 141.173 and 141.175, 141.550–141.553 and 141.560–141.563 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13 of this chapter.

* * * * *

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and the reporting requirements of §§ 141.75, 141.175, and 141.570, of this chapter must be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis under provisions of part 141, subpart H, subpart P, or subpart T of this chapter, must be made in writing and kept at the State.

* * * * *

(7) Any decisions made pursuant to the provisions of part 141, subpart P or subpart T of this chapter.

(i) Records of systems consulting with the State concerning a modification to disinfection practice under §§ 141.172(c), 141.170(d), and 141.544 of this chapter, including the status of the consultation or approval.

(ii) Records of decisions that a system using alternative filtration technologies, as allowed under §§ 141.173(b) and § 141.552 of this chapter, can consistently achieve a 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. The decisions must include State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised. The State must provide a copy of the decision to the system.

(iii) Records of systems required to do filter self-assessment, CPE, or CCP under the requirements of § 141.175 and § 141.562 of this chapter.

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15. Section 142.15 is amended by adding paragraphs (c)(6) and (c)(7) and (c)(8).

§ 142.15 Reports by States.

* * * * *

(c) * * *

(6) Recycle return location. A list of all systems moving the recycle return location prior to the point of primary coagulant addition. The list must also contain all the systems the State granted alternate recycle locations, describe the alternative recycle return location, and briefly discuss the reason(s) the alternate recycle location was granted and is due [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(7) Self assessment determination. A list of all systems performing self assessments must be reported to EPA. The list must state whether individual plants exceeded State approved operating capacity during self assessment monitoring and whether the State required modification to recycle practice. A brief description of the modification to recycle practice required at each plant must be provided. If a plant exceeded State approved operating capacity, and the State did not require modification of recycle practice, the State must provide a brief explanation for this decision. Self assessment results must be reported no later than [DATE 54 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(8) Direct filtration determination. A list of all direct filtration systems recycling within the treatment process must be submitted to EPA. The list must state which systems were required to modify recycle practice and briefly describe the modification and the reason it was required. It must also identify systems not required to modify recycle practice and provide a brief description of the reason modification to recycle practice was not required. The list must be submitted no later than [DATE 54 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

16. Section 142.16 is amended by adding paragraph (b)(2)(v), (b)(2)(vi), and (b)(2)(vii) and (i) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(b) * * *

(2) * * *

(v) The application must describe the criteria the State will use to determine alternate recycle locations for public water systems applying to return spent filter backwash, thickener supernatant,

or liquids from dewatering to an alternate location other than prior to the point of primary coagulant addition.

(vi) The application must describe the criteria the State will use to determine whether public water systems completing self assessments are required to modify recycle practice and the criteria that will be used to specify modifications to recycle practice.

(vii) The application must describe the criteria the State will use to determine whether direct filtration systems are required to change recycle practice and the criteria that will be used to specify changes to recycle practice.

* * * * *

(i) *Requirements for States to adopt 40 CFR part 141, subpart T Enhanced Filtration and Disinfection.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart T Enhanced Filtration and Disinfection, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have rules or other authority to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, the performance improvement phase of the Composite Correction Program (CCP). The State shall determine whether a CTA must be conducted based on results of a CPE which indicate the potential for improved performance, and a finding by the State that the system is able to receive and implement technical assistance provided through the CTA. A CPE is a thorough review and analysis of a system's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance. During the CTA phase, the system must identify and systematically address factors limiting performance. The CTA is a combination of utilizing CPE results as a basis for follow-up, implementing process control priority-setting techniques and maintaining long-term involvement to systematically train staff and administrators.

(2) *State practices or procedures.* (i) Section 141.536 of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines or ozone for primary disinfection.

(ii) Section 141.544 of this chapter—How the State will approve modifications to disinfection practice.

(iii) Section 141.552 of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, diatomaceous earth filtration, or membrane filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology (or membrane filtration), in combination with disinfection treatment that meets the requirements of § 141.72(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

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Federal Register

Monday,
April 10, 2000

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6564–6]

RIN 2060–AE83

National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On September 21, 1998 (63 FR 50280), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pharmaceuticals Production. On November 17 and 20, 1998, petitions for reconsideration and review of the September 1998 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 12 technical issues and concerns with the rule. Additional issues were raised by intervenors on the side of the petitioners. In this action, EPA proposes amendments to the Pharmaceuticals Production NESHAP to address these issues and to correct any other inconsistencies that were discovered during the review process.

DATES: The EPA will accept comments regarding this proposal on or before May 10, 2000.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–03, Room M–1500, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket: A docket, No. A–96–03, containing information relevant to these proposed amendments, is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket items.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Comments

Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–96–03. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of this proposed rule will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

The regulated category and entities affected by this action include:

Category	NAICS	SIC codes	Examples of regulated entities
Industry	325411 and 325412 Typically 325199	2833 and 2834 Typically 2869	• Producers of finished dosage forms of drugs (e.g., tablets, capsules, and solutions), active ingredients, or precursors. • Producers of material whose primary use is as an active ingredient or precursor.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1250

of the promulgated rule, as well as in the proposed amendments to the applicability sections contained in this proposal. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

We are soliciting comment on the specific proposed amendments to the Pharmaceuticals Production NESHAP that are described below. We are not seeking comment on portions of the Pharmaceuticals Production NESHAP that we are not currently proposing to change.

I. Why Are We Proposing Changes to the Rule?

On September 21, 1998, we promulgated NESHAP for Pharmaceuticals Production as subpart GGG in 40 CFR part 63. On November 17 and 20, 1998, the Pharmaceutical Research and Manufacturers of America (PhRMA) filed petitions for reconsideration and review of the promulgated Pharmaceuticals Production NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *PhRMA* v. *EPA*, 98–1551 (D.C. Cir.). Issues raised by the petitioners included applicability of the rule, definition of a process, the 98 percent reduction requirement for certain process vents, the alternative standard, and recordkeeping requirements. The intervenors raised additional issues regarding the applicability of the rule to specialty chemical manufacturers and the clarity of the rule, especially with respect to the leak detection and repair (LDAR) provisions. On December 21, 1999, the parties filed a motion to lodge a settlement agreement with the court. The settlement agreement established a schedule by which EPA would propose revisions to the NESHAP and the preamble language agreed to by the parties. The settlement agreement provided that EPA would sign proposed rule amendments no later than 60 days after execution of the settlement. The settlement agreement also provided that EPA would sign final rule amendments no later than 180 days after the date on which the proposed amendments were signed. On February 22, 2000, the parties filed a motion to lodge a stipulation to modify the settlement agreement. The parties agreed to change the date by which EPA must sign the proposed rule amendments from 60 to 90 days after the execution of the settlement agreement (March 20, 2000). The date by which EPA must sign the final amendments was not changed (August 21, 2000). Today's proposed amendments address the issues raised by PhRMA and the intervenors of the promulgated Pharmaceuticals Production NESHAP and include corrections and clarifications to ensure that the rule is implemented as intended. Today's proposed amendments also provide some new compliance options, as well as new provisions that would reduce the burden associated with demonstrating compliance. For example, vapor balancing is proposed as a compliance option for storage tanks in § 63.1253(f), and the concept of a standard batch is proposed in § 63.1259(b)(5) that would allow an owner or operator to reduce the amount of recordkeeping by defining an operating scenario based on a range of process operating conditions.

II. What Changes Are We Proposing?

This section of the preamble describes the changes that we are proposing to make to subpart GGG and the rationale for the revisions.

A. Applicability of the Rule

We are proposing three minor changes to §§ 63.1250 and 63.1251 to clarify how applicability determinations are to be reported and what constitutes a new affected source. First, in § 63.1250(a), we are proposing to add a sentence specifying that applicability determinations are to be reported either as part of an operating permit application or as otherwise specified by the permitting authority. This change clarifies how to report applicability determinations. Second, § 63.1250(b) of the Pharmaceuticals Production NESHAP specifies the date after which construction of a dedicated pharmaceutical manufacturing process unit (PMPU) is to be considered a new source, but it did not address reconstructed PMPUs. To correct this oversight, we are proposing additional language in § 63.1250(b) to specify that dedicated PMPUs that are reconstructed after October 21, 1999 are new sources. This date corresponds with the completion of the settlement discussions (see section II.B of this preamble for a discussion of other changes to compliance dates). Third, in § 63.1251, we are proposing to add a sentence to the definition of the term "construction" to specify that adding equipment to a PMPU that is subject to existing source standards does not constitute construction, but it may constitute reconstruction. We are proposing this change to prevent any misinterpretation of the definition.

In addition to these changes, we are also proposing to clarify the intended applicability of the Pharmaceuticals Production NESHAP by revising the definition of pharmaceutical product and related definitions that are used to define the affected source. These changes would clarify when an intermediate is considered a pharmaceutical product and, therefore, subject to the rule.

1. Pharmaceutical Product Definition

We propose to revise the definition of "pharmaceutical product." In the Pharmaceuticals Production NESHAP, the definition of "pharmaceutical product," along with the definitions of "primary use," "active ingredient," and "precursor," are used to identify those manufacturing operations and facilities to which the NESHAP apply. Our intent is that the NESHAP apply to the manufacture of pharmaceutical active ingredients, final dosage products, and the manufacture of precursor chemical(s) whose ultimate primary use is to be subsequently processed through additional chemical transformations and separations into final drug products and pharmaceutical active ingredients. The definition of the term "pharmaceutical product" specifically excludes chemicals that are used as non-reactive solvents, excipients, binders, and fillers in the pharmaceutical manufacturing process. We also did not intend to regulate the manufacture of commodity chemicals under the NESHAP. The following discussion, in conjunction with the clarification in the regulatory text, is provided to assist in properly identifying those operations subject to the NESHAP.

Most pharmaceutical products are produced in a multi-step manufacturing process. Pharmaceutical manufacturers themselves may perform all of the manufacturing steps that take comparatively basic chemicals and transform them into the typically complex molecules that are the active ingredients. The active ingredients are combined with excipients, binders, and fillers to produce finished dosage forms of the drug. Manufacturers might perform all of the steps at one site or they may perform steps at the manufacturer's different production sites. The production of active ingredients and precursors by pharmaceutical manufacturers is always subject to this standard. The sites performing these manufacturing operations are typically described by § 63.1251, paragraph (4) of the pharmaceutical product definition in 40 CFR part 63, subpart GGG, as they usually will have a primary standard industrial classification (SIC) code of 2833 or 2834.

Pharmaceutical manufacturers can also purchase commercially available pharmaceutical active ingredients and intermediates from other manufacturers or chemical brokers and rely on other manufacturers to perform some of the early or intermediate steps in the pharmaceutical manufacturing process. Many chemical manufacturers have divisions that specifically manufacture these pharmaceutical active ingredients and intermediates for sale to pharmaceutical manufacturers. Finally, pharmaceutical manufacturers often contract with another manufacturer to have a particular pharmaceutical intermediate produced. The sites performing these manufacturing operations are typically described by § 63.1251, paragraph (5) of the pharmaceutical product definition in 40 CFR part 63, subpart GGG, and their pharmaceutical manufacturing operations are subject to the Pharmaceuticals Production NESHAP, even though the site's primary operations are chemical production, not pharmaceutical production.

The Pharmaceuticals Production NESHAP are not intended to apply to the manufacture of commodity chemicals which are typically the basic building blocks of the chemicals that eventually become pharmaceutical products. Commodity chemicals are chemicals manufactured and sold in large quantities by chemical manufacturers using their own processes and formulas to meet specifications typically established by the marketplace. Commodity chemicals typically have a wide variety of applications, uses, and customers. The definition of the term "pharmaceutical product" has been clarified to specifically exclude chemicals that are produced in a manufacturing process subject to subparts F and G of 40 CFR part 63, commonly referred to as the Hazardous Organic NESHAP (HON). The remainder of this discussion provides guidance on how to identify chemicals that we consider to be commodity chemicals for the purposes of the Pharmaceuticals Production NESHAP.

First, we consider the chemicals identified in the "Industrial Organic Chemical Use Trees" (Final Report, October 1983, U.S. EPA) to be commodity chemicals (sometimes also referred to as industrial chemicals) that are not regulated by the Pharmaceuticals Production NESHAP. This list, which contains approximately 650 chemicals, is simply an illustration of some of the chemicals that are not regulated by the Pharmaceuticals Production NESHAP. Chemicals listed in subparts NNN and RRR of 40 CFR part 60, many of which are referenced in the chemical use tree report, are also to be considered commodity chemicals. There are also many inorganic chemicals, gases, other organic chemicals and mixtures with non-pharmaceutical uses that are considered commodity chemicals, not active ingredients, and are not covered by the Pharmaceuticals Production NESHAP even though some portion of their production is sold to and used by the pharmaceutical industry. It would not be possible or practical to list all such chemicals in the text of the proposed amendments or in this preamble. The list would be too long and always out of date as new chemicals and mixtures are constantly created and new uses for existing chemicals and mixtures continue to be discovered. We do not intend to bring under the Pharmaceuticals Production NESHAP the manufacture of chemicals which are not produced specifically for use as an active ingredient or as a precursor to the manufacture of an active ingredient and which are not primarily used in the manufacture of pharmaceuticals.

Second, chemicals subject to the inventory update report (IUR) requirement of the Toxic Substances Control Act (TSCA), section 8(a), and the implementing regulations found in 40 CFR part 710 are likely to be commodity chemicals or chemicals that do not have any significant pharmaceutical use and, thus, will not likely be subject to the pharmaceutical standards. Unlike the reference to the chemical tree that broadly applies to the manufacture of the listed chemicals at any site, this paragraph applies to site-specific manufacturing. The IUR requires chemical manufacturers (including importers) to provide information every 4 years about chemical substances they manufacture (including imports) in annual quantities of 10,000 pounds or more at each plant site they own or control. The information required includes company name, plant site location, plant site Dun and Bradstreet number, the identity of the chemical substance, and the production volume of the chemical substance. A material that is regulated by the Food and Drug Administration (FDA) is not a "chemical substance" regulated by TSCA, and as such, would not have to be on the TSCA Inventory and would not be subject to the IUR. If a chemical manufacturing facility is reporting its production of a particular chemical under the IUR, that chemical is most likely a commodity chemical and not primarily an active ingredient or a pharmaceutical precursor. Conversely, the fact that a manufacturer does not have an IUR reporting obligation for a chemical does not necessarily have any bearing on whether the material would be a "pharmaceutical product." For example, under the IUR requirements, chemicals that are manufactured in annual quantities of less than 10,000 pounds do not have to be reported under the IUR, nor do certain polymers, inorganic chemicals, and naturally occurring materials which are not required to be placed on the TSCA Inventory.

We expect that manufacturers of finished drug products and active ingredients will have sufficiently complete knowledge of their products' use to enable them to make applicability determinations that fully comport with our intended implementation of the "pharmaceutical product" definition. Likewise, chemical manufacturing companies who market particular chemicals for use as pharmaceutical intermediates and active ingredients at the time they manufacture a chemical should be able to make accurate applicability determinations (*i.e.*, to know whether the primary use is as a pharmaceutical active ingredient or precursor). We recognize that there may be cases where the customer of the manufacturer does not inform the manufacturer of the intended use of the material due to the customer's interest in protecting its trade secrets or other competitive concerns. Chemical manufacturers who market a chemical as being used in the pharmaceutical industry or manufacture a chemical under a specific contract (toll manufacturing) with a pharmaceutical manufacturer will need to make an applicability determination at the time of manufacturing by considering information about the past and projected use of the chemical, the location to which the chemical is shipped, and other circumstances regarding the production of the chemical.

2. Definition of Precursor

We are proposing to add a definition of "precursor" to more clearly identify what materials are pharmaceutical intermediates. Our intent is to regulate the intermediate materials that are integral to the production of "active ingredients." Typically, pharmaceutical precursors are complex chemicals that have few if any commercially recognized uses outside of the production of pharmaceuticals. We are not aware of the existence of any comprehensive list of pharmaceutical intermediates and even if such a list existed, it would be difficult to keep up-

to-date. As stated above, we do not intend to bring within the Pharmaceuticals Production NESHAP the manufacture of commodity chemicals. We intend for the precursor definition to clarify where this line between pharmaceutical intermediates and commodity chemicals can be drawn.

The term "precursor" means a material produced for the purpose of producing a pharmaceutical product. It does not mean any and every chemical upstream of the finished dosage form or the active ingredient because that would ultimately encompass commodity chemicals. For example, if the pharmaceutical active or intermediate is a chemical ABCD, the precursors are those chemicals specifically produced to manufacture ABCD. If the way this pharmaceutical material is produced is to manufacture the materials AB and CD and then react AB and CD, then the precursors to ABCD are AB and CD. If the raw materials for making AB and CD are chemicals A, B, C, and D, and these chemicals are commodity chemicals or chemicals that have many uses unrelated to pharmaceutical manufacturing, they are not "precursors" for the purposes of the Pharmaceuticals Production NESHAP. Alternatively, if chemicals A, B, C, and D are primarily produced for the purpose of producing AB and CD, then they would be considered precursors and, thus, "pharmaceutical products" under the Pharmaceuticals Production NESHAP.

Materials that are intended to be pharmaceutical intermediates (i.e., precursors) frequently are manufactured according to current Good Manufacturing Practices (cGMP) (21 CFR parts 210 and 211), which have been promulgated by the FDA. The requirement for cGMP is determined by the FDA and the pharmaceutical manufacturer when the drug manufacturing process is first described in a master file or drug application. Considerations the FDA uses in requiring cGMP include the commercial availability of starting materials and how close an intermediate is to the final product form. Once the FDA and the pharmaceutical manufacturer have documented the manufacturing requirements and the process in the master file and/or drug application, this process and the requirements of cGMP must be followed no matter where the manufacturing process occurs. Thus, chemicals which are required to be manufactured according to cGMP, as shown in the master file or drug application for the ultimate active ingredient or drug product, would be considered precursors. However, a chemical may be manufactured under cGMP for reasons other than because the chemical is a precursor or active ingredient. Chemicals intended for use as binders, excipients, or fillers may be manufactured under cGMP, but these materials are excluded from coverage under the Pharmaceuticals Production NESHAP. Other chemicals or materials manufactured under cGMP are not covered by the Pharmaceuticals Production NESHAP because they do not meet the definition of an "active ingredient" (*e.g.*, food, food additives, color additives, in-vitro diagnostic substances, x-ray file, test indicator devices, and medical devices such as implants, artificial joints, surgical bandages, and stitching materials).

3. Definition of Primary Use

We are proposing changes to the primary use criteria that apply to active ingredients and precursors to avoid the unintended regulation of chemical manufacturing processes that produce chemicals that have a minor use as a pharmaceutical active ingredient or precursor. If greater than 50 percent of the projected use of a material produced by a chemical manufacturing site will be either as an active ingredient or a precursor to an active ingredient, then the material is a "pharmaceutical product," and the manufacturing operation is subject to regulation under the Pharmaceuticals Production NESHAP for the period of time it is manufacturing that material. A number of other Clean Air Act (CAA) standards have in place some type of 50 percent test to classify the manufacturing operation for regulatory applicability purposes.

A chemical manufacturer will have to consider information about past and projected uses of a chemical that is not a commodity chemical to determine whether the chemical's primary use is as a pharmaceutical product. A manufacturer should consider specific information about how its customers are using a material, if that information is available to the manufacturer. Otherwise, the chemical manufacturer will have to make assumptions about uses depending on who the customers are and based on the nature of the chemical. For example, if the manufacturer is manufacturing a chemical that is an intermediate (i.e., a chemical that will be used in a process to produce other chemicals), then the manufacturer should consider what products the customer manufactures. If the customer manufacturers pharmaceutical products (*i.e.*, has operations covered under SIC codes 2833 and 2834), the chemical manufacturer may inquire as to whether the chemical is used to manufacture an active ingredient or precursor or may assume that some or all of the chemical intermediate sent to the customer may be used as an active ingredient or precursor and produce that material subject to the Pharmaceuticals Production NESHAP. If the material sent to the same customer is not an intermediate, but rather a trade name product with a specific use or set of uses and that use or those uses would not be as an active ingredient, or as a precursor, then that quantity would not have to be considered as having a pharmaceutical use. For example, shipping a heat transfer fluid or cooling tower water treatment chemical to a pharmaceutical manufacturer does not create the presumption that the chemical is being used in the manufacture of pharmaceutical products in such a manner as to bring its manufacture under the Pharmaceuticals Production NESHAP.

The period of time to use for making the primary use determination will vary depending on the circumstances under which the chemical is manufactured. For example, if a chemical is manufactured under a specific contract with a customer or customers, then the projected use of the chemical by the customers during the period of time of the contract would be considered. Another example would be if a chemical is produced in a single campaign. The manufacturer will have to consider its customer's projected use at the start of the campaign for the material based on how the manufacturer markets the chemical and other available information to determine whether greater than 50 percent of the chemical to be produced in the upcoming campaign will be used as a pharmaceutical product, in which case the manufacturing operation would be subject to the Pharmaceuticals Production NESHAP. For the situation in which a material is manufactured on a continued basis, the primary use determination should be based on a projected annual use.

To make the primary use determination, the chemical manufacturer will use the total amount of the chemical projected to be produced over each specified period of time as the denominator, and then use as the numerator the amount of that chemical that is projected to be either used as an active ingredient and/or as a precursor for the same period of time. The chemical manufacturer will exclude from the numerator the amount of material that is used for non-

pharmaceutical uses and the amount used in the pharmaceutical industry for such uses as an excipient, binder, filler, or non-reactive solvent.

4. Definition of Active Ingredient

We are proposing to clarify the definition of "active ingredient" by identifying some of the materials that are not intended to come within the scope of this term. Because the definition of the term "active ingredient" is based on terminology used by the Federal Food Drug and Cosmetic Act, the language of what is excluded is also borrowed from that. Excluded from the definition are foods, food additives (other than vitamins and materials described in SIC codes 2833 and 2834), color additives, in-vitro diagnostic substances, x-ray film, test indicator devices, and medical devices such as implants, artificial joints, surgical bandages, and stitching materials. We never intended for the manufacture of these materials to be subject to the Pharmaceuticals Production NESHAP. The Pharmaceuticals Production NESHAP were developed to regulate the emissions from manufacturing processes that produce active ingredients and precursors.

B. Compliance Dates

1. Existing Sources

The Pharmaceuticals Production NESHAP promulgated on September 21, 1998, specifies that existing sources must be in compliance with the NESHAP no later than September 21, 2001, unless an extension is granted in accordance with § 63.1250(f)(4). We are proposing a new compliance date of October 21, 2002 because the proposed amendments are sufficiently far reaching and complex that an amended rule would effectively be a new rule warranting a new compliance date.

Section 112(a)(3) of the CAA provides that existing sources are to be in compliance with applicable emission standards "as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard." The September 21, 1998, Pharmaceuticals Production NESHAP specifies a compliance date 3 years from the issuance of that rule. Section 112(d)(6) provides authority for the Administrator to revise the emission standards issued under section 112 "no less often than every 8 years." We believe the authority to revise the standards inherently includes the authority to set new compliance dates for revised rules. Congress provided us discretion to set a compliance date for existing sources of up to 3 years in order to provide time for retrofitting of controls where necessary. Thus, due to the extensive nature of the proposed amendments, we are proposing a new compliance date.

We believe that 13 months from the otherwise applicable compliance date will be sufficient for all sources to come into compliance with the proposed amendments. However, should any source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, each source may request an extension of up to 1 year in accordance with § 63.1250(f)(6) of the proposed amendments.

2. New Sources

The Pharmaceuticals Production NESHAP specifies that new sources must comply with the NESHAP on September 21, 1998, or upon startup, whichever is later. However, an exception to this requirement was also provided. If the Pharmaceuticals Production NESHAP were more stringent than the proposed rule, the owner or operator would have until 3 years after September 21, 1998 to comply with the NESHAP. We are proposing comparable language to address the event that the final amendments would be more stringent than either the Pharmaceuticals Production NESHAP or these proposed amendments. The compliance date for complying with the final amendments and the requirements with which the owner or operator must comply until that date vary depending on the date construction or reconstruction commenced. Separate requirements are proposed for three time periods. In each case, we believe the allotted times, based on the settlement agreement, will be sufficient for all sources to come into compliance with the proposed amendments.

The first set of requirements would apply to new sources that commenced construction or reconstruction between the proposal and promulgation dates (*i.e.*, April 2, 1997 and September 21, 1998) if final amendments were to be more stringent than the Pharmaceuticals Production NESHAP. We are proposing that these sources come into compliance by September 21, 2001, and we are proposing that they comply with the April 12, 1997 proposed rule until that date.

The second set of requirements would apply to new sources that commenced construction or reconstruction between September 21, 1998 and April 10, 2000 if final amendments were to be more stringent than the Pharmaceuticals Production NESHAP. We are proposing that these sources come into compliance by October 21, 2002. In the absence of the proposed amendments, these sources would be required to comply with the NESHAP upon startup. Therefore, we are proposing that they continue to comply with the NESHAP until October 21, 2002.

The third set of requirements would apply to new sources that commence construction or reconstruction between April 10, 2000 and the date the final amendments are published if the final amendments were to be more stringent than the proposed amendments. We are proposing that these sources come into compliance by the date 1 year after publication of the final amendments, and we are proposing that they comply with the NESHAP between startup and the date 1 year after publication of the final amendments.

C. Overlapping Regulations

1. Overlap with Subpart PPP of 40 CFR Part 63

We are proposing to add a new paragraph at § 63.1250(h)(6) that would specify alternative procedures to address overlap situations between the pharmaceuticals NESHAP and the polyether polyols NESHAP in 40 CFR part 63, subpart PPP. This paragraph would specify that an owner or operator may elect to demonstrate compliance with the process vent standards in § 63.1254 by either controlling all process vents within the process by the most stringent requirements in subpart PPP (i.e., § 63.1425(b), (c)(1), (c)(3), (d), and/or (f)), or by identifying those vents that would require control under § 63.1254 and controlling only those vents by the most stringent requirements in subpart PPP. If you own or operate an affected source and you elect to demonstrate compliance with an amended subpart GGG by controlling process vents within the process in accordance with the requirements in subpart PPP, you would still be required to comply with all other requirements in subpart GGG for the corresponding PMPU (e.g., the storage tank, wastewater, and equipment leak standards and their corresponding initial and continuous compliance requirements and recordkeeping and reporting requirements). The proposed paragraph does not simply state that compliance with the requirements of subpart PPP would constitute compliance with an amended subpart GGG because it is possible that certain process vents that require control under an amended subpart GGG would not meet the applicability requirements for

control under subpart PPP. We believe the proposed requirements are reasonable because the control achieved for process vents complying with subpart PPP would be equal to or greater than the control achieved for process vents complying with an amended subpart GGG. In addition, the monitoring, recordkeeping, and reporting requirements for process vents in the two rules are similar.

2. Overlap With Resource Conservation and Recovery Act Wastewater Provisions

We are proposing several changes to § 63.1250(h)(5) to clarify compliance requirements and options for wastewater that is subject to both subpart GGG and 40 CFR parts 260 through 272. Some of the changes are needed because it is possible that the promulgated language could be interpreted to mean that every owner or operator must determine which provisions are the most stringent. This was not our intent. However, we do believe an owner or operator must determine the most stringent requirements if the owner or operator wants to comply with only one of the rules. We believe this determination is necessary because it is not possible to categorically state which rule is the most stringent. One reason for this is that wastewater conditions and systems vary from site to site. Furthermore, subpart GGG includes requirements for individual drain systems, but 40 CFR parts 260 through 272 do not.

To clarify our intent, we are proposing to delete the last sentence in the section, state in the first sentence that the owner or operator "may elect to determine" which provisions are the most stringent, and add several new statements. One of the new statements specifies that compliance with provisions of 40 CFR parts 260 through 272 that are determined to be more stringent than the requirements of subpart GGG constitutes compliance with subpart GGG. As an example of more stringent requirements that constitute compliance with subpart GGG, a second statement cites the provisions of 40 CFR parts 260 through 272 for treatment units that meet the conditions specified in § 63.1256(g)(13). This example may help to reduce the burden of making a stringency determination. To address a reporting oversight in the Pharmaceuticals Production NESHAP, the third proposed statement would require the owner or operator to identify in the Notification of Compliance Status report both the more stringent provisions of 40 CFR parts 260 through 272 with which the owner or operator will comply, and the information and procedures used to make any stringency determinations. The last of the proposed new statements specifies that § 63.1250(h)(6) does not apply if the owner or operator elects not to determine which provisions are the most stringent, and that the owner or operator must comply with the provisions in both rules. Finally, we are also proposing minor editorial changes to clarify our intent.

3. Overlap with Subpart I

Section 63.1250(h)(4) specifies procedures for equipment that is subject to both subpart GGG and 40 CFR part 63, subpart I. We are proposing several editorial changes to this section to clarify that, for equipment subject to both rules, an owner or operator may elect to comply with either the provisions in § 63.1255 or with the provisions in subpart H of 40 CFR part 63.

4. Overlapping Requirements for Offsite Cleaning and Reloading Facilities

Section II.J. of this preamble describes proposed vapor balancing provisions for storage tanks. One of these provisions is that offsite reloading and cleaning facilities must control emissions from railcars and tank trucks used in vapor balancing at the affected source by either connecting them to a closed vent system with a control device that reduces emissions by 90 percent by weight, or by connecting them to a vapor balancing system during reloading. However, we are proposing to add a new paragraph at § 63.1250(h)(1)(ii) to state that an offsite reloading or cleaning facility in compliance with all of the control requirements of any other standard in 40 CFR part 63 is in compliance with the requirements of subpart GGG.

D. Definition of Process

We are proposing to revise the definition of the term "process" in order to achieve a more uniform and replicable entity for basing applicability of the rule. The Pharmaceuticals Production NESHAP uses the concept of a process as the defining entity for applicability. The NESHAP require that the owner or operator consider emissions from all sources within a process in order to determine what requirements apply. Therefore, it is important to the overall effectiveness and uniformity of the NESHAP that the definition of process is consistently applied across the industry.

In the April 2, 1997, proposed rule, the definition of process included the concept of isolated intermediates, which was intended to encompass essentially the same set of unit operations that we are proposing today. However, during the public comment period following proposal, some commenters objected to the requirement that material be removed from the process equipment in order to be considered an isolated intermediate. Other commenters believed the concept of isolated intermediates was unnecessary; they believed that all operations leading to the production of a final pharmaceutical product could be considered a single process. In addition, we realized that the definition of isolated intermediate could be problematic because it could be interpreted in many ways. To address these concerns we decided to eliminate the concept of isolated intermediates from the definition of process for the promulgated rule. We also revised the definition to consider all operations leading up to a final pharmaceutical product, except in two circumstances. One exception is where an intermediate is used to manufacture more than one product, and the second is where an intermediate is stored for more than 30 days before subsequent processing. Although we made these changes in an effort to eliminate confusion in how to define a process, the changes had other, unintended consequences.

Since promulgation, we have learned that the 30-day storage provision could lead to different interpretations of the number of operations considered within the same process boundaries. For example, the period for which a given intermediate could or would be stored prior to further processing might vary according to production scheduling depending upon availability of materials and processing equipment, demand, and other reasons. The 30-day holding time could therefore result in constantly changing, unpredictable, and unrepeatable process boundaries. We also now realize that including all intermediate steps in the definition of process may have the same effect. This could occur because not all intermediate steps are manufactured in the same process sequence or at the same facility all the time. Nonrepeatable process boundaries are problematic because they could result in inconsistencies in the way in which the NESHAP is implemented.

To address these concerns, we are proposing to eliminate the 30-day storage provision and redraw the boundaries of a process around a more repeatable unit. The unit we selected is that of the single process "step" that results in the production of a pharmaceutical product, which could be an isolated intermediate, active

ingredient, or final dosage form of drug. The defining characteristic of the proposed process definition is that it considers all unit operations associated with generating one or more materials that are stable, isolated, and ultimately stored (see definition of product and isolated intermediate). The concept of storage has intentionally not been defined by a period of time to prevent problems comparable to those caused by the 30-day storage period in the promulgated definition. Moreover, the intent of the storage reference in the definition of isolated intermediate is to draw the boundaries of the process around the unit operations that generate a product that is stored at any time (see discussion of isolated intermediate in section II.E of this preamble). These proposed changes provide a more clearly defined final step for a process than in the originally proposed definition. In addition, because of the proposed facilitywide cap on emissions from process vents for which the owner or operator complies with the annual mass emission limit (see section II.G. of this preamble), any incentive to create additional processes would be minimized.

As a result of this proposed change in the definition of process, we are proposing changes to other provisions to ensure that an amended rule would provide the same level of emissions reductions as the promulgated rule. For details on these other proposed changes, see discussions on definition of storage tank, annual mass emission limit standards for process vents, pollution prevention (P2) provisions, and wastewater load cutoffs in sections II.F., II.G., II.K., and II.M., respectively.

E. Definition of Isolated Intermediate

As part of the change in the definition of process, we are proposing to add the term "isolated intermediate." The purpose of the term "isolated intermediate" is to provide a bright line guide for identifying the boundaries between processes. This definition, in conjunction with the definition of "process," simply provides that a process ends when an intermediate compound is placed in equipment that is used solely within the given process for purposes of storage. For example, if a compound is produced in Reactor A and then transferred directly to Reactor B, where a subsequent reaction takes place, then Reactor A and Reactor B belong to the same process because the product of Reactor A is not placed in storage equipment prior to further processing. This would be true even if two or more batches from Reactor A must be accumulated in Reactor B prior to initiating the reaction in Reactor B. As another example, assume that the compound produced in Reactor A is sometimes put into drums for temporary storage prior to subsequent processing in Reactor B. In this case, the drum storage marks the end of a process, and Reactor B represents the beginning of the next process. This would be true even if the storage is for a short time and even if the material is drummed off infrequently. All that matters for the purposes of identifying the process boundary is that storage occurs. It may sometimes be necessary to put off-spec material into storage for the period until it can be reprocessed or disposed of. We do not intend that infrequent, unplanned events such as these should create process boundaries.

F. Definition of Storage Tank

To be consistent with the proposed changes to the definition of "process," we are also proposing to revise the definition of "storage tank." The promulgated definition of "storage tank" specifies that a storage tank contains either a feedstock or a product of a process (*i.e.*, on a process flow diagram, a storage tank is located on one side of the process—either before or after it). Process tanks are tanks within a process; the tanks receive material from the process and discharge material to the same process (*i.e.*, they would have the process on both sides). Because the promulgated process definition encompassed many processing steps, we believed that the promulgated storage tank definition would mostly capture raw material and solvent storage tanks. We believed there would be few product tanks because final products would most likely not contain solvents and would be stored in drums or other containers suitable for small quantities.

However, the proposed process definition would result in far more products of processes, such as isolated intermediates. The vessels storing these products would be considered storage tanks under the promulgated definition, but the characteristics of these tanks would more likely resemble process tanks. Isolated intermediate tanks would most likely have smaller capacities than raw material or solvent storage tanks, would be expected to operate at higher than ambient temperatures, and would be more likely to experience higher throughputs and possibly more constant levels. Emissions from these process tanks could also be linked with the other operations conducted in a process on a per-batch basis. Therefore, we decided to clarify the definition of "storage tank" to include only raw material coming into the process.

We are also proposing to revise the "storage tank" definition to include solvent storage tanks located in tank farms that receive spent solvent from one or more processes. Typically, these tanks (which are generally 20,000 gallons or higher) are considered storage tanks in previous MACT standards; therefore, the proposed change would make the rule consistent with previous rules.

G. Annual Mass Emission Limit Standards for Process Vents

As a result of the proposed change to the definition of "process," we were concerned that the "shortening" of the process might have some unintended consequences relating to a reduction in the amount of HAP emissions reductions resulting from NESHAP. Under the promulgated rule, the owner or operator of an existing source can comply with the annual mass emission limit standard for as many as seven processes. The seven process limit was based on a review of emissions from the industry which showed only 168,000 pounds per year (lb/yr), out of 16,246,000 lb/yr nationwide, were emitted from processes with emissions less than 2,000 lb/yr. On average, there were seven processes per facility that contributed to this 168,000 lb/yr. With the proposed change in the definition of "process," however, an owner or operator could conceivably exempt more emissions than the 168,000 lb/yr that were originally anticipated if they could redraw process boundaries to utilize all 2,000 lb/yr of the exemption per process. An analysis of the database also indicated that, of the approximately 12 million lb/yr reduction of HAP associated with the process vent MACT alternative, about 0.5 million lb/yr of reductions would be attributed to processes left uncontrolled or to processes controlled down to 2,000 lb/yr, and the remaining 11 million lb/yr would be attributed to achieving 93 percent reduction. For the expected 100 facilities in the source category, the amount of emissions exempted by using the 2,000 lb/yr alternative would average 5,000 lbs/yr (2.5 tons) per facility.

The average emissions per facility from processes for which an owner or operator complies with the 2,000 lb/yr limit could be much higher than 5,000 lb/yr, and nationwide emissions reductions could be much lower, under these proposed amendments than under the NESHAP. To prevent this unintended result, we are proposing several changes. One change is to replace the seven process limit with a facilitywide emission limit of 4,000 lb/

yr. This change would not only preserve the emissions reductions originally anticipated from the process definition, but would also simplify the process vent provisions. A second proposed change is to extend the 2,000 lb/yr/process emission limit to include vents in processes where at least one stream was required to meet the 98 percent reduction requirement. Under the promulgated rule, the owner or operator was required to reduce emissions from these "leftover" vents by 93 percent. However, this restriction is no longer necessary because the 4,000 lb/yr facility cap would preserve the intended overall emissions reductions. Similarly, we propose eliminating the 100 lb/yr process *de minimis* cutoff because the 2,000 lb/yr process limit, or the 4,000 lb/yr facility limit, would apply to these processes as well. Finally, we are proposing to express the limits only in metric units (*i.e.,* 900 kilograms per year (kg/yr) and 1,800 kg/yr, respectively).

We are also proposing to replace the 400 lb/yr (uncontrolled) cutoff for new sources with an 1,800 kg/yr (uncontrolled) facility cap. This change was needed because the new source MACT standard would have been more stringent than the existing source MACT standard had the format and emission limit not been changed.

H. 98 Percent Standard for Process Vents at Existing Sources

We are proposing to make changes to the applicability of the 98 percent individual process vent requirement. The promulgated rule requires 98 percent control of emissions from process vents that meet the total resource effectiveness (TRE) criteria. This requirement is accompanied by a "grandfathering" provision that exempts these process vents from the 98 percent control requirement if they were controlled to at least 93 percent prior to the proposal date.

The original basis for the grandfathering provision provided in the promulgated rule is that it was not cost effective to replace existing devices that could meet the floor level of control, 93 percent, for the incremental 5 percent control. However, upon replacement (*i.e.,* starting from scratch after the useful life of the device is over), upgrading from 93 percent to 98 percent control is cost effective. The promulgated rule language inadvertently grandfathered the process rather than the control device. As a result, the promulgated rule has an unintended adverse effect on one segment of the industry (*i.e.,* nondedicated processes). Since nondedicated, multipurpose facilities are constantly undergoing product changes, the introduction of new processes, which could not be grandfathered, would drive these facilities toward replacing existing devices with devices that could meet 98 percent almost immediately. However, for dedicated processes, the promulgated grandfathering provision exempted the existing process from the 98 percent requirement indefinitely.

To correct this unintended inequity, the proposed revisions grandfather the "control device" rather than the process vent. As noted above, an aspect of the original analysis was that it was cost effective to upgrade to 98 percent control when replacing the control device. In addition, further consideration was given to the useful life of a control device. The useful life typically is 10 to 20 years, depending on the type of device. Therefore, today's proposed amendments would require an owner or operator of both types of processes to meet the 98 percent control requirement upon replacement or reconstruction of the control device, or upon reaching a date either 15 years from issuance of a facility's preconstruction permit, or April 2, 2007, whichever is later. This proposed language provides a definite date by which all such devices must be replaced. Thus, in 2007, control devices installed before the Pharmaceuticals Production NESHAP proposal will be more than 10 years old and, on average, should be about at the end of their useful lives.

In addition to these changes, we are also proposing two additional exemptions from the 98 percent control requirement. The first of these proposed provisions is designed to encourage pollution prevention (P2). Specifically, the owner or operator would be exempt from the 98 percent control requirement if the TRE vent is controlled to at least the MACT floor level of control (93 percent), and the production-indexed HAP consumption factor for the process is reduced by at least 50 percent. The second of the new provisions would allow processes containing hydrogenation vents to maintain the level of control achieved on the date of these proposed amendments while requiring at least 95 percent reduction on all other vents within the process. This provision would allow an owner or operator to control processes containing hydrogenation vents at higher levels than the floor, but less than the 98 percent requirement. We are proposing to add this language to address concerns that controlling some hydrogenation vents can be unsafe.

I. The Alternative Standard

We are proposing several changes to the alternative standard. These changes include new terminology and additional language clarifying when HAP concentrations in gas streams exiting control devices must be corrected for dilution. We are also proposing additional procedures for demonstrating compliance that an owner or operator may use in lieu of the concentration corrections. The following discussion describes our rationale for developing an alternative standard, summarizes our reasons for requiring concentration corrections and how these requirements were included in the promulgated rule, and describes our proposed changes to the alternative standard.

1. Rationale for an Alternative Standard

The Pharmaceuticals Production NESHAP and today's proposed amendments contain several options that allow an owner or operator to meet a concentration cutoff at the outlet of a control device as a means of achieving compliance with the standards. The most common option is referred to as the alternative standard which requires continuous (15-minute) monitoring of control device outlet concentration. The alternative standard also enables compliance to be evaluated at a single point (the outlet of the device) regardless of how many processes or unit operations are tied into the control device inlet. In addition, only one violation per day is assigned for each device complying with the alternative standard. In contrast, compliance with other options is evaluated on a process basis even if multiple processes are tied into a common control device. If monitoring parameters for these devices are exceeded, these exceedances could result in one violation per process per day. Therefore, the alternative standard is viewed as a critical element of the NESHAP and proposed amendments for end-of-line control devices that service numerous unit operations and processes, and it is expected to be utilized widely by the industry.

2. Correcting Concentrations for Dilution

In establishing the alternative standard, we were concerned that an owner or operator could use dilution as a means of achieving compliance with the standard. Although this practice is addressed in the General Provisions (see § 63.4(b)), we recognize that there are valid circumstances where air or inert gases are introduced into manifolds for safety and design considerations, and that these practices should not be

viewed as strictly prohibited by the above-referenced passage in the General Provisions if the effect of adding these gases can somehow be considered. Therefore, we sought to address these situations in the proposed amendments in several ways.

In § 63.1257(b)(6), the NESHAP requires that concentration measurements "be adjusted to negate the dilution effects of introducing nonaffected gaseous streams into the vent streams prior to control or measurement * * *." One of the intended results of this language was to require owners or operators complying with the alternative standard to adjust their measured concentrations by considering the amount of diluent gas introduced into the system prior to comparing this value against the concentration limit. (Another intended result of § 63.1257(b)(6) was to consider diluent gases in defining a process vent—process vents must contain at least 50 parts per million by volume (ppmv) HAP, on an undiluted and uncontrolled basis.)

Another requirement addressed combustion devices specifically. Because combustion devices operate such that the characteristics of the incoming stream are chemically changed, a simple correction for dilution at the inlet of the device will not directly and proportionally correct the concentration at the outlet of the device. Therefore, for combustion devices, the NESHAP also requires that an owner or operator consider dilution by correcting the outlet concentration to 3 percent oxygen (see § 63.1257(a)(3)). The NESHAP further states in § 63.1257(d)(3)(ii) that this correction should be made when the control device is a combustion device that uses supplemental combustion air.

The intent of the provisions described above was to require the correction only when nonaffected streams (*i.e.*, diluent gases or supplemental combustion air) were introduced into the vent or manifold. However, supplemental combustion air was not specifically defined, and the location of the referenced language (under the process vent compliance determination procedures, rather than the general compliance determination procedures) made the intent of this requirement somewhat unclear.

The 3 percent correction factor was first used in the new source performance standards (NSPS) for air oxidation unit processes, distillation operations, and reactor processes in the synthetic organic chemical manufacturing industry (40 CFR part 60, subparts III, NNN, and RRR), and later, the HON. The value of 3 percent originates from good engineering practices. For the oxygen deficient streams found in these industries, if the proper amount of supplemental combustion air is added, the outlet stream would contain approximately 3 percent oxygen. The concept of requiring the correction to 3 percent oxygen only when supplemental combustion air is used has a precedent in the Polymer Manufacturing NSPS (40 CFR part 60, subpart DDD). In the development of that standard, commenters suggested that requiring the 3 percent correction factor for high volume, low concentration streams would make compliance with a 20 part per million by volume (ppmv) outlet concentration standard difficult. We responded by identifying situations where additional air was added to the vent streams (*e.g.*, supplemental combustion air) prior to the control devices and required the correction only when these situations were encountered. In other words, if the vent streams originating from the processes and affected sources themselves were high volume, low concentration, then no correction was required. However, if nonaffected streams were added prior to control, then the NESHAP requires the correction.

This same concept was incorporated into the Pharmaceutical MACT. However, as mentioned previously, the promulgated rule was not clear on several aspects of the requirement, including the definition of supplemental combustion air, and when the requirement to correct to 3 percent oxygen should apply. In addition, the predominant reasons pharmaceutical facilities add excess air or other diluents to manifolds is not to provide the supplemental air necessary for combustion of emissions streams (the high volume, low concentration streams in the pharmaceuticals industry, by their very nature, should not require additional air for combustion), but rather for safety and design considerations. We also recognize that for these high oxygen streams, the correction requirement has the effect of lowering the 20 ppmv compliance level, perhaps significantly.

3. Proposed Changes in Terminology and Dilution Correction Requirements

To clarify the dilution correction requirements, we are proposing to revise terminology, to use the new terminology in the provisions describing the conditions under which outlet concentrations from combustion devices must be corrected, to explicitly state the procedures for correcting outlet concentrations from noncombustion devices, and to increase the compliance level for noncombustion devices from 20 ppmv to 50 ppmv.

In today's proposed amendments, we define a more general term called "supplemental gases." This term distinguishes air added to the vent stream for combustion and gases added for design or safety purposes from the affected vent streams and air required to operate combustion device burner(s). In addition, because this is a general term, it applies in all situations; it is not limited to combustion devices. The definition also clarifies that air used to operate combustion device burner(s) is not considered supplemental gas. Failure to include this clarification could allow the interpretation that every combustion device uses supplemental gases.

Using this new terminology, we are proposing to revise the current compliance option for combustion devices to require that the correction to 3 percent oxygen be made in cases where supplemental gases are added to affected streams prior to combustion. For noncombustion devices, we are proposing to add a new § 63.1257(a)(3)(ii) requiring correction to adjust outlet concentrations by the amount of supplemental gas added. This was the intent of the language in the promulgated rule. In addition to these changes, we are proposing to increase the concentration limit for noncombustion devices from 20 ppmv to 50 ppmv to be consistent with the definition of a process vent. This change would also provide a greater allowance to meet the concentration limit for devices that are perceived to be more environmentally-friendly in terms of potential for material recovery and the minimizing of secondary air pollution.

We believe an explanation of how to determine which streams are supplemental gases is warranted at this point. We are not requiring owners and operators to measure the concentration of total organic compounds (TOC) in gas streams. The proposed definition of supplemental gases indicates that process knowledge is adequate in identifying such streams. We intend that the owner or operator can qualitatively identify these streams based on their knowledge of the process and use reasonable judgement in estimating TOC or HAP concentrations. Similarly, these proposed amendments also allow owners and operators to use process knowledge in identifying affected process vents (defined by containing 50 ppmv HAP) and affected wastewater streams (defined by containing 5 ppmw HAP and a load of at least 0.05 kg/yr).

For characterizing affected wastewater, two "process knowledge"-based approaches, the use of a mass balance, and the use of published water solubility data are identified as adequate for determination of HAP wastewater concentrations. For defining process vents, these proposed amendments state that process knowledge that no HAP are present in an emission stream or the use of engineering assessments are both allowable approaches. Consistent with other guidance on process knowledge, the proposed amendments define engineering assessments broadly in § 63.1257(d)(2)(ii) and do not specify exact procedures or formulas for determining vent stream characteristics. In many cases, the exercise of identifying process vents will also result in identification of supplemental gases.

4. Proposed Alternative to HAP Concentration Correction for Combustion Devices

In addition to the proposed clarification of the 3 percent oxygen correction factor for combustion devices, we are also proposing to add an option that would allow owners and operators to monitor combustion devices for good operating practices in lieu of correcting to 3 percent oxygen when supplemental gases are used. The 20 ppmv concentration limit is based on concentrations achievable by properly operated incinerators—those with adequate residence times and combustion chamber temperatures. With the additional constraints of maintaining residence times and combustion chamber temperatures, owners and operators have economic incentives to minimize the amount of supplemental gases that are introduced prior to combustion devices. Nevertheless, we believe that it is reasonable to allow for monitoring of parameters in lieu of correcting to 3 percent oxygen when supplemental gas is added.

Therefore, we are proposing two sets of parameter levels as alternatives to correcting for dilution when supplemental gases are used in combustion devices. If the owner or operator complies with the alternative standard instead of a percent reduction requirement of 95 percent or less (*e.g.*, for some process vents and storage tanks), the owner or operator would be required to monitor for a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760°C. These values are consistent with parameters specified in subpart GGG for controlling emission streams from vents at wastewater collection and treatment systems. If the owner or operator complies with the alternative standard instead of a percent reduction requirement of 98 percent, the owner or operator would be required to monitor for a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C. Based on a considerable amount of data, we have concluded that properly designed and operated incinerators reduce emissions by 98 percent if they maintain these residence times and temperatures.

5. Proposed Alternative to HAP Concentration Correction for Noncombustion Devices

In addition to the proposed clarification of the concentration correction requirements described above, we are proposing an option to allow owners and operators of "dense gas" systems a simplified procedure for correction. Dense gas systems are defined as systems that are designed and operated to limit oxygen levels to less than 12 percent. We are proposing the simplified correction for dense gas systems because these systems are generally used to convey concentrated streams (above 5,000 ppmv). The proposed procedure would allow owners and operators to calculate a system flowrate setpoint. This setpoint is an indicator of stream concentration and would be monitored to demonstrate that significant dilution is not occurring. The owner or operator of a dense gas system would also be able to choose to operate at a higher flowrate than the system setpoint by making a concentration correction.

J. Vapor Balancing for Storage Tanks

We are proposing to allow vapor balancing in conjunction with the use of a pressure setting to comply with the storage tank control requirements. The vapor balancing provisions also would require that displaced vapors from the tank trucks and railcars be controlled at the reloading or cleaning facility to at least 90 percent or be vapor balanced. To demonstrate compliance with the offsite provisions, the owner or operator must obtain a certification from the cleaning and reloading facility indicating that the control requirements will be met. In general, a pressure setting of at least 2.5 pounds per square inch gage (psig) was determined to eliminate breathing losses from tanks that are typically found in this industry. As a means of demonstrating continuous compliance with the pressure setting requirement, the proposed provisions would also require the owner or operator to record the pressure vent setting during each transfer operation and to monitor the pressure relief valve on a quarterly basis to ensure no breathing losses.

K. Wastewater Standards

We are proposing several changes to the wastewater provisions. Because the proposed change in the definition of process reduces the number of steps in a process, we are proposing to reduce the wastewater load point of determination (POD) cutoffs in § 63.1256(a)(1)(i) from 1 megagram per year (Mg/yr) per process to 0.25 Mg/yr per process.

In § 63.1256(a)(5), we are proposing to clarify the offsite wastewater treatment options. Under the Pharmaceuticals Production NESHAP, offsite treatment was allowed only if the wastewater contained less than 50 ppmw of partially soluble HAP to prevent discharges that could result in significant volatilization of HAP prior to treatment. Since this objective would be met if the wastewater or residual is always managed and treated, we are proposing to add a provision to allow the wastewater to be discharged if the transferee (*i.e.*, the company or other organization accepting the discharged wastewater or residual) certifies that the wastewater or residual will be managed and treated in accordance with an amended subpart GGG. The 50 ppmw limit would still apply if this certification is not obtained, but we are also proposing to clarify the management and treatment requirements for these streams. The treatment options would be either enhanced biological treatment (§ 63.1256(g)(10)) or the 95 percent mass reduction option for biological treatment (§ 63.1256(g)(11)(i), (ii), and § 63.1256 (h)), and the management options would be either to cover the waste management units up to the activated sludge units or to demonstrate that less than 5 percent of the total soluble HAP is emitted from waste management units up to the activated sludge unit.

Another proposed change is to add specific provisions in § 63.1256(a)(3) for maintenance wastewater that differ from the provisions for process wastewater. The proposed provisions are equivalent to the provisions in the HON and other recent rules. They would require an owner or operator to prepare a description of maintenance procedures for management of maintenance wastewater as part of the startup, shutdown, and malfunction plan. Modification of the procedures would be required, as necessary.

L. Equipment Leak Provisions

We are proposing numerous clarifying changes within the LDAR provisions. One set of changes would make the difficult-to-monitor, unsafe-to-monitor, and inaccessible provisions consistent with language used in past and pending regulations (changes made to subpart H of the HON and in the proposed consolidated air rule). These changes would clarify which provisions apply to a given component and how to deal with components that cannot be accessed at any time in a safe manner. Another proposed change is to revise § 63.1255(b) to clarify which provisions in subpart H of the HON apply in these proposed amendments.

M. Pollution Prevention Provisions

We are proposing to add language to § 63.1252(e) that would allow owners and operators to merge processes for the purposes of complying with P2 provisions. This proposed change is being made because of the proposed change in the definition of a process. Our intent with regard to compliance under P2 provisions is that the owner or operator can make the P2 demonstration around the same starting and ending materials, regardless of how many "processes" the manufacture of these materials encompass. For example, consider the sequential manufacturing of four intermediates (A, B, C, and D) and the final product (E). Under the promulgated process definition, these five steps would be considered a single process. However, under the proposed revised definition, there are five processes. The proposed P2 language clarifies that owners and operators are allowed to consider any or all of these processes when demonstrating a reduction in the production-indexed consumption factor, as long as the activities covered under P2 provisions are limited to the same starting and ending materials for the baseline (before) and annual (after) demonstrations. In the above example, therefore, the owner or operator could make the P2 demonstration around processes A through E. Additionally, if the facility eliminated middle products C or D through a process optimization or improvement measure, the owner or operator could take credit for reducing the amount of HAP consumed by these steps. However, we stress that under P2 provisions, eliminating steps within a process by transferring operations elsewhere is not allowed. In addition, because the P2 provisions apply beyond the individual process level, other constraints are needed to make the provisions practical for documentation purposes. The baseline date for merged processes is 1992 (approximately 10 years prior to the compliance date) and merging a nondedicated formulation process or a nondedicated solvent recovery process with another process to claim a reduction from both processes is not allowed.

N. Initial Compliance Demonstration Provisions

1. Use of Equations in the 1978 Control Techniques Guideline (CTG) Document

In § 63.1257(d)(2), we are proposing to revise equations 13, 25, 26, and 33. These equations are used to estimate uncontrolled emissions from heating, depressurization, and vacuum system events. One of the proposed changes is to eliminate the requirement to use an average molecular weight in calculations for emission streams that contain more than one HAP. This change has no effect on the emissions estimates, but it makes the equations look more consistent with the equations in the 1978 CTG, which was our original intent. This change also does not apply to the optional approaches in the NESHAP to calculate emissions from heating and depressurization. We are also proposing to correct equation 33 and add new language that would provide additional flexibility in calculating emissions.

The proposed change to equation 13 (heating) is accomplished by simply removing the average molecular weight variable and adding the individual molecular weight to the summation term in the numerator. The NESHAP also includes instructions on how to modify equation 17 when it is used to calculate the average molecular weight for use in equation 13. The proposed change to equation 13 eliminates the need for these instructions, which were included with the definition of the HAP partial pressure in the variable list for equations 13 through 17. Therefore, we are proposing to delete these instructions.

The steps in the 1978 CTG to calculate emissions from depressurization are inconsistent with each other. Steps 6 through 9 describe how to calculate the ratio of air to total volatile organic compounds (VOC), but step 10 describes how to estimate the mass emissions of individual VOC assuming the previous steps were used to calculate the ratio of air to that individual VOC. We are proposing to replace the average molecular weight in equation 26 with individual compound molecular weights because this is consistent with the final step in the 1978 CTG. It appears this was the intent in the CTG (*i.e.*, procedures to calculate emissions from all other types of emission events are for single compounds), and we understand that this is how many pharmaceutical facilities calculate emissions from depressurization. To be consistent with this change in equation 26, we are also proposing to remove the summations from equation 25 so that it will calculate the average ratio of moles of noncondensables to moles of an individual HAP instead of the average ratio of moles of noncondensables to total HAP.

We are proposing two changes to equation 33, which is used to estimate emissions from vacuum systems. The first change is to replace the variable for the average molecular weight with one for an individual HAP molecular weight. This change alone would make the equation valid for emission streams with a single pollutant. To make the equation valid for multicomponent systems, the portion of the equation that represents the ratio of moles of condensable compounds to moles of noncondensable compounds must be replaced. To calculate the emissions of each HAP individually, the numerator of the revised ratio would be the partial pressure of the individual HAP, and the denominator would be the system pressure minus the sum of the partial pressures of all condensable compounds. Because we want to know the total HAP emissions, the proposed equation 33 multiplies the partial pressure of an individual HAP (in the numerator) by the molecular weight for that HAP, and sums over the number of HAPs in the emission stream.

To provide additional flexibility in calculating emissions, we are also proposing to add a statement in § 63.1257(d)(2)(ii) that would allow an owner or operator to calculate emissions using modified versions of the equations in § 63.1257(d)(2)(i) if they meet two conditions. First, the modified equations must have been used to meet other regulatory obligations. Second, the owner or operator must demonstrate that the results obtained using the modified equations do not affect applicability assessments or compliance determinations under these proposed amendments.

2. Process Condenser Demonstration

We are proposing to revise the initial compliance demonstration procedures for process condensers. These changes exclude from the demonstration requirement any process condensers followed by either secondary condensers that would be considered air pollution control devices or air

pollution control devices complying with the alternative standard. The original compliance procedure for process condensers was promulgated to ensure that owners and operators would accurately characterize uncontrolled emissions. If a process condenser was not operating properly, then the load to a secondary condenser or an air pollution control device (APCD) would be higher than the equations contained in the NESHAP would predict.

However, if a secondary condenser operates to cool a stream down to a temperature that corresponds to the required removal, assuming HAP load is at the level estimated by the equations (even though the load is actually higher because the process condenser doesn't work as anticipated), then the secondary condenser actually removes more HAP than is estimated by the equations and, in effect, accounts for the ineffectiveness of the process condenser. A similar effect occurs for other devices whose monitoring parameters are correlated directly with compliance, such as devices meeting the outlet concentration alternative standard. For these devices, the continuous compliance demonstration (monitoring) procedures will provide an indication that the requirements of the NESHAP are met, regardless of whether the process condenser is effective. However, in cases where no control device follows a process condenser, or where the APCD monitoring is based on testing or design evaluation at worst case conditions, either the validity of monitoring correlated to worst case conditions or actual emissions to the atmosphere depend on the effectiveness of the process condenser. Therefore, these proposed amendments require a process condenser initial demonstration for these cases.

3. Clarification of Worst-Case Testing Conditions

Although we are proposing only a minor change to the language in § 63.1257(b)(8) regarding the testing conditions for batch processes, we believe additional clarification of the intent of the worst-case provisions is warranted. Worst-case conditions are the most challenging conditions that the control device will encounter when used to control emission streams subject to the NESHAP which defines two categories of worst-case conditions: Absolute and hypothetical. Absolute worst-case conditions are based on actual emission stream characteristics. If the most challenging conditions are associated with the maximum HAP load, the NESHAP provides two time periods for defining the absolute worst-case conditions: (1) The period of time when the inlet to the control device contains at least 50 percent of the HAP load in the 8-hour period that contains the maximum HAP load, or (2) The 1-hour period when the inlet to the control device contains the maximum hourly HAP load. If the most challenging conditions are associated with a characteristic(s) other than the maximum HAP load, the absolute worst-case conditions are defined as the 1-hour period when those characteristics occur. The NESHAP cites three examples of such conditions: (1) Periods of time when the emission streams contain the maximum combined VOC and HAP load, (2) periods of time when the emission streams contain HAP(s) that approach limits of solubility for scrubbing media, and (3) periods of time when the emission streams contain HAP(s) that approach limits of adsorptivity for carbon adsorption systems. To determine the absolute worst-case conditions, the owner or operator must develop an emission profile that considers the characteristics of all of the vent streams to the control device, the design and operating characteristics of the control device, and scheduling of processes that generate the emission streams.

Hypothetical worst-case conditions are simulated conditions that are at least as challenging as the absolute worst-case conditions. As with absolute worst-case conditions, the owner or operator must develop an emission profile to determine the hypothetical worst-case conditions. The NESHAP provides two options for developing these emission profiles. One option is to determine the 1-hour period of time with the most challenging actual conditions. After these conditions are defined, the owner or operator must describe the equipment configuration, type of material to be processed, and any other characteristics of the simulated conditions under which test runs will be conducted. The owner or operator must also provide rationale for why the simulated conditions are considered to be as challenging as the most challenging actual conditions. The second option is to develop an emissions profile based on characteristics of the capture and control system that limit the maximum hourly emissions that can be routed to the control device. For example, a fan may limit the flowrate, and the concentration may be limited to a certain percentage of the lower explosive limit before a bypass valve opens.

O. Recordkeeping To Demonstrate Compliance With Process Vent Standards

We are proposing several changes to the recordkeeping and reporting procedures to clarify our intent. The provisions of § 63.1259 originally required owners and operators to calculate uncontrolled and controlled emissions for all processes in the PMPU. However, because some compliance options, such as the alternative standard, do not require such calculations to demonstrate compliance, we are proposing to specify the records required to demonstrate compliance with each option. We are also proposing the concept of a "standard" batch to clarify when uncontrolled and controlled emissions must be recalculated as part of ongoing compliance demonstrations.

The language of § 63.1259(b)(6) in the NESHAP states that the owners or operators must keep records of uncontrolled and controlled emissions per batch for each process. In specifying this recordkeeping requirement, we intended that owners and operators keep detailed records of uncontrolled and controlled emissions for each process to be operated at the facility and the number of batches of each process operated at the facility. In order to demonstrate compliance with the percent reduction requirement, only a showing of the process uncontrolled and controlled emissions would be needed since the ongoing continuous compliance demonstration was achieved through the monitoring of process parameters. Similarly, in order to demonstrate compliance with the 2,000 lb/yr emissions limit, we required records of the number of batches run at the facility, in addition to the controlled emissions, for use in calculating a summation of yearly emissions. However, because each batch in a campaign does not necessarily operate under exactly the same conditions, the emissions may vary from batch to batch. The promulgated rule does not clearly describe how to handle these variations in the continuous compliance demonstration. It could be interpreted to mean that the owner or operator must recalculate emissions for every variation in operating conditions, but this was not our intent.

To clarify our intent, we are proposing to add the concept of a standard batch. The owner or operator would create a standard batch based on a range of operating characteristics and other processing variables that affect emissions. The standard batch would become part of an operating scenario for

the process (*i.e.*, the standard batch consists of the same operating parameters as are required in the operating scenario, but the owner or operator may specify a range instead of only a single, fixed value). The owner or operator would calculate emissions for the standard batch using the characteristics that result in the highest emissions, and these results would be used in the demonstration of initial compliance with the process vent standards. If, during the processing of a particular batch, one such process variable was operated outside of the standard batch, the owner or operator would be required to recalculate uncontrolled and controlled emissions for that batch and demonstrate compliance with an amended subpart GGG. If the batch was operated within the standard batch constraints, then only a record that the batch was operated accordingly would be required.

In establishing the standard batch, owners and operators have flexibility in determining how to identify and record nonstandard batches. For example, the owner or operator should focus on the episodes that affect emissions or control efficiency. Likewise, in some cases, tracking control device parameters would be an adequate means of detecting nonstandard batches. Moreover, insignificant episodes, under the revised standard batch concept, would not require any further monitoring for "nonstandardness" during the operating period. For example, a one-time demonstration would be appropriate where a given process vent handles only a small fraction of the uncontrolled emissions from the given process, or where it is not physically possible to exceed the standard batch conditions. As another example, facilities often have head tanks within their processes. These tanks are used to measure a specified quantity of raw material prior to addition to the reactor or other unit operation. Typically, the capacity of these tanks is small—often no more than 100 or 200 gallons. If operated at ambient conditions, the potential emissions from the tank are limited only by the design capacity of the tank. In this situation, it would be sufficient to make a one-time showing that emissions from filling of the tank to capacity cannot exceed emissions under standard batch conditions.

P. Minor Technical Corrections

1. Tables 1 and 5

In Table 1, we are proposing several changes to clarify how subpart A (the General Provisions) applies to these proposed amendments. Some proposed changes correct inconsistencies. For example, we are proposing to change the requirement to conduct a performance test within 180 days of the compliance date to 150 days to be consistent with the time period to conduct necessary performance tests and submit the Notification of Compliance Status report. Other changes direct the reader to appropriate sections of the NESHAP that contain language related to the specific requirements in the General Provisions. We are also proposing to specify that the preconstruction approval requirement in § 63.5(b)(3) would not apply to facilities that are covered by 40 CFR 52.2454.

In Table 5, we are proposing to delete references to fuel gas systems. We inadvertently included these references in the NESHAP. They should be deleted because we did not include requirements specific to fuel gas systems anywhere in the NESHAP. Our intent is that fuel gas systems are a form of control device, and the requirements for control devices apply. We are also proposing changes to the control requirements for in-process tanks that meet the criteria of § 63.1252(f). Table 5 of the promulgated rule required an owner or operator to maintain a fixed roof on these tanks, and if the tank meets certain criteria, to control vent streams from the tank. However, because the tank is within the process, vents from the tank are also process vents and subject to the process vent standards. To eliminate this overlap, we are proposing to replace the vent stream control requirements in Table 5 with a statement that vents on these tanks are process vents.

2. Definitions

In addition to the changes to definitions described in other sections of this preamble, we are also proposing minor changes to definitions of many other terms to correct errors, improve clarity, or to make them consistent with other regulations.

3. Wastewater Provisions

We are proposing several minor changes and corrections to the wastewater provisions. In § 63.1256(a)(3), we are proposing to add an exemption for wastewater samples of a size not greater than reasonably necessary for the method of analysis. If the owner or operator determines that it is unsafe to perform the required seal gap measurements or inspections of a wastewater tank at the specified time, the HON specifies two compliance options. Although we intended to include both of these options in the promulgated pharmaceuticals rule, one of them was inadvertently left out. Therefore, we are proposing to add § 63.1256(b)(6)(i), which would specify that an owner or operator may measure the seal gaps or inspect the tank within 30 calendar days of the determination that the floating roof is unsafe. In § 63.1256(d)(2), we are proposing to add an option to vapor balance wastewater loading operations from containers back to the process.

In § 63.1256(g)(8), (11), and (12), the promulgated rule specifies that compliance with treatment options must be determined based on a performance test; to be consistent with other rules, we are proposing to clarify that compliance with all treatment options, except open biological treatment, may also be determined using a design evaluation. Paragraphs (g)(8) and (12) in § 63.1256 of the promulgated rule cross referenced two paragraphs that describe compliance procedures for biological treatment; we are proposing editorial changes to clarify which cross referenced section applies to open biological treatment and which applies to closed biological treatment.

Finally, to be consistent with other recent rules, we are proposing to add a provision in § 63.1257(b)(10) that would allow an owner or operator to analyze wastewater using Method 8260, as well as Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992).

4. Emissions Averaging

According to § 63.1252(d)(6) of the promulgated rule, an affected source may include, in emissions averaging groups, no more than 20 storage tanks that are subject to the 90 percent reduction requirement, and no more than 20 storage tanks that are subject to the 95 percent reduction requirement. However, this provision is inconsistent with the policy we established in the HON of limiting to 20 the number of emission points in an emissions average (59 FR 19428, April 22, 1994). Section 63.1257(g) specifies that emissions averaging for storage tanks applies to all storage tanks at an affected source (*i.e.*, all storage tanks are emission points that may be grouped for emissions averaging). Therefore, we are proposing to correct § 63.1252(d)(6) by specifying that not more than 20 storage tanks at an affected source may be included in emissions averaging.

5. Initial Compliance and Monitoring

We are proposing several minor changes and corrections to the initial compliance and monitoring provisions. In § 63.1257(b)(6)(iii), we are proposing to add that Method 26A of appendix A of 40 CFR part 60 may be used to determine hydrogen chloride concentrations, and we are proposing to specify that both Methods 26 and 26A also may be used to determine hydrogen halide and halogen concentrations. In § 63.1257(d)(2)(i)(H), we are proposing a correction to the note associated with equation 36 so that an owner or operator may elect to disregard the effect of time on the emissions and simply assume all HAP in the vapor space are emitted. In § 63.1257(e), (f), and (g), we are proposing to correct symbols used to define variables in several equations, and we are proposing to correct references to several equation numbers. To reduce the burden of demonstrating compliance with the P2 provisions, we are proposing to add a statement in § 63.1257(f) that would allow an owner or operator to calculate the annual HAP consumption factor once per month if more than 10 batches are produced in a month. We are proposing to move equation 61 from § 63.1257(h)(3) to its proper location in § 63.1257(h)(2)(i). In § 63.1258(b)(6)(iii), we are proposing a change to clarify that an exceedance for a flare occurs only upon the loss of all pilot flames. Because we are proposing to change the annual mass emission limit compliance option for process vents by adding an 1,800 kg/yr facilitywide limit, we are also proposing to add a requirement in § 63.1258(c) that owners and operators demonstrate continuous compliance with this limit by calculating daily 365-day rolling summations; this requirement parallels the requirement for demonstrating compliance with the 2,000 lb/yr limits for individual processes. We are also proposing to delete from this paragraph the sentence that describes what will be considered a violation.

6. Recordkeeping and Reporting

The promulgated rule did not include any recordkeeping and reporting requirements for storage tanks with floating roofs. To correct this oversight we are proposing to add requirements to: (1) record the results of each inspection and seal gap measurement, as specified in § 63.123(c) through (e); and (2) submit the results of inspections that detected a failure or seal gap measurements that exceed required limits, as specified in § 63.122(d) through (f). Clearly, these are the same recordkeeping and reporting requirements in the HON, and they have been applied in other rules as well.

To document compliance with the annual mass emission limit for process vents, § 63.1259(b)(4) of the NESHAP requires records of rolling annual total emission calculations, but it did not specify the recordkeeping frequency. Because the NESHAP specifies that the emission limit not be exceeded in any 365-day period, we are proposing to require daily recordkeeping. In addition, we are proposing that this requirement apply to the proposed 4,000 lb/yr facilitywide emission limit, as well as to the 2,000 lb/yr limit for individual processes.

Table 1 in the NESHAP states that § 63.10(b)(2) does not apply to the NESHAP because we have specified applicable records within the NESHAP. We did not include a requirement in the NESHAP to record all maintenance performed on the air pollution control equipment, but these are important records that we should have required. Therefore, we are proposing to add a requirement to record this information in § 63.1259(a)(3)(iii).

We are proposing several statements to clarify our intent. In § 63.1260(e), we are proposing to add paragraphs (6) and (7) to reiterate requirements already stated in § 63.1257(e)(1)(ii) that data used in determining the annual average concentration of wastewater streams must be included in the precompliance report. We are proposing to edit § 63.1260(g)(1)(ii) to clarify when quarterly reporting is required. We are proposing to move a statement from the definition of the term "operating scenario" to § 63.1260(g)(2)(vii) because it deals with information the owner or operator must provide to verify that requirements for new operating scenarios have been met. In § 63.1260(h)(1), we are proposing to add a statement to clarify that process changes for which the owner or operator must submit a notification of process change means the startup of a new process.

7. Units

The NESHAP specifies most emission limits and other numerical requirements in two sets of units. This can create confusion when a parameter meets the value in one set of units but not the other. One approach to resolve this problem would be to specify the values using an unreasonable number of significant figures. However, we are proposing to simply specify all terms using only one set of units.

III. What are the administrative requirements of the rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these proposed amendments do not constitute a "significant regulatory action" because they do not add any new control requirements. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local

governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's proposed amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to these proposed amendments. Thus, the requirements of section 6 of the Executive Order do not apply to today's action.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed amendments to subpart GGG do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate sources subject to these proposed amendments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's proposed amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, this rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the Pharmaceuticals Production NESHAP for any year has been estimated to be approximately $64 million (63 FR 50287, September 21, 1998), and today's proposed amendments do not add new requirements that would increase this cost. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business in SIC code 2833 or 2834 that has as many as 750 employees; (2) a small business in SIC code 2869 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the proposed amendments impose no additional regulatory requirements on owners or operators of affected sources.

Although these proposed amendments will not have a significant economic impact, EPA nonetheless has tried to reduce the impact of the proposed amendments on small entities. Many of the proposed amendments define optional means of compliance. For example, vapor balancing was added as an optional means of compliance for storage tanks, a facilitywide limit on the mass of process vent emissions replaces the limit on the number of processes that may comply with the process-based emission limit, additional compliance alternatives are included for process vents that meet the criteria for 98 percent control, and optional parameter monitoring is included as an alternative to correcting to 3 percent O_2 when supplemental gas is introduced to a dense gas system or a system controlled with a combustion device and the owner or operator complies with the alternative standard. The proposed amendments also include simplified recordkeeping requirements when the owner or operator documents conditions that define a standard batch, and the process is operated within that range of conditions. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1998 NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control No. 2060–0358. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1781.01), and a copy may be obtained from Sandy Farmer by mail at U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740.

Today's proposed amendments to the NESHAP will have no net impact on the information collection burden estimates made previously. An oversight has been corrected by adding recordkeeping and reporting requirements for storage tanks equipped with floating roofs. The promulgated rule only included recordkeeping and reporting requirements for add-on control devices for storage tanks even though add-on control devices and floating roofs were considered in the cost impacts and burden estimates. Also, the proposed amendments clarify the intent of several provisions in the 1998 NESHAP and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed amendments to subpart GGG do not involve the proposal of any new technical standards or incorporate by reference existing technical standards. The EPA welcomes comments on this aspect of these proposed amendments and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 20, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart GGG—National Emission Standards for Pharmaceuticals Production

2. Section 63.1250 is amended by:

a. Revising paragraph (a),

b. Revising paragraph (b),

c. Revising paragraph (c),

d. Revising paragraph (f);

e. Revising paragraph (h)(1);

f. Revising paragraphs (h)(4) and (5); and

g. Adding paragraph (h)(6).

The revisions and additions read as follows:

§ 63.1250 Applicability.

(a) *Definition of affected source.* (1) The affected source subject to this subpart consists of the pharmaceutical

manufacturing operations as defined in § 63.1251. Except as specified in paragraph (d) of this section, the provisions of this subpart apply to pharmaceutical manufacturing operations that meet the criteria specified in paragraphs (a)(1)(i) through (iii) of this section as follows:

(i) Manufacture a pharmaceutical product as defined in § 63.1251;

(ii) Are located at a plant site that is a major source as defined in section 112(a) of the Act; and

(iii) Process, use, or produce HAP.

(2) Determination of the applicability of this subpart shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(b) *New source applicability.* A new affected source subject to this subpart and to which the requirements for new sources apply is: an affected source for which construction or reconstruction commenced after April 2, 1997, and the standard was applicable at the time of construction or reconstruction; or a pharmaceutical manufacturing process unit (PMPU) dedicated to manufacturing a single product that has the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP for which construction commenced after April 2, 1997 or reconstruction commenced after October 21, 1999.

(c) *General provisions.* Table 1 of this subpart specifies and clarifies the provisions of subpart A of this part that apply to an owner or operator of an affected source subject to this subpart. The provisions of subpart A specified in Table 1 are the only provisions of subpart A that apply to an affected source subject to this subpart.

* * * * *

(f) *Compliance dates.* The compliance dates for affected sources are as follows:

(1) An owner or operator of an existing affected source must comply with the provisions of this subpart no later than October 21, 2002.

(2) An owner or operator of a new or reconstructed affected source must comply with the provisions of this subpart on [date of publication of the final amendments] or upon startup, whichever is later.

(3) Notwithstanding the requirements of paragraph (f)(2) of this section, a new source which commences construction or reconstruction after April 2, 1997 and before September 21, 1998 shall not be required to comply with this subpart until September 21, 2001 if:

(i) The requirements of this subpart are more stringent than requirements of this subpart in effect before [effective date of the final rule] and contained in the 40 CFR, part (63.1200-end), edition revised as of July 1, 2000; and

(ii) The owner or operator complies with the requirements published on April 2, 1997 (62 FR 15754) during the period until September 21, 2001.

(4) Notwithstanding the requirements of paragraph (f)(2) of this section, a new source which commences construction or reconstruction after September 21, 1998 and before April 10, 2000 shall not be required to comply with this subpart until October 21, 2002 if:

(i) The requirements of this subpart are more stringent than the requirements of this subpart in effect before [effective date of the final rule]; and

(ii) The owner or operator complies with the requirements of this subpart in effect before [effective date of the final rule] during the period between startup and October 21, 2002.

(5) Notwithstanding the requirements of paragraph (f)(2) of this section, a new source which commences construction or reconstruction after April 10, 2000 and before [date of publication of final amendments] shall not be required to comply with this subpart until [date 1 year after publication of final amendments] if:

(i) The requirements of this subpart are more stringent than the requirements published on April 2, 1997 (62 FR 15754); and

(ii) The owner or operator complies with the requirements of this subpart in effect before [effective date of the final rule] during the period between startup and [date 1 year after publication of final amendments].

(6) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing source up to 1 additional year to comply with section 112(d) standards.

(i) For purposes of this subpart, a request for an extension shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (f)(1) through (5) of this section, except as provided in paragraph (f)(6)(ii) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to sources subject to this subpart.

(ii) An owner or operator may submit a compliance extension request after the date specified in paragraph (f)(6)(i) of this section provided the need for the compliance extension arose after that date and before the otherwise applicable compliance date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include the data described in § 63.6(i)(6)(i)(A), (B), (C), and (D).

* * * * *

(h) * * *

(1) *Compliance with other MACT standards.* (i) After the compliance dates specified in this section, an affected source subject to the provisions of this subpart that is also subject to the provisions of any other subpart of this part 63 may elect to comply with either the provisions of this subpart of the provisions of another subpart governing the maintenance of records and reporting to EPA. The affected source shall identify in the Notification of Compliance Status report required by § 63.1260(f) under which authority such records will be maintained.

(ii) After the compliance dates specified in paragraph (f) of this section, at an offsite reloading or cleaning facility subject to § 63.1253(f), compliance with the emission standards and associated initial compliance, monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 constitutes compliance with the provisions of § 63.1253(f)(7)(ii) or (iii). The owner or operator of the affected storage tank shall identify in the Notification of Compliance Status report required by § 63.1260(f) the subpart of this part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

* * * * *

(4) *Compliance with subpart I of this part.* After the compliance dates specified in this section, an affected source with equipment subject to subpart I of this part may elect to comply with either the provisions of § 63.1255 or the provisions of subpart H of this part for all such equipment. The owner or operator shall identify in the Notification of Compliance Status report required by § 63.1260(f) the provisions with which the owner elects to comply.

(5) *Compliance with other regulations for wastewater.* After the compliance dates specified in this section, the owner or operator of an affected wastewater stream that is also subject to provisions in 40 CFR parts 260 through 272 may elect to determine whether this subpart or 40 CFR parts 260 through 272 contain the more stringent control requirements (*e.g.*, design, operation, and inspection requirements for waste management units; numerical treatment standards; etc.) and the more stringent testing, monitoring, recordkeeping and reporting. Compliance with provisions of 40 CFR parts 260 through 272 that are determined to be more stringent than the requirements of this subpart

constitutes compliance with this subpart. For example, provisions of 40 CFR parts 260 through 272 for treatment units that meet the conditions specified in § 63.1256(g)(13) constitute compliance with this subpart. In the Notification of Compliance Status report required by § 63.1260(f), the owner or operator shall identify the more stringent provisions of 40 CFR parts 260 through 272 with which the owner or operator will comply. The owner or operator shall also identify in the Notification of Compliance Status report required by § 63.1260(f) the information and procedures used to make any stringency determinations. If the owner or operator does not elect to determine the more stringent requirements, the owner or operator must comply with both the provisions of 40 CFR parts 260 through 272 and the provisions of this subpart.

(6) *Compliance with subpart PPP of this part.* After the compliance dates specified in this section, an affected source with equipment in a pharmaceutical manufacturing process unit that is also part of an affected source under subpart PPP of this part may elect to demonstrate compliance with § 63.1254 by controlling all process vents in accordance with § 63.1425(b), (c)(1), (c)(3), (d), and/or (f) of subpart PPP of this part. Alternatively, the owner or operator may elect to determine which process vents must be controlled to comply with the percent reduction requirements of § 63.1254 and control only those vents in accordance with § 63.1425(b), (c)(1), (c)(3), (d), and/or (f) of subpart PPP of this part. For any pharmaceutical manufacturing process unit controlled in accordance with the requirements of § 63.1425 of subpart PPP of this part, the owner or operator must also comply with all other requirements in subpart PPP of this part. In the Notification of Compliance Status report required by § 63.1260(f), the owner or operator shall identify which pharmaceutical manufacturing process units are meeting the control requirements for process vents and all other requirements of subpart PPP of this part, and the owner or operator shall describe the calculations and other information used to identify which process vents must be controlled to comply with the percent reduction requirements of § 63.1254, if applicable.

* * * * *

3. Section 63.1251 is amended by:

a. Revising the definitions for "Active ingredient," Annual average concentration," "Construction," "Consumption," "Excipient," "Large control device," "Pharmaceutical manufacturing operations," "Pharmaceutical product," "Primary use," "Process," "Process tank," "Repaired," "Shutdown," "Small control device," "Startup," "Storage tank." and "Vapor-mounted seal";

b. Removing the definition of "Component";

c. Removing the last sentence from the definition of "Wastewater stream";

d. Revising paragraphs (3) and (8) in the definition for "Operating scenario";

e. Adding definitions in alphabetical order for "Combustion device burner," "Dense gas system," "Isolated intermediate," "Maintenance wastewater," "Precursor," "Reconstruction," "Standard batch," "Supplemental gases," and "System flowrate."

The revisions and additions read as follows:

§ 63.1251 Definitions.

* * * * *

Active ingredient means any material that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. This term does not include food, food additives (except vitamins and other materials described by SIC code 2833 or 2834), color additives, cosmetics, in-vitro diagnostic substances, x-ray film, test indicator devices, and medical devices such as implants, artificial joints, surgical bandages, and stitching material.

* * * * *

Annual average concentration, as used in the wastewater provisions in § 63.1256, means the total mass of partially soluble and/or soluble HAP compounds in a wastewater stream during the calendar year divided by the total mass of the wastewater stream discharged during the same calendar year, as determined according to the procedures specified in § 63.1257(e)(1)(i) and (ii).

* * * * *

Combustion device burner means a device designed to mix and ignite fuel and air to provide a flame to heat and oxidize waste organic vapors in a combustion device.

* * * * *

Construction means the onsite fabrication, erection, or installation of an affected source or a PMPU. Addition of new equipment to a PMPU subject to existing source standards does not constitute construction, but it may constitute reconstruction of the affected source or PMPU if it satisfies the definition of "Reconstruction" in this section.

Consumption means the quantity of all HAP raw materials entering a process in excess of the theoretical amount used as reactant, assuming 100 percent stoichiometric conversion. The raw materials include reactants, solvents, and any other additives. If a HAP is generated in the process as well as added as a raw material, consumption includes the quantity generated in the process.

* * * * *

Dense gas system means a conveyance system operated to limit oxygen levels below 12 percent.

* * * * *

Excipient means any substance other than the active drug or product which has been appropriately evaluated for safety and is included in a drug delivery system to either aid the processing of the drug delivery system during its manufacture; protect, support, or enhance stability, bioavailablity, or patient acceptability; assist in product identification; or enhance any other attribute of the overall safety and effectiveness of the drug delivery system during storage or use.

* * * * *

Isolated intermediate is obtained as the product of a process. An isolated intermediate is usually a product of a chemical synthesis, fermentation, or biological extraction process; several different isolated intermediates may be produced in the manufacture of a finished dosage form of a drug. Precursors, active ingredients, or finished dosage forms are considered isolated intermediates. An isolated intermediate is stored before subsequent processing. Storage occurs at any time the intermediate is placed in equipment used solely for storage, such as drums, totes, day tanks, and storage tanks. The storage of an isolated intermediate marks the end of a process.

* * * * *

Large control device means a control device that controls total HAP emissions of greater than or equal to 10 tons/yr, before control.

* * * * *

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the pharmaceutical manufacturing process unit into an individual drain system in preparation for or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewater include

descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of pumps into an individual drain system, and draining of portions of the pharmaceutical manufacturing process unit for repair. Wastewater from cleaning operations is not considered maintenance wastewater.

* * * * *

Operating scenario, * * *

(3) The applicable control requirements of this subpart, including the level of required control, and for vents, the level of control for each vent;

* * * * *

(8) For reporting purposes, a change to any of these elements not previously reported, except for paragraph (5) of this definition, shall constitute a new operating scenario.

* * * * *

Pharmaceutical manufacturing operations means the facilitywide collection of PMPUs and any other equipment such as heat exchanger systems, wastewater and waste management units, or cooling towers that are not associated with an individual PMPU, but that are located at a facility for the purpose of manufacturing pharmaceutical products and are under common control.

* * * * *

Pharmaceutical product means any of the following materials, excluding any material that is a nonreactive solvent, excipient, binder, or filler, or any material that is produced in a chemical manufacturing process unit that is subject to the requirements of subparts F and G of this part 63:

(1) Any material described by the standard industrial classification (SIC) code 2833 or 2834; or

(2) Any material whose manufacturing process is described by North American Industrial Classification System (NAICS) code 325411 or 325412; or

(3) A finished dosage form of a drug, for example, a tablet, capsule, solution, etc.; or

(4) Any active ingredient or precursor that is produced at a facility whose primary manufacturing operations are described by SIC code 2833 or 2834; or

(5) At a facility whose primary operations are not described by SIC code 2833 or 2834, any material whose primary use is as an active ingredient or precursor.

* * * * *

Precursor means a material that is manufactured to undergo further chemical change or processing to ultimately manufacture an active ingredient or finished dosage form of a drug. This term does not include commodity chemicals produced by the synthetic organic chemical manufacturing industry.

* * * * *

Primary use means 50 percent or more of a material is used for a particular purpose.

Process means all equipment which collectively function to produce a pharmaceutical product or isolated intermediate (which is also a pharmaceutical product). A process may consist of one or more unit operations. For the purposes of this subpart, process includes any, all, or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a pharmaceutical product or isolated intermediate. Cleaning operations conducted are considered part of the process. Nondedicated solvent recovery operations located within a contiguous area within the affected source are considered single processes. A storage tank that is used to accumulate used solvent from multiple batches of a single process for purposes of solvent recovery does not represent the end of the process. Nondedicated formulation operations occurring within a contiguous area are considered a single process that is used to formulate numerous materials and/or products. Quality assurance and quality control laboratories are not considered part of any process. Ancillary activities are not considered a process or part of any process. Ancillary activities include boilers and incinerators (not used to comply with the provisions of § 63.1253, § 63.1254, or § 63.1256(h)), chillers and refrigeration systems, and other equipment and activities that are not directly involved (*i.e.*, they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a pharmaceutical product.

* * * * *

Process tank means a tank that is used to collect material discharged from a feedstock storage tank or unit operation and transfer this material to another unit operation within the process or to a product storage tank. Surge control vessels and bottoms receivers that fit these conditions are considered process tanks. Product storage tanks are considered process tanks and are part of the PMPU that produce the stored material. For the purposes of this subpart, vents from process tanks are considered process vents.

* * * * *

Reconstruction, as used in § 63.1250(b), shall have the meaning given in § 63.2, except that "affected or previously unaffected stationary source" shall mean either "affected facility" or "PMPU." As used in § 63.1254(a)(3)(ii)(A)(*3*), reconstruction shall have the meaning given in § 63.2, except that "source" shall mean "control device."

* * * * *

Repaired means that equipment:

(1) Is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable paragraphs of § 63.1255, and;

(2) Unless otherwise specified in applicable provisions of § 63.1255, is monitored as specified in § 63.180(b) and (c) as appropriate, to verify that emissions from the equipment are below the applicable leak definition.

* * * * *

Shutdown means the cessation of operation of a continuous process for any purpose. Shutdown also means the cessation of a batch process or any related individual piece of equipment required or used to comply with this subpart as a result of a malfunction or for replacement of equipment, repair, or any other purpose not excluded from this definition. Shutdown also applies to emptying and degassing storage vessels. Shutdown does not apply to cessation of a batch process at the end of a campaign, for routine maintenance, for rinsing or washing of equipment between batches, or other routine operations.

* * * * *

Small control device means a control device that controls total HAP emissions of less than 10 tons/yr, before control.

* * * * *

Standard batch means a batch process operated within a range of operating conditions that are documented in an operating scenario. Emissions from a standard batch are based on the operating conditions that result in highest emissions. The standard batch defines the uncontrolled and controlled emissions for each emission episode defined under the operating scenario.

Startup means the setting in operation of a continuous process unit for any purpose; the first time a new or reconstructed batch process unit begins production; for new equipment added, including equipment used to comply with this subpart, the first time the equipment is put into operation; or, for the introduction of a new product/process, the first time the product or process is run in equipment. For batch process units, startup does not apply to the first time the equipment is put into operation at the start of a campaign to

produce a product that has been produced in the past, after a shutdown for maintenance, or when the equipment is put into operation as part of a batch within a campaign. As used in § 63.1255, startup means the setting in operation of a piece of equipment or a control device that is subject to this subpart.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP as raw material feedstocks. Storage tank also means a tank or other vessel in a tank farm that receives and accumulates used solvent from multiple batches of a process or processes for purposes of solvent recovery. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process tanks (including product tanks and isolated intermediate tanks).

Supplemental gases are any gaseous streams that are not defined as process vents, or closed-vent systems from wastewater management and treatment units, storage tanks, or equipment components and that contain less than 50 ppmv TOC, as determined through process knowledge, that are introduced into vent streams or manifolds. Air required to operate combustion device burner(s) is not considered supplemental gas.

* * * * *

System flowrate means the flowrate of gas entering the control device.

* * * * *

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall of the storage tank or waste management unit and the edge of the floating roof and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

* * * * *

4. Section 63.1252 is amended by:

a. Revising the introductory paragraph;

b. Revising paragraph (d)(2);

c. Revising the first sentence in paragraph (d)(5);

d. Revising paragraph (d)(6);

e. Revising paragraph (e) introductory text;

f. Revising the second sentence in paragraph (e)(1); and

g. Adding paragraph (e)(4).

The revisions and additions read as follows:

§ 63.1252 Standards: General.

Each owner or operator of any affected source subject to the provisions of this subpart shall control HAP emissions to the level specified in this section on and after the compliance dates specified in § 63.1250(f). Initial compliance with the emission limits is demonstrated in accordance with the provisions of § 63.1257, and continuous compliance is demonstrated in accordance with the provisions of § 63.1258.

* * * * *

(d) * * *

(2) Only emission sources subject to the requirements of § 63.1253(b)(1) and (c)(1) or § 63.1254(a)(1)(i) or (a)(3) may be included in any averaging group.

* * * * *

(5) Emission points controlled to comply with a State or Federal rule other than this subpart may not be credited in an emission averaging group, unless the level of control has been increased after November 15, 1990 above what is required by the other State or Federal rule. * * *

(6) Not more than 20 processes subject to § 63.1254(a)(2), and 20 storage tanks subject to § 63.1253(b)(1) or (c)(1)(i) at an affected source may be included in an emissions averaging group.

* * * * *

(e) *Pollution prevention alternative.* Except as provided in paragraph (e)(1) of this section, an owner or operator may choose to meet the pollution prevention alternative requirement specified in either paragraph (e)(2) or (3) of this section for any PMPU or for any situation described in paragraph (e)(4) of this section, in lieu of the requirements specified in §§ 63.1253, 63.1254, 63.1255, and 63.1256. Compliance with paragraphs (e)(2) and (3) of this section shall be demonstrated through the procedures in § 63.1257(f). Any PMPU for which the owner or operator seeks to comply by using the pollution prevention alternative shall begin with the same starting material(s) and end with the same product(s). The owner or operator may not comply with the pollution prevention alternative by eliminating any steps of a process by transferring the step offsite (to another manufacturing location).

(1) * * * The hydrogen halides that are generated as a result of combustion control of emissions must be controlled according to the requirements of paragraph (g)(1) of this section.

* * * * *

(4) The owner or operator may comply with the requirements in either paragraph (e)(2) or (3) of this section for a series of processes, including situations where multiple processes are merged, subject to the following conditions:

(i) The baseline period shall be a single year beginning no earlier than the 1992 calendar year.

(ii) The term "PMPU" shall have the meaning provided in § 63.1251 except that the baseline and modified PMPUs may include multiple processes (*i.e.*, precursors, active ingredients, and final dosage form) if the owner or operator demonstrates to the satisfaction of the Administrator that the multiple processes were merged after the baseline period into an existing process or processes.

(iii) Nondedicated formulation and solvent recovery processes may not be merged with any other processes.

5. Section 63.1253 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (d); and

c. Adding paragraph (f).

The revisions and additions read as follows:

§ 63.1253 Standards: Storage tanks.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, the owner or operator of a storage tank meeting the criteria of paragraph (a)(1) of this section is subject to the requirements of paragraph (b) of this section. Except as provided in paragraphs (d), (e), and (f) of this section, the owner or operator of a storage tank meeting the criteria of paragraph (a)(2) of this section is subject to the requirements of paragraph (c) of this section. Compliance with the provisions of paragraphs (b) and (c) of this section is demonstrated using the initial compliance procedures in § 63.1257(c) and the monitoring requirements in § 63.1258.

(1) A storage tank with a design capacity greater than or equal to 38 m^3 but less than 75 m^3 storing a liquid for which the maximum true vapor pressure of total HAP is greater than or equal to 13.1 kPa.

(2) A storage tank with a design capacity greater than or equal to 75 m^3 storing a liquid for which the maximum true vapor pressure of total HAP is greater than or equal to 13.1 kPa.

* * * * *

(d) As an alternative standard, the owner or operator of an existing or new affected source may comply with the storage tank standards by routing storage tank vents to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or

less, and an outlet concentration of hydrogen halides and halogens of 20 ppmv or less. If the owner or operator is routing emissions to a noncombustion control device, it must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 50 ppmv or less. Compliance with the outlet concentrations shall be determined by the initial compliance procedures of § 63.1257(c)(4) and the continuous emission monitoring requirements of § 63.1258(b)(5).

* * * * *

(f) *Vapor balancing alternative.* As an alternative to the requirements in paragraphs (b) and (c) of this section, the owner or operator of an existing or new affected source may implement vapor balancing in accordance with paragraphs (f)(1) through (7) of this section.

(1) The vapor balancing system must be designed and operated to route organic HAP vapors displaced from loading of the storage tank to the railcar or tank truck from which the storage tank is filled.

(2) Tank trucks and railcars must have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars.

(3) Hazardous air pollutants must only be unloaded from tank trucks or railcars when vapor collection systems are connected to the storage tank's vapor collection system.

(4) No pressure relief device on the storage tank, or on the railcar, or tank truck shall open during loading or as a result of diurnal temperature changes (breathing losses).

(5) Pressure relief devices on affected storage tanks must be set to no less than 2.5 psig at all times to prevent breathing losses. The owner or operator shall record the setting as specified in § 63.1259(b)(12) and comply with the following requirements for each pressure relief valve:

(i) The pressure relief valve shall be monitored quarterly using the method described in § 63.180(b).

(ii) An instrument reading of 500 ppmv or greater defines a leak.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but no later than 5 days after it is detected, and the owner or operator shall comply with the recordkeeping requirements of § 63.1255(g)(4)(i) through (iv).

(6) Railcars or tank trucks that deliver HAPs to an affected storage tank must be reloaded or cleaned at a facility that utilizes one of the following control techniques:

(i) The railcar or tank truck must be connected to a closed-vent system with a control device that reduces inlet emissions of HAP by 90 percent by weight or greater; or

(ii) A vapor balancing system designed and operated to collect organic HAP vapor displaced from the tank truck or railcar during reloading must be used to route the collected HAP vapor to the storage tank from which the liquid being transferred originated.

(7) The owner or operator of the facility where the railcar or tank truck is reloaded or cleaned must comply with the following requirements:

(i) Submit to the owner or operator of the affected storage tank and to the Administrator a written certification that the reloading or cleaning facility will meet the requirements of this section. The certifying entity may revoke the written certification by sending a written statement to the owner or operator of the affected storage tank giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the requirements of this paragraph.

(ii) If complying with paragraph (f)(6)(i) of this section, demonstrate initial compliance in accordance with § 63.1257(c), demonstrate continuous compliance in accordance with § 63.1258, keep records as specified in § 63.1259, and prepare reports as specified in § 63.1260.

(iii) If complying with paragraph (f)(6)(ii) of this section, keep records of:

(A) The equipment to be used and the procedures to be followed when reloading the railcar or tank truck and displacing vapors to the storage tank from which the liquid originates, and (B) Each time the vapor balancing system is used to comply with paragraph (f)(6)(ii) of this section.

6. Section 63.1254 is revised to read as follows:

§ 63.1254 Standards: Process vents.

(a) *Existing sources.* For each process, the owner or operator of an existing affected source must comply with the requirements in either paragraphs (a)(1) and (3) of this section or paragraphs (a)(2) and (3) of this section. Initial compliance with the required emission limits or reductions in paragraphs (a)(1) through (3) of this section is demonstrated in accordance with the initial compliance procedures described in § 63.1257(d), and continuous compliance is demonstrated in accordance with the monitoring requirements described in § 63.1258.

(1) *Process-based emission reduction requirement.*

(i) Uncontrolled HAP emissions from the sum of all process vents within a process that are not subject to the requirements of paragraph (a)(3) of this section shall be reduced by 93 percent or greater by weight, or as specified in paragraph (a)(1)(ii) of this section. Notification of changes in the compliance method shall be reported according to the procedures in § 63.1260(h).

(ii) Any one or more vents within a process may be controlled in accordance with any of the procedures in paragraphs (a)(1)(ii)(A) through (D) of this section. All other vents within the process must be controlled as specified in paragraph (a)(1)(i) of this section.

(A) To outlet concentrations less than or equal to 20 ppmv as TOC and less than or equal to 20 ppmv as hydrogen halides and halogens;

(B) By a flare that meets the requirements of § 63.11(b);

(C) By a control device specified in § 63.1257(a)(4); or

(D) In accordance with the alternative standard specified in paragraph (c) of this section.

(2) *Process-based annual mass limit.* (i) Actual HAP emissions from the sum of all process vents within a process must not exceed 900 kilograms (kg) in any 365-day period.

(ii) Actual HAP emissions from the sum of all process vents within processes complying with paragraph (a)(2)(i) of this section are limited to a maximum of 1,800 kg in any 365-day period.

(iii) Emissions from vents that are subject to the requirements of paragraph (a)(3) of this section and emissions from vents that are controlled in accordance with the procedures in paragraph (c) of this section may be excluded from the sums calculated in paragraphs (a)(2)(i) and (ii) of this section.

(iv) The owner or operator may switch from compliance with paragraph (a)(2) of this section to compliance with paragraph (a)(1) of this section only after at least 1 year of operation in compliance with paragraph (a)(2) of this section. Notification of such a change in the compliance method shall be reported according to the procedures in § 63.1260(h).

(3) *Individual vent emission reduction requirements.*

(i) Except as provided in paragraph (a)(3)(ii) of this section, uncontrolled HAP emissions from a process vent must be reduced by 98 percent or in accordance with any of the procedures

in paragraphs (a)(1)(ii)(A) through (D) of this section if the uncontrolled HAP emissions from the vent exceed 25 tons per year, and the flow-weighted average flowrate (FR_a) calculated using Equation 1 of this subpart is less than or equal to the flowrate index (FRI) calculated using Equation 2 of this subpart.

$$FR_a = \frac{\sum_{i=1}^{n}(D_i)(FR_i)}{\sum_{i=1}^{n} D_i} \quad \text{(Eq. 1)}$$

$$FRI = 0.02 * (HL) - 1{,}000 \quad \text{(Eq. 2)}$$

Where:

FR_a=flow-weighted average flowrate for the vent, scfm
D_i=duration of each emission event, min
FR_i=flowrate of each emission event, scfm
n=number of emission events
FRI=flowrate index, scfm
HL=annual uncontrolled HAP emissions, lb/yr, as defined in § 63.1251

(ii) *Grandfathering provisions.* As an alternative to the requirements in paragraph (a)(3)(i) of this section, the owner or operator may comply with the provisions in paragraphs (a)(3)(ii)(A), (B), or (C) of this section, if applicable.

(A) *Control device operation.* If the owner or operator can demonstrate that a process vent is controlled by a control device meeting the criteria specified in paragraph (a)(3)(ii)(A)(*1*) of this section, then the control device is required to be operated according to paragraphs (a)(3)(ii)(A)(*2*), (*3*), and (*4*) of this section:

(*1*) The control device was installed on any process vent that met the conditions of paragraph (a)(3)(i) of this section on or before April 2, 1997, and was operated to reduce uncontrolled emissions of total HAP by greater than or equal to 93 percent by weight, but less than 98 percent by weight;

(*2*) The device must be operated to reduce inlet emissions of total HAP by 93 percent or by the percent reduction specified for that control device in any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I (including parts C or D) of the Clean Air Act, whichever is greater;

(*3*) The device must be replaced or upgraded to achieve at least 98 percent reduction of HAP or meet any of the conditions specified in paragraphs (a)(1)(ii)(A) through (D) of this section upon reconstruction or replacement.

(*4*) The device must be replaced or upgraded to achieve at least 98 percent reduction of HAP or meet any of the conditions specified in paragraphs (a)(1)(ii)(A) through (D) of this section by April 2, 2007, or 15 years after issuance of the preconstruction permit, whichever is later.

(B) *Process operations.* If a process meets all of the conditions specified in paragraphs (a)(3)(ii)(B)(*1*) through (*3*) of this section, the required level of control for the process is the level that was achieved on or before April 2, 1997. This level of control is demonstrated using the same procedures that are used to demonstrate compliance with paragraph (a)(1) of this section.

(*1*) At least one vent in the process met the conditions of paragraph (a)(3)(i) of this section on or before April 2, 1997; and

(*2*) The overall control for the process on or before April 2, 1997 was greater than or equal to 93 percent by weight, but less than 98 percent by weight; and

(*3*) The production-indexed HAP consumption factor for the 12-month period in which the process was operated prior to the compliance date is less than one-half of the 3-year average baseline value established no earlier than the 1987 through 1989 calendar years.

(C) *Hydrogenation vents.* Processes meeting the conditions of paragraphs (a)(3)(ii)(C)(*1*) through (*3*) of this section are required to be operated to maintain the level of control achieved on or before April 2, 1997. For all other processes meeting the conditions of paragraph (a)(3)(ii)(C)(*3*) of this section, uncontrolled HAP emissions from the sum of all process vents within the process must be reduced by 95 percent or greater by weight.

(*1*) Processes containing a process vent that met the conditions of paragraph (a)(3)(i) of this section on or before April 2, 1997; and

(*2*) Processes that are controlled to greater than or equal to 93 percent by weight, but less than 98 percent by weight; and

(*3*) Processes with a hydrogenation vent that, in conjunction with all other process vents from the process that do not meet the conditions of paragraph (a)(3)(i) of this section, cannot meet the requirements of paragraph (a)(1) or (2) of this section.

(b) *New sources.* (1) Except as provided in paragraph (b)(2) of this section, uncontrolled HAP emissions from the sum of all process vents within a process at a new affected source shall be reduced by 98 percent or greater by weight or controlled in accordance with any of requirements of paragraphs (a)(1)(ii)(A) through (D) of this section. Initial compliance with the required emission limit or reduction is demonstrated in accordance with the initial compliance procedures in § 63.1257(d), and continuous compliance is demonstrated in accordance with the monitoring requirements described in § 63.1258.

(2) *Annual mass limit.* The actual HAP emissions from the sum of all process vents for which the owner or operator is not complying with paragraph (b)(1) of this section are limited to 900 kg in any 365-day period.

(c) *Alternative standard.* As an alternative standard, the owner or operator of an existing or new affected source may comply with the process vent standards by routing vents from a process to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 20 ppmv or less. If the owner or operator is routing emissions to a noncombustion control device, it must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 50 ppmv or less. Any process vents within a process that are not routed to this control device must be controlled in accordance with the provisions of paragraph (a) or (b) of this section, as applicable. Initial compliance with the outlet concentrations is demonstrated in accordance with the initial compliance procedures described in § 63.1257(d)(1)(iv), and continuous compliance is demonstrated in accordance with the emission monitoring requirements described in § 63.1258(b)(5).

7. Section 63.1255 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(7);

c. Revising paragraphs (a)(10)(ii) and (iii);

d. Adding paragraphs (a)(11) and (12);

e. Revising paragraph (b);

f. Revising paragraph (c)(2)(i);

g. Revising "paragraph (b)(1)(v)" to read "paragraph (b)(4)(i)" in paragraph (c)(3)(i);

h. Revising the definitions of the terms "P_L" and "P_T" following Equation 3 in paragraph (c)(4)(iv);

i. Removing the definition of the term "P_S" following Equation 3 in paragraph (c)(4)(iv) and adding the definition of the term "P_S" following Equation 3 in paragraph (c)(4)(iv);

j. Revising "paragraph (b)(1)(vi)" to read "paragraph (b)(4)(ii)" in paragraph (c)(5)(i)(B);

k. Revising paragraphs (c)(5)(vi)(B) and (C);
l. Revising paragraphs (c)(6) and (7);
m. Revising paragraph (c)(9);
n. Revising paragraphs (d)(1)(i) and (ii);
o. Revising paragraph (e)(2);
p. Revising paragraph (e)(3) introductory text;
q. Revising paragraph (e)(3)(i);
r. Revising the definition of the term "$\%V_L$" following Equation 5 in paragraph (e)(6)(ii);
s. Revising "paragraph (b)(1)(v)" to read "paragraph (b)(4)(i)" in paragraph (e)(7)(i);
t. Adding paragraphs (e)(7)(iii)(A) through (C);
u. Revising the second sentence in paragraph (e)(9);
v. Revising paragraph (f);
w. Revising paragraph (g)(2) introductory text;
x. Revising paragraph (g)(2)(i)(A);
y. Removing paragraph (g)(2)(v), redesignating paragraphs (g)(2)(vi) through (ix) as paragraphs (g)(2)(v) through (viii), and revising redesignated paragraphs (g)(2)(vi) and (viii);
z. Revising the first sentence in paragraph (g)(3);
aa. Revising paragraph (g)(4) introductory text;
bb. Revising paragraph (g)(4)(iv);
cc. Revising paragraph (g)(4)(v)(A);
dd. Revising "§ 63.174(c)" to read "§ 63.174(c)(1)(i) and (c)(2)(ii)" in the first sentence in paragraph (g)(4)(vii)(B);
ee. Revising "§§ 63.178(c)(3)(ii) and (c)(3)(iii)" to read "§ 63.178(c)(3)(ii) and (iii)" in the first sentence in paragraph (g)(4)(viii);
ff. Revising the first sentence in paragraph (g)(5) introductory text;
gg. Removing paragraph (g)(5)(ii), redesignating paragraphs (g)(5)(iii) through (vi) as paragraphs (g)(5)(ii) through (v), and revising "appendix" to read "section" in the second sentence of redesignated paragraph (g)(5)(ii);
hh. Revising paragraph (g)(6) heading;
ii. Revising the first sentence in paragraph (g)(7) introductory text;
jj. Revising "paragraph (b)(1)(vi)" to read "paragraph (b)(4)(ii)" in paragraph (g)(7)(i)(D);
kk. Revising paragraph (h)(2) heading;
ll. Revising paragraph (h)(2)(i)(B);
mm. Revising "paragraph (b)(1)(ix)" to read "paragraph (b)(4)(iv)" in paragraph (h)(2)(ii);
nn. Revising "paragraph (b)(1)(vi)" to read "paragraph (b)(4)(ii)" in paragraph (h)(2)(iii)(B);
oo. Revising paragraph (h)(2)(iv);
pp. Revising "§ 63.1250(e)" to read "§ 63.1250(f)" in the second sentence in paragraph (h)(3)(i);
qq. Revising paragraph (h)(3)(ii) introductory text;
rr. Revising paragraphs (h)(3)(ii)(C) and (D); and
ss. Revising paragraph (h)(3)(iv);

The revisions and additions read as follows:

§ 63.1255 Standards: Equipment leaks.

(a) * * *

(1) The provisions of this section apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, control devices, and closed-vent systems required by this section that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of this subpart.

* * * * *

(7) Equipment to which this section applies shall be identified such that it can be distinguished readily from equipment that is not subject to this section. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, or by designation of process boundaries by some form of weatherproof identification. If changes are made to the affected source subject to the leak detection requirements, equipment identification for each type of component shall be updated, if needed, within 90 calendar days, or by the next Periodic Report, following the end of the monitoring period for that component, whichever is later.

* * * * *

(10) * * *

(ii) The identification on a valve in light liquid or gas/vapor service may be removed after it has been monitored as specified in paragraph (e)(7)(iii) of this section, and no leak has been detected during the follow-up monitoring.

(iii) The identification on equipment, except on a valve in light liquid or gas/vapor service, may be removed after it has been repaired.

(11) Except as provided in paragraph (a)(11)(i) of this section, all terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual) refer to the standard calendar periods unless specified otherwise in the section or paragraph that imposes the requirement.

(i) If the initial compliance date does not coincide with the beginning of the standard calendar period, an owner or operator may elect to utilize a period beginning on the compliance date, or may elect to comply in accordance with the provisions of paragraph (a)(11)(ii) or (iii) of this section.

(ii) Time periods specified in this subpart for completion of required tasks may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part. For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(iii) Except as provided in paragraph (a)(11)(i) or (ii) of this section, where the period specified for compliance is a standard calendar period, if the initial compliance date does not coincide with the beginning of the calendar period, compliance shall be required according to the schedule specified in paragraph (a)(11)(iii)(A) or (B) of this section, as appropriate.

(A) Compliance shall be required before the end of the standard calendar period within which the initial compliance date occurs if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(B) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance date occurs.

(iv) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during each period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

(12) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this section to fail to take action to repair the leaks within the specified time. If action is taken to repair the leaks within the specified time, failure of that action to successfully repair the leak is not a violation of this section. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by applicable provisions of this section.

(b) *References.* (1) The owner or operator of a source subject to this section shall comply with the provisions of subpart H of this part, as specified in paragraphs (b)(2) through (4) of this section. The term "process unit" as used in subpart H of this part

shall be considered to be defined the same as "group of processes" for sources subject to this subpart GGG. The term "fuel gas system," as used in subpart H of this part, shall not apply for the purposes of this subpart GGG.

(2) Sections 63.160, 63.161, 63.162, 63.163, 63.167, 63.168, 63.170, 63.173, 63.175, 63.176, 63.181, and 63.182 shall not apply for the purposes of this subpart GGG. The owner or operator shall comply with the provisions specified in paragraphs (b)(2)(i) through (viii) of this section.

(i) Sections 63.160 and 63.162 shall not apply; instead, the owner or operator shall comply with paragraph (a) of this section;

(ii) Section 63.161 shall not apply; instead, the owner or operator shall comply with § 63.1251;

(iii) Sections 63.163 and 63.173 shall not apply; instead, the owner or operator shall comply with paragraph (c) of this section;

(iv) Section 63.167 shall not apply; instead, the owner or operator shall comply with paragraph (d) of this section;

(v) Section 63.168 shall not apply; instead, the owner or operator shall comply with paragraph (e) of this section;

(vi) Section 63.170 shall not apply; instead, the owner or operator shall comply with § 63.1254;

(vii) Section 63.181 shall not apply; instead, the owner or operator shall comply with paragraph (g) of this section; and

(viii) Section 63.182 shall not apply; instead, the owner or operator shall comply with paragraph (h) of this section.

(3) The owner or operator shall comply with §§ 63.164, 63.165, 63.166, 63.169, 63.177, and 63.179 in their entirety, except that when these sections reference other sections of subpart H of this part, the references shall mean those sections as specified in paragraphs (b)(2) and (4) of this section. Section 63.164 applies to compressors. Section 63.165 applies to pressure relief devices in gas/vapor service. Section 63.166 applies to sampling connection systems. Section 63.169 applies to pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service. Section 63.177 applies to general alternative means of emission limitation. Section 63.179 applies to alternative means of emission limitation for enclosed-vented process units.

(4) The owner or operator shall comply with §§ 63.171, 63.172, 63.174, 63.178, and 63.180 with the differences specified in paragraphs (b)(4)(i) through (vi) of this section.

(i) Section 63.171, shall apply, except § 63.171(a) shall not apply. Instead, delay of repair of equipment for which leaks have been detected is allowed if one of the following conditions exists:

(A) The repair is technically infeasible without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(B) The owner or operator determines that repair personnel would be exposed to an immediate danger if attempting to repair without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(ii) Section 63.172, shall apply for closed-vent systems used to comply with this section, and for control devices used to comply with this section only, except:

(A) Section 63.172(k) and (l) shall not apply. The owner or operator shall instead comply with paragraph (f) of this section.

(B) Owners or operators may, instead of complying with the provisions of § 63.172(f), design a closed-vent system to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gage or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the associated control device is operating.

(iii) Section 63.174, shall apply except:

(A) Section 63.174(f), (g), and (h) shall not apply. Instead of § 63.174(f), (g), and (h), the owner or operator shall comply with paragraph (f) of this section. Section 63.174(b)(3) shall not apply. Instead of § 63.174(b)(3), the owner or operator shall comply with paragraphs (b)(3)(iii)(B) through (F) of this section.

(B) If the percent leaking connectors in a group of processes was greater than or equal to 0.5 percent during the initial monitoring period, monitoring shall be performed once per year until the percent leaking connectors is less than 0.5 percent.

(C) If the percent leaking connectors in the group of processes was less than 0.5 percent, but equal to or greater than 0.25 percent, during the initial or last required monitoring period, the owner or operator may elect to monitor once every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first 2 years and the remainder of the connectors within the next 2 years. The percent leaking connectors will be calculated for the total of all required monitoring performed during the 4-year period.

(D) Except as provided in paragraph (b)(4)(iii)(B) of this section, if leaking connectors comprise at least 0.5 percent but less than 1.0 percent of the connectors during the last monitoring period, the owner or operator shall monitor at least once every 2 years for the next monitoring period. At the end of that 2-year monitoring period, the owner or operator shall monitor once per year if the percent leaking connectors is greater than or equal to 0.5 percent; if the percent leaking connectors is less than 0.5 percent, the owner or operator shall monitor in accordance with paragraph (b)(4)(iii)(C) or (F) of this section, as appropriate.

(E) If an owner or operator determines that 1 percent or greater of the connectors in a group of processes are leaking, the owner or operator shall monitor the connectors once per year. The owner or operator may elect to use the provisions of paragraph (b)(4)(iii)(C), (D), or (F) of this section, as appropriate, after a monitoring period in which less than 1 percent of the connectors are determined to be leaking.

(F) The owner or operator may elect to perform monitoring once every 8 years if the percent leaking connectors in the group of processes was less than 0.25 percent during the initial or last required monitoring period. An owner or operator shall monitor at least 50 percent of the connectors in the first 4 years and the remainder of the connectors within the next 4 years. If the percent leaking connectors in the first 4 years is equal to or greater than 0.35 percent, the monitoring program shall revert at that time to the appropriate monitoring frequency specified in paragraph (b)(4)(iii)(C), (D), or (E) of this section.

(iv) Section 63.178, shall apply except:

(A) Section 63.178(b), requirements for pressure testing, may be applied to all processes (not just batch processes) and to supply lines between storage and processing areas.

(B) For pumps, the phrase "at the frequencies specified in Table 1 of this subpart" in § 63.178(c)(iii) shall mean "quarterly" for the purposes of this subpart.

(v) Section 63.180 shall apply except § 63.180(b)(4)(ii)(A) through (C) shall not apply. Instead, calibration gases shall be a mixture of methane and air at a concentration of approximately, but less than, 10,000 parts per million methane for agitators; 2,000 parts per million for pumps; and 500 parts per

million for all other equipment, except as provided in § 63.180(b)(4)(iii).

(vi) When §§ 63.171, 63.172, 63.174, 63.178, and 63.180 reference other sections in subpart H of this part, the references shall mean those sections specified in paragraphs (b)(2) and (b)(4)(i) through (v) of this section, as applicable.

(c) * * *

(2)(i) *Monitoring.* Each pump and agitator subject to this section shall be monitored quarterly to detect leaks by the method specified in § 63.180(b) except as provided in § 63.177, § 63.178(b) paragraph (f) of this section, and paragraphs (c)(5) through (9) of this section.

(4) * * *

(iv) * * *

P = number of pumps found leaking as determined through periodic monitoring as required in paragraphs (c)(2)(i) and (ii) of this section

P_T = total pumps in organic HAP service, including those meeting the criteria in paragraphs (c)(5) and (6) of this section

P_S = number of pumps in a continuous process leaking within 1 quarter of startup during the current monitoring period

(5) * * *

(vi) * * *

(B) If indications of liquids dripping from the pump/agitator seal exceed the criteria established in paragraph (c)(5)(vi)(A) of this section, or if, based on the criteria established in paragraph (c)(5)(vi)(A) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(C) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(4)(i) of this section.

* * * * *

(6) Any pump/agitator that is designed with no externally actuated shaft penetrating the pump/agitator housing is exempt from the requirements of paragraphs (c)(1) through (3) of this section.

(7) Any pump/agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals back to the process or to a control device that complies with the requirements of paragraph (b)(4)(ii) of this section is exempt from the requirements of paragraphs (c)(2) through (5) of this section.

* * * * *

(9) If more than 90 percent of the pumps in a group of processes meet the criteria in either paragraph (c)(5) or (6) of this section, the group of processes is exempt from the requirements of paragraph (c)(4) of this section.

(d) * * *

(1)(i) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.177 and paragraphs (d)(4) through (6) of this section.

(ii) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance or repair. The cap, blind flange, plug, or second valve shall be in place within 1 hour of cessation of operations requiring process fluid flow through the open-ended valve or line, or within 1 hour of cessation of maintenance or repair. The owner or operator is not required to keep a record documenting compliance with the 1-hour requirement.

* * * * *

(e) * * *

(2) For existing and new affected sources, all valves subject to this section shall be monitored, except as provided in paragraph (f) of this section and in § 63.177 by no later than 1 year after the compliance date.

(3) *Monitoring.* The owner or operator of a source subject to this section shall monitor all valves, except as provided in paragraph (f) of this section and in § 63.177 at the intervals specified in paragraph (e)(4) of this section and shall comply with all other provisions of this section, except as provided in paragraph (b)(4)(i) of this section, § 63.178(b) and § 63.179.

(i) The valves shall be monitored to detect leaks by the method specified in § 63.180(b).

* * * * *

(6) * * *

(ii) * * *

$\%V_L$ = percent leaking valves as determined through periodic monitoring required in paragraphs (e)(2) through (4) of this section.

* * *

* * * * *

(7) * * *

(iii) * * *

(A) The monitoring shall be conducted as specified in § 63.180(b) and (c) as appropriate, to determine whether the valve has resumed leaking.

(B) Periodic monitoring required by paragraphs (e)(2) through (4) of this section may be used to satisfy the requirements of paragraph (e)(7)(iii) of this section, if the timing of the monitoring period coincides with the time specified in paragraph (e)(7)(iii) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (e)(7)(iii) of this section, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (e)(7)(iii) of this section.

(C) If a leak is detected by monitoring that is conducted pursuant to paragraph (e)(7)(iii) of this section, the owner or operator shall follow the provisions of paragraphs (e)(7)(iii)(C)(*1*) and (*2*) of this section to determine whether that valve must be counted as a leaking valve for purposes of paragraph (e)(6) of this section.

(*1*) If the owner or operator elects to use periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve.

(*2*) If the owner or operator elects to use other monitoring prior to the periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

* * * * *

(9) * * * Instead, the owner or operator shall monitor each valve in organic HAP service for leaks once each quarter, or comply with paragraph (e)(4)(iii) or (iv) of this section, except as provided in paragraph (f) of this section.

(f) *Unsafe to monitor/inspect, difficult to monitor/inspect, and inaccessible equipment.* (1) Equipment that is designated as unsafe to monitor, unsafe to inspect, difficult to monitor, difficult to inspect, or inaccessible is exempt from the monitoring requirements as specified in paragraphs (f)(1)(i) through (iv) of this section provided the owner or operator meets the requirements specified in paragraph (f)(2), (3), or (4) of this section, as applicable. All equipment must be assigned to a group of processes. Ceramic or ceramic-lined connectors are subject to the same requirements as inaccessible connectors.

(i) For pumps and agitators, paragraphs (c)(2), (3), and (4) of this section do not apply.

(ii) For valves, paragraphs (e)(2) through (7) of this section do not apply.

(iii) For connectors, § 63.174(b) through (e) and paragraphs (b)(3)(iii)(B) through (F) of this section do not apply.

(iv) For closed-vent systems, § 63.172(f)(1) and (2), and § 63.172(g) do not apply.

(2) *Equipment that is unsafe to monitor or unsafe to inspect.* (i) Valves, connectors, agitators, and pumps may be designated as unsafe to monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements referred to in paragraphs (f)(1)(i) through (iii) of this section.

(ii) Any part of a closed-vent system may be designated as unsafe to inspect if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements referred to in paragraph (f)(1)(iv) of this section.

(iii) The owner or operator of equipment that is designated as unsafe to monitor must have a written plan that requires monitoring of the equipment as frequently as practicable during safe to monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located.

(iv) For any parts of a closed-vent system designated as unsafe to inspect, the owner or operator must have a written plan that requires inspection of the closed-vent systems as frequently as practicable during safe to inspect times, but not more frequently than annually.

(3) *Equipment that is difficult to monitor or difficult to inspect.* (i) A valve, agitator, or pump may be designated as difficult to monitor if the owner or operator determines that the valve, agitator, or pump cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface, or it is not accessible in a safe manner when it is in organic HAP service.

(ii) Any part of a closed-vent system may be designated as difficult to inspect if the owner or operator determines that the equipment cannot be inspected without elevating the monitoring personnel more than 2 meters above a support surface, or it is not accessible in a safe manner when it is in organic HAP service.

(iii) At an existing source, any valve, agitator or pump within a group of processes that meets the criteria of paragraph (f)(3)(i) of this section may be designated as difficult to monitor, and any parts of a closed-vent system that meet the requirements of paragraph (f)(3)(ii) of this section may be designated as difficult to inspect. At a new affected source, an owner or operator may designate no more than 3 percent of valves as difficult to monitor.

(iv) The owner or operator of valves, agitators, or pumps designated as difficult to monitor must have a written plan that requires monitoring of the equipment at least once per calendar year or on the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located, whichever is less frequent. For any part of a closed-vent system designated as difficult to inspect, the owner or operator must have a written plan that requires inspection of the closed-vent system at least once every 5 years.

(4) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) A connector may be designated as inaccessible if it is:

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold which would allow access to equipment up to 7.6 meters (25 feet) above the ground; or

(E) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(ii) A connector may be designated as inaccessible if it would require elevating the monitoring personnel more than 2 meters above a permanent support surface or would require the erection of scaffold.

(iii) At an existing source, any connector that meets the criteria of paragraph (f)(4)(i) or (ii) of this section may be designated as inaccessible. At a new affected source, an owner or operator may designate no more than 3 percent of connectors as inaccessible.

(iv) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (b)(3)(i) of this section.

(v) Any connector that is inaccessible or that is ceramic or ceramic-lined is exempt from the recordkeeping and reporting requirements of paragraphs (g) and (h) of this section.

(g) * * *

(2) *General recordkeeping.* Except as provided in paragraph (g)(5)(i) of this section and in paragraph (a)(9) of this section, the following information pertaining to all equipment subject to the requirements in this section shall be recorded:

(i)(A) A list of identification numbers for equipment (except connectors that are subject to paragraph (f)(4) of this section) subject to the requirements of this section. Except for equipment subject to the recordkeeping requirements in paragraphs (g)(2)(ii) through (viii) of this section, equipment need not be individually identified if, for a particular type of equipment, all items of that equipment in a designated area or length of pipe subject to the provisions of this section are identified as a group, and the number of subject items of equipment is indicated. The list for each type of equipment shall be completed no later than the completion of the initial survey required for that component. The list of identification numbers shall be updated, if needed, to incorporate equipment changes identified during the course of each monitoring period within 90 calendar days, or by the next Periodic Report, following the end of the monitoring period for the type of equipment component monitored, whichever is later.

* * * * *

(vi) A list of equipment designated as unsafe to monitor/inspect or difficult to monitor/inspect under paragraph (f) of this section and a copy of the plan for monitoring or inspecting this equipment.

* * * * *

(viii) For equipment that the owner or operator elects to monitor as provided under § 63.178(c), a list of equipment added to batch product processes since the last monitoring period required in § 63.178(c)(3)(ii) and (iii). This list must be completed for each type of equipment within 90 calendar days, or by the next Periodic Report, following the end of the monitoring period for the type of equipment monitored, whichever is later. Also, if the owner or operator elects to adjust monitoring frequency by the time in use, as provided in § 63.178(c)(3)(iii), records demonstrating the proportion of the time during the calendar year the equipment is in use in a manner subject to the provisions of this section are required. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit.

(3) *Records of visual inspections.* For visual inspections of equipment subject to the provisions of paragraphs (c)(2)(iii)

and (c)(5)(iv) of this section, the owner or operator shall document that the inspection was conducted and the date of the inspection. * * *

(4) *Monitoring records.* When each leak is detected as specified in paragraph (c) of this section and § 63.164, paragraph (e) of this section and § 63.169, and §§ 63.172 and 63.174, the following information shall be recorded and kept for 5 years (at least 2 years onsite, with the remaining 3 years either onsite or offsite):

* * * * *

(iv) The maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A, after the leak is successfully repaired or determined to be nonrepairable.

(v) * * *

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures shall be included either as part of the startup/shutdown/malfunction plan, required by § 63.1259(a)(3), or in a separate document that is maintained at the plant site. Reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

* * * * *

(5) *Records of pressure tests.* The owner or operator who elects to pressure test a process equipment train or supply lines between storage and processing areas to demonstrate compliance with this section is exempt from the requirements of paragraphs (g)(2), (3), (4), and (6) of this section.

* * *

* * * * *

(6) *Records of compressor and relief device compliance tests.* * * *

* * * * *

(7) *Records for closed-vent systems.* The owner or operator shall maintain records of the information specified in paragraphs (g)(7)(i) through (iii) of this section for closed-vent systems and control devices subject to the provisions of paragraph (b)(4)(ii) of this section.

* * *

* * * * *

(h) * * *

(2) *Notification of compliance status report.* * * *

(i) * * *

(B) Number of each equipment type (e.g., valves, pumps) in organic HAP service, excluding equipment in vacuum service.

* * * * *

(iv) Section 63.9(j) shall not apply to the Notification of Compliance Status report described in this paragraph (h)(2).

(3) * * *

(ii) For equipment complying with the provisions of paragraphs (b) through (g) of this section, except paragraph (b)(3)(iv) of this section and § 63.179 the summary information listed in paragraphs (h)(3)(ii)(A) through (L) of this section for each monitoring period during the 6-month period.

* * * * *

(C) Separately, the number of pumps and agitators for which leaks were detected as described in paragraph (c)(2) of this section, the total number of pumps and agitators monitored, and, for pumps, the percent leakers;

(D) Separately, the number of pumps and agitators for which leaks were not repaired as required in paragraph (c)(3) of this section;

* * * * *

(iv) Any revisions to items reported in earlier Notification of Compliance Status report, if the method of compliance has changed since the last report.

8. Section 63.1256 is amended by:

a. Revising paragraphs (a)(1)(i)(A) and (B);

b. Revising paragraph (a)(3);

c. Revising paragraph (a)(5) introductory text;

d. Revising paragraph (a)(5)(ii)(C);

e. Adding paragraph (a)(5)(ii)(D);

f. Adding paragraph (b)(6)(i);

g. Revising paragraphs (d)(2) introductory text and paragraph (d)(2)(i);

h. Revising paragraph (g)(8)(ii);

i. Revising paragraph (g)(11)(ii); and

j. Revising paragraph (g)(12).

The revisions and additions read as follows:

§ 63.1256 Standards: Wastewater.

(a) * * *

(1) * * *

(i) * * *

(A) The wastewater stream contains partially soluble HAP compounds at an annual average concentration greater than 1,300 ppmw, and the total soluble and partially soluble HAP load in all wastewater from the PMPU exceeds 0.25 Mg/yr.

(B) The wastewater stream contains partially soluble and/or soluble HAP compounds at an annual average concentration of 5,200 ppmw, and the total soluble and partially soluble HAP load in all wastewater from the PMPU exceeds 0.25 Mg/yr.

* * * * *

(3) *Exemptions from wastewater requirements.* (i) The following wastewaters are not subject to the wastewater provisions of this subpart:

(A) Stormwater from segregated sewers;

(B) Water from fire-fighting and deluge systems, including testing of such systems;

(C) Spills;

(D) Water from safety showers; and

(E) Samples of a size not greater than reasonably necessary for the method of analysis that is used.

(ii) *Maintenance wastewater.* Each owner or operator of a source subject to this subpart shall comply with the requirements of paragraphs (a)(3)(ii)(A) through (D) of this section for maintenance wastewater containing partially soluble or soluble HAPs listed in Tables 2 and 3 of this subpart.

(A) The owner or operator shall prepare a description of maintenance procedures for management of wastewater generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair (*i.e.,* a maintenance turnaround) and during periods which are not shutdowns (*i.e.,* routine maintenance). The descriptions shall:

(*1*) Specify the process equipment or maintenance tasks that are anticipated to create wastewater during maintenance activities; and

(*2*) Specify the procedures that will be followed to properly manage the wastewater and minimize organic HAP emissions to the atmosphere; and

(*3*) Specify the procedures to be followed when clearing materials from process equipment.

(B) The owner or operator shall modify and update the information required by paragraph (a)(3)(ii)(A) of this section as needed following each maintenance procedure based on the actions taken and the wastewater generated in the preceding maintenance procedure.

(C) The owner or operator shall implement the procedures described in paragraphs (a)(3)(ii)(A) and (B) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

(D) The owner or operator shall maintain a record of the information required by paragraphs (a)(3)(ii)(A) and (B) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

* * * * *

(5) *Offsite treatment or onsite treatment not owned or operated by the source.* The owner or operator may elect to transfer affected wastewater streams or a residual removed from such affected wastewater to an onsite treatment operation not owned or operated by the owner or operator of the source generating the wastewater or

residual, or to an offsite treatment operation.

* * * * *

(ii) * * *

(C) Section 63.6(g); or

(D) If the affected wastewater streams or residuals removed from affected wastewater streams received by the transferee contain less than 50 ppmw of partially soluble HAP, then the transferee must, at a minimum, manage and treat the affected wastewater streams and residuals in accordance with one of the following:

(*1*) Comply with paragraph (g)(10) of this section and cover the waste management units up to the activated sludge unit; or

(*2*) Comply with paragraphs (g)(11)(i), (ii), and (h) of this section and cover the waste management units up to the activated sludge unit; or

(*3*) Comply with paragraph (g)(10) of this section provided that the owner or operator of the affected source demonstrates that less than 5 percent of the total soluble HAP is emitted from waste management units up to the activated sludge unit; or

(*4*) Comply with paragraphs (g)(11)(i), (ii), and (h) of this section provided that the owner or operator of the affected source demonstrates that less than 5 percent of the total soluble HAP is emitted from waste management units up to the activated sludge unit.

* * * * *

(b) * * *

(6) * * *

(i) The owner or operator shall measure the seal gaps or inspect the wastewater tank within 30 calendar days of the determination that the floating roof is unsafe.

* * * * *

(d) * * *

(2) *Filling of large containers.* Pumping affected wastewater or a residual removed from affected wastewater into a container with a capacity greater than or equal to 0.42 m^3 shall be conducted in accordance with the conditions in paragraphs (d)(2)(i) and (ii) of this section.

(i) Comply with any one of the procedures specified in paragraphs (d)(2)(i)(A), (B), or (C) of this section.

(A) Use a submerged fill pipe. The submerged fill pipe outlet shall extend to no more than 6 inches or within two fill pipe diameters of the bottom of the container while the container is being filled.

(B) Locate the container within an enclosure with a closed-vent system that routes the organic HAP vapors vented from the container to a control device.

(C) Use a closed-vent system to vent the displaced organic vapors vented from the container to a control device or back to the equipment from which the wastewater is transferred.

* * * * *

(g) * * *

(8) * * *

(ii) *Percent mass removal/destruction option.* The owner or operator shall reduce, by removal or destruction, the mass of total partially soluble HAP compounds by 99 percent or more. The removal destruction efficiency shall be determined by the procedures specified in § 63.1257(e)(2)(ii) or (iii)(C) for noncombustion, nonbiological treatment processes; § 63.1257(e)(2)(ii) or (iii)(D) for combustion processes; § 63.1257(e)(2)(iii)(F) for open biological treatment processes; and § 63.1257(e)(2)(ii) or (iii)(G) for closed biological treatment processes.

* * * * *

(11) * * *

(ii) For open biological treatment processes, compliance shall be determined using the procedures specified in § 63.1257(e)(2)(iii)(E). For closed aerobic biological treatment processes, compliance shall be determined using the procedures specified in § 63.1257(e)(2)(ii), (iii)(E), or (iii)(G). For closed anaerobic biological treatment processes, compliance shall be determined using the procedures specified in § 63.1257(e)(2)(ii) or (iii)(G).

* * * * *

(12) *Percent mass removal/destruction option for soluble HAP compounds at new sources.* The owner or operator of a new source shall reduce, by removal or destruction, the mass flow rate of total soluble HAP from affected wastewater by 99 percent or more. The removal/destruction efficiency shall be determined by the procedures in § 63.1257(e)(2)(ii) or (iii)(C) for noncombustion, nonbiological treatment processes; § 63.1257(e)(2)(ii) and (iii)(D) for combustion processes; § 63.1257(e)(2)(iii)(F) for open biological treatment processes; and § 63.1257(e)(2)(ii) or (iii)(G) for closed biological treatment processes.

* * * * *

9. Section 63.1257 is amended by:

a. Revising paragraph (a)(3);

b. Revising paragraph (a)(5);

c. Revising paragraph (b)(6) introductory text;

d. Revising paragraph (b)(6)(iii);

e. Adding a new sentence at the end of paragraph (b)(8)(i)(A) introductory text;

f. Revising paragraph (b)(8)(i)(A)(*3*)(*i*);

g. Revising paragraph (b)(10) introductory text;

h. Revising paragraphs (b)(10)(i) and (ii);

i. Redesignating paragraphs (b)(10)(iii) through (v) as paragraphs (b)(10)(iv) through (vi) and revising redesignated paragraphs (b)(10)(iv) introductory text and (b)(10)(v);

j. Adding paragraph (b)(10)(iii);

k. Revising the second sentence in paragraph (c)(1) introductory text;

l. Revising paragraph (c)(3)(v);

m. Revising paragraphs (d)(1)(i) through (iii);

n. Revising equation 13 and the definitions of the terms "$(P_i)_{Tn}$" and "MW_i" for Equations 13 through 17 in paragraph (d)(2)(i)(C)(*1*);

o. Removing the definitions of the terms "(P_i^*)" and "(P_j^*)" for Equations 13 through 17 in paragraph (d)(2)(i)(C)(*1*) and adding definitions for the terms "P_i^*" and "P_j^*" for Equations 13 through 17 in paragraph (d)(2)(i)(C)(*1*);

p. Removing the last sentence in paragraph (d)(2)(i)(C)(2)(i);

q. Revising paragraph (d)(2)(i)(C)(*4*) introductory text;

r. Revising paragraph (d)(2)(i)(C)(*4*)(*ii*);

s. Revising the definition of the term "x_j" after Equation 24 in paragraph (d)(2)(i)(D)(2);

t. Revising paragraphs (d)(2)(i)(D)(*3*) and (*4*);

u. Revising paragraph (d)(2)(i)(E);

v. Revising paragraph (d)(2)(i)(H);

w. Adding a new sentence between the third and fourth sentences in paragraph (d)(2)(ii);

x. Revising paragraph (d)(3) introductory text;

y. Revising paragraph (d)(3)(ii)(A);

z. Adding paragraph (d)(3)(iii);

aa. Removing the definition of the term "P" following Equation 45 in paragraph (e)(2)(iii)(C)(*3*) and adding in its place the definition of the term "ρ'" in paragraph (e)(2)(iii)(C)(*3*);

bb. Revising "Equation 44" to read "Equation 46" in the first sentence in paragraph (e)(2)(iii)(C)(*5*);

cc. Removing the definition of the term "π" for Equation 47 in paragraph (e)(2)(iii)(D)(*3*) and revising the definition of the term "ρ'" for Equation 47 in paragraph (e)(2)(iii)(D)(*3*);

dd. Adding the definition of the term "ρ" for Equation 47 in paragraph (e)(2)(iii)(D)(*3*);

ee. Revising paragraph (e)(2)(iii)(E)(*3*) introductory text;

ff. Revising "Equation 49" to read "Equation 50" in the first sentence in paragraph (e)(2)(iii)(E)(*3*)(*ii*);

gg. Revising the definitions of the terms "QMW_a, QMW_b" and "QMG_b" for Equation 51 in paragraph (e)(2)(iii)(G)(*3*);

hh. Revising the first sentence in paragraph (f)(1)(iii)(B);

ii. Revising paragraph (f)(2)(ii)(A); and

jj. Redesignating paragraphs (h)(2)(i) and (h)(3) as paragraphs (h)(3) and (4), revising redesignated paragraph (h)(3), and removing Equation 61 from redesignated paragraph (h)(4).

The revisions and additions read as follows:

§ 63.1257 Test methods and compliance procedures.

(a) * * *

(3) *Outlet concentration correction for supplemental gases.* (i) *Combustion devices.* Except as provided in § 63.1258(b)(5)(ii)(A), for a combustion device used to comply with an outlet concentration standard, the actual TOC, organic HAP, and hydrogen halide and halogen must be corrected to 3 percent oxygen if supplemental gases, as defined in § 63.1251, are added to the vent stream or manifold. The integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the actual oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the TOC or total organic HAP or hydrogen halides and halogen samples are taken. The concentration corrected to 3 percent oxygen (C_d) shall be computed using Equation 7A of this subpart:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{(Eq. 7A)}$$

Where:

C_c = concentration of TOC or total organic HAP or hydrogen halide and halogen corrected to 3 percent oxygen, dry basis, ppmv

C_m = total concentration of TOC or total organic HAP or hydrogen halide and halogen in vented gas stream, average of samples, dry basis, ppmv

$\%O_{2d}$ = concentration of oxygen measured in vented gas stream, dry basis, percent by volume

(ii) *Noncombustion devices.* Except as provided in § 63.1258(b)(5)(ii)(B), if a control device other than a combustion device is used to comply with a TOC, organic HAP, or hydrogen halide outlet concentration standard, the owner or operator must correct the actual concentration for supplemental gases using Equation 7B of this subpart; process knowledge and representative operating data may be used to determine the fraction of the total flow due to supplemental gas.

$$C_a = C_m\left(\frac{V_s + V_a}{V_a}\right) \qquad \text{(Eq. 7B)}$$

Where:

C_a = corrected outlet TOC, organic HAP, and hydrogen halides and halogens concentration, dry basis, ppmv

C_m = actual TOC, organic HAP, and hydrogen halides and halogens concentration measured at control device outlet, dry basis, ppmv

V_a = total volumetric flow rate of all gas streams vented to the control device, except supplemental gases

V_s = total volumetric flow rate of supplemental gases

* * * * *

(5) *Initial compliance with alternative standard.* Initial compliance with the alternative standards in §§ 63.1253(d) and 63.1254(c) for combustion devices is demonstrated when the outlet TOC concentration is 20 ppmv or less, and the outlet hydrogen halide and halogen concentration is 20 ppmv or less. Initial compliance with the alternative standards in §§ 63.1253(d) and 63.1254(c) for noncombustion devices is demonstrated when the outlet TOC concentration is 50 ppmv or less, and the outlet hydrogen halide and hydrogen concentration is 50 ppmv or less. To demonstrate initial compliance, the owner or operator shall be in compliance with the monitoring provisions in § 63.1258(b)(5) on the initial compliance date. The owner or operator shall use Method 18 to determine the predominant organic HAP in the emission stream if the TOC monitor is calibrated on the predominant HAP.

* * * * *

(b) * * *

(6) The following methods are specified for concentration measurements:

* * * * *

(iii) Method 26 or 26A of appendix A of part 60 shall be used to determine hydrogen chloride, hydrogen halide and halogen concentrations in control device efficiency determinations or in the 20 ppmv outlet hydrogen halide concentration standard.

* * * * *

(8) * * *

(i) * * *

(A) * * * The owner or operator must consider all relevant factors, including load and compound-specific characteristics in defining absolute worst-case conditions.

* * * * *

(*3*) * * *

(*i*) Periods when the stream contains the highest combined VOC and HAP load, in lb/hr, described by the emission profiles in paragraph (b)(8)(ii) of this section;

* * * * *

(10) *Wastewater testing.* Wastewater analysis shall be conducted in accordance with paragraph (b)(10)(i), (ii), (iii), (iv), or (v) of this section.

(i) *Method 305.* Use procedures specified in Method 305 of 40 CFR part 63, appendix A, and comply with requirements specified in paragraph (b)(10)(vi) of this section.

(ii) *Method 624, 625, 1624, or 1625.* Use procedures specified in Method 624, 625, 1624, or 1625 of 40 CFR part 136, appendix A, and comply with requirements in paragraph (b)(10)(vi) of this section.

(iii) *Method 8260 or 8270.* Use procedures specified in Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992. As an alternative, an owner or operator may use any more recent, updated version of Method 8260 or 8270 approved by the EPA. For the purpose of using Method 8260 or 8270 to comply with this subpart, the owner or operator must maintain a formal quality assurance program consistent with either Section 8 of Method 8260 or Method 8270, and this program must include the following elements related to measuring the concentrations of volatile compounds:

(A) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps.

(B) Documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis.

(C) Measurement of the average accuracy and precision of the specific procedures, including field duplicates and field spiking of the material source before or during sampling with compounds having similar chemical characteristics to the target analytes.

(iv) *Other EPA methods.* Use procedures specified in the method, validate the method using the procedures in paragraph (b)(10)(iv)(A) or (B) of this section, and comply with the procedures in paragraph (b)(10)(vi) of this section.

* * * * *

(v) *Methods other than an EPA method.* Use procedures specified in the method, validate the method using the procedures in paragraph (b)(10)(iv)(A) of this section, and comply with the requirements in paragraph (b)(10)(vi) of this section.

* * * * *

(c) * * *

(1) * * * Initial compliance with the outlet concentration requirement of § 63.1253(d) is demonstrated by fulfilling the requirements of paragraph (a)(5) of this section.

* * * * *

(3) * * *

(v) When the phrase "the maximum true vapor pressure of the total organic HAP's in the stored liquid falls below the values defining Group 1 storage vessels specified in table 5 or table 6 of this subpart" is referred to in § 63.120(b)(1)(iv), the phrase "the maximum true vapor pressure of the total organic HAP in the stored liquid falls below 13.1 kPa" shall apply for the purposes of this subpart.

* * * * *

(d) * * *

(1) * * *

(i) Initial compliance with § 63.1254(a)(2)(i) is demonstrated when the actual emissions of HAP from the sum of all process vents within a process is less than or equal to 900 kg/yr. Initial compliance with § 63.1254(a)(2)(ii) is demonstrated when the actual emissions of HAP from the sum of all process vents in compliance with § 63.1254(a)(2)(i) is less than or equal to 1,800 kg/yr. Uncontrolled HAP emissions and controlled HAP emissions shall be determined using the procedures described in paragraphs (d)(2) and (3) of this section.

(ii) Initial compliance with the percent reduction requirements in § 63.1254(a)(1)(i), § 63.1254(a)(3), and § 63.1254(b) is demonstrated by:

(A) Determining controlled HAP emissions using the procedures described in paragraph (d)(3) of this section, and uncontrolled HAP emissions determined using the procedures described in paragraph (d)(2) of this section, and demonstrating that the reductions required by § 63.1254(a)(1)(i), § 63.1254(a)(3), and § 63.1254(b) are met; or

(B) Controlling the process vents using a device meeting the criteria specified in paragraph (a)(4) of this section.

(iii) Initial compliance with the outlet concentration requirements in § 63.1254(a)(1)(ii)(A), § 63.1254(a)(3), and § 63.1254(b)(1) is demonstrated when the outlet TOC concentration is 20 ppmv or less and the outlet hydrogen halide and halogen concentration is 20 ppmv or less. The owner or operator shall demonstrate compliance by fulfilling the requirements in paragraph (a)(6) of this section.

* * * * *

(2) * * *

(i) * * *

(C) * * *

(*1*) * * *

$$E = \frac{\sum_{i=1}^{n}\left((P_i^*)(x_i)(MW_i)\right)}{760 - \sum_{j=1}^{m}\left((P_j^*)(x_j)\right)} \times \Delta\eta \quad \text{(Eq. 13)}$$

* * * * *

P_i^* = vapor pressure of each HAP in the vessel headspace at any temperature between the initial and final heatup temperatures, mmHg

P_j^* = vapor pressure of each condensable VOC (including HAP) in the vessel headspace at any temperature between the initial and final heatup temperatures, mmHg

* * *

$(P_i)_{Tn}$ = partial pressure of each HAP in the vessel headspace at initial (T1) and final (T2) temperature

MW_i = molecular weight of the individual HAP * * *

* * * * *

(*4*) If the vessel contents are heated to the boiling point, emissions must be calculated using the procedure in paragraphs (d)(2)(i)(C)(*4*)(*i*) and (*ii*) of this section.

* * * * *

(*ii*) While boiling, the vessel must be operated with a properly operated process condenser. An initial demonstration that a process condenser is properly operated is required for some process condensers, as described in paragraph (d)(2)(iii) of this section.

(D) * * *

(*2*) * * *

x_j = mole fraction of each condensable (including HAP) in the liquid phase

* * * * *

(*3*) The average ratio of moles of noncondensable to moles of an individual HAP in the emission stream is calculated using Equation 25 of this subpart; this calculation must be repeated for each HAP in the emission stream:

$$n_{Ri} = \frac{\left(\frac{P_{nc1}}{(P_i^*)(x_i)} + \frac{P_{nc2}}{(P_i^*)(x_i)}\right)}{2} \quad \text{(Eq. 25)}$$

Where:

n_{Ri} = average ratio of moles of noncondensable to moles of individual HAP

P_{nc1} = initial partial pressure of the noncondensable gas, as calculated using Equation 23 of this subpart

P_{nc2} = final partial pressure of the noncondensable gas, as calculated using Equation 24 of this subpart

P_i^* = vapor pressure of each individual HAP

x_i = mole fraction of each individual HAP in the liquid phase

n = number of HAP compounds

i = identifier for a HAP compound

(*4*) The mass of HAP emitted shall be calculated using Equation 26 of this subpart:

$$E = (V_{nc1} - V_{nc2}) \times \frac{P_{atm}}{RT} \times \sum_{i-1}^{n} \frac{MW_i}{n_{Ri}} \quad \text{(Eq. 26)}$$

Where:

E = mass of HAP emitted

V_{nc1} = initial volume of noncondensable gas in the vessel, as calculated using Equation 21 of this subpart

V_{nc2} = final volume of noncondensable gas in the vessel, as calculated using Equation 22 of this subpart

n_{Ri} = average ratio of moles of noncondensable to moles of individual HAP, as calculated using Equation 25 of this subpart

P_{atm} = atmospheric pressure, standard

R = ideal gas law constant

T = temperature of the vessel, absolute

MW_i = molecular weight of each HAP

* * * * *

(E) *Vacuum systems.* Emissions from vacuum systems may be calculated using Equation 33 of this subpart if the air leakage rate is known or can be approximated.

$$E = \frac{(La)(t)}{MW_{nc}}\left(\frac{\sum_{i=1}^{n} P_i MW_i}{P_{system} - \sum_{j=1}^{m} P_j}\right) \quad \text{(Eq. 33)}$$

Where:

E = mass of HAP emitted

P_{system} = absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver

P_i = partial pressure of the HAP at the receiver temperature or the ejector outlet conditions
P_j = partial pressure of condensable (including HAP) at the receiver temperature or the ejector outlet conditions
La = total air leak rate in the system, mass/time
MW_{nc} = molecular weight of noncondensable gas
t = time of vacuum operation
MWi = molecular weight of the individual HAP in the emission stream, with HAP partial pressures calculated at the temperature of the receiver or ejector outlet, as appropriate

* * * * *

(H) *Empty vessel purging.* Emissions from empty vessel purging shall be calculated using Equation 36 of this subpart (Note: The term $e^{-Ft/v}$ can be assumed to be 0):

* * * * *

(ii) * * * Modified versions of the engineering evaluation methods in paragraphs (d)(2)(i)(A) through (H) may be used if the owner or operator demonstrates that they have been used to meet other regulatory obligations and they do not affect applicability assessments or compliance determinations under this subpart GGG.

* * *

* * * * *

(3) *Controlled emissions.* An owner or operator shall determine controlled emissions using the procedures in either paragraph (d)(3)(i) or (ii) of this section.

* * * * *

(ii) * * *

(A) The performance test shall be conducted by performing emission testing on the inlet and outlet of the control device following the test methods and procedures of § 63.1257(b). Concentrations shall be calculated from the data obtained through emission testing according to the procedures in paragraph (a)(2) of this section.

* * * * *

(iii) *Initial compliance demonstration for condensers.*

(A) *Air pollution control devices.* During periods in which a condenser functions as an air pollution control device, controlled emissions shall be calculated using the emission estimation equations described in paragraph (d)(3)(i)(B) of this section.

(B) *Process condensers.* During periods when the condenser is operating as a process condenser, the owner or operator is required to demonstrate that the process condenser is properly operated if the process condenser meets either of the criteria described in paragraphs (d)(2)(iii)(B)(*1*) and (*2*) of this section. The owner or operator must either measure the condenser exhaust gas temperature and show it is less than the boiling or bubble point of the substance(s) in the vessel, or perform a material balance around the vessel and condenser to show that at least 99 percent of the material vaporized while boiling is condensed. The initial demonstration shall be conducted for all appropriate operating scenarios and documented in the Notification of Compliance report described in § 63.1260(f).

(*1*) The process condenser is not followed by an air pollution control device; or

(*2*) The air pollution control device following the process condenser is not a condenser or is not meeting the alternative standard of § 63.1254(c).

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(C) * * *

(*3*) * * *

ρ= density of the wastewater, kg/m^3

* * * * *

(D) * * *

(*3*) * * *

ρ= density of the wastewater stream, kg/m^3

* * * * *

p = number of runs

* * * * *

(E) * * *

(*3*) *Destruction efficiency.* The owner or operator shall comply with the provisions in either paragraph (e)(2)(iii)(E)(*3*)(*i*) or (*ii*) of this section. Compliance is demonstrated if the destruction efficiency, E, is equal to or greater than 95 percent.

* * * * *

(G) * * *

(*3*) * * *

QMW_a, QMW_b = mass flow rate of partially soluble and/or soluble HAP compounds in wastewater entering (QMW_a) and exiting (QMW_b) the treatment process, kilograms per hour (as calculated using Equations 44 and 45)
QMG_b = mass flow rate of partially soluble and/or soluble HAP compounds in vented gas stream exiting the control device, kg/hr

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(B) For batch processes, the annual factor shall be calculated either every 10 batches for the 12-month period preceding the 10th batch (10-batch rolling average) or a maximum of once per month, if the number of batches is greater than 10 batches per month. * * *

(2) * * *

(ii) * * *

(A) The mass of HAP calculated using Equation 55 of this subpart:

$$M = [kg/kg]_b (0.75 - P_R)(M_{prod}) \quad \text{(Eq. 55)}$$

Where:

$[kg/kg]_b$ = the baseline production-indexed HAP consumption factor, in kg/kg
M_{prod} = the annual production rate, in kg/yr
M = the annual reduction required by add-on controls, in kg/yr
P_R = the fractional reduction in the annual kg/kg factor achieved using pollution prevention where P_R is ≥0.5

* * * * *

(h) * * *

(3) Equations 60 and 61 of this subpart shall be used to calculate total HAP emissions:

$$E_{TU} = \sum_{i=1}^{n} E_{Ui} \quad \text{(Eq. 60)}$$

$$E_{TC} = \sum_{i=1}^{n} E_{Ci} \quad \text{(Eq. 61)}$$

Where:

E_{Ui} = yearly uncontrolled emissions from process i
E_{Ci} = yearly actual emissions for process i
E_{TU} = total yearly uncontrolled emissions
E_{TC} = total yearly actual emissions
n = number of processes included in the emissions average

* * * * *

10. Section 63.1258 is amended by:

a. Revising paragraph (b)(5);

b. Revising paragraph (b)(6)(iii);

c. Revising the first sentence in paragraph (b)(8) introductory text; and

d. Revising paragraph (c).

The revisions read as follows:

§ 63.1258 Monitoring requirements.

* * * * *

(b) * * *

(5) *Monitoring for the alternative standards.* (i) For control devices that are used to comply with the provisions of § 63.1253(d) or 63.1254(c), the owner or operator shall monitor and record the outlet TOC concentration and the outlet hydrogen halide and halogen concentration every 15 minutes during the period in which the device is

functioning in achieving the HAP removal required by this subpart. A TOC monitor meeting the requirements of Performance Specification 8 or 9 of appendix B of part 60 shall be installed, calibrated, and maintained according to § 63.8. The owner or operator need not monitor the hydrogen halide and halogen concentration if, based on process knowledge, the owner or operator determines that the emission stream does not contain hydrogen halides or halogens.

(ii) An owner or operator complying with the alternative standard using control devices in which supplemental gases are added to the vents or manifolds must either correct for supplemental gases as specified in § 63.1257(a)(3) or comply with the requirements of paragraph (b)(5)(ii)(A) or (B) of this section.

(A) *Provisions for combustion devices.* As an alternative to correcting for supplemental gases as specified in § 63.1257(a)(3), the owner or operator may monitor residence time and firebox temperature according to the requirements of paragraphs (b)(5)(ii)(A)(*1*) and (*2*) of this section. Monitoring of residence time may be accomplished by monitoring flowrate into the combustion chamber.

(*1*) If complying with the alternative standard instead of achieving a control efficiency of 95 percent or less, the owner or operator must maintain a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760°C.

(*2*) If complying with the alternative standard instead of achieving a control efficiency of 98 percent or less, the owner or operator must maintain a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C.

(B) *Provisions for dense gas systems.* As an alternative to correcting for supplemental gases as specified in § 63.1257(a)(3), for noncombustion devices used to control emissions from dense gas systems, as defined in § 63.1251, the owner or operator shall monitor flowrate as specified in paragraphs (b)(5)(ii)(B)(*1*) through (*4*) of this section.

(*1*) Use Equation 63 of this subpart to calculate the system flowrate setpoint at which the average concentration is 5,000 ppmv TOC:

$$F_s = \frac{721 \times E_{an}}{5{,}000} \qquad \text{(Eq. 63)}$$

Where:

F_s = system flowrate setpoint, scfm
E_{an} = annual emissions entering the control device, lbmols/yr

(*2*) Annual emissions used in Equation 63 of this subpart must be based on the actual mass of organic compounds entering the control device, as calculated from the most representative emissions inventory data submitted within the 5 years before the Notification of Compliance Status report is due. The owner or operator must recalculate the system flowrate setpoint once every 5 years using the annual emissions from the most representative emissions inventory data submitted during the 5-year period after the previous calculation. Results of the initial calculation must be included in the Notification of Compliance Status report, and recalculated values must be included in the next Periodic report after each recalculation. For all calculations after the initial calculation, to use emissions inventory data calculated using procedures other than those specified in § 63.1257(d), the owner or operator must submit the emissions inventory data calculations and rationale for their use in the Notification of Process Change report or an application for a part 70 permit renewal or revision.

(*3*) In the Notification of Compliance Status report, the owner or operator may elect to establish both a maximum daily average operating flowrate limit above the flowrate setpoint and a reduced outlet concentration limit corresponding to this flowrate limit. The owner or operator may also establish reduced outlet concentration limits for any daily average flowrates between the flowrate setpoint and the flowrate limit. The correlation between these elevated flowrates and the corresponding outlet concentration limits must be established using Equation 64 of this subpart:

$$C_a = \frac{F_s}{F_a} \times 50 \qquad \text{(Eq. 64)}$$

Where:

C_a = adjusted outlet concentration limit, dry basis, ppmv
50 = outlet concentration limit associated with the flowrate setpoint, dry basis, ppmv
F_s = system flowrate setpoint, scfm
F_a = actual system flowrate limit, scfm

(*4*) The owner or operator must install and operate a monitoring system for measuring system flowrate. The flowrate into the control device must be monitored and recorded at least once every hour. The system flowrate must be calculated as the average of all values measured during each 24-hour operating day. The flowrate monitoring device must be accurate to within 5 percent of the system flowrate setpoint, and the flowrate monitoring device must be calibrated annually.

(C) *Flow rate evaluation for noncombustion devices.* To demonstrate continuous compliance with the requirement to correct for supplemental gases as specified in § 63.1257(a)(3)(ii) for noncombustion devices, the owner or operator must evaluate the volumetric flow rate of supplemental gases, V_s, and the volumetric flow rate of all gases, V_a, each time a new operating scenario is implemented based on process knowledge and representative operating data. The procedures used to evaluate the flow rates, and the resulting correction factor used in Equation 7B of this subpart, must be included in the Notification of Compliance Status report and in the next Periodic report submitted after an operating scenario change.

(6) * * *

(iii) Each loss of all pilot flames for flares.

* * * * *

(8) *Violations.* Exceedances of parameters monitored according to the provisions of paragraphs (b)(1)(ii), (iv) through (ix), and (b)(5)(ii)(A) and (B) of this section, or excursions as defined by paragraphs (b)(7)(i) through (iii) of this section, constitute violations of the operating limit according to paragraphs (b)(8)(i), (ii), and (iv) of this section.

* * *

* * * * *

(c) *Monitoring for emission limits.* The owner or operator of any affected source complying with the provisions of § 63.1254(a)(2) shall demonstrate continuous compliance with the 900 and 1,800 kg/yr emission limits by calculating daily 365-day rolling summations of emissions. For any owner or operator opting to switch compliance strategy from the 93 percent control requirement to the annual mass emission limit method, as described in § 63.1254(a)(1)(i), the rolling summations, beginning with the first day after the switch, must include emissions from the past 365 days.

* * * * *

11. Section 63.1259 is amended by:

a. Revising paragraph (a)(3)(i);

b. Revising paragraph (a)(3)(iii);

c. Revising paragraph (b)(4);

d. Revising paragraphs (b)(5)(i) and (b)(5)(ii);

e. Removing paragraph (b)(6), redesignating paragraphs (b)(7) through (b)(11) as paragraphs (b)(6) through (b)(10), and revising the redesignated paragraphs (b)(6) and (b)(9); and

f. Adding paragraphs (b)(11) and (12).

The revisions and additions read as follows:

§ 63.1259 Recordkeeping requirements.

(a) * * *

(3) * * *

(i) The owner or operator shall record the occurrence and duration of each malfunction of the process operations or of air pollution control equipment used to comply with this subpart, as specified in § 63.6(e)(3)(iii).

* * * * *

(iii) For each startup, shutdown, or malfunction, the owner or operator shall record all information necessary to demonstrate that the procedures specified in the affected source's startup, shutdown, and malfunction plan were followed, as specified in § 63.6(e)(3)(iii), and shall record all maintenance performed on the air pollution control equipment, as specified in § 63.10(b)(2)(iii); alternatively, the owner or operator shall record any actions taken that are not consistent with the plan, as specified in § 63.6(e)(3)(iv).

* * * * *

(b) * * *

(4) For purposes of compliance with the annual mass limits of § 63.1254(a)(2) and § 63.1254(b)(2), daily records of the rolling annual total emissions.

(5) * * *

(i) For processes or process vents that are in compliance with the percent reduction requirements of § 63.1254(a)(1), (a)(3), or § 63.1254(b)(1) and containing vents controlled to less than the percent reduction requirement, the following records are required:

(A) Standard batch uncontrolled and controlled emissions for each process;

(B) Actual uncontrolled and controlled emissions for each nonstandard batch; and

(C) A record whether each batch operated was considered a standard batch.

(ii) For processes in compliance with the annual mass limits of § 63.1254(a)(2) or § 63.1254(b)(2), the following records are required:

(A) The number of batches per year for each batch process;

(B) The operating hours per year for continuous processes;

(C) Standard batch uncontrolled and controlled emissions for each process;

(D) Actual uncontrolled and controlled emissions for each nonstandard batch;

(E) A record whether each batch operated was considered a standard batch.

(6) Wastewater concentration per POD or process, except as provided in § 63.1256(a)(1)(ii).

* * * * *

(9) Description of worst-case operating conditions as required in § 63.1257(b)(8).

* * * * *

(11) If the owner or operator elects to comply with § 63.1253(b) or (c) by installing a floating roof, the owner or operator must keep records of each inspection and seal gap measurement in accordance with § 63.123(c) through (e) as applicable.

(12) If the owner or operator elects to comply with the vapor balancing alternative in § 63.1253(f), the owner or operator must keep records of the DOT certification required by § 63.1253(f)(2) and the pressure relief vent setting and the leak detection records specified in § 63.1253(f)(5).

* * * * *

12. Section 63.1260 is amended by:

a. Adding paragraphs (e)(6) and (7);

b. Revising paragraph (g)(1)(ii);

c. Revising paragraph (g)(2)(vii);

d. Adding paragraph (g)(2)(viii);

e. Adding a new sentence after the first sentence in paragraph (h)(1) introductory text; and

f. Revising the reference "§ 63.10(d)(4)(ii)" to read "§"63.10(d)(5)(ii)" in the last sentence in paragraph (i).

The revisions and additions read as follows:

§ 63.1260 Reporting requirements.

* * * * *

(e) * * *

(6) Data and other information supporting the determination of annual average concentrations by process simulation as required in § 63.1257(e)(1)(ii).

(7) Bench scale or pilot-scale test data and rationale used to determine annual average concentrations as required in § 63.1257(e)(1)(ii)(C).

* * * * *

(g) * * *

(1) * * *

(ii) Quarterly reports shall be submitted when the source experiences an exceedance of a temperature limit monitored according to the provisions of § 63.1258(b)(1)(iii) or an exceedance of the outlet concentration monitored according to the provisions of § 63.1258(b)(1)(x) or § 63.1258(b)(5). Once an affected source reports quarterly, the affected source shall follow a quarterly reporting format until a request to reduce reporting frequency is approved. If an owner or operator submits a request to reduce the frequency of reporting, the provisions in § 63.10(e)(3)(ii) and (iii) shall apply, except that the phrase "excess emissions and continuous monitoring system performance report and/or summary report" shall mean "Periodic report" for the purposes of this section.

* * * * *

(2) * * *

(vii) Each new operating scenario which has been operated since the time period covered by the last Periodic report. For each new operating scenario, the owner or operator shall provide verification that the operating conditions for any associated control or treatment device have not been exceeded, and that any required calculations and engineering analyses have been performed. For the initial Periodic report, each operating scenario for each process operated since the compliance date shall be submitted.

(viii) If the owner or operator elects to comply with the provisions of § 63.1253(b) or (c) by installing a floating roof, the owner or operator shall submit the information specified in § 63.122(d) through (f) as applicable. References to § 63.152 from § 63.122 shall not apply for the purposes of this subpart.

(h) * * *

(1) * * * For the purposes of this section, a process change means the startup of a new process, as defined in § 63.1251. * * *

* * * * *

13. Section 63.1261 is revised to read as follows:

§ 63.1261 Delegation of Authority.

(a) This subpart can be administered by EPA, or a delegated authority such as a State, local, or tribal agency. If the Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to administer and enforce this subpart. To find out if this subpart is delegated to a State, local, or tribal agency, the appropriate EPA Regional Office should be contacted.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to the emission standards in §§ 63.1252 through 63.1256 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.1257 as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.1258 as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under §§ 63.1259 and 63.1260 as defined in § 63.90.

14. Table 1 to subpart GGG is amended by:

a. Revising the column heading "Comments" to read "Explanation";

b. Revising the entries "63.5(b)(3)," "63.7(a)(1)," "63.9(h)," "63.9(j)," "63.9(a)–(d)," "63.9(e)," "63.9(g)(1)," "63.9(g)(3)," "63.10(a)," "63.10(b)(1)," "63.10(b)(3)," and "63.10(c)–(d)(2);"

c. Removing the entry "63.7(a)(2)(i–ix)" and adding in its place the entry "63.7(a)(2)(i)–(ix);"

d. Removing the entry "63.8(b)(3)–(c)(3)" and adding in its place the entry "63.8(b)(3)–(c)(4);"

e. Removing the entry "63.8(c)(4–5)" and adding in its place the entry "63.8(c)(5);"

f. Removing the entry "63.8(c)6)–(8)" and adding in its place the entry "63.8(c)(6)–(8)."

The revisions and additions read as follows:

TABLE 1.—TO SUBPART GGG. GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Explanation and comments
* * * * * * *			
63.5(b)(3)	New construction/reconstruction	Yes	Except for changes and additions authorized under § 52.2454 of this title. However, the requirement to submit the Precompliance report at least 90 days before the compliance date still applies
* * * * * * *			
63.7(a)(1)	Performance testing requirements	Yes	Subpart GGG also specifies required testing and compliance procedures
63.7(a)(2)(i–ix)		Yes	Except substitute "150 days" instead of "180 days."
* * * * * * *			
63.8(b)(3)–(c)(4)	CMS requirements	Yes	§ 63.1259 also specifies recordkeeping for CMS.
63.8(c)(5)	COMS operation requirements	No.	
63.8 (c)(6–8)	CMS calibration and malfunction provisions	No	Calibration procedures are provided in § 63.1258.
* * * * * * *			
63.9(a)–(d)	Notification requirements—Applicability and general information.	Yes	§ 63.1260(b) also specifies initial notification requirement.
63.9(e)	Notification of performance test	Yes	§ 63.1260(l) also specifies notification requirement for performance test.
* * * * * * *			
63.9(g)(1)	Additional notification requirements for sources with CMS.	Yes	§ 63.1260 (d) also specifies notification requirement for performance evaluation.
* * * * * * *			
63.9(g)(3)	Notification that criterion to continue use of alternative to relative accuracy testing has been exceeded.	Yes	§ 63.1260(d) also specifies notification requirement for performance evaluation.
63.9(h)	Notification of compliance status	Yes	Specified in § 63.1260(f). Due 150 days after compliance date.
* * * * * * *			
63.9(j)	Change in information provided	No	Subpart GGG specifies procedures for notification of changes.
* * * * * * *			
63.10(a)	Recordkeeping requirements	Yes.	
63.10(b)(1)	Records retention	Yes	Also stated in § 63.1259.
* * * * * * *			
63.10(b)(3)	Records retention for sources not subject to relevant standard.	Yes	Also stated in § 63.1259 (a)(2).
63.10(c)–(d)(2)	Other recordkeeping and reporting provisions	Yes	Also stated in § 63.1259 (a)(4).

15. Table 5 to subpart GGG is revised to read as follows:

TABLE 5. TO SUBPART GGG.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.1252(F)

Item of equipment	Control requirement[a]
Drain or drain hub	(a) Tightly fitting solid cover (TFSC); or (b) TFSC with a vent to either a process or to a control device meeting the requirements of § 63.1256(h)(2); or

TABLE 5. TO SUBPART GGG.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF §63.1252(F)—Continued

Item of equipment	Control requirement[a]
	(c) Water seal with submerged discharge or barrier to protect discharge from wind.
Manhole[b]	(a) TFSC; or (b) TSFC with a vent to either a process or to a control device meeting the requirements of §63.1256(h)(2); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to either a process or to a control device meeting the requirements of §63.1256(h)(2); or (c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
Trench	(a) TFSC; or (b) TFSC with a vent to either a process or to a control device meeting the requirements of §63.1256(h)(2); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and route vapors to a process or equip with a closed-vent system that routes vapors to a control device meeting the requirements of §63.1256(h)(2); or (b) Equip with a floating roof that meets the equipment specifications of §60.693(a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
Tank	Maintain a fixed roof and consider vents as process vents.[c]

[a] Where a tightly fitting solid cover is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.

[b] Manhole includes sumps and other points of access to a conveyance system.

[c] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.

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Federal Register

Monday,
April 10, 2000

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 411 and 489
Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 411 and 489

[HCFA–1112–P]

RIN 0938–AJ93

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule sets forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year 2001. Furthermore, it specifically proposes changes to the SNF PPS case-mix methodology. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act, as amended by the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999, related to Medicare payments and consolidated billing for SNFs. In addition, this proposed rule sets forth certain conforming revisions to the regulations that are necessary in order to implement amendments made to the Act by section 103 of the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 9, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1112–P, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–15–03, 7500 Security Boulevard, Baltimore, MD 21244–8150.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1112–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7061).

FOR FURTHER INFORMATION CONTACT:

Dana Burley, (410) 786–4547 or Sheila Lambowitz, (410) 786–7605 (for information related to the case-mix classification methodology).

John Davis, (410) 786–0008 (for information related to the Wage Index).

Bill Ullman, (410) 786–5667 (for information related to consolidated billing).

Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition rates).

Bill Ullman, (410) 786–5667 and Susan Burris (410) 786–6655 (for general information).

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To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Table of Contents

In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL—Activity of Daily Living
BBA—Balanced Budget Act of 1997
BBRA—Balanced Budget Refinement Act of 1999
BLS—(U.S.) Bureau of Labor Statistics
CPI—Consumer Price Index
HCFA— Health Care Financing Administration
HCPCS—HCFA Common Procedure Coding System
IFC—Interim Final Rule with Comments
MDS—Minimum Data Set
MSA—Metropolitan Statistical Area
PPI—Producer Price Index
PPS—Prospective Payment System
PRM—Provider Reimbursement Manual

RUG—Resource Utilization Group
SCHIP—State Child Health Insurance Program
SNF—Skilled Nursing Facility

I. Background

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) mandated the implementation of a per diem prospective payment system (PPS) for skilled nursing facilities (SNFs), covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. The SNF PPS payment methodology features a case-mix adjustment that utilizes data from the comprehensive assessment process required for every SNF beneficiary in order to group them clinically in terms of their degree of resource intensity. The case-mix adjustment is designed to ensure that the amount of the PPS per diem payment is appropriate to the individual beneficiary's actual condition, and is sufficient to purchase the full range of care and services that a beneficiary with a particular clinical profile would typically be expected to require. We are setting forth this proposed rule in accordance with section 1888(e)(4)(H)(ii) of the Social Security Act (the Act), which requires us to publish each year in the **Federal Register** any changes in the case-mix classification system that we use to make the case-mix adjustment. Although we are not proposing any other changes in the overall PPS payment methodology at present, we are nonetheless including a detailed discussion of the overall payment methodology in section I.C. below, in order to provide a context for the proposed changes to the case-mix classification system. In addition, we are incorporating revisions based on the Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA). Major elements of the system were implemented in an interim final rule that was published in the **Federal Register** on May 12, 1998 (63 FR 26252), and in a final rule that was published in the **Federal Register** on July 30, 1999 (64 FR 41644). These elements are discussed in greater detail in section I.C. below, and include:

- *Rates:* Per diem Federal rates were established for urban and rural areas using allowable costs from fiscal year (FY) 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. Rates are case-mix adjusted using a refined classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The proposed refinement to the RUG classification system is based on critical analysis which examined various options to account more precisely for the variation in non-therapy ancillary services in our payments and the care needs of medically complex patients. The proposed RUG refinement includes the addition of new categories and incorporation of an ancillary index, as discussed in further detail in section II.B. In addition, the Federal rates are adjusted by the hospital wage index to account for geographic variation in wages. At this time, data for the FY 2001 hospital wage index is not yet available; therefore, the index applied in this proposed rule is the same index used in the July 30, 1999 update notice. We will be updating the wage index in the final rule using the latest hospital wage data. Further, the rates are adjusted annually using an SNF market basket index. Lastly, as a result of section 101 of the BBRA, for SNF services furnished on or after April 1, 2000, and before the later of October 1, 2000, or implementation by the Secretary of Health and Human Services of a refined RUG system, per diem adjusted payments are increased by 20 percent for 15 RUGs falling under categories for Extensive Services, Special Care, Clinically Complex, High Rehabilitation and Medium Rehabilitation. This 20 percent increase serves solely as a temporary, interim adjustment to the payment rates and RUG–III classification system as published in the final rule of July 30, 1999, until we have had the opportunity to implement the case-mix refinements proposed in this rule. At that point, the temporary adjustment afforded by the 20 percent increase will no longer be applicable, as payment will be made in accordance with the newly-refined RUGs. The RUG–III groups to which this adjustment applies are: SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC and RMB. In addition, for FY 2001 and FY 2002, the adjusted Federal per diem payment to a facility is increased by 4 percent in each year, calculated exclusive of the 20 percent RUG rate increase.
- *Transition:* The SNF PPS includes a 3-year, phased transition that blends a facility-specific payment rate with the Federal case-mix adjusted rate. The blend used changes for each cost reporting period after a facility migrates to the new system. For most facilities, the facility-specific rate is based on allowable costs from FY 1995. As a result of section 102 of the BBRA of 1999, SNFs may elect immediate transition to the Federal rate on or after December 15, 1999 for cost reporting periods beginning on or after January 1, 2000. There is no such election for cost reporting periods beginning before January 1, 2000. SNFs may elect immediate transition up to 30 days after the start of their cost reporting period.
- *Coverage:* The PPS statute did not change Medicare's fundamental requirements for SNF coverage. However, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted where possible to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities. For example, we believe that when an initial Medicare required (5-day) assessment, properly completed, places the beneficiary in one of the upper RUG–III classifications that we designate as representing a covered level of SNF care (see section II.E. of this preamble), this provides the basis for us to assume that the beneficiary needed such care upon admission and at least up until the assessment reference date for the initial Medicare-required assessment. We will, however, continue to make individual review determinations for claims of those individuals who classify in one of the lower RUG–III categories.
- *Consolidated Billing:* The statute includes a billing provision that requires a SNF to submit consolidated Medicare bills for its beneficiaries for virtually all services that are covered under either Part A or Part B. The statute excludes a small list of services (primarily those of physicians and certain other types of practitioners). As discussed later in this preamble, section 103 of the BBRA has identified certain additional services for exclusion, effective April 1, 2000.

As noted above, an interim final rule implementing the SNF PPS was published in the **Federal Register** on May 12, 1998, for which the comment period was initially scheduled to close on July 13, 1998. A subsequent notice extended the public comment period for an additional 60 days (July 13, 1998, (63 FR 37498)), and a second notice reopened the comment period for another 30 days (November 27, 1998 (63 FR 65561)). In addition, a correction notice was published October 5, 1998 (63 FR 53301) that made a number of

minor technical and editorial corrections to the interim final rule. In the July 30, 1999, final rule we responded to the public comments received on the interim final rule and made a number of modifications in the regulation. This final rule was followed by a correction notice published on November 4, 1999 (64 FR 60122), which made a technical correction to the final rule's preamble. Also on July 30, 1999, we issued an update notice (64 FR 41684), followed by a correction notice published on October 5, 1999 (64 FR 54031). We have also issued several Program Memoranda on claims processing and billing under the SNF PPS that are available on the SNF PPS home page at the HCFA website on the Internet, at the following location: <www.hcfa.gov/Medicare/snfpps.htm>

B. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Skilled Nursing Facilities

As described above, section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In addition, in the July 30, 1999 final rule, we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to Part A SNF services or to the RUG–III classifications.

This proposed rule updates the rates as mandated by the Medicare statute.

C. The Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999

As a result of enactment of the BBRA, there are several new provisions that result in adjustments to the PPS for SNFs. The following highlights the major provisions involving the PPS for SNFs:

Temporary Increase in Payment for Certain High Cost Residents

As noted previously, section 101 of the BBRA provides for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUGs, falling under categories for Extensive Services, Special Care, Clinically Complex, High Rehabilitation and Medium Rehabilitation. The specific RUG–III groups to which this adjustment applies are: SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB. The statute provides that the 20 percent increase takes effect with SNF services that are furnished on or after April 1, 2000, and continues until the later of October 1, 2000, or implementation by the Secretary of a refined RUG system. Thus, the 20 percent increase serves solely as a temporary, interim adjustment to the payment rates and RUG–III classification system as published in the final rule of July 30, 1999, until we have implemented the case-mix refinements that we now propose elsewhere in this document, which we expect to accomplish by October 1, 2000. Once we have implemented the case-mix refinements, the temporary adjustment afforded by the 20 percent increase will no longer be applicable, as we will then make payment in accordance with the newly-refined RUGs.

For FY 2001 and FY 2002, section 101 of the BBRA also provides for an across-the-board increase in the adjusted Federal per diem payment rates by 4 percent in each year, calculated exclusive of the 20 percent RUG rate increase discussed above. Unlike the 20 percent increase, which is targeted at certain particular RUG–III groups, this 4 percent increase will apply equally to all RUG groups.

Election For Immediate Transition to Federal Rate

As noted earlier, under section 102 of the BBRA, all SNFs may now elect to bypass the transition and be paid based upon 100 percent of the Federal rate. This election applies to cost reporting periods beginning on or after January 1, 2000. There is no such election for cost reporting periods beginning before January 1, 2000. SNFs may make this election beginning on or after December 15, 1999 and up to 30 days after the start of their cost reporting periods. An election to bypass the transition is effective for all subsequent periods and cannot be rescinded once it is effective. Further information can be found in Program Memorandum A–99–53.

Special Payment Adjustment for Certain SNFs

Section 155 of the BBRA provides that PPS payments to certain SNF providers located in Baldwin or Mobile County, Alabama, will be based on 100 percent of their facility specific rates for cost reporting periods that begin in FY 2000 or FY 2001. In addition, it requires that the facility specific portion of their payment rate be calculated using data from their cost reporting period beginning in FY 1998. In order to be eligible for this special payment, a SNF must meet the following criteria: began participation in the Medicare program before January 1, 1995; have at least 80 percent of the total inpatient days of the facility in the cost reporting period beginning in FY 1998 comprised of persons entitled to Medicare; and, be located in Baldwin or Mobile County, Alabama.

Special SNF PPS Payment Provisions for SNFs with Certain Types of Patient Populations

Section 105 of the BBRA adds paragraph (12) to section 1888(e) of the Act and permits certain SNFs to receive 50 percent of the facility specific rate and 50 percent of the Federal per diem rate, effective from November 29, 1999, until September 30, 2001. In order to be eligible, a SNF must: have been certified as an SNF under Medicare prior to July 1, 1992; be a hospital-based facility; and, in the cost reporting period beginning in FY 1998, have had a patient population, eligible for Part A benefits, of which at least 60 percent were "immuno-compromised secondary to an infectious disease," with "specific diagnoses specified by the Secretary." The statute gives the Secretary the authority to specify the diagnosis associated with this provision, and we believe the legislative history provides some guidance concerning the application of this provision. The House Ways and Means Committee report (H. Rep. 106–436, Part 1 at 47) indicates that this provision is directed at facilities that serve "* * * very specialized patients * * * whose medical conditions are not well-accounted for in the RUG classification system." The Senate Finance Committee Report (S. Rep. 106–199 at 8) indicates the need to study "* * * alternative payment methods for skilled nursing facilities that specialize in providing care to extremely high cost, chronically ill populations * * *" such as "a facility that exclusively specializes in caring for AIDS patients * * *" In light of this general Congressional intent, we believe that the scope of this provision should be limited and propose that this provision be applied to human immunodeficiency virus (HIV) as coded in ICD–9–CM with the following code: 042.

Provision for Part B Add-Ons for Facilities Participating in the Nursing Home Case-Mix and Quality (NHCMQ) Demonstration Project

Under prior law, section 1888(e)(3) of the Act provided for an add-on to the

payment rates for Part B services furnished during the course of a Part A covered stay for those facilities that did not participate in the demonstration that preceded SNF PPS. However, the Act did not provide for a similar add-on for facilities that did participate in the demonstration project. Therefore, section 104 of the BBRA amended section 1888(e)(3) to provide that SNFs that had participated in the Nursing Home Case Mix and Quality Demonstration (NHCMQ) project are eligible for the inclusion of a Part B add-on amount in their facility specific PPS rates. This provision is effective as if included in the enactment of the BBA and, therefore, applies to all cost reporting periods subject to the PPS transition.

For the purpose of computing facility specific rates, the base year for providers participating in the NHCMQ demonstration project is calendar year 1997 rather than FY 1995 (which is the base year for SNFs not participating in the demonstration project). Therefore, the Part B add-on amounts for the demonstration SNFs will be calculated using data from the appropriate periods in 1997. Because of the time period necessary for us to compute these amounts, existing Part B data from 1995 will be updated for inflation and used as the bases for payment on an interim basis until we can develop the final amounts using the 1997 data, at which point earlier payments will be adjusted to reflect the correct data.

Exclusion of Certain Additional Services from the SNF PPS Bundle and Consolidated Billing

The original SNF PPS legislation in the BBA identified several service categories that were excluded from the SNF consolidated billing requirement, as well as from the bundled Part A payment made under the SNF PPS itself. Effective with services furnished on or after April 1, 2000, section 103(a) of the BBRA has amended section 1888(e)(2)(A) to exclude certain additional types of services from the consolidated billing requirement, thus allowing these services to be billed separately to Part B. Section 103(b) of the BBRA has also amended section 1888(e)(4)(G) to provide for a corresponding proportional reduction in Part A SNF payments, beginning with FY 2001. We discuss these additional excluded service categories in section V. of this preamble, on consolidated billing.

D. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through per diem prospective case-mix adjusted payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (For a complete discussion of these provisions, see the May 12, 1998 interim final rule (63 FR 26252)).

1. Payment Provisions—Federal Rate

The statute sets forth a fairly prescriptive methodology for calculating the amount of payment under the SNF PPS. The PPS utilizes per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporate an estimate of the amounts that would be payable under Part B for covered SNF services to individuals who were receiving Part A covered services in an SNF. In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and standardized for facility differences in case-mix and for geographic variations in wages. Providers that received "new provider" exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits were excluded from the database used to compute the Federal rates. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately the payment rates for facilities located in urban and rural areas. In addition, we adjust the portion of the Federal rate attributable to wage related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix using a classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, utilizes beneficiary assessment data (from the Minimum Data Set or MDS) completed by SNFs to assign beneficiaries into one of 178 groups. The May 12, 1998 interim final rule (63 FR 26252) has a complete and detailed description of the original (44 group) RUG–III classification system. A detailed discussion of the proposed changes to the RUG classification system is found in Section II.B. of this proposed rule.

The Federal rates reflected in this notice update the rates in the July 30, 1999 update notice (64 FR 41684) by a factor equal to the SNF market basket index minus 1 percentage point. According to section 1888(e)(4)(E)(ii) of the Act, for FYs 2001 and 2002, we will update the rate by adjusting the current rates by the SNF market basket change minus 1 percentage point. For subsequent FYs, we will adjust the rates by the applicable SNF market basket change.

2. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During the transition period, SNFs receive a payment rate comprising a blend between the Federal rate and a facility-specific rate based on each facility's FY 1995 cost report. Under section 1888(e)(2)(E)(ii) of the Act, SNFs that received their first payment from Medicare on or after October 1, 1995 receive payment according to the Federal rates only.

For SNFs subject to transition, the composition of the blended rate varies depending on the year of transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost

reporting periods, we base payments entirely on the Federal rates.

As noted earlier, in accordance with section 102 of the BBRA, SNFs that would otherwise be subject to the statutory three-year, phased transition from facility-specific to Federal rates, may elect to bypass the transition and go directly to the full Federal rate. This amendment applies to elections made on or after December 15, 1999, except that no election will be effective for a cost reporting period beginning before January 1, 2000; an election is effective for a cost reporting period beginning no earlier than 30 days before the date of the election.

3. Payment Provisions—Facility-Specific Rate

For most facilities, we compute the facility-specific payment rate utilized for the transition using the allowable costs of SNF services for cost reporting periods beginning in FY 1995 (cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995). Included in the facility-specific per diem rate is an estimate of the amount that would be payable under Part B for covered SNF services furnished during FY 1995 to individuals who were beneficiaries of the facility and receiving Part A covered services. The facility-specific rate, in contrast to the Federal rates, includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account "new provider" exemptions from the routine cost limits, but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting period after FY 1995 to the first cost reporting period beginning on or after July 1, 1998 (the initial period of the PPS) by a factor equal to the SNF market basket percentage increase minus 1 percentage point. For FYs 1998 and 1999, we updated this rate by a factor equal to the SNF market basket increase minus 1 percentage point, and in each subsequent year, we will update it by the applicable SNF market basket increase.

Appeals Rights

In enacting SNF PPS, Congress imposed limitations on the rights of SNFs to appeal their new payment rates (section 1888(e)(8) of the Social Security Act). Similar to the hospital PPS, the new SNF system begins with a transition period, wherein a portion of the payment rates (that is, the facility-specific rate) is based upon the facilities' costs in a base period (cost reporting periods beginning in 1995). The facility-specific portion of the rate phases out over the course of a three year cost reporting transition period, after which the SNFs will be paid on a fully Federal rate. The statutory language removes the Federal portion of the rate from administrative and judicial review, while allowing for a limited review of the facility-specific portion of the rate related to an SNFs Part A historical costs from the 1995 base year. The language of the interim final rule with comment and the Medicare Provider Reimbursement Manual (PRM) contemplate situations where adjustments are made to the reimbursement amounts allowable in the base year that are used to set the facility-specific portion of a provider's PPS rate. Adjustments may be made in the cost report settlement process and/or providers may have appealed specific cost report adjustments. Where adjustments are made to the base year costs either through final settlement of the cost report or as a result of an appeal of the base year Notice of Program Reimbursement (NPR), such adjustments may be applied to the facility-specific portion of the PPS rate for any cost years that are open or are within the time periods subject to reopening under the regulations at 42 CFR 405.1885. Additionally, providers may challenge the facility-specific portion of their rates by appealing the facility-specific rate notice they receive from their fiscal intermediary before the start of SNF PPS. The fiscal intermediaries will apply any adjustments resulting from a successful challenge to this rate notice to all open transition years. Providers may also challenge their facility-specific rates by appealing their transition year NPRs. Adjustments obtained through a NPR challenge will only be applied to the year under appeal. Moreover, in accordance with the judicial review prohibitions contained in section 1888(e)(8)(B) of the Act, all reviews of facility-specific rates are limited to challenges relating to specific Medicare Part A costs in the base year.

II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This rule sets forth a proposed schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2000. The schedule incorporates per diem Federal rates designed to provide Part A payment for all costs of services furnished to a beneficiary of an SNF during a Medicare-covered stay.

1. Cost and Services Covered by the Federal Rates

The Federal rates apply to all costs (that is, routine, ancillary, and capital related costs) of covered SNF services other than costs associated with operating approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include posthospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97). Also, as mentioned previously, section 103 of the BBRA has identified certain additional types of services for exclusion from the SNF PPS bundle, and has provided for a corresponding proportional reduction in Part A SNF payments beginning with FY 2001.).

2. Methodology Used for the Calculation of the Federal Rates

The methodology to compute the unadjusted Federal rates incorporates several changes since we published the final rule on July 30, 1999 (64 FR 41684). First, to facilitate the incorporation of our proposed refinement to the case mix classification system, we are creating a new component of the payment rates to account for non-therapy ancillary services. This component is being created by moving the non-therapy ancillary costs used in establishing the nursing case-mix component of the payment rates to a separate component. For the payment rates associated with urban areas, 43.4 percent of the nursing case mix component is related to non-therapy ancillary services (including Part B services). For the payment rates associated with rural areas, 42.7 percent of the nursing case mix component is related to non-therapy ancillary services (including Part B services). These percentages were previously identified in a **Federal Register** notice dated November 27, 1998 (63 FR 65561). This new component of the payment rates is presented in Tables 1 and 2 of this proposed rule.

In addition, in accordance with section 103 of the BBRA, the Federal rates will be adjusted to reflect the

exclusion of certain items and services from consolidated billing, as explained previously. The complexity and time necessary for computing the numeric adjustment itself does not allow us to present it in this proposed rule. However, we describe the general methodology that we plan to use later in this preamble (in the discussion of the PPS Rate Tables). As required by the statute, the rates are updated using the latest market basket percentage minus 1 percentage point. For a complete description of the multi-step process, see the May 12, 1998 interim final rule. In addition, based on section 101 of the BBRA, we have provided for a 4 percent increase in the adjusted Federal rate for FY 2001. This 4 percent adjustment is not reflected in the rate tables (Tables 1, 2, 5, and 6 of this proposed rule). In accordance with the statute, it is applied after all adjustments (wage and case-mix). See the example in Section III; Table 9, of this proposed rule.

The SNF market basket is used to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal FY beginning October 1, 1999 and the midpoint of the Federal FY beginning October 1, 2000, and ending September 30, 2001, to which the payment rates apply. In accordance with section 1888(e)(4)(B) of the Act, the payment rates are updated between FY 2000 and FY 2001 by a factor equivalent to the annual market basket index percentage increase minus 1 percentage point. This factor is equal to 1.01833. Tables 1 and 2 below reflect the updated components of the unadjusted Federal rates.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM: URBAN

Rate component	Nursing case-mix	Medical ancillary	Therapy case-mix	Therapy non-case mix	Non-case-mix
Per Diem Amount	$64.49	$49.45	$85.79	$11.32	$58.25

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM: RURAL

Rate component	Nursing case-mix	Medical ancillary	Therapy case-mix	Therapy non-case mix	Non-case-mix
Per Diem Amount	$62.50	$46.58	$99.11	$12.10	$59.32

B. Case-Mix Adjustment and Options

As required by the BBA, HCFA must publish the SNF PPS case-mix classification methodology applicable for the next Federal FY before August 1 of each year. This proposed rule discusses options for refinements to the RUG–III system, describes ongoing research and analyses, shares the initial results that we propose be incorporated into the Medicare PPS system effective October 1, 2000, and solicits comments from all interested parties. During the next 60 days, comments will be reviewed and considered, additional analyses will be conducted, and final decisions will be made on the need for, and types of, RUG–III refinements to be implemented. A final rule will then be promulgated before August 1, 2000.

Research Goals

We commissioned a study to review the RUG–III classification system with particular emphasis on the care needs of medically complex Medicare beneficiaries and the variation in non-therapy ancillary services within RUG–III categories. This project is a major priority for us, the provider industry, and others. The initial research identified potential refinements to the system that we propose to implement effective October 1, 2000.

A key part of this research was the exploration of potential refinements to the Extensive Services category. Previous research showed that the Extensive category is associated with the highest per diem non-therapy ancillary costs of any of the RUG–III categories. The research also indicated that, while the Extensive Services category did capture a disproportionate share of high cost beneficiaries, there was considerable variance in costs within this category as well as within other categories. In the current project, additional studies were conducted to extend the analysis of non-therapy ancillary costs and within-group variance to other RUG–III categories.

The researchers focused on the following analyses to identify options, and the results were used to develop the proposed RUG–III refinements discussed in this rule:

1. Evaluate the ability of the current RUG–III system to predict variance in drug, respiratory or other non-therapy ancillary costs.

2. Evaluate the ability of specific MDS items to predict variance in non-therapy ancillary costs, and identify the MDS items most closely associated with differences in non-therapy ancillary costs.

3. Design/test potential refinements to the RUG–III methodology.

A detailed description of the methodology used to conduct these analyses is included in the Technical Appendix A to this proposed rule.

Data Sources

Since ensuring the equity and accuracy of the SNF PPS has been, and continues to be, a major HCFA priority, the studies were initiated shortly after the introduction of the new payment system. In fact, the research was conducted before actual PPS claims and acuity data became available. For this reason, the analyses described here were conducted using a large cross-linked research data base that included clinical assessment data collected from the Federally-mandated MDS, drug information, our claims data, and organizational data on nursing home providers. The data sets used in the analyses are described below:

Minimum Data Set (MDS)

MDS data were collected from 6 states: Kansas, Maine, Mississippi, Ohio, South Dakota, and Texas. (As explained in Technical Appendix A, we were unable to utilize data from a seventh state, New York, due to that state's use of an all-inclusive payment rate.) These states were selected because the MDS data had been collected and used for rate-setting purposes prior to the start of the Medicare SNF PPS (either through the HCFA Case-Mix Demonstration Project or for state Medicaid payment systems), and provided a greater number of MDS records over a longer period of time than available from any other source. In addition, previous demonstration

project reliability studies and state validation activities indicated a generally high level of data accuracy.

MDS data used in this study were for calendar years 1995, 1996 and 1997 (except for Texas, where data were only available for 1997), and included assessments for Medicare beneficiaries, Medicaid recipients and private pay patients. While some states required MDS assessments for all beneficiaries admitted to the SNF regardless of the length of stay, most of the assessments were prepared following the Federal guidelines in effect at the time; that is, assessments required by day 14 of the SNF admission.

MDS Drug Data

Facilities participating in the HCFA Case-Mix Demonstration project submitted medications data as part of their MDS assessments. In addition, several of the states, including Maine, South Dakota, and Ohio, required the medications data with every MDS, regardless of payor source. The medications reported on the MDSs were collected from seven states, the six states used for this study, plus New York (see Technical Appendix A for details on the use of New York data).

Up to 18 medications administered during the assessment reference period can be reported on an MDS record. The MDS drug data were cleansed and verified through a combination of manual examination (by either a clinical pharmacist or physician) and computerized reclassification of National Drug Codes (NDC). The data were then ordered into therapeutic groups for easier analysis.

SNF Claims

All SNF Medicare claims spanning the years 1995 through 1997 were downloaded from the HCFA Data Center and matched to MDS files. The files were constructed so that there are multiple observations per SNF stay if multiple MDS assessments were performed.

Staff Time Measurement (STM) Study Data

This analysis incorporated HCFA STM Study data (combined 1995 and 1997). The May 12, 1998 interim final rule described the STM Study, and the methodology used to incorporate the STM data into Medicare PPS rate-setting. These data were used to impute staff time costs for the observations used in this study.

On-Line Survey Certification and Reporting System (OSCAR) Data

The OSCAR data provide facility-level information, such as the results from annual survey inspections and information regarding facility type. OSCAR data from 1991 through 1998 were linked serially into a longitudinal file. The analytic database constructed for this research has been merged to this longitudinal OSCAR file through the linking of facility identifiers, using the OSCAR information from the survey dates closest to the MDS assessment data.

Case Mix Research Findings

While maintaining the general structure of RUG–III, we found that the two most viable ways to refine the system are by adding new categories and end splits to the system, and by developing a new index system to reflect the variation of non-therapy ancillary service costs. Adoption of these refinements will add additional groups to the case-mix system, somewhat increasing its complexity. This proposed change also may introduce some initial uncertainty for providers, who would have to become familiar with the refined system and modify existing operational and support systems.

In evaluating a particular change, we first identified the drawbacks of that change (for example, added complexity of the RUG–III model and time and effort required by providers, contractors, and beneficiaries to assimilate the change). Then, to evaluate the overall desirability of the potential change, we weighed these drawbacks against the benefits, such as the expected improvement in payment and clinical accuracy. In addition, we evaluated potential refinements in terms of possible incentives and disincentives related to access, quality and cost-effectiveness of SNF care. We incorporated this analysis into our evaluation of potential RUG–III refinements.

After careful review and extensive analysis, we then identified several possible RUG–III refinements that will improve the accuracy of SNF PPS payments. One such refinement is the development of new categories for beneficiaries who qualify for both the RUG–III Rehabilitation and Extensive Services categories. As expected, our analyses indicated that ancillary costs were much higher for Medicare beneficiaries in the Extensive Services category than for those in other categories. There are also a significant number of beneficiaries who would classify into the Extensive Services category based on clinical conditions but who, because they are also receiving rehabilitation services, classify into one of the Rehabilitation categories instead (due to the hierarchical logic of the RUG–III classification system). These beneficiaries carry with them the same non-therapy ancillary costs associated with their complex clinical needs even though they are classified into a RUG–III Rehabilitation category.

The high costs for beneficiaries in the Extensive Services category suggest that the payment rate for Extensive Services should be increased. However, increasing the payment rate without further adjustments could adversely affect provider incentives to provide therapy to beneficiaries requiring Extensive Services. Therefore, we expanded the scope of the proposed refinement to include a new category for beneficiaries who qualify for both Extensive Services and a RUG–III Rehabilitation category.

Our research findings showed little or no correlation between the groups within the Extensive Services category (that is, SE1, SE2, SE3) and the level of rehabilitation services used. For this reason, the structure for the new hierarchy level proposed here would mirror that of the existing Rehabilitation categories. Thus, we would add to the current RUG–III model fourteen (14) new "Rehabilitation and Extensive Services" sub-categories that use the same Rehabilitation sub-category and ADL splits as the current system (See Table 4 for the proposed RUG–III structure).

The second component of the proposed refinement is the development of a separate "non-therapy ancillary" index based on clinical variables on the MDS. We tested MDS items to identify clinical conditions and services that are predictive of non-therapy ancillary costs. First, we analyzed each MDS variable independently, and identified all MDS items that had a significant positive relationship (at the 5 percent level) with per diem non-therapy ancillary costs. Next, we identified combinations of MDS items that were associated with significant cost differences. We then evaluated variables for clinical validity and potential incentive effects. For example, we rejected consideration of indwelling catheters as case-mix adjustors due to the potential negative incentive factors associated with their use in the index. See Table 3 for a list of MDS items that were found to be associated with significant differences in ancillary costs.

Once we identified the critical predictive variables, we investigated a

number of index model approaches. We developed weighted and unweighted versions of a non-therapy ancillary index. Both versions improved the variance prediction of the case-mix system. The unweighted index model assigns a non-therapy ancillary level based on a count of the variables (selected MDS items) associated with non-therapy ancillary costs. Under the weighted index model, different weights are assigned to the selected MDS items based on the difference in costs associated with the item. In this study, the researchers assigned the weights based on quantitative analysis of the data. With both indices, thresholds were determined to form subgroups which vary logically in cost. However, these cost variations relate to the research data base, and need to be verified against the national MDS/Medicare claims data base.

The grouping logic used for the refined RUG–III is very similar to that currently used. The same 108 MDS items that are used to classify beneficiaries into the 44 RUG–III groups will be used to classify beneficiaries into the refined RUG–III subcategories in either the unweighted or weighted index models. It is only at the last level of classification that additional MDS items are considered. The MDS items used for the last step of classification include some of the 108 items that are used for the first level of classification in addition to some others, either alone or in combinations.

The last step to grouping using the unweighted index model (UWIM) that we are proposing is based on a count of clinical variables, up to a maximum of 11. There are 11 "domains," some of which are comprised of multiple MDS clinical variables. The clinical conditions and services that define the domains are shown in Table 3. Within a domain, any one clinical variable, or combination of variables, satisfies the criteria for being included in the count for classification into one of the refined RUG–III groups. For example, the first domain is "Parenteral/IV feeding with greater than 76 percent total calories." In order for the domain to be counted for determining the final step in RUG–III classification in the UWIM, the MDS items K5a and K6a must be coded to reflect the receipt by the beneficiary of at least 76 percent of total nutrition received via parenteral or IV feeding in the previous 7 days.

Other domains are comprised of many more MDS items than the parenteral/IV feeding domain. An example of this is the domain entitled, "Oxygen and either pneumonia or respiratory infection with fever, or pneumonia or respiratory infection, chronic obstructive pulmonary disease, congestive heart failure, coronary artery disease with shortness of breath." This domain will only count once toward classification even though it is possible for a beneficiary to have values for all of these clinical conditions. As soon as the grouper software identifies that one combination of MDS items' values is present on the MDS that satisfies this domain, it will credit the case with a count of 1 in addition to whatever other domain criteria are satisfied by the MDS.

The identified clinical variables are used for classification of every Medicare MDS in the Clinically Complex category and above, regardless of the other qualifying conditions and services reported on the MDS. This means that a beneficiary who has a count of 2 of the relevant clinical variables, will classify into the "3" level of the particular refined RUG–III subcategory for which he or she qualifies. As described above, the "3" level signifies a count of 1 or 2 of the clinical variables used for determining the non-therapy ancillary end split.

For example, a beneficiary who has pneumonia, an ADL sum score of 8, dehydration, a fever, and a surgical wound that requires twice daily dressing changes, will classify to the Special Care category. Within the Special Care category, the ADL score of 8 will classify this beneficiary into the "SC" subcategory. The count of the items that are used to make the final classification is 2, as the pneumonia and the wound care with dressing changes are the two clinical variables that will affect classification of this beneficiary to the SC3 group.

TABLE 3.—MDS ITEMS ASSOCIATED WITH DIFFERENCES IN ANCILLARY CHARGES—REFINED VARIABLE LIST FOLLOWING CLINICAL INPUT

MDS items domains	Percent of sample	Regression coefficient	Standard error	t–Statistic
Parenteral/IV with >76 percent total calories	1	153.97	14.63	10.53
Tracheostomy	1	109.87	16.57	6.63
Suctioning	2	106.76	10.23	10.43
IV Medication	15	77.33	3.71	20.86
Oxygen and either pneumonia or resp. inf. with fever, or pneumonia or resp. inf., COPD, CHF, CAD with SOB	44	26.42	2.60	10.17
Pneumonia	10	25.64	4.06	6.32
Tube feeding with >76 percent total calories	6	23.21	4.33	5.36
Respiratory Infection	7	18.81	4.87	3.87
Application of dressing with/with-out topical medication and presence of ulcers or other skin lesions/ wounds	5	13.38	5.15	2.60
Skin wound/ulcer care	25	7.01	2.77	2.53
Stage 4 Pressure Ulcer	4	6.87	3.09	2.22

Notes: N = 8,087 (Based on analysis of test sample only—20 percent of observations)
Data Source: Medicare MDS and SNF Claims Data 1995–1997, excluding ME, CH, SD.

Using the selected MDS items, we calculated a non-therapy ancillary index score for each MDS and classified them to the appropriate non-therapy ancillary level. We are including a more detailed description of the non-therapy ancillary index methodology in Technical Appendix A.

An index model can differ with respect to the RUG-III categories to which the model is applied. Two options that we considered were to apply the index model only to the Extensive Services category (including beneficiaries in rehabilitation who also qualify for Extensive Services) or to apply the index option to a broader group of RUG-III categories. The research indicated very little difference in ancillary costs for beneficiaries in the

Impaired Cognition, Behavior and Physical Function categories. Differences in ancillary costs were identified within the Rehabilitation, Clinically Complex, Special Care, and Extensive Services groups. For this reason, we propose to apply the non-therapy ancillary index model to all residents in the Clinically Complex category or above (where over 90 percent of Medicare patients fall). In addition, we propose to apply a single non-therapy ancillary index factor to each of the lower levels of the RUG-III model (that is, Impaired Cognition, Behavior, and Physical Function).

Index models can also be applied differently across RUG-III levels. The most straightforward method is to apply a fixed dollar amount for each level of the index. In this case, the add-on for a non-therapy ancillary index score of 3 would be the same regardless of the beneficiary's RUG-III group. Separate indices can also be calculated for each level of the hierarchy. In this case, the dollar amount of the non-therapy ancillary index level of 3 would be different for beneficiaries in different levels of the RUG-III hierarchy, for example, clinically complex, special care, rehabilitation, etc. Separate indices are more appropriate when there is significant inter-group variance. Using the research data base, we found significant variation. In projecting rates for both the UWIM (Tables 5 and 6) and WIM 2 (Technical Appendix A, Tables 6.1 and 6.2) models, we calculated separate index values for each of the 8 proposed hierarchy levels. This approach will be analyzed and evaluated using the national PPS/MDS data base.

Finally, index models can also differ with respect to the number of non-therapy ancillary index groups that are used. Six groups were developed for the weighted index model. Four groups were used for the unweighted model. The weighted index model performs slightly better than its unweighted counterpart. However, it adds a significant level of complexity both in terms of the number of additional RUG-III variations and the addition of a new type of MDS scoring methodology based on cost instead of clinical criteria. In addition, as stated above, the weighted index model break points are not representative of national ancillary costs.

On the other hand, the unweighted index model relies on a count of MDS items to differentiate among index levels, an approach similar to that used currently in RUG-III for classification into the Extensive Services category. At this phase of our analysis, we have concluded that the added complexity of the weighted model offsets any benefits gained. Therefore, we are proposing the unweighted non-therapy ancillary index model that will be applied to the combined Rehabilitation/Extensive Services, Rehabilitation, Extensive Services, Special Care and Clinically Complex categories of the RUG-III hierarchy.

Adopting a new Extensive Services with Rehabilitation category and adding a non-therapy ancillary index component will require modifications to the naming conventions used to identify each RUG-III group. Based on these recommendations, we have updated the RUG-III structure to incorporate the proposed refinements, as displayed in Table 4. These proposed RUG-III groups are based upon the existing 3 digit RUG-III coding structure, but will designate the non-therapy ancillary level as well as the RUG-III category.

The first letter of the RUG-III code defines the hierarchy level. First, a new hierarchy level is being added to recognize beneficiaries needing a combination of Extensive and Rehabilitation Services. The codes used to reflect the hierarchy level are also being expanded to identify separately each level of Rehabilitation (that is, Ultra High, Very High, High, Medium and Low) either in combination with Extensive Services or separately.

RUG CODE—FIRST LETTER

Hierarchy	Code
Extensive with Rehabilitation:	
Ultra High	J
Very High	K
High	L
Medium	M
Low	N
Rehabilitation:	
Ultra High	U
Very High	V
High	W
Medium	X
Low	Y
Extensive Services	E
Special Services	S
Clinically Complex	C
Impaired Cognition	I
Behavior	B
Reduced Physical Function	P

The second letter of the proposed RUG–III coding structure is an alpha character that indicates the final group assigned after the RUG–III end-splits (that is, ADLs, depression, restorative nursing) have been calculated.

The third digit of the proposed RUG–III coding structure will indicate the non-therapy ancillary index level. In the unweighted non-therapy ancillary model, there are 4 levels determined by the number of MDS non-therapy ancillary qualifying items (See Table 4 for the complete list of qualifiers.)

Index level	Number qualifiers met
5	6 or more.
4	3–5.
3	1–2.
2	0.
1	Regular—for impaired cognition behavior and physical function categories.

For example, under the current RUG–III model, a beneficiary whose MDS reflects an ADL sum score of 11, a tracheostomy, suctioning, pneumonia, IV medications and receipt of 380 minutes per week of physical therapy, would group into the RHB rehabilitation group.

In the refined RUG-III model with the unweighted non-therapy ancillary index, this beneficiary would group into the LB4 group with the first digit, L, indicating a combination of Extensive Services and High Rehabilitation, the second digit, B, indicating the ADL level of 11, and the third digit, 4, indicating the non-therapy ancillary level for a beneficiary with 4 qualifiers. See Table 4 for a crosswalk from the current RUG-III groups to the new groups.

In Example 2, we will show the proposed classification for a beneficiary who receives no rehabilitation services. This beneficiary is a quadriplegic, who has an ADL sum score of 17, a stage 4 pressure ulcer, treatment for the pressure ulcer, pneumonia, and daily respiratory therapy. This beneficiary currently classifies into the Special Care category, into the SSC group. In the refined classification system he or she will group into the SA4 group, showing that he or she is in the Special Care category, with an ADL sum score of 17–18, and 3–5 of the MDS non-therapy ancillary qualifiers.

A naming convention has also been established for the weighted model. The first 2 digits are the same as for the unweighted model. The third digit, the non-therapy ancillary indicator, uses alpha characters A through F, with "F" as the lowest ancillary level.

TABLE 4.—RUG REFINEMENT CROSSWALK

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
	Rehab: At least 720 minutes/week in 1 disciplines, one discipline at least 5 days/week	6	JA5
	Extensive: At least one of the following: IV feeding in last 7 days, IV medications in last 14 days, suctioning in last 14 days, tracheostomy care in last 14 days, ventilator/respirator in last 14 days		
	ADL Sum Score: 16–18		
		3–5	JA4
		1–2	JA3
		0	JA2
	Rehabilitation: As above for ultra high rehabilitation	6	JB5
	Extensive: As above		
	ADL Sum Score: 9–15		
		3–5	JB4
		1–2	JB3
		0	JB2
	Rehabilitation: As above for ultra high rehabilitation	6	JC5
	Extensive: As above		
	ADL Sum Score: 7–8		
		3–5	JC4
		1–2	JC3
		0	JC2
	Rehabilitation: At least 500 minutes/week. At least one discipline 5 days/week	6	KA5
	Extensive: As above		
	ADL Sum Score: 16–18		
		3–5	KA4
		1–2	KA3
		0	KA2
	Rehabilitation: As above for Very High Rehabilitation	6	KB5
	Extensive: As above		
	ADL Sum Score: 9–15		
		3–5	KB4
		1–2	KB3
		0	KB2
	Rehabilitation: As above for Very High Rehabilitation	6	KC5
	Extensive: As above		
	ADL Sum Score: 7–8		
		3–5	KC4
		1–2	KC3
		0	KC2
	Rehabilitation: High Rehabilitation: At least 325 minutes/week. One discipline at least 5 times/week.	6	LA5
	Extensive: As above.		
	ADL Sum Score: 13–18		
		3–5	LA4
		1–2	LA3
		0	LA2
	Rehabilitation: As above for High Rehabilitation	6	LB5
	Extensive: As above		
	ADL Sum Score: 8–12		
		3–5	LB4
		1–2	LB3
		0	LB2
	Rehabilitation: As above for High Rehabilitation	6	LC5
	Extensive: As above		
	ADL Sum Score: 7		
		3–5	LC4
		1–2	LC3
		0	LC2
	Rehabilitation: Medium Rehabilitation: At least 150 minutes/week. Must have therapy on 5 days, any discipline combination.	6	MA5
	Extensive: As above		
	ADL Sum Score: 15–18		
		3–5	MA4
		1–2	MA3
		0	MA2
	Rehabilitation: As above for Medium Rehabilitation	6	MB5
	Extensive: As above		
	ADL Sum Score: 8–14		
		3–5	MB4
		1–2	MB3
		0	MB2

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
	Rehabilitation: As above for Medium Rehabilitation Extensive: As above ADL Sum Score: 7	6	MC5
		3–5	MC4
		1–2	MC3
		0	MC2
	Rehabilitation: Low Rehabilitation: At least 45 minutes/week on at least 3 days/week. Nursing Rehabilitation therapy must be provided in two activities, for 15 minutes, 6 days/week. Extensive: As above ADL Sum Score: 14–18	6	NA5
		3–5	NA4
		1–2	NA3
		0	NA2
	Rehabilitation: As above for Low Rehabilitation Extensive: As above. ADL Sum Score: 7–13	6	NB5
		3–5	NB4
		1–2	NB3
		0	NB2
ULTRA HIGH RUC.	Rehabilitation: At least 720 minutes/week in at least 2 therapy disciplines. At least one discipline must be provided at least 5 days/week. ADL Sum Score: 16–18	6	UA5
		3–5	UA4
		1–2	UA3
		0	UA2
RUB	Rehabilitation: As above for Ultra High Rehabilitation ADL Sum Score: 9–15	6	UB5
		3–5	UB4
		1–2	UB3
		0	UB2
RUA	Rehabilitation: As above for Ultra High Rehabilitation ADL Sum Score: 4–8	6	UC5
		3–5	UC4
		1–2	UC3
		0	UC2
RVC	Rehabilitation: Very High Rehabilitation: At least 500 minutes/week. One discipline at least 5 days/week. ADL Sum Score: 16–18	6	VA5
		3–5	VA4
		1–2	VA3
		0	VA2
RVB	Rehabilitation: As above for Very High Rehabilitation ADL Sum Score: 9–15	6	VB5
		3–5	VB4
		1–2	VB3
		0	VB2
	Rehabilitation: As above for Very High Rehabilitation ADL Sum Score: 4–8	6	VC5
		3–5	VC4
		1–2	VC3
		0	VC2
RHC	Rehabilitation: High Rehabilitation: At least 325 minutes/week and at least one discipline 5 days/week. ADL Sum Score: 13–18	6	WA5
		3–5	WA4
		1–2	WA3
		0	WA2
RHB	Rehabilitation: As above for High Rehabilitation ADL Sum Score: 8–12	6	WB5
		3–5	WB4
		1–2	WB3
		0	WB2
RHA	Rehabilitation: As above for High Rehabilitation ADL Sum Score: 4–7	6	WC5
		3–5	WC4
		1–2	WC3
		0	WC2

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
RMC	Rehabilitation: At least 150 minutes/week and at least 5 days/week in one therapy discipline ..	6	XA5
		3–5	XA4
		1–2	XA3
		0	XA2
RMB	Rehabilitation: As above for Medium Rehabilitation	6	XB5
	ADL Sum Score: 8–14		
		3–5	XB4
		1–2	XB3
		0	XB2
RMA	Rehabilitation: As above for Medium Rehabilitation	6	XC5
	ADL Sum Score: 4–7		
		3–5	XC4
		1–2	XC3
		0	XC2
RLB	Rehabilitation: Low Rehabilitation: At least 45 minutes/week on at least 3 days/week. Nursing rehabilitation therapy must be provided in two activities, for 15 minutes, 6 days/week.	6	YA5
	ADL Sum Score: 14–18		
		3–5	YA4
		1–2	YA3
		0	YA2
RLA	Rehabilitation: As above for Low Rehabilitation	6	YB5
	ADL Sum Score: 4–13		
		3–5	YB4
		1–2	YB3
		0	YB2
SE3	EXTENSIVE SERVICES—(if ADL <7, beneficiary classifies to Special Care)	6	EA5
	IV feeding in the past 7 days (K5a).		
	IV medications in the past 14 days (P1ac).		
	Suctioning in the past 14 days (P1ai).		
	Tracheostomy care in the last 14 days (P1aj).		
	Ventilator/respirator in the last 14 days (P1al).		
	ADL Sum Score: 7–18.		
		3–5	EA4
	Qualification for the EA, EB, EC levels is dependent on ADL score and additional clinical qualifiers identified in the Special Care and Clinically Complex criteria. No change from the current RUG–III system.	1–2	EA3
		0	EA2
SE2	Extensive Services: As above	6	EB5
	ADL Sum Score: 7–18		
		3–5	EB4
		1–2	EB3
		0	EB2
SE1	Extensive Services: As above	6	EC5
	ADL Sum Score: 7–18		
		3–5	EC4
		1–2	EC3
		0	EC2
SSC	SPECIAL CARE—(if ADL <7 beneficiary classifies to Clinically Complex)	6	SA5
	Multiple Sclerosis (I1w) and an ADL score of 10 or higher		
	Quadriplegia (I1z) and an ADL score of 10 or higher		
	Cerebral Palsy (I1s) and an ADL score of 10 or higher		
	Respiratory therapy (P1bdA must = 7 days)		
	Ulcers, pressure or stasis; 2 or more of any stage (M1a,b,c,d) *and* treatment (M5a, b,c,d,e,g,h)		
	Ulcers, pressure; any stage 3 or 4 (M2a) *and* treatment (M5a,b,c,d,e,g,h)		
	Radiation therapy (P1ah)		
	Surgical, Wounds (M4g) *and* treatment (M5f,g,h)		
	Open Lesions (M4c) *and* treatment (M5f,g,h)		
	Tube Fed (K5b) and Aphasia (I1r) *and* feeding accounts for at least 51 percent of daily calories (K6a = 3 or 4) OR at least 26 percent of daily calories and 501cc daily intake (K6b = 2,3,4 or 5).		
	Fever (J1h) with Dehydration (J1c), Pneumonia (Ie2),Vomiting (J1o) or Weight loss (K 3a)		
	Fever (J1h) with Tube Feeding (K5b) *and*, as above, (K6a = 3 or 4) &/or (K6b = 2,3,4, or 5)		
	ADL Sum Score: 17–18	3–5	SA4

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
		1–2	SA3
		0	SA2
SSB	Special Care: As above	6	SB5
	ADL Sum Score: 15–16		
		3–5	SB4
		1–2	SB3
		0	SB2
SSA	Special Care: As above	6	SC5
	ADL Sum Score: 7–14		
		3–5	SC4
		1–2	SC3
		0	SC2
CC2	CLINICALLY COMPLEX—	6	CA5
	Burns (M4b)		
	Coma (B1) *and* Not awake (N1=d) *and* completely ADL dependent (G1aa, G1ba, G1ha, G1ia=4 or 8).		
	Septicemia (I2g)		
	Pneumonia (I2e)		
	Foot/Wounds (M6b,c) *and* treatment (M6f)		
	Internal Bleed (J1j)		
	Dialysis (P1ab)		
	Tube Fed (K5b) and feeding accounts for: at least 51% of daily calories (K6a=3 or 4) OR 26 percent of daily calories and 501cc daily intake (K6b=2, 3, 4 or 5).		
	Dehydration (J1c)		
	Oxygen therapy (P1ag)		
	Transfusions (P1ak)		
	Hemiplegia (I1v) *and* an ADL score or 10 or higher		
	Chemotherapy (P1aa)		
	No. Of Days in last 14 there were Physician Visits and order changes:		
	visits >=1 days and order changes >=4 days; or visits >=2 days and order changes on >=2 days.		
	Diabetes mellitus (I1a) *and* injections on 7 days (O3>=7).		
	ADL Sum Score: 17–18	3–5	CA4
	Positive for Signs of Depression		
CC1	Clinically Complex: As above	6	CB5
	ADL Sum Score: 17–18		
	No signs of depression	3–5	CB4
		1–2	CB3
		0	CB2
CB2	Clinically Complex: As above	6	CC5
	ADL Sum Score: 12–16	3–5	CC4
	Positive for Signs for Depression		
		1–2	CC3
		0	CC2
CB1	Clinically Complex: As above	6	CD5
	ADL Sum Score: 12–16	3–5	CD4
	No signs of depression	1–2	CD3
		0	CD2
CA2	Clinically Complex: As above	6	CE5
	ADL Sum Score: 4–11	3–5	CE4
	Positive for Signs of Depression	1–2	CE3
		1	CE2
CA1	Clinically Complex: As above	6	CF5
	ADL Sum Score: 4–11	3–5	CF4
	No Signs of Depression		
		1–2	CF3
		0	CF2
IB2	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3		IA1
	Receiving Nursing rehabilitation therapy in two activities, for 15 minutes, 6 days/week.		
	ADL Sum Score: 6–10.		
IB1	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3		IB1
	ADL Sum Score: 6–1		
IA2	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3		IC1
	Receiving Nursing rehabilitation therapy in two activities, for 15 minutes, 6 days/week.		
	ADL Sum Score: 4–5.		

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
IA1	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3 ADL Sum Score: 4–5		ID1
BB2	BEHAVIOR ONLY Coded on MDS 2.0 items: 4+ days a week—wandering, physical or verbal abuse, inappropriate behavior or resists care; or hallucinations, or delusions checked. Receiving Nursing rehabilitation therapy in two activities, for 15 minutes, 6 days/week. ADL Sum Score: 6–10.		BA1
BB1	Behavior: As above No nursing rehabilitation received ADL Sum Score: 6–10		BB1
BA2	Behavior: As above Nursing Rehabilitation received, at level described above ADL Sum Score: 4–5		BC1
BA1	Behavior: As above No nursing rehabilitation received ADL Sum Score: 4–5		BD1
PE2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score:16–18		PA1
PE1	Physical Function Impaired ADL Sum Score: 16–18		PB1
PD2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score:11–15		PC1
PD1	Physical Function Impaired ADL Sum Score: 11–15		PD1
PC2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score: 9–10		PE1
PC1	Physical Function Impaired ADL Sum Score: 9–10		PF1
PB2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score: 6–8		PG1
PB1	Physical Function Impaired ADL Sum Score: 6–8		PH1
PA2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score: 4–5		PI1
PA1	Physical Function Impaired ADL Sum Score: 4–5		PJ1
BC1		([1])	BC1

[1]Default Code

Additional Research Plans

As noted above, we performed the RUG–III refinement analyses on a research data base rather than on PPS Medicare claims and MDS data. The research data base was appropriate and extremely useful in testing hypotheses, and identifying areas where refinements could be introduced. However, research data always have limitations, and HCFA and contractor staff have identified several areas of concern. Fortunately, since actual PPS claims and MDS data are now available, we are already conducting additional analyses of the unweighted and weighted models to address these concerns and validate the research findings.

For this proposed rule, we have developed Tables 5 and 6 to illustrate the application of the proposed refinement to the RUG–III classification system on the FY 2001 Federal per diem rates. In addition, for comparison purposes, we have developed rate tables for the WIM2 model that are shown in Technical Appendix A (Tables 6.1 and 6.2). However, in reviewing these tables, it is important to recognize the following limitations:

The nursing index is a critical factor in accurately calibrating the system to link payment to acuity levels. The nursing indices shown in Tables 5 through 6 assume that the distribution of the actual Medicare population is the same as the distribution of the research data base. We are now reworking these calculations using national PPS data to ensure accurate calibration of the system.

Using the actual PPS data base also adjusts for a second data limitation: the extent to which MDS data reflects short stay patients. The research data base utilized MDS assessments from 1995 through 1997, a period when MDSs were often not completed for beneficiaries who were in a SNF for less than 14 days. By contrast, the PPS data base includes short-stay beneficiaries, and we will take any special needs of this population into account by using actual PPS data to validate the initial findings.

In addition, the methodology used to adjust non-therapy ancillary charges to cost used the older, non-therapy ancillary charges and facility cost-to-charge ratios. In developing the PPS data base, we will use PPS claims data and the latest available cost-to-charge ratios.

Using the smaller research data base, it was not always possible to obtain a

large number of observations in some of the RUG–III groups to fully determine ancillary costs with the necessary level of precision. For that small number of RUG–III groups, the researchers imputed ancillary costs, and applied these imputed costs to the non-therapy ancillary index used in the rate-setting projections. Using the national PPS data base will allow better differentiation between the non-therapy ancillary index levels for the new, combined Rehabilitation and Extensive Services categories, particularly in index levels 2 and 3 of the unweighted model (and B and C of the weighted model.) (See Tables 5 and 6 for the UWIM model and Technical Appendix A Tables 6.1 and 6.2 for the WIM2 model.)

Finally, we will continue the process of identifying possible negative incentives associated with MDS items used in the non-therapy ancillary index. We will carefully evaluate each item before incorporating it into the final index. Then, we will develop methods to monitor coding practices and to identify changes in coding patterns for use in medical review, quality assurance and program integrity activities. We will issue clarifications, through Program Memoranda and other appropriate means, of MDS requirements needed to maintain the integrity of the RUG–III system.

Using the national PPS data base, we will recalculate the distribution of the beneficiary population across RUG–III categories, including the proposed combined Rehabilitation and Extensive Services category. Then, we will perform the necessary analyses and sensitivity tests to compare the results with those derived from the research data base. We will reevaluate program options (for example, unweighted vs. weighted non-therapy ancillary index, etc.) based on the additional analyses, and modify the proposed refinements as needed. We expect these final analyses to be available in late Spring 2000, and we plan to incorporate them in the final rule to be issued before August 1, 2000.

PPS Rate Tables

We are confident that the additional analyses based on national data will confirm the need for refinements in the RUG–III model by adding the new combined Extensive and Rehabilitation Service groups and by creating a new non-therapy ancillary index. However, it is very likely the values of some of the model components (for example, average ancillary cost by RUG–III group, frequency distribution by RUG–III group, relative weights, etc.) will be further refined through use of the national data base. For this reason, it is important to understand that the values contained in these tables will likely change in the final rule.

While we are confident that these research findings are based on sound methodology, it is certainly possible that additional testing will identify new issues or support variations of the models to those presented here. We remain open to suggestions during the comment period and will carefully evaluate the validation analyses before proceeding to final rulemaking. To illustrate the impact of these proposed changes based on the best data currently available, we have developed rate Tables 5 and 6 using the unweighted model. (For an additional discussion of the weighted model, including a schedule of rates, see Technical Appendix A.) These projections should not be viewed as final nursing indices, non-therapy ancillary indices, or payment rates.

Further, as noted above, we based the non-therapy ancillary indices on the mean adjusted derived cost (that is, charges adjusted by facility ancillary cost-to-charge ratios) of non-therapy ancillary services. Mean costs were calculated separately for each of the eight proposed levels of the RUG–III hierarchy. For the research data base, we used the cost-to-charge ratio applicable to the service date of the claim. For the follow up analyses using actual PPS claims data, we are using the most recent available cost-to-charge ratio. We expect that using the newer cost-to-charges ratios will enhance the accuracy of the calculations. However, due to the lag time between SNF PPS claims submission and cost report processing, it is impossible to match the claims service dates perfectly with the cost report period used for the cost-to-charge ratios. For the SNF PPS data base, we are proposing to use approximately 9 months of claims data starting from January 1, 1999, the date almost all providers became subject to PPS. The cost reports for calendar year 1999 are not due until April 2000.

Finally, the research findings in this proposed rule include the use of "imputed" data in situations where the cell size (for example, number of records meeting the criteria for a specific RUG–III group, etc.) was too small for accurate measurement. When using the national data base, we expect that the relevant data cells will be adequately populated and that all analyses used in developing the final rule will be based on actual rather than imputed data.

These tables reflect two adjustments in particular. First, our nursing and therapy staff time indices (combined 1995 and 1997 staff time data) currently used to establish PPS rates have been adjusted to reflect the new combined Extensive Services with Rehabilitation categories. Second, we have adjusted the nursing case mix component of the rate to remove the non-therapy ancillary component that is part of the current nursing index used in PPS rate-setting. We will need to adjust one or both of these components based on the additional analyses.

We integrated these proposed refinements into the rate-setting methodology, and we list the estimated per diem Federal rates for 178 separate RUG–III classification groups in Tables 5 and 6. We list the case-mix adjusted payment rates separately for urban and rural SNFs (178 each), with the corresponding case-mix index values. These tables list the rates in total and by component. The application of the wage index, described later in this section, is the final adjustment applied to the projected Federal rates in these tables.

In accordance with section 101 of the BBRA, we will make a four percent upward adjustment to the adjusted per diem Federal rate for FY 2001. This estimated adjustment is shown in Table 9.

Finally, these projected rates do not reflect the BBRA requirement (section 103) to reduce the Part A SNF payment rates to account for those services that are newly excluded from consolidated billing and, thus, will be separately billable to Part B by the supplier. As mentioned in section II.A.2. above, because of the complexity of the process and the amount of time needed to implement this requirement, we are unable at present to adjust the proposed rates to reflect this. However, we will make these adjustments prospectively in the final rule establishing payment rates for FY 2001, using the methodology described below.

In order to compute the level of this adjustment, we propose to determine the per diem amount of allowed charges associated with the specific HCPCS codes identified in the statute (and later in this rule) using the same 1995 data on Part B services used in establishing the Federal rates. These data are described in detail in section II.A.2.b of the May 12, 1998 interim final rule (63 FR 26251) and final rule (64 FR 41644) associated with the implementation of the SNF PPS. The per diem amount will be subtracted from the non-therapy ancillary component of the Federal rates shown in Tables 5 and 6 of this rule. We expect this adjustment to be minimal.

Summary of Proposed RUG–III Refinements

Based on the research described here, we are proposing the addition of new RUG–III groups to recognize the needs of Medicare beneficiaries with both heavy medical and rehabilitation needs and the development of an unweighted index model that would account more precisely for the variation in non-therapy ancillary services. Since the research shows substantial ancillary cost variation in the Rehabilitation and Extensive Services, Rehabilitation, Extensive Services, Special Care, and Clinically Complex categories, we have proposed four ancillary index levels to capture variation in ancillary costs accurately. Since beneficiaries in the Impaired Cognition, Behavior, and Physical Function categories exhibited a much smaller ancillary cost variation, we calculated a single ancillary add-on amount. The ancillary add-on amounts were calculated separately for each of the eight proposed RUG–III categories.

The refinements will achieve important improvements in the PPS model, and allow for more accurate payment rates. In addition, after further analysis and review of public comments, we may adjust these proposed refinements further to reflect actual PPS experience.

Collection of Medication Data

In the interim final rule published in the **Federal Register** on May 12, 1998, we stated that we would require facilities to complete and include MDS Section U with their Medicare MDS submissions beginning October 1, 1999. Subsequently, in the final rule published in the **Federal Register** on July 30, 1999, we announced a delay of that requirement and stated our intention to require completion of Section U beginning October 1, 2000. However, we are currently unable to implement the collection of medication data on the MDS beginning October 1, 2000. Accordingly, we will not require completion and submission of Section U of the MDS beginning October 1, 2000, as we had planned. We are currently examining issues related to the implementation of this requirement and we plan to address this matter when we implement the SNF PPS payment update for FY 2001.

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Table 5

CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

URBAN

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
JA5	1.71	6.87	2.25	$110.28	$339.72	$193.03		$58.25	$701.28
JA4	1.71	2.89	2.25	$110.28	$142.91	$193.03		$58.25	$504.47
JA3	1.71	1.33	2.25	$110.28	$65.77	$193.03		$58.25	$427.33
JA2	1.71	1.33	2.25	$110.28	$65.77	$193.03		$58.25	$427.33
JB5	1.39	6.87	2.25	$89.64	$339.72	$193.03		$58.25	$680.64
JB4	1.39	2.89	2.25	$89.64	$142.91	$193.03		$58.25	$483.83
JB3	1.39	1.33	2.25	$89.64	$65.77	$193.03		$58.25	$406.69
JB2	1.39	1.33	2.25	$89.64	$65.77	$193.03		$58.25	$406.69
JC5	1.22	6.87	2.25	$78.68	$339.72	$193.03		$58.25	$669.68
JC4	1.22	2.89	2.25	$78.68	$142.91	$193.03		$58.25	$472.87
JC3	1.22	1.33	2.25	$78.68	$65.77	$193.03		$58.25	$395.73
JC2	1.22	1.33	2.25	$78.68	$65.77	$193.03		$58.25	$395.73
KA5	1.57	6.87	1.41	$101.25	$339.72	$120.96		$58.25	$620.18
KA4	1.57	2.89	1.41	$101.25	$142.91	$120.96		$58.25	$423.37
KA3	1.57	1.33	1.41	$101.25	$65.77	$120.96		$58.25	$346.23
KA2	1.57	1.33	1.41	$101.25	$65.77	$120.96		$58.25	$346.23
KB5	1.44	6.87	1.41	$92.87	$339.72	$120.96		$58.25	$611.80
KB4	1.44	2.89	1.41	$92.87	$142.91	$120.96		$58.25	$414.99
KB3	1.44	1.33	1.41	$92.87	$65.77	$120.96		$58.25	$337.85

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
KB2	1.44	1.33	1.41	$92.87	$65.77	$120.96		$58.25	$337.85
KC5	1.20	6.87	1.41	$77.39	$339.72	$120.96		$58.25	$596.32
KC4	1.20	2.89	1.41	$77.39	$142.91	$120.96		$58.25	$399.51
KC3	1.20	1.33	1.41	$77.39	$65.77	$120.96		$58.25	$322.37
KC2	1.20	1.33	1.41	$77.39	$65.77	$120.96		$58.25	$322.37
LA5	1.53	6.87	0.94	$98.67	$339.72	$80.64		$58.25	$577.28
LA4	1.53	2.89	0.94	$98.67	$142.91	$80.64		$58.25	$380.47
LA3	1.53	1.33	0.94	$98.67	$65.77	$80.64		$58.25	$303.33
LA2	1.53	1.33	0.94	$98.67	$65.77	$80.64		$58.25	$303.33
LB5	1.45	6.87	0.94	$93.51	$339.72	$80.64		$58.25	$572.12
LB4	1.45	2.89	0.94	$93.51	$142.91	$80.64		$58.25	$375.31
LB3	1.45	1.33	0.94	$93.51	$65.77	$80.64		$58.25	$298.17
LB2	1.45	1.33	0.94	$93.51	$65.77	$80.64		$58.25	$298.17
LC5	1.23	6.87	0.94	$79.32	$339.72	$80.64		$58.25	$557.93
LC4	1.23	2.89	0.94	$79.32	$142.91	$80.64		$58.25	$361.12
LC3	1.23	1.33	0.94	$79.32	$65.77	$80.64		$58.25	$283.98
LC2	1.23	1.33	0.94	$79.32	$65.77	$80.64		$58.25	$283.98
MA5	1.66	6.87	0.77	$107.05	$339.72	$66.06		$58.25	$571.08
MA4	1.66	2.89	0.77	$107.05	$142.91	$66.06		$58.25	$374.27
MA3	1.66	1.33	0.77	$107.05	$65.77	$66.06		$58.25	$297.13
MA2	1.66	1.33	0.77	$107.05	$65.77	$66.06		$58.25	$297.13
MB5	1.47	6.87	0.77	$94.80	$339.72	$66.06		$58.25	$558.83

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
MB4	1.47	2.89	0.77	$94.80	$142.91	$66.06		$58.25	$362.02
MB3	1.47	1.33	0.77	$94.80	$65.77	$66.06		$58.25	$284.88
MB2	1.47	1.33	0.77	$94.80	$65.77	$66.06		$58.25	$284.88
MC5	1.43	6.87	0.77	$92.22	$339.72	$66.06		$58.25	$556.25
MC4	1.43	2.89	0.77	$92.22	$142.91	$66.06		$58.25	$359.44
MC3	1.43	1.33	0.77	$92.22	$65.77	$66.06		$58.25	$282.30
MC2	1.43	1.33	0.77	$92.22	$65.77	$66.06		$58.25	$282.30
NA5	1.52	6.87	0.43	$98.02	$339.72	$36.89		$58.25	$532.88
NA4	1.52	2.89	0.43	$98.02	$142.91	$36.89		$58.25	$336.07
NA3	1.52	1.33	0.43	$98.02	$65.77	$36.89		$58.25	$258.93
NA2	1.52	1.33	0.43	$98.02	$65.77	$36.89		$58.25	$258.93
NB5	1.26	6.87	0.43	$81.26	$339.72	$36.89		$58.25	$516.12
NB4	1.26	2.89	0.43	$81.26	$142.91	$36.89		$58.25	$319.31
NB3	1.26	1.33	0.43	$81.26	$65.77	$36.89		$58.25	$242.17
NB2	1.26	1.33	0.43	$81.26	$65.77	$36.89		$58.25	$242.17
UA5	1.21	1.74	2.25	$78.03	$86.04	$193.03		$58.25	$415.35
UA4	1.21	1.76	2.25	$78.03	$87.03	$193.03		$58.25	$416.34
UA3	1.21	0.84	2.25	$78.03	$41.54	$193.03		$58.25	$370.85
UA2	1.21	0.45	2.25	$78.03	$22.25	$193.03		$58.25	$351.56
UB5	0.94	1.74	2.25	$60.62	$86.04	$193.03		$58.25	$397.94
UB4	0.94	1.76	2.25	$60.62	$87.03	$193.03		$58.25	$398.93
UB3	0.94	0.84	2.25	$60.62	$41.54	$193.03		$58.25	$353.44
UB2	0.94	0.45	2.25	$60.62	$22.25	$193.03		$58.25	$334.15

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
UC5	0.79	1.74	2.25	$50.95	$86.04	$193.03		$58.25	$388.27
UC4	0.79	1.76	2.25	$50.95	$87.03	$193.03		$58.25	$389.26
UC3	0.79	0.84	2.25	$50.95	$41.54	$193.03		$58.25	$343.77
UC2	0.79	0.45	2.25	$50.95	$22.25	$193.03		$58.25	$324.48
VA5	1.16	1.74	1.41	$74.81	$86.04	$120.96		$58.25	$340.06
VA4	1.16	1.76	1.41	$74.81	$87.03	$120.96		$58.25	$341.05
VA3	1.16	0.84	1.41	$74.81	$41.54	$120.96		$58.25	$295.56
VA2	1.16	0.45	1.41	$74.81	$22.25	$120.96		$58.25	$276.27
VB5	1.02	1.74	1.41	$65.78	$86.04	$120.96		$58.25	$331.03
VB4	1.02	1.76	1.41	$65.78	$87.03	$120.96		$58.25	$332.02
VB3	1.02	0.84	1.41	$65.78	$41.54	$120.96		$58.25	$286.53
VB2	1.02	0.45	1.41	$65.78	$22.25	$120.96		$58.25	$267.24
VC5	0.78	1.74	1.41	$50.30	$86.04	$120.96		$58.25	$315.55
VC4	0.78	1.76	1.41	$50.30	$87.03	$120.96		$58.25	$316.54
VC3	0.78	0.84	1.41	$50.30	$41.54	$120.96		$58.25	$271.05
VC2	0.78	0.45	1.41	$50.30	$22.25	$120.96		$58.25	$251.76
WA5	1.15	1.74	0.94	$74.16	$86.04	$80.64		$58.25	$299.09
WA4	1.15	1.76	0.94	$74.16	$87.03	$80.64		$58.25	$300.08
WA3	1.15	0.84	0.94	$74.16	$41.54	$80.64		$58.25	$254.59
WA2	1.15	0.45	0.94	$74.16	$22.25	$80.64		$58.25	$235.30
WB5	1.05	1.74	0.94	$67.71	$86.04	$80.64		$58.25	$292.64
WB4	1.05	1.76	0.94	$67.71	$87.03	$80.64		$58.25	$293.63

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
WB3	1.05	0.84	0.94	$67.71	$41.54	$80.64		$58.25	$248.14
WB2	1.05	0.45	0.94	$67.71	$22.25	$80.64		$58.25	$228.85
WC5	0.89	1.74	0.94	$57.40	$86.04	$80.64		$58.25	$282.33
WC4	0.89	1.76	0.94	$57.40	$87.03	$80.64		$58.25	$283.32
WC3	0.89	0.84	0.94	$57.40	$41.54	$80.64		$58.25	$237.83
WC2	0.89	0.45	0.94	$57.40	$22.25	$80.64		$58.25	$218.54
XA5	1.09	1.74	0.77	$70.29	$86.04	$66.06		$58.25	$280.64
XA4	1.09	1.76	0.77	$70.29	$87.03	$66.06		$58.25	$281.63
XA3	1.09	0.84	0.77	$70.29	$41.54	$66.06		$58.25	$236.14
XA2	1.09	0.45	0.77	$70.29	$22.25	$66.06		$58.25	$216.85
XB5	1.02	1.74	0.77	$65.78	$86.04	$66.06		$58.25	$276.13
XB4	1.02	1.76	0.77	$65.78	$87.03	$66.06		$58.25	$277.12
XB3	1.02	0.84	0.77	$65.78	$41.54	$66.06		$58.25	$231.63
XB2	1.02	0.45	0.77	$65.78	$22.25	$66.06		$58.25	$212.34
XC5	0.98	1.74	0.77	$63.20	$86.04	$66.06		$58.25	$273.55
XC4	0.98	1.76	0.77	$63.20	$87.03	$66.06		$58.25	$274.54
XC3	0.98	0.84	0.77	$63.20	$41.54	$66.06		$58.25	$229.05
XC2	0.98	0.45	0.77	$63.20	$22.25	$66.06		$58.25	$209.76
YA5	1.08	1.74	0.43	$69.65	$86.04	$36.89		$58.25	$250.83
YA4	1.08	1.76	0.43	$69.65	$87.03	$36.89		$58.25	$251.82
YA3	1.08	0.84	0.43	$69.65	$41.54	$36.89		$58.25	$206.33
YA2	1.08	0.45	0.43	$69.65	$22.25	$36.89		$58.25	$187.04

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
YB5	0.8	1.74	0.43	$51.59	$86.04	$36.89		$58.25	$232.77
YB4	0.8	1.76	0.43	$51.59	$87.03	$36.89		$58.25	$233.76
YB3	0.8	0.84	0.43	$51.59	$41.54	$36.89		$58.25	$188.27
YB2	0.8	0.45	0.43	$51.59	$22.25	$36.89		$58.25	$168.98
EA5	1.75	5.07		$112.86	$250.71		$11.32	$58.25	$433.14
EA4	1.75	3.2		$112.86	$158.24		$11.32	$58.25	$340.67
EA3	1.75	1.72		$112.86	$85.05		$11.32	$58.25	$267.48
EA2	1.75	1.16		$112.86	$57.36		$11.32	$58.25	$239.79
EB5	1.41	5.07		$90.93	$250.71		$11.32	$58.25	$411.21
EB4	1.41	3.2		$90.93	$158.24		$11.32	$58.25	$318.74
EB3	1.41	1.72		$90.93	$85.05		$11.32	$58.25	$245.55
EB2	1.41	1.16		$90.93	$57.36		$11.32	$58.25	$217.86
EC5	1.19	5.07		$76.74	$250.71		$11.32	$58.25	$397.02
EC4	1.19	3.2		$76.74	$158.24		$11.32	$58.25	$304.55
EC3	1.19	1.72		$76.74	$85.05		$11.32	$58.25	$231.36
EC2	1.19	1.16		$76.74	$57.36		$11.32	$58.25	$203.67
SA5	1.13	1.2		$72.87	$59.34		$11.32	$58.25	$201.78
SA4	1.13	1.67		$72.87	$82.58		$11.32	$58.25	$225.02
SA3	1.13	0.99		$72.87	$48.96		$11.32	$58.25	$191.40
SA2	1.13	0.63		$72.87	$31.15		$11.32	$58.25	$173.59
SB5	1.05	1.2		$67.71	$59.34		$11.32	$58.25	$196.62
SB4	1.05	1.67		$67.71	$82.58		$11.32	$58.25	$219.86
SB3	1.05	0.99		$67.71	$48.96		$11.32	$58.25	$186.24

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
SB2	1.05	0.63		$67.71	$31.15		$11.32	$58.25	**$168.43**
SC5	1.01	1.2		$65.13	$59.34		$11.32	$58.25	**$194.04**
SC4	1.01	1.67		$65.13	$82.58		$11.32	$58.25	**$217.28**
SC3	1.01	0.99		$65.13	$48.96		$11.32	$58.25	**$183.66**
SC2	1.01	0.63		$65.13	$31.15		$11.32	$58.25	**$165.85**
CA5	1.12	2.53		$72.23	$125.11		$11.32	$58.25	**$266.91**
CA4	1.12	2.53		$72.23	$125.11		$11.32	$58.25	**$266.91**
CA3	1.12	1.36		$72.23	$67.25		$11.32	$58.25	**$209.05**
CA2	1.12	0.65		$72.23	$32.14		$11.32	$58.25	**$173.94**
CB5	0.99	2.53		$63.85	$125.11		$11.32	$58.25	**$258.53**
CB4	0.99	2.53		$63.85	$125.11		$11.32	$58.25	**$258.53**
CB3	0.99	1.36		$63.85	$67.25		$11.32	$58.25	**$200.67**
CB2	0.99	0.65		$63.85	$32.14		$11.32	$58.25	**$165.56**
CC5	0.91	2.53		$58.69	$125.11		$11.32	$58.25	**$253.37**
CC4	0.91	2.53		$58.69	$125.11		$11.32	$58.25	**$253.37**
CC3	0.91	1.36		$58.69	$67.25		$11.32	$58.25	**$195.51**
CC2	0.91	0.65		$58.69	$32.14		$11.32	$58.25	**$160.40**
CD5	0.84	2.53		$54.17	$125.11		$11.32	$58.25	**$248.85**
CD4	0.84	2.53		$54.17	$125.11		$11.32	$58.25	**$248.85**
CD3	0.84	1.36		$54.17	$67.25		$11.32	$58.25	**$190.99**
CD2	0.84	0.65		$54.17	$32.14		$11.32	$58.25	**$155.88**
CE5	0.83	2.53		$53.53	$125.11		$11.32	$58.25	**$248.21**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
CE4	0.83	2.53		$53.53	$125.11		$11.32	$58.25	$248.21
CE3	0.83	1.36		$53.53	$67.25		$11.32	$58.25	$190.35
CE2	0.83	0.65		$53.53	$32.14		$11.32	$58.25	$155.24
CF5	0.75	2.53		$48.37	$125.11		$11.32	$58.25	$243.05
CF4	0.75	2.53		$48.37	$125.11		$11.32	$58.25	$243.05
CF3	0.75	1.36		$48.37	$67.25		$11.32	$58.25	$185.19
CF2	0.75	0.65		$48.37	$32.14		$11.32	$58.25	$150.08
IA1	0.69	0.54		$44.50	$26.70		$11.32	$58.25	$140.77
IB1	0.67	0.54		$43.21	$26.70		$11.32	$58.25	$139.48
IC1	0.57	0.54		$36.76	$26.70		$11.32	$58.25	$133.03
ID1	0.53	0.54		$34.18	$26.70		$11.32	$58.25	$130.45
BA1	0.68	0.7		$43.85	$34.62		$11.32	$58.25	$148.04
BB1	0.65	0.7		$41.92	$34.62		$11.32	$58.25	$146.11
BC1	0.56	0.7		$36.11	$34.62		$11.32	$58.25	$140.30
BD1	0.48	0.7		$30.96	$34.62		$11.32	$58.25	$135.15
PA1	0.77	0.72		$49.66	$35.60		$11.32	$58.25	$154.83
PB1	0.72	0.72		$46.43	$35.60		$11.32	$58.25	$151.60

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
PC1	0.7	0.72		$45.14	$35.60		$11.32	$58.25	$150.31
PD1	0.65	0.72		$41.92	$35.60		$11.32	$58.25	$147.09
PE1	0.64	0.72		$41.27	$35.60		$11.32	$58.25	$146.44
PF1	0.51	0.72		$32.89	$35.60		$11.32	$58.25	$138.06
PG1	0.5	0.72		$32.25	$35.60		$11.32	$58.25	$137.42
PH1	0.49	0.72		$31.60	$35.60		$11.32	$58.25	$136.77
PI1	0.46	0.72		$29.67	$35.60		$11.32	$58.25	$134.84
PJ1	0.46	0.72		$29.67	$35.60		$11.32	$58.25	$134.84

Table 6

CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

RURAL

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
JA5	1.71	6.87	2.25	$106.88	$320.00	$223.00		$59.32	$709.20
JA4	1.71	2.89	2.25	$106.88	$134.62	$223.00		$59.32	$523.82
JA3	1.71	1.33	2.25	$106.88	$61.95	$223.00		$59.32	$451.15
JA2	1.71	1.33	2.25	$106.88	$61.95	$223.00		$59.32	$451.15
JB5	1.39	6.87	2.25	$86.88	$320.00	$223.00		$59.32	$689.20
JB4	1.39	2.89	2.25	$86.88	$134.62	$223.00		$59.32	$503.82
JB3	1.39	1.33	2.25	$86.88	$61.95	$223.00		$59.32	$431.15
JB2	1.39	1.33	2.25	$86.88	$61.95	$223.00		$59.32	$431.15
JC5	1.22	6.87	2.25	$76.25	$320.00	$223.00		$59.32	$678.57
JC4	1.22	2.89	2.25	$76.25	$134.62	$223.00		$59.32	$493.19
JC3	1.22	1.33	2.25	$76.25	$61.95	$223.00		$59.32	$420.52
JC2	1.22	1.33	2.25	$76.25	$61.95	$223.00		$59.32	$420.52
KA5	1.57	6.87	1.41	$98.13	$320.00	$139.75		$59.32	$617.20
KA4	1.57	2.89	1.41	$98.13	$134.62	$139.75		$59.32	$431.82
KA3	1.57	1.33	1.41	$98.13	$61.95	$139.75		$59.32	$359.15
KA2	1.57	1.33	1.41	$98.13	$61.95	$139.75		$59.32	$359.15
KB5	1.44	6.87	1.41	$90.00	$320.00	$139.75		$59.32	$609.07
KB4	1.44	2.89	1.41	$90.00	$134.62	$139.75		$59.32	$423.69
KB3	1.44	1.33	1.41	$90.00	$61.95	$139.75		$59.32	$351.02
KB2	1.44	1.33	1.41	$90.00	$61.95	$139.75		$59.32	$351.02

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
KC5	1.2	6.87	1.41	$75.00	$320.00	$139.75		$59.32	$594.07
KC4	1.2	2.89	1.41	$75.00	$134.62	$139.75		$59.32	$408.69
KC3	1.2	1.33	1.41	$75.00	$61.95	$139.75		$59.32	$336.02
KC2	1.2	1.33	1.41	$75.00	$61.95	$139.75		$59.32	$336.02
LA5	1.53	6.87	0.94	$95.63	$320.00	$93.16		$59.32	$568.11
LA4	1.53	2.89	0.94	$95.63	$134.62	$93.16		$59.32	$382.73
LA3	1.53	1.33	0.94	$95.63	$61.95	$93.16		$59.32	$310.06
LA2	1.53	1.33	0.94	$95.63	$61.95	$93.16		$59.32	$310.06
LB5	1.45	6.87	0.94	$90.63	$320.00	$93.16		$59.32	$563.11
LB4	1.45	2.89	0.94	$90.63	$134.62	$93.16		$59.32	$377.73
LB3	1.45	1.33	0.94	$90.63	$61.95	$93.16		$59.32	$305.06
LB2	1.45	1.33	0.94	$90.63	$61.95	$93.16		$59.32	$305.06
LC5	1.23	6.87	0.94	$76.88	$320.00	$93.16		$59.32	$549.36
LC4	1.23	2.89	0.94	$76.88	$134.62	$93.16		$59.32	$363.98
LC3	1.23	1.33	0.94	$76.88	$61.95	$93.16		$59.32	$291.31
LC2	1.23	1.33	0.94	$76.88	$61.95	$93.16		$59.32	$291.31
MA5	1.66	6.87	0.77	$103.75	$320.00	$76.31		$59.32	$559.38
MA4	1.66	2.89	0.77	$103.75	$134.62	$76.31		$59.32	$374.00
MA3	1.66	1.33	0.77	$103.75	$61.95	$76.31		$59.32	$301.33
MA2	1.66	1.33	0.77	$103.75	$61.95	$76.31		$59.32	$301.33
MB5	1.47	6.87	0.77	$91.88	$320.00	$76.31		$59.32	$547.51
MB4	1.47	2.89	0.77	$91.88	$134.62	$76.31		$59.32	$362.13
MB3	1.47	1.33	0.77	$91.88	$61.95	$76.31		$59.32	$289.46
MB2	1.47	1.33	0.77	$91.88	$61.95	$76.31		$59.32	$289.46

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
MC5	1.43	6.87	0.77	$89.38	$320.00	$76.31		$59.32	$545.01
MC4	1.43	2.89	0.77	$89.38	$134.62	$76.31		$59.32	$359.63
MC3	1.43	1.33	0.77	$89.38	$61.95	$76.31		$59.32	$286.96
MC2	1.43	1.33	0.77	$89.38	$61.95	$76.31		$59.32	$286.96
NA5	1.52	6.87	0.43	$95.00	$320.00	$42.62		$59.32	$516.94
NA4	1.52	2.89	0.43	$95.00	$134.62	$42.62		$59.32	$331.56
NA3	1.52	1.33	0.43	$95.00	$61.95	$42.62		$59.32	$258.89
NA2	1.52	1.33	0.43	$95.00	$61.95	$42.62		$59.32	$258.89
NB5	1.26	6.87	0.43	$78.75	$320.00	$42.62		$59.32	$500.69
NB4	1.26	2.89	0.43	$78.75	$134.62	$42.62		$59.32	$315.31
NB3	1.26	1.33	0.43	$78.75	$61.95	$42.62		$59.32	$242.64
NB2	1.26	1.33	0.43	$78.75	$61.95	$42.62		$59.32	$242.64
UA5	1.21	1.74	2.25	$75.63	$81.05	$223.00		$59.32	$439.00
UA4	1.21	1.76	2.25	$75.63	$81.98	$223.00		$59.32	$439.93
UA3	1.21	0.84	2.25	$75.63	$39.13	$223.00		$59.32	$397.08
UA2	1.21	0.45	2.25	$75.63	$20.96	$223.00		$59.32	$378.91
UB5	.094	1.74	2.25	$58.75	$81.05	$223.00		$59.32	$422.12
UB4	.094	1.76	2.25	$58.75	$81.98	$223.00		$59.32	$423.05

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
UB3	.094	0.84	2.25	$58.75	$39.13	$223.00		$59.32	$380.20
UB2	.094	0.45	2.25	$58.75	$20.96	$223.00		$59.32	$362.03
UC5	0.79	1.74	2.25	$49.38	$81.05	$223.00		$59.32	$412.75
UC4	0.79	1.76	2.25	$49.38	$81.98	$223.00		$59.32	$413.68
UC3	0.79	0.84	2.25	$49.38	$39.13	$223.00		$59.32	$370.83
UC2	0.79	0.45	2.25	$49.38	$20.96	$223.00		$59.32	$352.66
VA5	1.16	1.74	1.41	$72.50	$81.05	$139.75		$59.32	$352.62
VA4	1.16	1.76	1.41	$72.50	$81.98	$139.75		$59.32	$353.55
VA3	1.16	0.84	1.41	$72.50	$39.13	$139.75		$59.32	$310.70
VA2	1.16	0.45	1.41	$72.50	$20.96	$139.75		$59.32	$292.53
VB5	1.02	1.74	1.41	$63.75	$81.05	$139.75		$59.32	$343.87
VB4	1.02	1.76	1.41	$63.75	$81.98	$139.75		$59.32	$344.80
VB3	1.02	0.84	1.41	$63.75	$39.13	$139.75		$59.32	$301.95
VB2	1.02	0.45	1.41	$63.75	$20.96	$139.75		$59.32	$283.78
VC5	0.78	1.74	1.41	$48.75	$81.05	$139.75		$59.32	$328.87
VC4	0.78	1.76	1.41	$48.75	$81.98	$139.75		$59.32	$329.80
VC3	0.78	0.84	1.41	$48.75	$39.13	$139.75		$59.32	$286.95
VC2	0.78	0.45	1.41	$48.75	$20.96	$139.75		$59.32	$268.78
WA5	1.15	1.74	0.94	$71.88	$81.05	$93.16		$59.32	$305.41
WA4	1.15	1.76	0.94	$71.88	$81.98	$93.16		$59.32	$306.34

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
WA3	1.15	0.84	0.94	$71.88	$39.13	$93.16		$59.32	$263.49
WA2	1.15	0.45	0.94	$71.88	$20.96	$93.16		$59.32	$245.32
WB5	1.05	1.74	0.94	$65.63	$81.05	$93.16		$59.32	$299.16
WB4	1.05	1.76	0.94	$65.63	$81.98	$93.16		$59.32	$300.09
WB3	1.05	0.84	0.94	$65.63	$39.13	$93.16		$59.32	$257.24
WB2	1.05	0.45	0.94	$65.63	$20.96	$93.16		$59.32	$239.07
WC5	0.89	1.74	0.94	$55.63	$81.05	$93.16		$59.32	$289.16
WC4	0.89	1.76	0.94	$55.63	$81.98	$93.16		$59.32	$290.09
WC3	0.89	0.84	0.94	$55.63	$39.13	$93.16		$59.32	$247.24
WC2	0.89	0.45	0.94	$55.63	$20.96	$93.16		$59.32	$229.07
XA5	1.09	1.74	0.77	$68.13	$81.05	$76.31		$59.32	$284.81
XA4	1.09	1.76	0.77	$68.13	$81.98	$76.31		$59.32	$285.74
XA3	1.09	0.84	0.77	$68.13	$39.13	$76.31		$59.32	$242.89
XA2	1.09	0.45	0.77	$68.13	$20.96	$76.31		$59.32	$224.72
XB5	1.02	1.74	0.77	$63.75	$81.05	$76.31		$59.32	$280.43
XB4	1.02	1.76	0.77	$63.75	$81.98	$76.31		$59.32	$281.36
XB3	1.02	0.84	0.77	$63.75	$39.13	$76.31		$59.32	$238.51
XB2	1.02	0.45	0.77	$63.75	$20.96	$76.31		$59.32	$220.34
XC5	0.98	1.74	0.77	$61.25	$81.05	$76.31		$59.32	$277.93
XC4	0.98	1.76	0.77	$61.25	$81.98	$76.31		$59.32	$278.86
XC3	0.98	0.84	0.77	$61.25	$39.13	$76.31		$59.32	$236.01
XC2	0.98	0.45	0.77	$61.25	$20.96	$76.31		$59.32	$217.84
YA5	1.08	1.74	0.43	$67.50	$81.05	$42.62		$59.32	$250.49

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	**Total Rate**
YA4	1.08	1.76	0.43	$67.50	$81.98	$42.62		$59.32	**$251.42**
YA3	1.08	0.84	0.43	$67.50	$39.13	$42.62		$59.32	**$208.57**
YA2	1.08	0.45	0.43	$67.50	$20.96	$42.62		$59.32	**$190.40**
YB5	0.8	1.74	0.43	$50.00	$81.05	$42.62		$59.32	**$232.99**
YB4	0.8	1.76	0.43	$50.00	$81.98	$42.62		$59.32	**$233.92**
YB3	0.8	0.84	0.43	$50.00	$39.13	$42.62		$59.32	**$191.07**
YB2	0.8	0.45	0.43	$50.00	$20.96	$42.62		$59.32	**$172.90**
EA5	1.75	5.07		$109.38	$236.16		$12.10	$59.32	**$416.96**
EA4	1.75	3.2		$109.38	$149.06		$12.10	$59.32	**$329.86**
EA3	1.75	1.72		$109.38	$80.12		$12.10	$59.32	**$260.92**
EA2	1.75	1.16		$109.38	$54.03		$12.10	$59.32	**$234.83**
EB5	1.41	5.07		$88.13	$236.16		$12.10	$59.32	**$395.71**
EB4	1.41	3.2		$88.13	$149.06		$12.10	$59.32	**$308.61**
EB3	1.41	1.72		$88.13	$80.12		$12.10	$59.32	**$239.67**
EB2	1.41	1.16		$88.13	$54.03		$12.10	$59.32	**$213.58**
EC5	1.19	5.07		$74.38	$236.16		$12.10	$59.32	**$381.96**
EC4	1.19	3.2		$74.38	$149.06		$12.10	$59.32	**$294.86**
EC3	1.19	1.72		$74.38	$80.12		$12.10	$59.32	**$225.92**
EC2	1.19	1.16		$74.38	$54.03		$12.10	$59.32	**$199.83**
SA5	1.13	1.2		$70.63	$55.90		$12.10	$59.32	**$197.95**
SA4	1.13	1.67		$70.63	$77.79		$12.10	$59.32	**$219.84**
SA3	1.13	0.99		$70.63	$46.11		$12.10	$59.32	**$188.16**
SA2	1.13	0.63		$70.63	$29.35		$12.10	$59.32	**$171.40**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
SB5	1.05	1.2		$65.63	$55.90		$12.10	$59.32	$192.95
SB4	1.05	1.67		$65.63	$77.79		$12.10	$59.32	$214.84
SB3	1.05	0.99		$65.63	$46.11		$12.10	$59.32	$183.16
SB2	1.05	0.63		$65.63	$29.35		$12.10	$59.32	$166.40
SC5	1.01	1.2		$63.13	$55.90		$12.10	$59.32	$190.45
SC4	1.01	1.67		$63.13	$77.79		$12.10	$59.32	$212.34
SC3	1.01	0.99		$63.13	$46.11		$12.10	$59.32	$180.66
SC2	1.01	0.63		$63.13	$29.35		$12.10	$59.32	$163.90
CA5	1.12	2.53		$70.00	$117.85		$12.10	$59.32	$259.27
CA4	1.12	2.53		$70.00	$117.85		$12.10	$59.32	$259.27
CA3	1.12	1.36		$70.00	$63.35		$12.10	$59.32	$204.77
CA2	1.12	0.65		$70.00	$30.28		$12.10	$59.32	$171.70
CB5	0.99	2.53		$61.88	$117.85		$12.10	$59.32	$251.15
CB4	0.99	2.53		$61.88	$117.85		$12.10	$59.32	$251.15
CB3	0.99	1.36		$61.88	$63.35		$12.10	$59.32	$196.65
CB2	0.99	0.65		$61.88	$30.28		$12.10	$59.32	$163.58
CC5	0.91	2.53		$56.88	$117.85		$12.10	$59.32	$246.15
CC4	0.91	2.53		$56.88	$117.85		$12.10	$59.32	$246.15
CC3	0.91	1.36		$56.88	$63.35		$12.10	$59.32	$191.65
CC2	0.91	0.65		$56.88	$30.28		$12.10	$59.32	$158.58
CD5	0.84	2.53		$52.50	$117.85		$12.10	$59.32	$241.77
CD4	0.84	2.53		$52.50	$117.85		$12.10	$59.32	$241.77
CD3	0.84	1.36		$52.50	$63.35		$12.10	$59.32	$187.27
CD2	0.84	0.65		$52.50	$30.28		$12.10	$59.32	$154.20

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	**Total Rate**
CE5	0.83	2.53		$51.88	$117.85		$12.10	$59.32	**$241.15**
CE4	0.83	2.53		$51.88	$117.85		$12.10	$59.32	**$241.15**
CE3	0.83	1.36		$51.88	$63.35		$12.10	$59.32	**$186.65**
CE2	0.83	0.65		$51.88	$30.28		$12.10	$59.32	**$153.58**
CF5	0.75	2.53		$46.88	$117.85		$12.10	$59.32	**$236.15**
CF4	0.75	2.53		$46.88	$117.85		$12.10	$59.32	**$236.15**
CF3	0.75	1.36		$46.88	$63.35		$12.10	$59.32	**$181.65**
CF2	0.75	0.65		$46.88	$30.28		$12.10	$59.32	**$148.58**
IA1	0.69	0.54		$43.13	$25.15		$12.10	$59.32	**$139.70**
IB1	0.67	0.54		$41.88	$25.15		$12.10	$59.32	**$138.45**
IC1	0.57	0.54		$35.63	$25.15		$12.10	$59.32	**$132.20**
ID1	0.53	0.54		$33.13	$25.15		$12.10	$59.32	**$129.70**
BA1	0.68	0.7		$42.50	$32.61		$12.10	$59.32	**$146.53**
BB1	0.65	0.7		$40.63	$32.61		$12.10	$59.32	**$144.66**
BC1	0.56	0.7		$35.00	$32.61		$12.10	$59.32	**$139.03**
BD1	0.48	0.7		$30.00	$32.61		$12.10	$59.32	**$134.03**
PA1	0.77	0.72		$48.13	$33.54		$12.10	$59.32	**$153.09**

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
PB1	0.72	0.72		$45.00	$33.54		$12.10	$59.32	**$149.96**
PC1	0.7	0.72		$43.75	$33.54		$12.10	$59.32	**$148.71**
PD1	0.65	0.72		$40.63	$33.54		$12.10	$59.32	**$145.59**
PE1	0.64	0.72		$40.00	$33.54		$12.10	$59.32	**$144.96**
PF1	0.51	0.72		$31.88	$33.54		$12.10	$59.32	**$136.84**
PG1	0.5	0.72		$31.25	$33.54		$12.10	$59.32	**$136.21**
PH1	0.49	0.72		$30.63	$33.54		$12.10	$59.32	**$135.59**
PI1	0.46	0.72		$28.75	$33.54		$12.10	$59.32	**$133.71**
PJ1	0.46	0.72		$28.75	$33.54		$12.10	$59.32	**$133.71**

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we provide for adjustments to the Federal rates to account for differences in area wage levels using an "appropriate" wage index as determined by the Secretary. In addition, it is our intent to evaluate a wage index based specifically on SNF data once it becomes available. The SNF wage data are currently being collected and evaluated to determine if we can utilize them in the future. If a wage index based on SNF data is developed, we will publish it for comment. However, in the interim, many commenters urged us to incorporate the latest wage data available. We continue to believe that, until a wage index based on SNF wage data is collected and analyzed, the hospital wage index's wage data provide the best available measure of comparable wages that should be paid by SNFs. We believe, since hospitals and SNFs compete in the same labor market area, that the use of this index's wage data results in an appropriate adjustment to the labor portion of SNF costs based on an appropriate wage index, as required under section 1888(e) of the Act.

For rates addressed in this proposed rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in FY 1996, the same wage data as used to compute the FY 2000 wage index values for the inpatient hospital PPS. We will incorporate updated wage data in the final rule for the FY 2001 SNF PPS update.

The computation of the wage index is similar to past years in that we incorporate the latest data and methodology used to construct the hospital wage index (see the discussion in the May 12, 1998 interim final rule (63 FR 26274)). The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 77.663 percent of the total rate. The schedule of Federal rates below shows the Federal rates by labor-related and non-labor-related components.

As discussed above and in the interim final rule, until an appropriate wage index based specifically on SNF data is available, we will use the latest available hospital wage index data in making annual updates to the payment rates. In making these annual updates, section 1888(e)(4)(G)(ii) of the Act requires that the application of this wage index be made in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. In this third PPS year (Federal rates effective October 1, 2000), we are updating the wage index applicable to SNF payments using the most recent hospital wage data and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the per diem rate components by the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2000. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MedPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for FY 2001 is multiplied by each of the Federal rate components. This factor will be established when the updated wage data for the FY 2001 hospital wage index is available and set forth in the final rule establishing the FY 2001 SNF PPS rates.

TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
JA5	544.64	156.64	701.28
JA4	391.79	112.68	504.47
JA3	331.88	95.45	427.33
JA2	331.88	95.45	427.33
JB5	528.61	152.03	680.64
JB4	375.76	108.07	483.83
JB3	315.85	90.84	406.69
JB2	315.85	90.84	406.69
JC5	520.09	149.59	669.68
JC4	367.25	105.62	472.87
JC3	307.34	88.39	395.73
JC2	307.34	88.39	395.73
KA5	481.65	138.53	620.18
KA4	328.80	94.57	423.37
KA3	268.89	77.34	346.23
KA2	268.89	77.34	346.23
KB5	475.14	136.66	611.80
KB4	322.29	92.70	414.99
KB3	262.38	75.47	337.85
KB2	262.38	75.47	337.85
KC5	463.12	133.20	596.32
KC4	310.27	89.24	399.51
KC3	250.36	72.01	322.37
KC2	250.36	72.01	322.37
LA5	448.33	128.95	577.28
LA4	295.48	84.99	380.47
LA3	235.58	67.75	303.33
LA2	235.58	67.75	303.33
LB5	443.33	127.79	571.12

TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
LB4	291.48	83.83	375.31
LB3	231.57	66.60	298.17
LB2	231.57	66.60	298.17
LC5	433.31	124.62	557.93
LC4	280.46	80.66	361.12
LC3	220.55	63.43	283.98
LC2	220.55	63.43	283.98
MA5	443.52	127.56	571.08
MA4	290.67	83.60	374.27
MA3	230.76	66.37	297.13
MA2	230.76	66.37	297.13
MB5	434.00	124.83	558.83
MB4	281.16	80.86	362.02
MB3	221.25	63.63	284.88
MB2	221.25	63.63	284.88
MC5	432.00	124.25	556.25
MC4	279.15	80.29	359.44
MC3	219.24	63.06	282.30
MC2	219.24	63.06	282.30
NA5	413.85	119.03	532.88
NA4	261.00	75.07	336.07
NA3	201.09	57.84	258.93
NA2	201.09	57.84	258.93
NB5	400.83	115.29	516.12
NB4	247.99	71.32	319.31
NB3	188.08	54.09	242.17
NB2	188.08	54.09	242.17
UA5	322.57	92.78	415.35
UA4	323.34	93.00	416.34
UA3	288.01	82.84	370.85
UA2	273.03	78.53	351.56
UB5	309.05	88.89	397.94
UB4	309.82	89.11	398.93
UB3	274.49	78.95	353.44
UB2	259.51	74.64	334.15
UC5	301.54	86.73	388.27
UC4	302.31	86.95	389.26
UC3	266.98	76.79	343.77
UC2	252.00	72.48	324.48
VA5	264.10	75.96	340.06
VA4	264.87	76.18	341.05
VA3	229.54	66.02	295.56
VA2	214.56	61.71	276.27
VB5	257.09	73.94	331.03
VB4	257.86	74.16	332.02
VB3	222.53	64.00	286.53
VB2	207.55	59.69	267.24
VC5	245.07	70.48	315.55
VC4	245.83	70.71	316.54
VC3	210.51	60.54	271.05
VC2	195.52	56.24	251.76
WA5	232.28	66.81	299.09
WA4	233.05	67.03	300.08
WA3	197.72	56.87	254.59
WA2	182.74	52.56	235.30
WB5	227.27	65.37	292.64
WB4	228.04	65.59	293.63
WB3	192.71	55.43	248.14
WB2	177.73	51.12	228.85
WC5	219.27	63.06	282.33
WC4	220.03	63.29	283.32
WC3	184.71	53.12	237.83
WC2	169.72	48.82	218.54
XA5	217.95	62.69	280.64

TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
XA4	218.72	62.91	281.63
XA3	183.39	52.75	236.14
XA2	168.41	48.44	216.85
XB5	214.45	61.68	276.13
XB4	215.22	61.90	277.12
XB3	179.89	51.74	231.63
XB2	164.91	47.43	212.34
XC5	212.45	61.10	273.55
XC4	213.22	61.32	274.54
XC3	177.89	51.16	229.05
XC2	162.91	46.85	209.76
YA5	194.80	56.03	250.83
YA4	195.57	56.25	251.82
YA3	160.24	46.09	206.33
YA2	145.26	41.78	187.04
YB5	180.78	51.99	232.77
YB4	181.55	52.21	233.76
YB3	146.22	42.05	188.27
YB2	131.23	37.75	168.98
EA5	336.39	96.75	433.14
EA4	264.57	76.10	340.67
EA3	207.73	59.75	267.48
EA2	186.23	53.56	239.79
EB5	319.36	91.85	411.21
EB4	247.54	71.20	318.74
EB3	190.70	54.85	245.55
EB2	169.20	48.66	217.86
EC5	308.34	88.68	397.02
EC4	236.52	68.03	304.55
EC3	179.68	51.68	231.36
EC2	158.18	45.49	203.67
SA5	156.71	45.07	201.78
SA4	174.76	50.26	225.02
SA3	148.65	42.75	191.40
SA2	134.82	38.77	173.59
SB5	152.70	43.92	196.62
SB4	170.75	49.11	219.86
SB3	144.64	41.60	186.24
SB2	130.81	37.62	168.43
SC5	150.70	43.34	194.04
SC4	168.75	48.53	217.28
SC3	142.64	41.02	183.66
SC2	128.80	37.05	165.85
CA5	207.29	59.62	266.91
CA4	207.29	59.62	266.91
CA3	162.35	46.70	209.05
CA2	135.09	38.85	173.94
CB5	200.78	57.75	258.53
CB4	200.78	57.75	258.53
CB3	155.85	44.82	200.67
CB2	128.58	36.98	165.56
CC5	196.77	56.60	253.37
CC4	196.77	56.60	253.37
CC3	151.84	43.67	195.51
CC2	124.57	35.83	160.40
CD5	193.26	55.59	248.85
CD4	193.26	55.59	248.85
CD3	148.33	42.66	190.99
CD2	121.06	34.82	155.88
CE5	192.77	55.44	248.21
CE4	192.77	55.44	248.21
CE3	147.83	42.52	190.35
CE2	120.56	34.68	155.24
CF5	188.76	54.29	243.05

TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
CF4	188.76	54.29	243.05
CF3	143.82	41.37	185.19
CF2	116.56	33.52	150.08
IA1	109.33	31.44	140.77
IB1	108.32	31.16	139.48
IC1	103.32	29.71	133.03
ID1	101.31	29.14	130.45
BA1	114.97	33.07	148.04
BB1	113.47	32.64	146.11
BC1	108.96	31.34	140.30
BD1	104.96	30.19	135.15
PA1	120.25	34.58	154.83
PB1	117.74	33.86	151.60
PC1	116.74	33.57	150.31
PD1	114.23	32.86	147.09
PE1	113.73	32.71	146.44
PF1	107.22	30.84	138.06
PG1	106.72	30.70	137.42
PH1	106.22	30.55	136.77
PI1	104.72	30.12	134.84
PJ1	104.72	30.12	134.84

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
JA5	$550.79	$158.41	$709.20
JA4	406.81	117.01	523.82
JA3	350.38	100.77	451.15
JA2	350.38	100.77	451.15
JB5	535.25	153.95	689.20
JB4	391.28	112.54	503.82
JB3	334.84	96.31	431.15
JB2	334.84	96.31	431.15
JC5	527.00	151.57	678.57
JC4	383.03	110.16	493.19
JC3	326.59	93.93	420.52
JC2	326.59	93.93	420.52
KA5	479.34	137.86	617.20
KA4	335.36	96.46	431.82
KA3	278.93	80.22	359.15
KA2	278.93	80.22	359.15
KB5	473.02	136.05	609.07
KB4	329.05	94.64	423.69
KB3	272.61	78.41	351.02
KB2	272.61	78.41	351.02
KC5	461.37	132.70	594.07
KC4	317.40	91.29	408.69
KC3	260.96	75.06	336.02
KC2	260.96	75.06	336.02
LA5	441.21	126.90	568.11
LA4	297.24	85.49	382.73
LA3	240.80	69.26	310.06
LA2	240.80	69.26	310.06
LB5	437.33	125.78	563.11
LB4	293.36	84.37	377.73
LB3	236.92	68.14	305.06
LB2	236.92	68.14	305.06

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
LC5	426.65	122.71	549.36
LC4	282.68	81.30	363.98
LC3	226.24	65.07	291.31
LC2	226.24	65.07	291.31
MA5	434.43	124.95	559.38
MA4	290.46	83.54	374.00
MA3	234.02	67.31	301.33
MA2	234.02	67.31	301.33
MB5	425.21	122.30	547.51
MB4	281.24	80.89	362.13
MB3	224.80	64.66	289.46
MB2	224.80	64.66	289.46
MC5	423.27	121.74	545.01
MC4	279.30	80.33	359.63
MC3	222.86	64.10	286.96
MC2	222.86	64.10	286.96
NA5	401.47	115.47	516.94
NA4	257.50	74.06	331.56
NA3	201.06	57.83	258.89
NA2	201.06	57.83	258.89
NB5	388.85	111.84	500.69
NB4	244.88	70.43	315.31
NB3	188.44	54.20	242.64
NB2	188.44	54.20	242.64
UA5	340.94	98.06	439.00
UA4	341.66	98.27	439.93
UA3	308.38	88.70	397.08
UA2	294.27	84.64	378.91
UB5	327.83	94.29	422.12
UB4	328.55	94.50	423.05
UB3	295.27	84.93	380.20
UB2	281.16	80.87	362.03
UC5	320.55	92.20	412.75
UC4	321.28	92.40	413.68
UC3	288.00	82.83	370.83
UC2	273.89	78.77	352.66
VA5	273.86	78.76	352.62
VA4	274.58	78.97	353.55
VA3	241.30	69.40	310.70
VA2	227.19	65.34	292.53
VB5	267.06	76.81	343.87
VB4	267.78	77.02	344.80
VB3	234.50	67.45	301.95
VB2	220.39	63.39	283.78
VC5	255.41	73.46	328.87
VC4	256.13	73.67	329.80
VC3	222.85	64.10	286.95
VC2	208.74	60.04	268.78
WA5	237.19	68.22	305.41
WA4	237.91	68.43	306.34
WA3	204.63	58.86	263.49
WA2	190.52	54.80	245.32
WB5	232.34	66.82	299.16
WB4	233.06	67.03	300.09
WB3	199.78	57.46	257.24
WB2	185.67	53.40	239.07
WC5	224.57	64.59	289.16
WC4	225.29	64.80	290.09
WC3	192.01	55.23	247.24
WC2	177.90	51.17	229.07
XX5	221.19	63.62	284.81
XA4	221.91	63.83	285.74
XA3	188.64	54.25	242.89
XA2	174.52	50.20	224.72

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
XB5	217.79	62.64	280.43
XB4	218.51	62.85	281.36
XB3	185.23	53.28	238.51
XB2	171.12	49.22	220.34
XC5	215.85	62.08	277.93
XC4	216.57	62.29	278.86
XC3	183.29	52.72	236.01
XC2	169.18	48.66	217.84
YA5	194.54	55.95	250.49
YA4	195.26	56.16	251.42
YA3	161.98	46.59	208.57
YA2	147.87	42.53	190.40
YB5	180.95	52.04	232.99
YB4	181.67	52.25	233.92
YB3	148.39	42.68	191.07
YB2	134.28	38.62	172.90
EA5	323.82	93.14	416.96
EA4	256.18	73.68	329.86
EA3	202.64	58.28	260.92
EA2	182.38	52.45	234.83
EB5	307.32	88.39	395.71
EB4	239.68	68.93	308.61
EB3	186.13	53.54	239.67
EB2	165.87	47.71	213.58
EC5	296.64	85.32	381.96
EC4	229.00	65.86	294.86
EC3	175.46	50.46	225.92
EC2	155.19	44.64	199.83
SA5	153.73	44.22	197.95
SA4	170.73	49.11	219.84
SA3	146.13	42.03	188.16
SA2	133.11	38.29	171.40
SB5	149.85	43.10	192.95
SB4	166.85	47.99	214.84
SB3	142.25	40.91	183.16
SB2	129.23	37.17	166.40
SC5	147.91	42.54	190.45
SC4	164.91	47.43	212.34
SC3	140.31	40.35	180.66
SC2	127.29	36.61	163.90
CA5	201.36	57.91	259.27
CA4	201.36	57.91	259.27
CA3	159.03	45.74	204.77
CA2	133.35	38.35	171.70
CB5	195.05	56.10	251.15
CB4	195.05	56.10	251.15
CB3	152.72	43.93	196.65
CB2	127.04	36.54	163.58
CC5	191.17	54.98	246.15
CC4	191.17	54.98	246.15
CC3	148.84	42.81	191.65
CC2	123.16	35.42	158.58
CD5	187.77	54.00	241.77
CD4	187.77	54.00	241.77
CD3	145.44	41.83	187.27
CD2	119.76	34.44	154.20
CE5	187.28	53.87	241.15
CE4	187.28	53.87	241.15
CE3	144.96	41.69	186.65
CE2	119.27	34.31	153.58
CF5	183.40	52.75	236.15
CF4	183.40	52.75	236.15
CF3	141.07	40.58	181.65
CF2	115.39	33.19	148.58
IA1	108.50	31.20	139.70

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
IB1	107.52	30.93	138.45
IC1	102.67	29.53	132.20
ID1	100.73	28.97	129.70
BA1	113.80	32.73	146.53
BB1	112.35	32.31	144.66
BC1	107.97	31.06	139.03
BD1	104.09	29.94	134.03
PA1	118.89	34.20	153.09
PB1	116.46	33.50	149.96
PC1	115.49	33.22	148.71
PD1	113.07	32.52	145.59
PE1	112.58	32.38	144.96
PF1	106.27	30.57	136.84
PG1	105.78	30.43	136.21
PH1	105.30	30.29	135.59
PI1	103.84	29.87	133.71
PJ1	103.84	29.87	133.71

For any RUG–III group, to compute a wage-adjusted Federal payment rate, the labor-related portion of the payment rate is multiplied by the SNF's appropriate wage index factor. The wage index factor has not been updated since the publication of the July 30, 1999 update notice (64 FR 41684). The product of that calculation is added to the corresponding non-labor-related component. The resulting amount is the Federal rate applicable to a beneficiary in that RUG–III group for that SNF.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, the proposed payment rates listed here have been updated by the SNF market basket minus 1 percentage point, which equals 1.01833 percent. For each succeeding FY, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal FY.

For the current FY (FY 2001), and for FY 2002, section 1888(e)(4)(E)(ii) of the Act requires the rates to be increased by a factor equal to the SNF market index change minus 1 percentage point. For subsequent FYs, this section requires the rates to be increased by the applicable SNF market basket index increase.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in II.B above, we are proposing a number of refinements in the RUGs classifications in this notice. Further, regulations at § 413.345 provide that the information included in each update of the Federal payment rates in the **Federal Register** will include the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. Accordingly, we hereby propose to designate the following RUG–III classifications for this purpose: all groups within the Rehabilitation and Extensive category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; and, all groups within the Clinically Complex category.

III. Three-Year Transition Period

Under sections 1888(e)(1) and (2) of the Act, during a facility's first three cost reporting periods that begin on or after July 1, 1998 (that is, the transition period), the facility's PPS rate will be equal to the sum of a percentage of an adjusted facility-specific per diem rate and a percentage of the adjusted Federal per diem rate, as discussed in Section I.D.2. above. After the transition period, the PPS rate will equal the adjusted Federal per diem rate. The transition period payment method will not apply to SNFs that first received Medicare payments (interim or otherwise) on or after October 1, 1995 under present or previous ownership, or to those facilities choosing to bypass the transition in accordance with section 102 of the BBRA; these facilities will be paid based on 100 percent of the Federal rate.

The facility-specific per diem rate is the sum of the facility's total allowable Part A Medicare costs and an estimate of the amounts that would be payable under Part B for covered SNF services for cost reporting periods beginning in FY 1995 (base year). The base year cost report used to compute the facility-specific per diem rate in the transition period may be settled (either tentative or final) or as-submitted for Medicare payment purposes. Under section 1888(e)(3) of the Act, any adjustments to the base year cost report made as a result of settlement or other action by the fiscal intermediary, including cost limit exceptions and exemptions, or results of an appeal, will result in a revision to the facility-specific per diem rate. The instructions for calculating the facility-specific per diem rate are described in detail in the May 12, 1998 interim final rule. In order to implement section 104 of the BBRA, for providers that received payment under the RUG–III demonstration during a cost reporting period that began in calendar year 1997, we will determine their facility-specific per diem rate using the methodology described below.

It is possible that some providers participated in the demonstration but did not have a cost reporting period that began in calendar year 1997. For those providers, we will determine their

facility-specific per diem rate by using the calculations outlined in the May 12, 1998 **Federal Register** interim final rule (63 FR 26251, section III. (A)(1)(a), (b), or (c)). As with the facility-specific per diem applicable to other providers, the allowable costs will be subject to change based on the settlement of the cost report used to determine the total payment under the demonstration. In addition, we derive a special market basket inflation factor to adjust the 1997 costs to the midpoint of the rate setting period (October 1, 2000 to September 30, 2001.)

Step 1—Determine the aggregate payment during the cost reporting period that began in calendar year 1997—RUG–III payment plus routine capital costs plus ancillary costs (other than occupational therapy, physical therapy, and speech pathology).

Step 2—Divide the amount in Step 1, by the applicable total inpatient days for the cost reporting period.

Step 3—Adjust the amount in Step 2, by 1.094828 (inflation factor).

Step 4—Add the amount determined in step 3, to the appropriate Part B add-on amount determined according to Program Memorandum transmittal no. A–99–53 (December 1999).

The amount in Step 4 is the facility-specific rate that is applicable for the facility's first cost reporting period beginning on or after October 1, 2000.

Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition:

For the first three cost reporting periods beginning on or after July 1, 1998 (the transition period), an SNF's payment under the PPS is the sum of a percentage of the facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. Under section 1888(e)(2)(C) of the Act, for the first cost reporting period in the transition period, the SNF payment will be the sum of 75 percent of the facility-specific per diem rate and 25 percent of the Federal per diem rate. For the second cost reporting period, the SNF payment will be the sum of 50 percent of the facility-specific per diem rate and 50 percent of the Federal per diem rate. For the third cost reporting period, the SNF payment will be the sum of 25 percent of the facility-specific per diem rate and 75 percent of the Federal per diem rate. For all subsequent cost reporting periods beginning after the transition period, the SNF payment will be equal to 100 percent of the Federal per diem rate. An example is given below computing the SNF PPS rate and SNF payment.

Example of computation of adjusted PPS rates and SNF payment:

Using the XYZ SNF described in Table 9, the following shows the adjustments made to the facility-specific per diem rate and the Federal per diem rate to compute the provider's actual per diem PPS payment in the transition period. XYZ's 12-month cost reporting period begins October 1, 2000. (This is the provider's second cost reporting period under the transition.)

STEP 1

Compute:	
Facility-specific per diem rate	$570.00
Market Basket Adjustment (Table 10.C)	x 1.13320
Adjusted facility-specific rate	$645.92

Step 2

Compute Federal per diem rate:

TABLE 9

[SNF XYZ from above is located in State College, PA with a wage index of 0.9138.]

RUG group	Labor portion*	Wage index	Adjusted labor	Nonlabor portion*	Adjusted rate	4 percent adjustment	Medicare days	Payment
VA5	$264.10	0.9138	$241.33	$75.96	$317.29	$329.98	50	$16,499
WA5	232.28	0.9138	212.26	66.81	279.07	290.23	50	14,512
Total							100	31,011

*From Table 7.

STEP 3

Apply transition period percentages:	
Facility-specific per diem rate $645.92 × 100 days =	$64,592
Times transition percentage (50 percent)	.50
Actual facility-specific PPS payment	32,296
Federal PPS payment	31,011
Times transition percentage (50 percent)	.50
Actual Federal PPS payment	15,506

STEP 4

Compute total PPS payment:	
XYZ's total PPS payment ($32,296 + $15,506)	47,802

IV. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish an SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This rule incorporates the latest estimates of the SNF market basket index at the time of this proposed rule. The final rule will incorporate updated

projections based on the latest available projections as of that point in time. Accordingly, as described below, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the May 12, 1998 **Federal Register**, we included a complete discussion on rebasing the SNF market basket to FY 1992, and revising the index to include capital and ancillary costs. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Tables 4.A, 4.B, and Appendix A, found in the May 12, 1998 **Federal Register**.

Each year we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10.A below summarizes the updated labor-related share for FY 2001.

TABLE 10.A—FY 2001 LABOR-RELATED SHARE

Cost category	FY 2000 relative importance	FY 2001 relative importance
Wages and Salaries	56.647	56.744
Employee Benefits	12.321	12.405
Nonmedical Professional Fees	1.959	1.953
Labor-intensive Services	3.738	3.733
Capital-related	2.880	2.828
Total	77.545	77.663

The forecasted rates of growth used to compute the projected SNF market basket percentages, described in the next section, are shown in Table 10.B.

TABLE 10.B—SKILLED NURSING FACILITY TOTAL COST MARKET BASKET, FORECASTED CHANGE, 1997–2002

Fiscal years beginning October 1	Skilled nursing facility total cost market basket
October 1996, FY 1997	2.4
October 1997, FY 1998	2.8
October 1998, FY 1999	2.8
October 1999, FY 2000	3.1
October 2000, FY 2001	2.8
October 2001, FY 2002	2.9
Forecasted Average: 2000–2002	2.9

Source: Standard & Poor's DRI HCC, 4th QTR, 1999; @USSIM/TREND25YR1199 @CISSIM/TRENDLONG1199.

Released by HCFA, OACT, National Health Statistics Group

Use of the Skilled Nursing Facility Market Basket Percentage:

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, described in the previous section, from the midpoint of the prior FY (or period) to the midpoint of the current FY (or other period) involved. The facility-specific portion and Federal portion of the SNF PPS rates addressed in this proposed rule are based on cost reporting periods beginning in the base year, Federal FY 1995. For the Federal rates, the percentage increases in the SNF market basket index will be used to compute the update factors occurring between the midpoint of FY 2000 and the midpoint of FY 2001. We used the Standard & Poor's DRI CC, 4th quarter 1999 historical and forecasted percentage increases of the revised and rebased SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factors. Finally, the update factors, as described below, will be used to adjust the base year costs for computing the facility-specific portion and Federal portion of the SNF PPS rates.

A. Facility-Specific Rate Update Factor

Under section 1888(e)(3)(D)(i) of the Act, for the facility-specific portion of the SNF PPS rate, we will update a facility's base year costs up to the corresponding cost reporting period beginning October 1, 2000, and ending September 30, 2001, by the SNF market basket percentage. We took the following steps to develop the 12-month cost reporting period facility-specific rate update factors shown in Table 10.C.

For the facility rate, we developed factors to inflate data from cost reporting periods beginning October 1, 1994, through September 30, 1995, to the corresponding cost reporting period beginning in FY 2001. According to section 1888(e)(3)(D) of the Act, the years through FY 1999 were inflated at a rate of market basket minus 1 percentage point, while FY 2000 and FY 2001 are to be inflated at the full market basket rate of increase.

1. We first determined the total growth from the midpoint of each 12-month cost reporting period that began during the period from October 1, 1994, through September 30, 1995, to the midpoint of the corresponding period beginning in FY 2001.

2. From this total growth, we determined the average annual growth rate for each time span.

3. We subtracted 1 percentage point from each average annual growth rate through FY 1999.

4. These reduced average annual growth rates were converted to cumulative growth rates, using market basket minus one for the first four years, and with full market basket for the final two years. (For example, if the time span were for 9 years, we would inflate at the market basket minus 1 percentage point annual rate for 7 years and at annual market basket rate for 2 additional years).

TABLE 10.C—UPDATE FACTORS [1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 2000 AND BEFORE OCTOBER 1, 2001 FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
October 1, 2000	October 1, 1994	1.13320
November 1, 2000	November 1, 1994	1.13302
December 1, 2000	December 1, 1994	1.13276
January 1, 2001	January 1, 1995	1.13260
February 1, 2001	February 1, 1995	1.13273
March 1, 2001	March 1, 1995	1.13315
April 1, 2001	April 1, 1995	1.13363
May 1, 2001	May 1, 1995	1.13391
June 1, 2001	June 1, 1995	1.13401
July 1, 2001	July 1,1995	1.13411

TABLE 10.C—UPDATE FACTORS [1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 2000 AND BEFORE OCTOBER 1, 2001 FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)—Continued

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
August 1, 2001	August 1, 1995	1.13443
September 1, 2001	September 1, 1995	1.13497

[1] Source: Standard & Poor's DRI, 1st Qtr 2000; @USSIM/TREND25YR0299@CISSIM/CONTROL991

B. Federal Rate Update Factor

To update each facility's costs up to the common period, we:

1. Determined the total growth from the average market basket level for the period of October 1, 1999 through September 30, 2000 to the average market basket level for the period of October 1, 2000 through September 30, 2001.

2. Calculated the rate of growth between the midpoints of the two periods.

3. Calculated the annual average rate of growth for number 2, above.

4. Subtracted 1 percentage point from this annual average rate of growth.

5. Using the annual average minus 1 percentage point rate of growth, determined the cumulative growth between the midpoints of the two periods specified above.

This revised update factor was used to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

V. Consolidated Billing

Section 4432(b) of the BBA sets forth a consolidated billing requirement applicable to all SNFs providing Medicare services. SNF consolidated billing is a comprehensive billing requirement (similar to the one that has been in effect for inpatient hospital services for well over a decade), under which the SNF itself is responsible for billing Medicare for virtually all of the services that its beneficiaries receive. As with hospital bundling, the law contains a list of services (primarily those of physicians and certain other types of medical practitioners) that are excluded from SNF consolidated billing and, thus, can be separately billed to Part B directly by the outside entity that furnishes them to the Medicare beneficiary (see section 1888(e)(2)(A)(ii) of the Act).

Section 103(a)(2) of the BBRA added section 1888(e)(2)(A)(iii) to the Act to provide for the exclusion of certain additional types of services from SNF consolidated billing, effective with services furnished on or after April 1, 2000. The original statutory exclusions enacted by the BBA consisted of a number of broad service categories, and encompassed all of the individual services that fall within those categories. By contrast, the additional exclusions enacted in the BBRA apply only to certain specified, individual services within a number of broader service categories that otherwise remain subject to consolidated billing. Within the affected service categories—that is, chemotherapy items and their administration, radioisotope services, and customized prosthetic devices—the exclusion applies only to those individual services that are specifically identified by HCPCS code in the legislation itself, while all other services within those broader categories remain subject to consolidated billing. See Table 11, Post-BBA Consolidated Billing Exclusions. We have issued Program Memorandum (PM) no. AB–00–18 (March 2000), which lists the HCPCS codes of those particular services identified by the BBRA as excluded from consolidated billing.

TABLE 11.—POST-BBA CONSOLIDATED BILLING EXCLUSIONS

Exclusion	Exclusion authority	Effective date	Comments
Chemotherapy & Administration	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (II) and (III) of the Act.	4/1/2000	Only applies to those HCPCS codes specified in legislation; Excluded regardless of whether they are furnished in a hospital or nonhospital setting.
Radioisotope Services	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (IV) of the Act.	4/1/2000	Only applies to those HCPCS codes specified in legislation; Excluded regardless of whether they are furnished in a hospital or nonhospital setting.
Customized prosthetic devices	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (V) of the Act.	4/1/2000	Only applies to those HCPCS codes specified in legislation; Excluded regardless of whether they are furnished in a hospital or nonhospital setting.
Ambulance Services furnished in conjunction with Part B Dialysis services.	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (I) of the Act.	4/1/2000	Subject to the medical necessity requirements that apply to ambulance services generally.
Outpatient hospital services that HCFA has identified (see Program Memorandum A–98–;37, 11/1998) as being beyond the general scope of SNF care plans along with associated ambulance services: • Cardiac catheterization; • CT scans; • Magnetic resonance imaging (MRIs);	§ 411.15(p)(2)(x) and (p)(3)(iii), as promulgated in the SNF PPS Interim Final Rule (5/12/1998).	7/1/1998	Excluded from consolidated billing only when furnished in the outpatient hospital setting.

TABLE 11.—POST-BBA CONSOLIDATED BILLING EXCLUSIONS—Continued

Exclusion	Exclusion authority	Effective date	Comments
• Ambulatory surgery involving the use of an operating room; • Emergency services; • Radiation therapy; • Angiography; • Venous and lymphatic procedures			

The BBRA Conference report (H.R. Conf. Rep. No. 106–479 at 854) characterizes the individual services that this legislation targets for exclusion as "* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system * * *." According to the conferees, section 103(a) "is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs * * *." Some chemotherapy drugs, which are relatively inexpensive and are administered routinely in SNFs, were excluded from this provision [and thus continue to be subject to consolidated billing requirements]. Id.

Further, we note that the exceptionally costly and intensive outpatient hospital services, such as magnetic resonance imaging (MRIs) and cardiac catheterization, that we identified previously under the regulations at § 411.15(p)(3)(iii) (see the preamble discussion in the May 12, 1998 interim final rule at 63 FR 26298–99, and in the July 30, 1999 final rule at 64 FR 41675–76) are excluded from consolidated billing only when furnished in the outpatient hospital setting. By contrast, as indicated in Table 11, the services identified in section 103 of the BBRA are excluded regardless of whether they are furnished in a hospital or nonhospital setting.

In addition, section 103(a)(2) of the BBRA excludes from consolidated billing those ambulance services that are furnished to an SNF beneficiary in conjunction with dialysis services that are covered under Part B. We note that Part B dialysis services themselves are already excluded from consolidated billing (see regulations at 42 CFR 411.15(p)(2)(vii)), as are those ambulance services that are furnished to a beneficiary who is not considered an SNF "resident" for consolidated billing purposes (see § 411.15(p)(2)(x))—for example, a beneficiary who receives one of the excluded outpatient hospital services under § 411.15(p)(3)(iii). The BBRA Conference Committee report further indicates that the newly excluded ambulance services (that is, those needed to transport a SNF resident who receives Part B dialysis services offsite at a certified dialysis facility) still remain subject to the overall medical necessity requirement that applies to ambulance services generally; that is, that ambulance coverage is available only in those situations where the use of other means of transportation is medically contraindicated. (H.R. Conf. Rep. No. 106–479 at 854.)

Further, we note that the statutory exclusion of those ambulance services that are furnished to SNF residents in conjunction with Part B dialysis services does not extend to ambulance services furnished to SNF residents in conjunction with any of the other types of services that this section of the BBRA identifies as excluded. For example, when a SNF resident is temporarily transported offsite via ambulance to receive a type of chemotherapy that is excluded by the BBRA, the ambulance services themselves remain subject to the SNF consolidated billing provision, and are not separately billable to Part B.

Section 103 of the BBRA also gives the Secretary the authority to designate additional, individual services for exclusion within each of the specified service categories. The BBRA Conference report notes that "* * * [n]ew, extremely costly items may come into use or codes may change over time", H.R. Conf. Rep. No. 106–479 at 854 and the discretionary authority provided in the BBRA affords the Secretary the flexibility to revise the exclusion list as warranted by changing conditions that may occur in the future. For example, we note that the BBRA's conference agreement requests the GAO to conduct a review, by July 1, 2000, of the appropriateness of the codes that this legislation has designated for exclusion from consolidated billing. We will carefully consider the GAO's findings to determine whether further refinements in the exclusion list are warranted.

Also, we note that the BBRA made a number of technical corrections in the provisions of the BBA. One of these corrections, section 321(g)(2) of the BBRA, has revised the statute at section 1833(h)(5)(A)(iii) of the Act to make it clear that clinical diagnostic tests furnished to a SNF resident are subject to the consolidated billing requirement.

Finally, while we have implemented consolidated billing in connection with services furnished to SNF residents during Medicare-covered stays, we have not yet implemented so-called "Part B" consolidated billing, in connection with services furnished to SNF residents who are in noncovered stays. As we explained in the July 30, 1999 final rule, the overriding need to accomplish systems renovations in time to achieve Year 2000 (Y2K) compliance forced us to delay certain other projects that involved significant systems modifications of their own, including the implementation of this aspect of consolidated billing. Now that the Y2K-related systems changes have been completed, we have been able to resume work on these other projects. In this context, we have been reexamining some of the operational implications of consolidated billing that are specific to implementing the "Part B" aspect of this provision.

For example, under regulations at § 411.15(p)(3)(iv), if a beneficiary leaves the SNF and then returns within 24 hours of departure, his or her status as an SNF "resident" (for consolidated billing purposes) continues during the absence, regardless of whether the SNF has effected a formal discharge. This would make the SNF responsible for billing Medicare for any services that a beneficiary receives during a temporary absence of up to 24 hours, other than those that are specifically excluded (see the preamble discussion in the SNF PPS interim final rule (63 FR 26298 through 26299, May 12, 1998)). Since consolidated billing is currently in effect only for those SNF stays that are covered by Part A and paid by the PPS, this essentially means that such a beneficiary remains a SNF "resident" after leaving the SNF only if he or she then returns to the SNF by midnight, thus making the day of departure a covered Part A day. However, once

consolidated billing is fully implemented, this will effectively convert the policy regarding services furnished during a beneficiary's temporary absence from the current "midnight rule" to the full "24 hour rule" described in the regulations.

As explained in the SNF PPS interim final rule, we initially established a 24-hour window in the regulations in order to prevent a SNF from being able to unbundle a particular service merely by sending a beneficiary offsite briefly to receive the service as an outpatient of a hospital or clinic. However, we note that SNFs basically have a financial incentive to unbundle such services only in connection with a resident whose stay is covered under Part A, since unbundling the service would mean that it could be paid separately under Part B, rather than out of the global per diem amount that Part A pays the SNF for the covered stay itself. By contrast, a resident who is in a noncovered stay does not qualify for comprehensive coverage of the entire institutional package of care under Part A, but only for Part B coverage of the individual medical and other health services specified in section 1861(s) of the Act. This means that when a SNF resident is in a noncovered stay, Part B would pay individually for each covered medical or other health service furnished to that resident, regardless of whether the SNF or an outside supplier submits the bill.

Thus, as the financial incentives for unbundling are associated with covered stays, we believe that it may be appropriate to have a standard with regard to SNF "resident" status that, in actual practice, is not more stringent for noncovered stays. We could revise the regulations at § 411.15(p)(3)(iv) to provide for continuing a beneficiary's "resident" status during a temporary absence only if he or she returns by midnight of the day of departure. This would, in effect, utilize the same standard that currently applies to covered stays for noncovered stays as well, and we invite comments on the appropriateness of such a revision.

As a point of clarification, we note that the phrase "midnight of the day of departure" refers to the midnight that immediately follows the actual moment of departure, rather than to the midnight that immediately precedes it (see, for example, the discussion of a "leave of absence" in section 3103.3 of the Medicare Intermediary Manual, Part 3 (HCFA Pub. 13–3), which indicates that the day a patient returns to the hospital from a leave of absence "* * * is counted as an inpatient day if he is present *at midnight of that day*" (emphasis added)). Thus, under this policy, a patient "day" begins at 12:01 A.M., and midnight of a particular day occurs at the very end of that day rather than at the very beginning. For example, under the "midnight rule," if a beneficiary begins a leave of absence from the SNF at 10:00 A.M. on July 1 but subsequently returns to the SNF by 12:00 A.M. that night, the beneficiary would continue to be considered a "resident" of the SNF, for consolidated billing purposes, during his or her absence. By contrast, if the beneficiary does not return to the SNF until 1:00 A.M. on the morning of July 2, his or her "resident" status, for consolidated billing purposes, would end as of 10:00 A.M. on July 1, and would not resume until the actual point of readmission to the SNF (that is, as of 1:00 A.M. on July 2).

VI. Provisions of the Proposed Rule

The provisions of this proposed rule are as follows:

- In § 411.15, paragraph (p)(2)(vii) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- In § 411.15, paragraph (p)(2) would also be revised to list the additional services that the BBRA has excluded from consolidated billing.
- In § 411.15, paragraph (p)(3)(iv), the phrase "within 24 consecutive hours" would be revised to read "by midnight of the day of departure".
- In § 489.20, paragraph (s) would be revised to list the additional services that BBRA has excluded from consolidated billing, and a conforming change would be made in § 489.21(h).
- In § 489.20, paragraph (s)(7) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- Section 489.20(s)(11) and § 411.15(p)(2)(xi), would be revised to reflect editorial revisions in the paragraphs concerning the transportation costs of electrocardiogram equipment.

VII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et.seq.).

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4), the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Federalism Executive Order (EO) 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate its impact will be to increase the payments to SNFs by approximately $900 million in FY 2001. The update set forth in this notice applies to payments in FY 2001. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

Executive Order 13132 (effective November 2, 1999), establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments,

preempts State law, or otherwise have Federalism implications. As stated above, this rule will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity. The policies contained in this rule would update the SNF PPS rates by increasing the payment rates published in the July 30, 1999 notice, but will not have a significant effect upon small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

A. Background

This notice sets forth proposed updates of the SNF PPS rates contained in the update notice, published on July 30, 1999. Table 13 below, presents the projected effects of the policy changes in the SNF PPS update notice, as well as statutory changes effective for FY 2001, on various SNF categories. We estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit based on Medicare claims from 1998. Some of the data used for this analysis are the same data used to develop the impact analysis associated with the SNF PPS update notice promulgated on July 30, 1999 (64 FR 41684). These data were used to estimate the effects of changing only one payment variable at a time. We have also utilized MDS 2.0 data from the States used for the RUG–III refinement research (described in section 2.B earlier) to illustrate the effect of case mix refinements on the classification of the patient population in the study States. In addition, we are unable at this time to demonstrate the distributional impact of these case mix refinements on facility payments but anticipate doing so in the final rule planned for later this year.

We have used the best avaliable data on SNF case mix in calculating the FY 2001 impact for this proposed rule; however, we note that the data currently available on Medicare SNF claims and MDS 2.0 do not reflect the refined case mix classification system and case-mix indices proposed in this rule. While we still have only a partial database of SNF PPS claims and MDS 2.0 data at the present time due to the phased-in manner in which SNFs came into the PPS, we are confident that sufficient national data reflecting the distribution of payments and service days under the new RUG–III classification model can be assembled before promulgation of the final rule associated with this update. While the refinement to the case-mix classification system results in no greater or lesser aggregate payments to SNFs under the Medicare SNF PPS, we believe it is important to estimate the potential distributional impact of incorporating the refined RUG–III case-mix groups and indices. Consequently, for the final rule implementing the FY 2001 SNF PPS rates, we anticipate using such a national data base of SNF PPS claims and MDS 2.0 data to estimate more accurately the impact of this update, including the distributional effect of the case-mix refinements on payments for different facility types and locations. However, based on the data currently available, we believe that the method we have used to develop the impact analysis for this proposed rule offers the most accurate estimate of the FY 2001 update to the SNF PPS.

For this proposed rule, we have attempted to convey a sense of the effect of the case-mix refinements on the classification of residents in SNFs. Below, we have prepared Table 12 which displays the distribution of patients in the six-state sample used to develop the case-mix refinements, as shown for both the existing RUG–III groups and for the refined model proposed in this rule. This table details a comparison of the distribution of an identical group of Medicare patients across both the existing and proposed RUG–III classification models. In addition, Table 6, in Technical Appendix A accompanying this rule, illustrates a comparison of the distribution of this same group of patients across the existing RUG–III system and the alternate ancillary index refinement approach (WIM2) discussed earlier in this proposed rule.

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III–MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
RUC+SE		JA5	14
RUC+SE		JA4	91
RUC+SE		JA3	78
RUC+SE		JA2	0
RUB+SE		JB5	9
RUB+SE		JB4	82
RUB+SE		JB3	190
RUB+SE		JB2	0
RUA+SE		JC5	0
RUA+SE		JC4	4
RUA+SE		JC3	23
RUA+SE		JC2	0

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III–MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE—Continued

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
RVC+SE		KA5	5
RVC+SE		KA4	80
RVC+SE		KA3	75
RVC+SE		KA2	0
RVB+SE		KB5	2
RVB+SE		KB4	77
RVB+SE		KB3	169
RVB+SE		KB2	0
RVA+SE		KC5	0
RVA+SE		KC4	13
RVA+SE		KC3	18
RVA+SE		KC2	0
RHC+SE		LA5	12
RHC+SE		LA4	89
RHC+SE		LA3	143
RHC+SE		LA2	0
RHB+SE		LB5	1
RHB+SE		LB4	37
RHB+SE		LB3	91
RHB+SE		LB2	0
RHA+SE		LC5	0
RHA+SE		LC4	0
RHA+SE		LC3	1
RHA+SE		LC2	0
RMC+SE		MA5	40
RMC+SE		MA4	333
RMC+SE		MA3	376
RMC+SE		MA2	0
RMB+SE		MB5	5
RMB+SE		MB4	183
RMB+SE		MB3	563
RMB+SE		MB2	2
RMA+SE		MC5	0
RMA+SE		MC4	1
RMA+SE		MC3	15
RMA+SE		MC2	0
RLB+SE		NA5	0
RLB+SE		NA4	12
RLB+SE		NA3	28
RLB+SE		NA2	0
RLA+SE		NB5	0
RLA+SE		NB4	4
RLA+SE		NB3	31
RLA+SE		NB2	0
RUC	971	UA5	1
RUC		UA4	63
RUC		UA3	424
RUC		UA2	300
RUB	3072	UB5	1
RUB		UB4	106
RUB		UB3	1100
RUB		UB2	1584
RUA	1222	UC5	0
RUA		UC4	30
RUA		UC3	349
RUA		UC2	816
RVC	853	VA5	1
RVC		VA4	53
RVC		VA3	350
RVC		VA2	289
RVB	2812	VB5	0
RVB		VB4	81
RVB		VB3	1091
RVB		VB2	1392
RVA	1383	VC5	0

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III–MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE—Continued

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
RVA		VC4	41
RVA		VC3	471
RVA		VC2	840
RHC	1808	WA5	0
RHC		WA4	75
RHC		WA3	721
RHC		WA2	768
RHB	1795	WB5	0
RHB		WB4	38
RHB		WB3	601
RHB		WB2	1027
RHA	900	WC5	0
RHA		WC4	23
RHA		WC3	309
RHA		WC2	567
RMC	3834	XX5	0
RMC		XA4	205
RMC		XA3	1601
RMC		XA2	1279
RMB	7142	XB5	0
RMB		XB4	160
RMB		XB3	2487
RMB		XB2	3742
RMA	2426	XC5	0
RMA		XC4	68
RMA		XC3	801
RMA		XC2	1541
RLB	404	YA5	0
RLB		YA4	18
RLB		YA3	182
RLB		YA2	164
RLA	703	YB5	0
RLA		YB4	19
RLA		YB3	249
RLA		YB2	400
SE3	2059	EA5	106
SE3		EA4	1021
SE3		EA3	932
SE3		EA2	0
SE2	2944	EB5	65
SE2		EB4	913
SE2		EB3	1934
SE2		EB2	32
SE1	272	EC5	0
SE1		EC4	33
SE1		EC3	227
SE1		EC2	12
SSC	3129	SA5	2
SSC		SA4	391
SSC		SA3	1907
SSC		SA2	829
SSB	3598	SB5	0
SSB		SB4	370
SSB		SB3	2168
SSB		SB2	1060
SSA	6251	SC5	0
SSA		SC4	424
SSA		SC3	3688
SSA		SC2	2139
CC2	58	CA5	0
CC2		CA4	1
CC2		CA3	28
CC2		CA2	29
CC1	309	CB5	0
CC1		CB4	18

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III–MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE—Continued

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
CC1	.....	CB3	171
CC1	.....	CB2	120
CB2	262	CC5	0
CB2	.....	CC4	9
CB2	.....	CC3	104
CB2	.....	CC2	149
CB1	1423	CD5	0
CB1	.....	CD4	36
CB1	.....	CD3	619
CB1	.....	CD2	768
CA2	802	CE5	0
CA2	.....	CE4	18
CA2	.....	CE3	319
CA2	.....	CE2	465
CA1	4977	CF5	0
CA1	.....	CF4	107
CA1	.....	CF3	2075
CA1	.....	CF2	2795
IB2	60	IA1	60
IB1	565	IB1	565
IA2	12	IC1	12
IA1	379	ID1	379
BB2	1	BA1	1
BB1	52	BB1	52
BA2	2	BC1	2
BA1	71	BD1	71
PE2	41	PA1	41
PE1	401	PB1	401
PD2	119	PC1	119
PD1	1184	PD1	1184
PC2	33	PE1	33
PC1	342	PF1	342
PB2	39	PG1	39
PB1	602	PH1	602
PA2	40	PI1	40
PA1	1185	PJ1	1185

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA. Although these changes may not be specific to SNF PPS, due to the nature of the Medicare program the changes may interact, and the complexity of the interaction of these changes could make it very difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of This Proposed Rule

As stated previously in this preamble, the aggregate increase in payments associated with this update is estimated to be $900 million. There are three areas of change that produce this increase for facilities—

1. The effect of the Federal transition, that results in many facilities being paid 75 percent at the Federal rate and 25 percent at the facility-specific rate instead of the current 50 percent Federal rate and 50 percent facility-specific rate. There is also the additional effect of the BBRA option to bypass the transition and be paid according to 100 percent of the Federal rate;

2. The implementation of various other provisions in the BBRA; and,

3. The total change in payments from FY 2000 levels to FY 2001 levels. This includes all of the previously noted changes in addition to the effect of the update to the rates.

As seen in table 13 below, some of these areas result in increased aggregate payments and others tend to lower them. The breakdown of the various categories of data in the table are as follows:

In column one, the first row of the table includes the effects on all facilities. The next six rows show the effects on facilities split by hospital-based versus freestanding and urban versus rural. The rest of the table shows the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database. The third column shows the effect of the transition to the Federal rates. It includes the impact of the normal progression of facilities in the transition to new cost reporting periods

and, therefore, blended payment amounts (that is, facility-specific versus Federal rates) as well as those facilities that, as a result of the BBRA, elect to bypass the transition and go immediately to the full Federal rate). This change has an overall effect of raising payments by .3 percent, with most of the increase coming from freestanding facilities. There are several regions that have decreased payments due to this provision, but the majority (and most populous) of the regions evidence higher payments, with the largest increase being in the New England and mid-Atlantic regions for both urban and rural facilities.

We estimate that approximately 51 percent of SNFs currently under the transition will elect to be paid based on 100 percent of the Federal rate. Of these facilities, we estimate 22 percent are hospital-based and 78 percent are freestanding.

The fourth column shows the projected effect of the 4 percent add-on to the adjusted Federal rate mandated by the BBRA. As expected, this provision results in an increase in payments for all facilities. However, as seen in the table, the varying effect of the SNF PPS transition results in a distributional impact of this provision. In addition, since this increase only applies to the Federal portion of the payment rate, the effect on total expenditures is less than 4 percent.

The fifth column of the table shows the effect of the update to the Federal and facility-specific payment rates. It reflects an update to the Federal rates of 1.833 percent, which is equivalent to the market basket increase minus 1 percentage point, as required by law. In addition, it reflects an update to the facility-specific rates of 2.833 percent, which is equivalent to the full market basket increase for this period. For this analysis, it is assumed that payments will increase by 2.0 percent in total if there are no behavioral changes by the facilities. As can be seen from this table, the effects of the update itself do not vary significantly by specific types of providers or by location.

The sixth column of the table shows the effect of all of the changes on the FY 2001 payments. This includes all of the previous changes, including the update to this year's payment rates by the market basket. Therefore, it is assumed that payments will increase by 5.8 percent in total, assuming facilities do not change their care delivery and billing practices in response. As can be seen from this table, the combined effects of all of the changes vary much more widely by specific types of providers and by location. For example, freestanding facilities enjoy more significant payment increases due to the policy changes, while the effects of the transition tend to diminish the increase for hospital-based providers.

TABLE 13.—PROJECTED IMPACT OF FY 2001 UPDATE TO THE SNF PPS

	Number of facilities	Transition to federal rates (percent)	Add on to federal rates (percent)	Update change (percent)	Total FY 2001 change (percent)
Total	9037	0.3	3.4	2.0	5.8
Urban	6300	0.0	3.4	2.0	5.5
Rural	2737	1.4	3.5	1.9	6.9
Hospital based urban	683	−6.1	2.9	2.1	−1.3
Freestanding urban	5617	1.2	3.5	2.0	6.8
Hospital based rural	533	−3.2	3.2	2.0	1.9
Freestanding rural	2204	2.5	3.6	1.9	5.8
Urban by region:					
New England	630	6.1	3.8	1.9	12.2
Middle Atlantic	877	5.1	3.7	1.9	11.1
South Atlantic	959	−2.0	3.2	2.0	3.2
East North Central	1232	1.5	3.5	1.9	7.0
East South Central	212	−1.3	3.3	2.0	4.0
West North Central	469	0.3	3.4	2.0	5.8
West South Central	519	−6.8	2.9	2.1	−2.1
Mountain	303	−4.6	3.0	2.1	0.3
Pacific	1070	−2.5	3.2	2.0	2.6
Rural by region:					
New England	88	6.0	3.9	1.9	12.2
Middle Atlantic	144	4.0	3.7	1.9	9.9
South Atlantic	373	0.6	3.5	2.0	6.2
East North Central	561	2.6	3.6	1.9	8.3
East South Central	255	−0.4	3.4	2.0	5.0
West North Central	581	3.9	3.6	1.9	9.7
West South Central	354	−3.2	3.2	2.0	1.9
Mountain	204	0.2	3.4	2.0	5.7
Pacific	151	1.7	3.6	1.9	7.4

Notes:

1. The effects of the various changes are not additive.
2. The percent differences illustrated in this table are measured against the policies and payment rates in effect for FY 2000 as described in the SNF PPS Notice published on July 30, 1999 (64 FR 42684).
3. This table reflects Federal payment rates based on the case-mix methodology and wage index used for FY 2000. As explained in the text, the FY 2001 wage index and national case-mix data based on the refined RUG–III model are not currently available, but will be for the final rule.

In the final rule implementing the SNF PPS update for FY 2001, we will revise the estimates listed in Table 13 to reflect the final FY 2001 payment rates as well as the latest available data on estimates of program growth in services and expenditures. Table 13 will also incorporate two additional columns showing the projected distributional effect of the refined case-mix classification system based on actual MDS 2.0 data and updated wage index

across the various facility types and locations, as discussed earlier. We will also indicate the impact of the reduction in the Federal rates to account for the new services excluded from consolidated billing under section 103 of the BBRA.

As discussed earlier in this rule, Section 101 of the BBRA provides for a 20 percent positive adjustment to the adjusted Federal rates associated with 15 RUG–III groups for the period of April 1, 2000 through October 1, 2000. In addition, it provides for a four percent positive adjustment to the Federal rates associated with all RUG–III categories for FY 2001 and FY 2002, regardless of whether refinements to the case-mix adjustment are implemented. However, were we not to implement case-mix refinements such as those proposed in this rule for FY 2001, the Federal rates for this period would be based on the existing RUG–III model currently in use and maintain the 20 percent adjustments to the 15 specified RUG–III groups. As indicated in Table 13, the effect of this proposed rule will be an increase in expenditures of 900 million dollars (or +5.8 percent) over the payment rates and policies as described in the SNF PPS Notice published on July 30, 1999 (64 FR 41684). However, were we not to implement case-mix refinements, the effect of this BBRA provision would be a larger increase in expenditures equaling 1.9 billion dollars (or +12.5 percent). At the present time, we are unable to illustrate the distributional impact of maintaining this 20 percent add-on, but will attempt to develop the data to allow us to do so for the final rule associated with the FY 2001 update. It is important to note that such a result would also have negative consequences for the beneficiary. Section 101 of the BBRA provides the 20 percent add-on for certain RUG–III rehabilitation groups, resulting in higher payments for such groups even though they are associated with a lower intensity of service than other rehabilitation groups. This results in a perverse incentive where some facilities may choose to provide less rehabilitation services to beneficiaries in order to receive the higher payments. Because this provision of the law takes effect on April 1, 2000, it may already be resulting in a reduction of needed services. Adoption of the refinements proposed in this rule would eliminate this perverse incentive.

As noted previously, we are proposing the addition of new RUG–III categories to recognize the needs of Medicare beneficiaries with both heavy medical and rehabilitation needs and to account more precisely for the variation in non-therapy ancillary services. The refinements will achieve important improvements in the PPS and allow for more accurate payment rates, thus meeting our responsibility to provide for equitable payments to providers while ensuring access to quality SNF care for Medicare beneficiaries. In evaluating the different options, it is important to analyze the overall impact of implementing a refined case-mix system. Adoption of any of these refinements will increase the complexity of the PPS and may introduce some initial uncertainty for providers, who would have to become familiar with the refined system and modify existing operational and support systems. As discussed in section II.B of this proposed rule, we propose adoption of the UWIM model because we believe it best represents an appropriate balance between improvements in the accuracy of our payments and the complexity and uncertainty which results from changes of this nature.

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

X. Federalism

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

2. Section 411.15 is amended by:

A. Republishing the introductory text.

B. Revising paragraphs (p)(2)(vii) and (p)(2)(xi).

C. Adding new paragraphs (p)(2)(xii), (p)(2)(xiii), (p)(2)(xiv), and (p)(2)(xv).

D. Revising paragraph (p)(3)(iv).

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.* * * *

(2) *Exceptions.* The following services are not excluded from coverage:

* * * * *

(vii) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(xi) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(xii) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(xiii) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(xiv) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(xv) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

(3) *SNF resident defined.* * * *

(iv) The beneficiary is formally discharged (or otherwise departs) from the SNF, unless the beneficiary is readmitted (or returns) to that or another SNF by midnight of the day of departure.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

B. Part 489 is amended to read as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

2. Section 489.20 is amended by:

A. Republishing the introductory text and paragraph (s) introductory text.

B. Revising paragraphs (s)(7) and (s)(11).

C. Adding new paragraphs (s)(12), (s)(13), (s)(14), and (s)(15).

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF, except the following:

* * * * *

(7) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(11) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(12) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(13) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(14) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(15) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

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

Dated: March 20, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 27, 2000.

Donna E. Shalala,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Technical Appendix A—Technical Features of the RUG–III Refinements Analyses

The purpose of the research discussed in this proposed rule is to develop potential refinements to the PPS that would better ensure accurate and equitable payment. An analytic (or research) data base consisting of linked MDS assessments and Medicare claims data was developed, and used to perform the analyses described in this proposed rule.

A. Creation of Analytic Sample

In creating the analytic sample used to develop and test potential refinements, we were guided by the desire to have a large, representative sample and the need to exclude assessments likely to contain reporting errors. Our original sample included 733,300 MDS assessments from seven States, representing the years 1995 through 1997. We then reduced this sample through implementation of the following exclusion criteria:

1. Exclude all assessments from New York. All assessments from New York were excluded from analyses that used Medicare claims data because many facilities in the State billed SNF stays using an all-inclusive rate. Because these facilities did not use the revenue codes that we used to measure prescription drug, respiratory therapy or other non-therapy ancillary charges, measured ancillary charges for most New York beneficiaries were zero in some or all of the revenue codes analyzed for this study. The exclusion of New York results in the removal of 525,215 of the 733,300 total MDS assessments from our analytic sample.

2. Exclude all assessments for which a cost-to-charge ratio could not be calculated. Medicare cost report data were used to calculate the facility-specific ratio of Total Part A allowed cost to total Part A charges for each facility in each year. Facilities missing Medicare cost reports for at least two years between 1995 and 1997 were excluded because we were not able to calculate cost-to-charge ratios for the facility. This resulted in the exclusion of 93,314 additional assessments.

3. Exclude all facilities for which the correlation between a measure of drug costs calculated from Section U and one calculated from Medicare claims data was less than zero. We used drug charge data derived from Medicare claims in the refinement analyses, but used the Section U data to identify facilities with unreliable drug cost data. For facilities that have a negative correlation between the two drug cost measures, there is a concern about inaccurate reporting on either claims or MDS assessments at the facility level, and these facilities were excluded. This step resulted in the exclusion of 10,915 MDS assessments.

4. Exclude all beneficiaries with per diem ancillary charges greater than $1,000. Two hundred fifty-three (253) observations with per diem total ancillary charges greater than $1,000 were excluded from the refinement analyses. Summary measures of statistical performance such as R-squared are typically sensitive to outliers, and these extreme values were judged unlikely to be accurate. In addition, such values have disproportionate leverage in the design of potential refinements. The exclusion of extreme outliers in refinement analyses does not mean that their costs cannot be considered when determining payment rates.

The resulting analytic sample included 103,603 assessments, which were assigned randomly to either the test or validation samples. We assigned approximately 60 percent of this sample—61,929 assessments—to the test sample which was used to develop and test potential refinements. The remaining 41,674 assessments comprised the validation sample.

B. Characteristics of the Sample

Table 1 shows the sociodemographic characteristics of the sample stratified by an aggregate of the RUG–III categories. The majority of beneficiaries were female (65 percent), with little variation in the proportion across the RUG–III categories. Beneficiaries classified in the Behavior category were less likely to be male (37 percent) and those in the Physical Function categories were the least likely to be male (30 percent). The majority of beneficiaries were white, of non-Hispanic origin (84 percent). Approximately nine percent of beneficiaries were black and 2 percent were Hispanic. Overall, nearly one quarter of the beneficiaries were severely cognitively impaired. Among beneficiaries classified in a Rehabilitation category, 35 percent were moderately impaired and 14 percent were severely cognitively impaired. The distribution of cognitive impairment among those classified as Reduced Physical Function was similar to that of the Rehabilitation category. Beneficiaries classified as Extensive Services or Special Care also had a similar distribution of cognitive impairment level. Approximately one third of each were moderately impaired. Thirty-nine percent of beneficiaries were classified as dependent in activities of daily living and only 7 percent with no limitations. Beneficiaries in the Behavior category were most likely to have only minimal limitations in physical functioning (28 percent). Beneficiaries classified in the Clinically Complex (14 percent), Cognitively Impaired (13 percent), or Physical Function (14 percent) categories were also more likely to have minimal limitations relative to the other RUG–III categories. Beneficiaries in the Extensive Services (58 percent) and Special Care (56 percent) categories were most likely to be classified as dependent in activities of daily living.

The active clinical diagnoses documented for beneficiaries in the sample are shown

stratified by RUG–III group on Table 1.1. Cardiovascular diseases were common in beneficiaries. Overall, 20 percent of beneficiaries had coronary artery disease. Cardiac arrhythmia was present in 14 percent of beneficiaries. Overall, nearly one quarter of beneficiaries had congestive heart failure and 9 percent had peripheral vascular diseases. On average, 43 percent of beneficiaries had documented hypertension. While the distribution of beneficiaries with coronary artery disease appeared similar across RUG–III groups, congestive heart failure and arrhythmia were more common in the Extensive Services, Special Care, and Clinically Complex categories. For most of the cardiovascular conditions, beneficiaries in the Impaired Cognition category were less likely to have these diseases relative to other RUG–III categories. A similar, but attenuated pattern was noted for beneficiaries in the Behavior category.

Neurological diseases were also common. Overall, 9 percent of beneficiaries had Alzheimer's disease documented. Twenty-eight percent had other dementia documented. Nearly one quarter of beneficiaries had an active clinical diagnosis of stroke and 6 percent had Parkinson's disease. While the proportion of beneficiaries with Parkinson's disease did not vary by RUG–III group, the proportion with other neurological conditions varied substantially by RUG–III group. Beneficiaries in the Impaired Cognition group were more likely to have Alzheimer's disease (22 percent) and other dementia (54 percent) documented and less likely to have had a stroke (15 percent) compared to other RUG–III groups. Similar to the Impaired Cognition group, beneficiaries in the Behavior category were more likely to have other dementia (41 percent) and less likely to have had a stroke (12 percent) compared to other RUG–III groups, but this category had a similar proportion of beneficiaries with Alzheimer's disease. The distribution of neurological conditions among beneficiaries classified as Extensive Services, Special Care, and Clinically Complex was similar. A third of beneficiaries classified as Extensive Services and Special Care had non-Alzheimer's dementia and one quarter had suffered a stroke.

Only 5 percent of beneficiaries had anxiety and 16 percent had depression documented as a diagnosis on the MDS. Across RUG–III groups, the proportion of beneficiaries with anxiety and depression was similar. However, the prevalence of anxiety (8 percent) and depression (22 percent) was higher in the Behavior category. Twelve percent of beneficiaries had cataracts and 7 percent had glaucoma. These conditions did not vary substantially by RUG–III group. Overall, septicemia was rare (1 percent), and only 8 percent of beneficiaries had pneumonia, while 17 percent had urinary tract infections. Beneficiaries in the Extensive Services category were more likely to have septicemia (2 percent), pneumonia (17 percent), and urinary tract infections (24 percent) compared to other RUG–III categories. Other diagnoses and conditions were common. Twenty-one percent of beneficiaries had allergies, 19 percent had anemia, 22 percent had arthritis, 22 percent had diabetes, and 12 percent had cancer. Beneficiaries in the Rehabilitation, Extensive Services, Special Care, and Clinically Complex categories were more likely to have these conditions relative to the Impaired Cognition and Behavioral Problem categories. The prevalence of hypothyroidism (10 percent) did not vary by RUG–III group.

Pooling across all States and the three years, there is little variation by RUG–III group in total daily drug cost as measured by Section U. Median costs within the Rehabilitation groups range from approximately $6.50 (Low Rehabilitation) to approximately $9.00 (Ultra-high Rehabilitation) whereas the lowest costs of medications were experienced by the Impaired Cognition category (approximately $3.00). The groups with the higher interquartile range (approximately $13) were the Extensive Services categories and some of the Rehabilitation groups (for example, RVC was approximately $12). The Impaired Cognition category also demonstrated the least variation in costs of medications, with an interquartile range of approximately $5.

To better understand which classes of drugs may be driving costs, we classified the drugs according to fourteen major therapeutic classes. The most expensive therapeutic drug classes are anti-infective agents (Median: $6.53) and biologics (Median: $9.73). The least expensive therapeutic drug classes are analgesics (Median: $0.10) and nutritional products (Median: $0.18). The proportion of beneficiaries within each of the major RUG–III categories are shown in Table 1.2. Variations in medication use across RUG–III groups were apparent for many medication classes and corresponded to observed variations in the active clinical diagnoses shown by RUG–III group in Table 1.1. Beneficiaries were least likely to be on biologics (1 percent) and anti-neoplastics (2 percent), regardless of RUG–III class. The majority of beneficiaries were on at least one cardiovascular medication, with substantial variation across RUG–III groups. Beneficiaries in the Rehabilitation category (67 percent) and in the Clinically Complex category (64 percent) were the most likely to be receiving at least one cardiovascular medication. Beneficiaries in the Impaired Cognition (47 percent) and Behavior (53 percent) categories were the least likely to be receiving cardiovascular medications.

Similar trends were observed across RUG–III groups for both gastrointestinal agents and endocrine/metabolic agents. More than half of beneficiaries had taken at least one gastrointestinal agent with beneficiaries in the Rehabilitation categories (67 percent) the most likely to use gastrointestinal products and beneficiaries in the Impaired Cognition or Behavioral Problem categories the least likely to receive these drugs (approximately 50 percent). With endocrine and metabolic agents, over one third of beneficiaries in the Rehabilitation, Extensive Services, Special Care, and Clinically Complex categories received these drugs, relative to approximately 25 percent of other RUG–III groups. Beneficiaries in the Rehabilitation, Extensive Services, Special Services, and Clinically Complex categories were most likely to be on anti-infective agents, with over 25 percent of beneficiaries in each on these medications. Among these RUG–III groups, beneficiaries in the the Extensive Services categories were the most likely to be taking anti-infective agents (39 percent). Less than 15 percent of beneficiaries in other RUG–III groups received these drugs.

Overall, 47 percent received at least one analgesic. Impaired Cognition (32 percent) and Behavior beneficiaries (39 percent) were less likely to receive analgesics than those in the Rehabilitation category (60 percent). Similar trends were apparent with hematological agents (approximately 20 percent Impaired Cognition vs. approximately 35 percent in the Rehabilitation groups), and topical agents (approximately 20 percent vs. approximately 37 percent in the Special Care groups). Conversely, beneficiaries in the Impaired Cognition (approximately 46 percent) and Behavior (over 50 percent) categories were more likely to receive CNS drugs relative to the other RUG–III groups (approximately 33 percent).

The highest proportion of total costs due to anti-infective use is found in the Extensive Services and Clinically Complex groups, with approximately 50 percent of drug costs attributable to the anti-infective agents. Use of biologics was relatively infrequent (approximately 1.2 percent) and the proportion of drug costs due to these agents was highly variable among the users, regardless of RUG–III group. Among people receiving anti-neoplastic medications (approxmiately 2.2 percent of beneficiaries), these agents accounted for one quarter of their total daily drug cost (Median: 27 percent; 25th percentile: 13 percent; 75th percentile: 49 percent). Regardless of RUG–III group, this measure is highly variable. While nearly one third of all beneficiaries received an endocrine medication, these agents only accounted for 8 percent of the total daily drug costs among users. Cardiovascular medications accounted for 18 percent of the total daily drug cost, which varies slightly across RUG–III group (+/– approximately 4 percent). There appears to be slightly less variation in this measure among the Extensive Services, Special Care, and Clinically Complex groups as compared to other RUG–III categories. Among the 19 percent of beneficiaries using respiratory medications, 12 percent of their drug costs were due to these agents. Higher median proportions and greater variability occurred at the end splits within the aggregate RUG–III categories. A similar pattern is observed among users of gastrointestinal agents. These medications accounted for only 13 percent (median) of the total daily costs. This measure is highly variable, regardless of RUG–III group. Only 5 percent of beneficiaries had used a genitourinary medication, accounting for only 13 percent of total drug costs (median value). This measure varied slightly across RUG–III groups.

TABLE 1.—SOCIODEMOGRAPHIC CHARACTERISTICS OF RESIDENTS OF SNF STAYS BY RUG–III GROUP

	All	Rehabilitation	Extensive services	Special care	Clinically complex	Impaired cognition	Behaviors only	Physical function reduced
Male	35	37	36	34	36	35	37	30
Race/Ethnicity:								
White	84	90	83	83	82	80	84	83
Hispanic	2	1	2	2	2	3	3	2
Black	9	6	9	9	9	11	8	9
Asian/Pacific Islander	0.5	0.2	0.7	0.5	0.6	0.7	0.7	0.6
American Indian	1	0.7	2	2	2	1	1	1
Missing=	3	.9	3	4	4	3	3	3
Cognitive Impairment:@								
Mild (CPS: 0–1)	41	51	33	35	47	0	50	53
Moderate (CPS: 2–4)	35	35	31	34	35	67	50	32
Severe (CPS: 5–6)	23	14	34	31	17	33	0	14
Physical Functioning:								
Minimal limitations	7	6	0	3	14	13	28	14
Moderate limitations	44	53	37	36	51	58	49	47
Dependent	39	18	58	56	31	20	7	26
Missing=	9	23	6	4	4	9	16	12

@ CPS = Cognitive Performance Scale.
=Missing data percentages shown when greater than 3% missing data occurred.
Totals may not equal 100% due to rounding.

TABLE 1.1—ACTIVE CLINICAL DIAGNOSES FOR BENEFICIARIES BY RUG–III GROUP

	All	Rehabilitation	Extensive services	Special care	Clinically complex	Impaired cognition	Behaviors only	Physical function reduced
Heart/Circulation:								
Coronary artery disease	20	14	22	22	22	21	19	21
Cardiac arrhythmia	14	15	16	15	14	11	8	12
Congestive heart failure	24	22	27	25	27	16	20	21
Hypertension	43	44	42	42	44	37	40	42
Peripheral vascular diseases	9	8	10	12	9	6	7	7
Other cardiovascular diseases	20	20	21	21	21	16	16	17
Neurological:								
Alzheimer's disease	9	5	9	9	8	22	11	8
Other dementia	28	18	30	30	27	54	41	28
Cerebrovascular disease	23	26	24	25	25	15	12	16
Parkinson's disease	6	5	6	6	5	6	5	6
Psychiatric:								
Anxiety	5	6	5	5	6	5	8	5
Depression	16	17	15	17	18	15	22	15
Sensory:								
Cataract	12	6	14	14	14	14	13	13
Glaucoma	7	5	7	7	7	6	8	7
Infections:								
Septicemia	1	1	2	1	1	0	0	0
Pneumonia	8	8	17	8	10	0	0	0
Urinary tract infection	17	16	24	19	13	10	9	12
Other:								
Allergies	21	23	22	22	21	14	19	17
Anemia	19	16	23	22	19	15	14	17
Arthritis	22	22	23	22	21	17	19	24
Cancer	12	11	14	13	13	7	8	9
Emphysema/COPD	15	14	17	15	19	10	14	10
Diabetes mellitus	22	22	22	23	24	15	19	18
Hypothyroidism	10	10	10	10	10	9	9	9
Osteoporosis	8	9	8	8	8	6	6	9

TABLE 1.2—DRUG UTILIZATION BY THERAPEUTIC CLASS AND RUG–111 GROUP

	All	Rehabilitation	Extensive services	Special care	Clinically complex	Impaired cognition	Behaviors only	Physical function reduced
Anti-infectives	26	29	39	28	23	12	12	16
Biologics	1	0.3	1	2	1	1	1	1
Anti-neoplastics	2	2	2	2	3	1	2	1
Endocrine	31	36	30	30	33	22	26	26
Cardiovascular	61	67	59	59	64	51	55	58
Respiratory	19	23	21	18	23	9	17	13
Gastrointestinal	61	67	60	62	62	47	53	58
Genitourinary	5	6	5	5	5	4	3	5
CNS	36	43	32	33	38	46	55	34
Analgesics	47	60	43	45	44	32	39	44
Neuromuscular	13	13	13	13	12	14	18	12
Hematological	30	35	30	31	29	20	19	26
Topical	30	26	34	37	28	20	20	23

C. Test and Validation Samples

The recursive strategies employed by stepwise regression, AID, and other fitting techniques may produce over-optimistic measures of variance explanation. For that reason, assessment of the explanatory power of alternative models required use of data that were not used in forming the models themselves. We selected at random 60 percent of the sample for use as a test sample and the remaining 40 percent for use as a validation sample. Refinements to RUG–III were developed based solely on analysis of the test sample and evaluated solely on their performance with the validation sample. Since aberrations in the test sample that may have influenced the design of refinements were absent in the validation sample, any unsupported features of the proposed models should be exposed by this approach.

D. Creation of Measure of Non-therapy Ancillary Charges From SNF Claims

Medicare Part A SNF claims were used to measure the perdiem ancillary charges. For ancillary charges developed using Medicare claims data, it was not possible to identify items with a date of service that corresponds to the period covered by the MDS assessment (used to establish the RUG–III classification). Per diem charges were calculated using Medicare claims with a covered date within a specified range of a date covered by MDS assessment. Operationally, per diem charges are derived by the sum of the charges of the ancillary therapies divided by the number of days covered by claims.

We then estimated the costs of non-therapy ancillaries, using revenue codes as extracted from the claims data. First, we identified target revenue codes and categorized charges into these conceptually meaningful categories. The categories and their related revenue codes included the following: prescription drugs/pharmacy (250–259), drugs requiring ID (630–639), IV therapy (260–269), medical and surgical supplies (270–270; 620–622), respiratory services (410–419), laboratory (300–309), oxygen (600–604), and dialysis (820–829, 830–839, 880–889).

1. Cost-to-Charge Multiplier

It is important to note that the actual ancillary costs for beneficiaries in the sample are not observed. The covered charges reported in claims are routinely discounted by the intermediary responsible for processing on the basis of audited reasonable cost. Inclusion of ancillary charges without further adjustment in our measure of per diem ancillary charges would overstate the true level of reimbursable costs, since these charges are routinely discounted before payment under the present system.

Using the appropriate annual SNF cost report (that is, the cost report for the service period covered by the claim), conversion factors were computed for each SNF included in the research data base. To be as consistent as possible, we calculated one average discount factor (the ratio of total Part A allowed cost to total Part A charges) for each facility in each year. This discount factor was applied to the facility's ancillary charges before analysis to approximate the costs of ancillary services.

E. Analysis and Findings—RUG–III Refinements

As shown by previous research and confirmed in this study, the RUG–III Extensive Services groups are associated with the highest per diem non-therapy ancillary charges of any of the RUG–III classifications, including the rehabilitation categories. For the purposes of this project, ancillary costs were divided into three categories: medications (by far the most critical predictor of overall ancillary costs), respiratory therapy, and other ancillaries. This research also showed significantly higher non-therapy ancillary costs and intra-group variance related to the variety of ancillary supplies and services needed to treat the various acute and severe health conditions characterizing beneficiaries who classify into the Extensive Services category. Figures 1 through 3 compare the mean, per diem costs of ancillary services for beneficiaries in the Extensive Services category with those of beneficiaries in other RUG–III categories.

Another key to more accurate accounting of the cost(s) associated with treating Extensive Services beneficiaries is disentangling some of the overlap between the Extensive Services and Rehabilitation categories. Under the current PPS system, the payment rate (under an index maximization approach) is the same for beneficiaries who qualify for both Extensive Services and one of the top three rehabilitation categories (Ultra High, Very High and High Rehabilitation) as for those beneficiaries who qualify only for one of the top three rehabilitation categories. Using this research data base, we found a significant number of beneficiaries qualifying for both Extensive Services and Rehabilitation.

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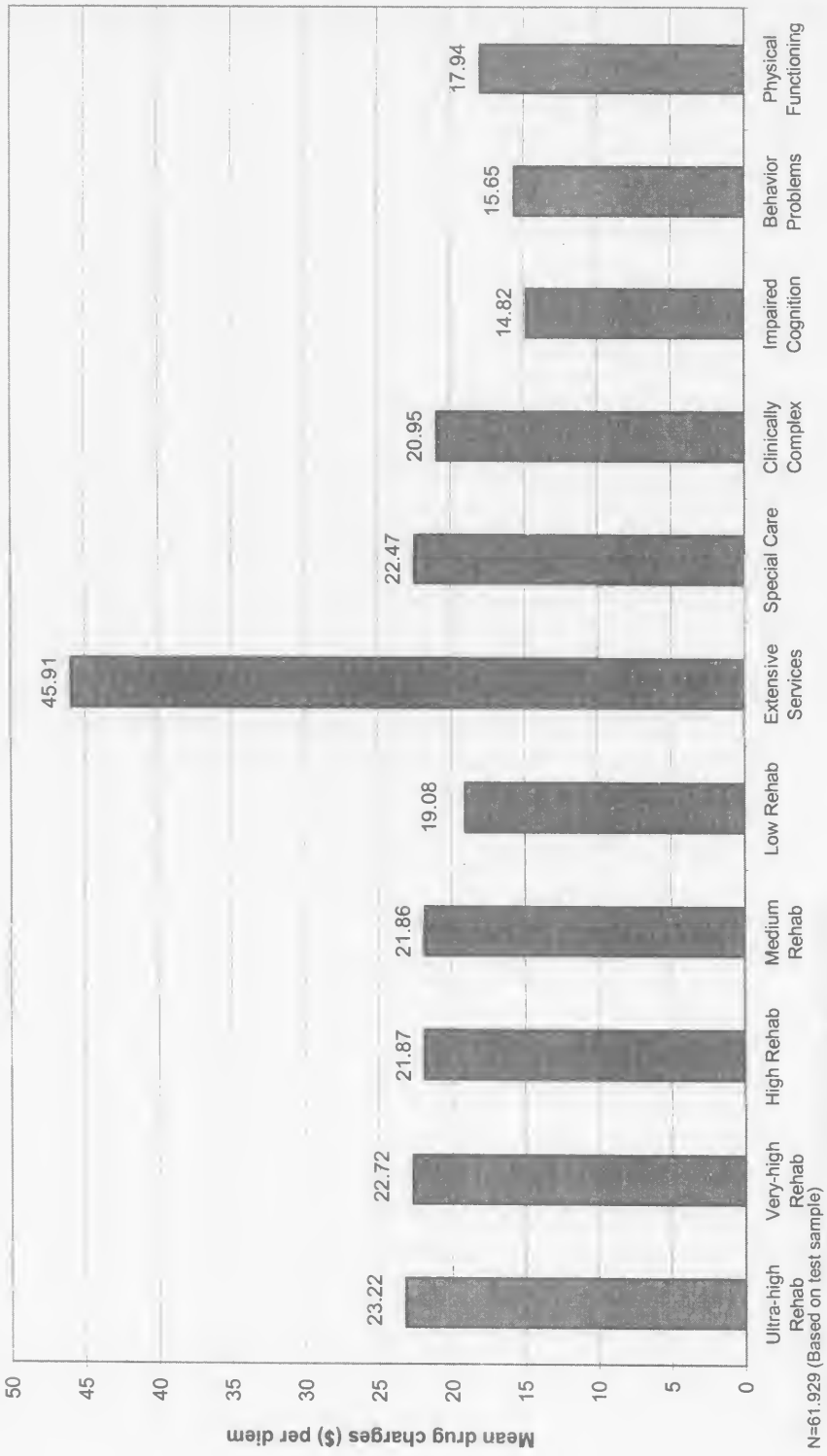
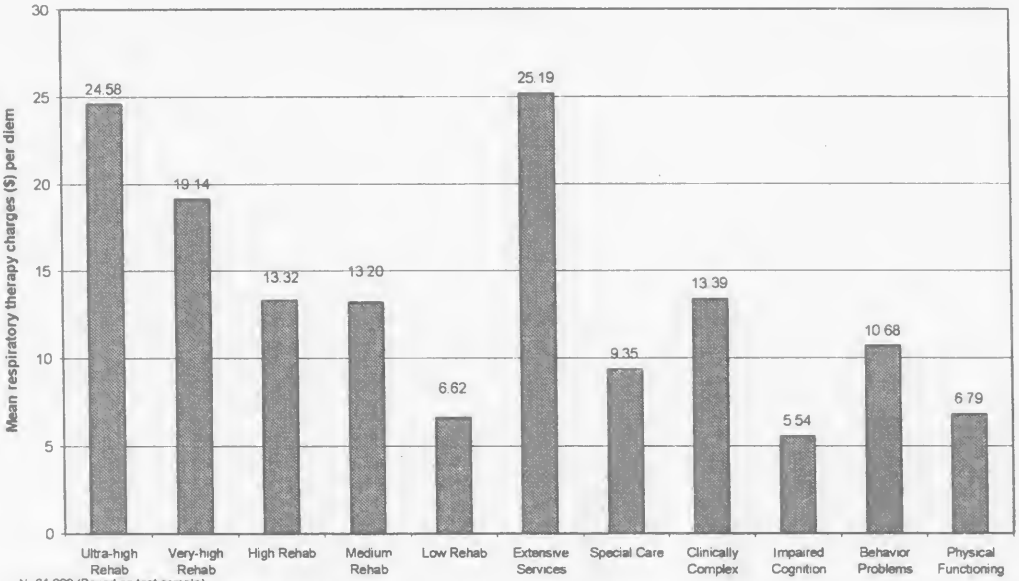
Figure 1: Comparison of Estimated Drug Costs by RUG-III Category



N=61,929 (Based on test sample)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

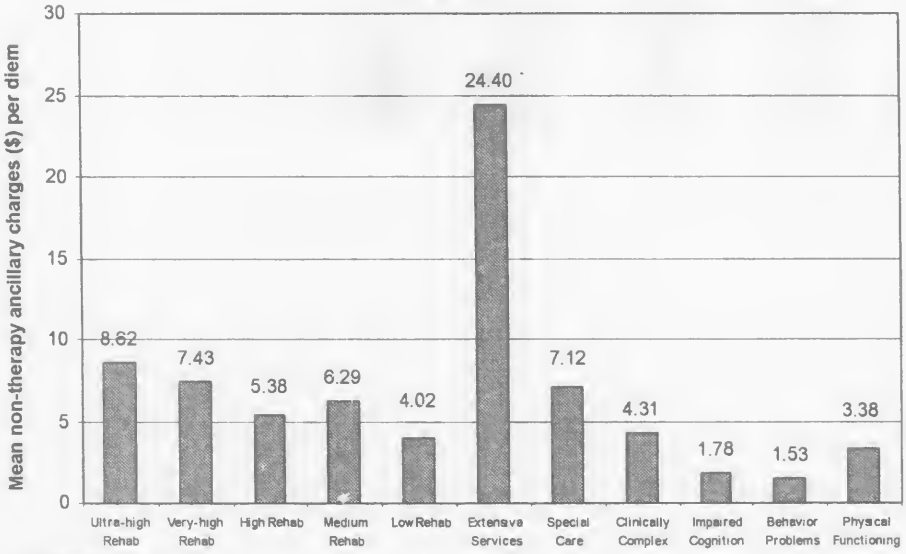
Figure 2: Comparison of Respiratory Therapy Costs by RUG-III Category



N=61,929 (Based on test sample)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

TOTAL TASKS

Figure 3 : Comparison of Other Non-therapy Ancillary Costs by RUG-III Category



N=61,929 (Based on test sample)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set
Analysis based on test sample

BILLING CODE 4120–03–C

1. Costs for Beneficiaries Who Qualify for Both Extensive Services and Rehabilitation

As shown in Figures 4 through 7, across all three ancillary categories, costs were significantly higher for beneficiaries who qualified for both Extensive Services and Rehabilitation compared to those who qualify only for a Rehabilitation category. Therefore, we considered whether those qualifying for both categories should be separately identified.

- Across all five Rehabilitation categories, mean prescription drug costs were approximately double for beneficiaries who qualified for both Extensive Services and Rehabilitation, compared to those who qualified only for Rehabilitation. (See Figure 4 for comparison of drug charges across all five Rehabilitation categories based on whether the beneficiary also qualified for Extensive Services.)
- A similar pattern was observed for respiratory therapy. Across all five rehabilitation categories, respiratory therapy costs were more than twice as high for beneficiaries who also qualified for Extensive Services as for those who qualified only for Rehabilitation (Figure 5).
- Other non-therapy ancillary costs were considerably higher for beneficiaries who qualified for both Rehabilitation and Extensive Services than for those who qualified for Rehabilitation but not Extensive Services (Figure 6).
- Total average ancillary charges for beneficiaries who qualified for both Rehabilitation and Extensive Services were also significantly higher than for those qualifying only for rehabilitation (Figure 7).

Based on these results, it makes sense, for statistical, incentive-related, and clinical reasons, to consider potential refinements which reflect the higher costs of beneficiaries in the Rehabilitation categories who also qualify for Extensive Services.

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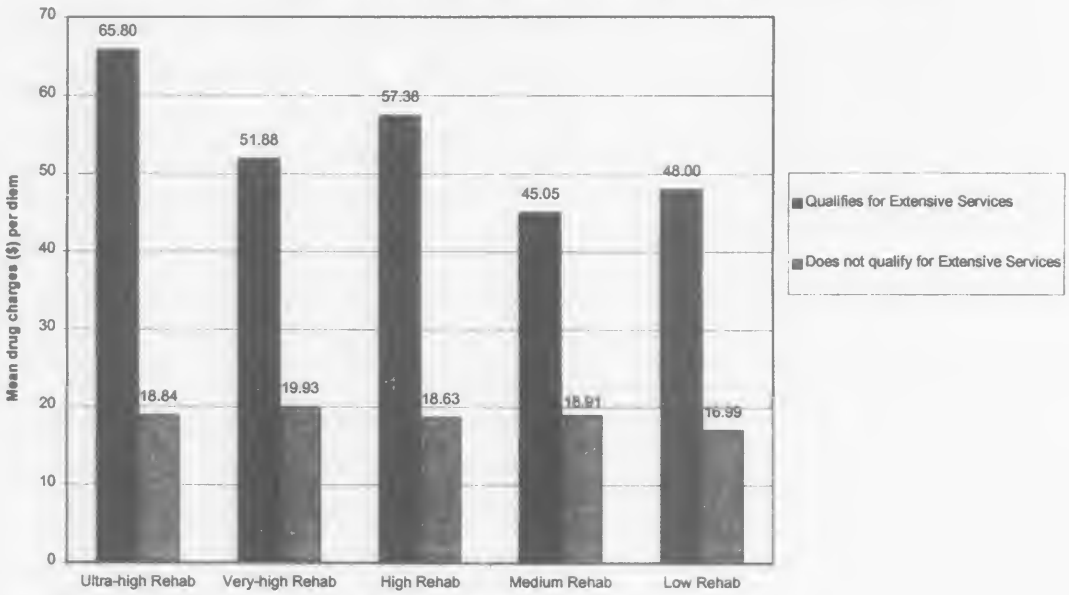
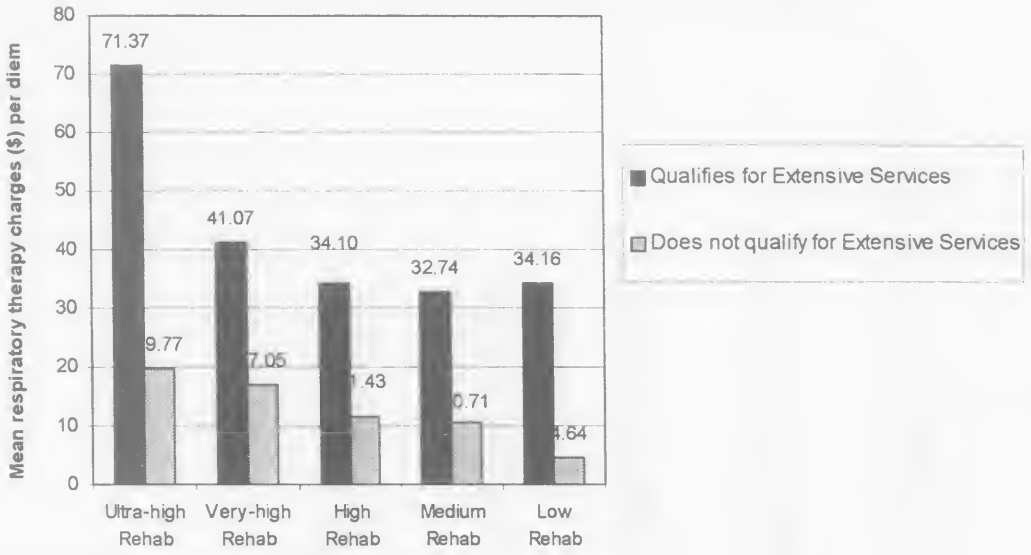
Figure 4: Comparison of Drug Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services



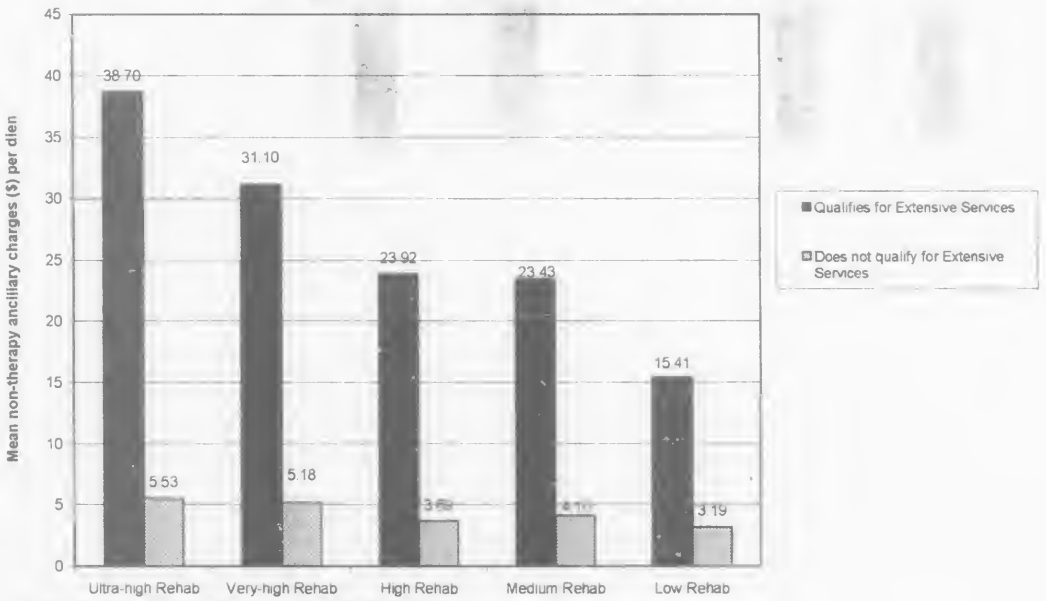
N=29,625 (Based on test sample residents in a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

Figure 5: Comparison of Respiratory Therapy Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services



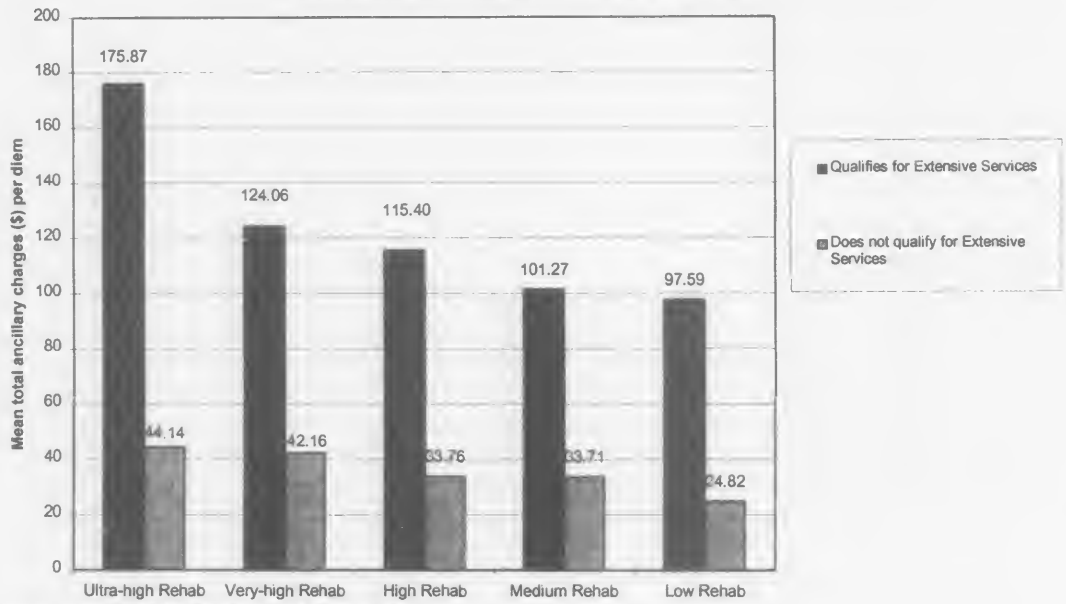
N=29 625 (Based on test sample resident sin a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995- 1997 and Minimum Data Set

Figure 6: Comparison of Other Ancillary Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services



N=29 625 (Based on test sample residents in a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

Figure 7: Comparison of Total Ancillary Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services



N=29,625 (Based on test sample residents in a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

BILLING CODE 4120–03–C

These cost differences suggested that a potential refinement could be based on interactions between existing RUG–III categories. Such a change could be implemented in either of two ways:

- A new terminal split within the current RUG–III Rehabilitation groups based on whether the beneficiary also qualified for Extensive Services. These changes would be reflected in changes in the Case Mix Index (CMI) for nursing in calculating payments for the Rehabilitation categories.
- A new RUG–III category for beneficiaries who qualify for both Extensive Services and Rehabilitation. The new category (which could be called "Rehabilitation and Extensive Services") would be at the top of the hierarchical case-mix system.

2. Non-Therapy Ancillary Index Models

In addition, variations in non-therapy ancillary costs could be addressed through several types of index model-based refinements. There are a number of ways that index model-based refinements can be implemented:

- The models can be based on an unweighted count of the number of index model variables present or on a weighted index that assigns a relative cost factor to each of the index model variables.
- The index models can differ with respect to the RUG–III categories to which the model is applied.
- The index models can differ with respect to the number of index groups that are used.
- The index models can also vary based on the thresholds used to define groups. For the weighted index model, beneficiaries were classified based on their predicted costs.
- The index model can be applied separately to each major category; that is, each level of the RUG–III hierarchy.

In our analysis of ancillary costs, the results did not indicate strong interaction effects. There were two implications of this finding. First, the variables effects were principally additive and models which develop indexes are indicated. Second, the appropriate approach was to use regression analysis to form indexes, rather than PC-Group to identify tree models. (It should be noted that PC-Group still has some unique capabilities, employed later, to help identify optimal thresholds for an index.)

One way an index model could be used is in an "add-on" system for predicting non-therapy ancillary charges. RUG–III could be used for predicting staff time costs and the non-therapy ancillary index would be "added-on" to determine the total payment rate for beneficiaries with given characteristics. The motivation for this approach is that RUG–III has been well tested and validated for predicting staff time costs, but was not designed to capture variance in non-therapy ancillary charges. Although such a system can be described as consisting of two components, it could easily be implemented as an integrated system, as though the non-therapy ancillary component defined a new set of end-splits to RUG–III.

The index model approach allowed for a large number of items to be considered simultaneously in determining payment rates, including additional measures of severity that are not reflected in RUG–III. We designed both weighted and unweighted versions of a non-therapy ancillary index for each level of the RUG–III hierarchy, and showed that both versions resulted in large improvements in the proportion of the variance predicted by the case-mix system and some improvement in the system's ability to identify high-cost beneficiaries. The weighted version allowed items that predict much higher costs (such as receipt of IV medications) to have more impact on predicted costs than less-influential items such as shortness of breath. For this study, the weights were assigned by the researchers based on a combination of expert opinion and a comparison of cost data for the various MDS items. The weighted index model exhibited enhanced explanatory power, but at the cost of additional complexity and subjectivity.

F. Model Performance

We tested a number of potential refinements, but selected only the most powerful alternative from each type for presentation here. The most promising types of potential refinements are summarized in Table 2, and discussed below.

1. RUG–III CMI Adjustment: This potential refinement improved the ability of the case-mix system to capture variance in ancillary and total costs. Changes to the CMI alone (that is, changes to the payment rates associated with different groups but no changes to the case-mix system) will reduce the proportion of beneficiaries for whom costs are greater than payment, but will not affect the proportion of variance in costs captured by the case-mix system. The current RUG–III methodology accounted for about 6 percent of the variance in ancillary charges and 11 percent of the variance in total costs (See Table 2).

TABLE 2.—STATISTICAL PERFORMANCE OF POTENTIAL RUG–III REFINEMENTS–MODEL DESCRIPTION

Model description	Number of groups	R-squared validation sample (test sample)		Min/Max δ	Specificity and sensitivity analyses validation sample	
		Ancillary charges (percent)	Total costs (percent)		Specificity ★ (percent)	Sensitivity ◆
RUG–III—(CMI changes only)	44	5.9 (6.5)	11.0 (11.2)	111/239	91.7	26.1%
RUG III (version 2001) RUG–III with new category "Extensive Services and Rehabilitation".	58	7.8 (8.3)	13.7 (13.7)	116/355	91.5	27.8
WIM 1—Weighted index model applied to Extensive Services (includes new category "Extensive Services and Rehabilitation").	58 plus a six-group ancillary add-on system.	11.2 (12.5)	16.8 (17.6)	114/458	91.5	31.7%
WIM 2—Weighted index model applied to Extensive Services beneficiaries (includes new category "Extensive Services and Rehabilitation") and to Rehabilitation. Special Care, and Clinically Complex.	58 plus a six-group ancillary add-on system.	13.4 (14.2)	19.0 (19.4)	111/456	92.3	32.2%
UWIM—Unweighted index model applied to Extensive Services (includes new category "Extensive Services and Rehabilitation") and to Rehabilitation, Special Care, and Clinically Complex.	58 plus a four-group ancillary add-on system.	10.9 (12.6)	17.1 (18.0)	104/447	92.0	30.8%

Notes:
▲: Predicted total costs tor the lowest and highest reimbursed groups in the refined case mix system.
†: Note that all index model-based refinements also include the "Extensive Services and Rehabilitation" category.
★: Specificity is measured as the proportion of beneficiaries who are not in the top 10 percent of predicted ancillary charges and also not in the top 10 percent in terms of actual ancillary charges.
◆: Sensitivity is measured as the proportion of beneficiaries in the top 10 percent in terms of both predicted and actual ancillary charges.
Data sources: Medicare claims, Minimum Data Set 1995–1997.

2. RUG–III (proposed, version 2001): Adding the new Extensive Services and Rehabilitation categories resulted in small improvements in statistical performance. The validation sample R-squared increased to 7.8 percent for ancillary charges, an increase of about 2 percent relative to RUG–III, and to 13.7 percent for total costs. However, the improvements associated solely with a change in the RUG–III (proposed, version 2001) methodology were substantially less than those produced by the other potential refinements that incorporated a combination of RUG–III and index model-based refinements.

In conducting this analysis, new CMIs had to be constructed. For this research, the CMIs were developed from the same 1995 through 1997 staff time measurement studies that were used to construct the indices used under the current RUG–III methodology. (See Table 3)

3. Weighted Index Model (WIM1): Under WIM1, Extensive Services beneficiaries (including those in the new Extensive Services and Rehabilitation categories) would receive an ancillary "add-on" based on the beneficiary's predicted, per diem ancillary costs for the index model qualifiers. The ancillary index has 6 groups with break points at costs at the 50th percentile or below, from the 51st through 75th percentile, from the 76th through 90th percentile, from the 91st through 95th percentile, from the 96th through 98th percentile, and the 99th percentile. The break points were calculated separately for each level of the RUG–III hierarchy.

Application of WIM1 resulted in some improvement relative to RUG–III (proposed, version 2001). For the validation sample, the model accounted for 11 percent of the variance in ancillary charges and 17 percent of the variance in total costs. Nearly 32 percent of beneficiaries in the top 10 percent of ancillary charges were also in the top 10 percent in terms of predicted costs, compared to 27.8 percent for RUG–III (proposed, version 2001).

4. Weighted Index Model 2 (WIM2): Model WIM2 extends the use of the non-therapy ancillary index to 40 RUG–III (proposed, version 2001) groups (14 Rehabilitation/ Extensive Services, 3 Extensive Services, 14 Rehabilitation, 3 Special Care and 6 Clinically Complex groups), and accounted for 19 percent of the variance in total costs and 13 percent of the variance in ancillary charges. This was more than twice the R-squared of the existing RUG–III or the proposed RUG–III (version 2001) alone. The range of payments was similar to that of WIM1. Using WIM2, 32 percent of beneficiaries in the top 10 percent in terms of actual ancillary charges were also in the top 10 percent in terms of predicted ancillary charges.

Table 4 shows the distribution of Medicare beneficiaries in the 6 non-therapy ancillary index levels by RUG–III (proposed version 2001) category. The cut-off points used to define these groups are the same as for WIM1.

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Table 3 -- Mean Resident and Non-Resident Specific Minutes for Nursing and Therapy Disciplines by RUG-III+ Group

RUG-III Group**	RUG-III Group Name	Number of Residents	Total LPN Minutes/Day	LPN Resident Specific Minutes/Day	LPN Non-Resident Specific Min/Day***
1	RUC+SE	9	84.89	61.44	23.44
2	RUB+SE	20	56.55	37.85	18.70
3	RUA+SE	1	112.00	90.00	22.00
4	RVC+SE	7	56.29	35.00	21.29
5	RVB+SE	17	40.41	20.88	19.53
6	RVA+SE	7	73.14	55.71	17.43
7	RHC+SE	26	48.69	26.31	22.38
8	RHB+SE	16	69.00	49.56	19.44
9*	RHA+SE				
10	RMC+SE	45	91.38	62.76	28.60
11	RMB+SE	31	62.68	39.06	23.61
12*	RMA+SE				
13	RLB+SE	5	59.00	31.60	27.40
14	RLA+SE	3	46.67	0.00	46.67
15	RUC	36	46.03	29.44	16.58
16	RUB	192	34.94	21.33	13.61
17	RUA	81	39.49	22.60	16.89
18	RVC	29	50.21	29.34	20.86
19	RVB	105	42.54	26.96	15.58
20	RVA	30	26.53	15.26	11.26
21	RHC	54	45.04	28.24	16.80
22	RHB	94	34.80	21.33	13.47
23	RHA	41	27.51	16.78	10.73
24	RMC	74	49.35	30.93	18.42
25	RMB	179	38.05	22.82	15.22
26	RMC	74	34.41	19.92	14.49
27	RLB	21	46.52	24.14	22.38
28	RLA	36	33.02	18.65	14.36
29	SE3	70	101.33	70.47	30.86
30	SE2	233	86.06	56.97	29.09
31	SE1	19	57.68	33.79	23.89

Total RN Minutes/ Day	RN Resident Specific Minutes/Day	RN Non-Resident Specific Min/Day***
160.67	106.87	54.00
132.85	82.55	50.30
29.00	21.00	8.00
83.43	47.14	36.29
156.47	95.18	61.30
131.43	83.71	47.72
130.42	82.04	48.39
117.25	65.38	51.88
162.00	103.24	58.76
166.61	97.18	69.45
119.60	51.20	68.40
112.33	41.00	71.33
100.75	56.89	43.86
84.12	46.07	38.06
64.98	36.77	28.21
93.31	53.52	39.79
85.90	46.53	39.36
72.04	37.78	34.26
94.85	52.89	41.96
100.85	57.97	42.88
89.78	49.68	40.07
78.01	46.20	31.81
88.89	47.98	40.71
94.15	54.23	39.92
69.38	37.76	31.62
60.88	29.36	31.52
143.56	91.31	52.24
108.62	67.31	41.21
80.79	48.05	32.74

Total Nurse Aide Minutes/ Day	Nurse Aide Resident Specific Minutes/Day	Nurse Aide Non-Resident Specific Minutes/Day***
200.67	111.67	89.00
134.30	79.45	54.85
140.00	84.00	56.00
176.43	107.14	69.29
129.35	74.24	55.12
151.28	85.43	65.85
155.39	93.81	61.58
127.00	75.63	51.38
195.76	128.51	69.25
147.07	85.03	62.03
169.80	110.40	59.40
70.67	22.87	48.80
174.86	108.39	66.47
123.13	73.78	49.35
97.91	54.10	43.82
163.59	102.55	61.03
138.37	84.77	53.60
103.49	52.78	50.71
166.48	103.70	62.78
130.40	73.39	57.01
102.59	51.17	51.41
172.18	107.78	64.38
140.23	78.54	61.69
119.54	60.65	58.89
196.33	122.67	73.87
124.29	71.11	53.18
193.50	124.09	69.41
163.54	105.15	58.40
191.79	128.68	63.11

Table 3 -- Mean Resident and Non-Resident Specific Minutes for Nursing and Therapy Disciplines by RUG-III+ Group

RUG-III Group**	RUG-III Group Name	Number of Residents	Total LPN Minutes/Day	LPN Resident Specific Minutes/Day	LPN Non-Resident Specific Min/Day***
1	RUC+SE	9	84.89	61.44	23.44
2					
3	RUA+SE	1	112.00	90.00	22.00
4					
5	RVB+SE	17	40.41	20.88	19.53
6					
7	RHC+SE	26	48.69	26.31	22.38
8					
9*	RHA+SE				
10					
11	RMB+SE	31	62.68	39.06	23.61
12					
13	RLB+SE	5	59.00	31.60	27.40
14					
15	RUC	36	46.03	29.44	16.58
16					
17	RUA	81	39.49	22.60	16.89
18					
19	RVB	105	42.54	26.96	15.58
20					
21	RHC	54	45.04	28.24	16.80
22					
23	RHA	41	27.51	16.78	10.73
24					
25	RMB	179	38.05	22.82	15.22
26					
27	RLB	21	46.52	24.14	22.38
28					
29	SE3	70	101.33	70.47	30.86
30					
31	SE1	19	57.68	33.79	23.89

Total RN Minutes/ Day	RN Resident Specific Minutes/Day	RN Non-Resident Specific Min/Day***
160.67	106.67	54.00
[illegible]	[illegible]	[illegible]
29.00	21.00	8.00
[illegible]	[illegible]	[illegible]
156.47	95.16	61.30
[illegible]	[illegible]	[illegible]
130.42	82.04	48.39
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
166.61	97.16	69.45
119.60	51.20	68.40
[illegible]	[illegible]	[illegible]
100.75	56.89	43.86
[illegible]	[illegible]	[illegible]
64.98	36.77	28.21
[illegible]	[illegible]	[illegible]
85.90	46.53	39.36
[illegible]	[illegible]	[illegible]
94.85	52.89	41.96
[illegible]	[illegible]	[illegible]
89.76	49.68	40.07
[illegible]	[illegible]	[illegible]
88.69	47.98	40.71
[illegible]	[illegible]	[illegible]
69.38	37.76	31.62
[illegible]	[illegible]	[illegible]
143.56	91.31	52.24
[illegible]	[illegible]	[illegible]
80.79	48.05	32.74

Total Nurse Aide Minutes/ Day	Nurse Aide Resident Specific Minutes/Day	Nurse Aide Non-Resident Specific Minutes/Day***
200.67	111.67	89.00
[illegible]	[illegible]	[illegible]
140.00	84.00	56.00
[illegible]	[illegible]	[illegible]
129.35	74.24	55.12
[illegible]	[illegible]	[illegible]
155.39	93.81	61.58
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
147.07	85.03	62.03
169.80	110.40	59.40
[illegible]	[illegible]	[illegible]
174.86	108.39	66.47
[illegible]	[illegible]	[illegible]
97.91	54.10	43.82
[illegible]	[illegible]	[illegible]
138.37	84.77	53.60
[illegible]	[illegible]	[illegible]
166.48	103.70	62.78
[illegible]	[illegible]	[illegible]
102.59	51.17	51.41
[illegible]	[illegible]	[illegible]
140.23	78.54	61.69
[illegible]	[illegible]	[illegible]
196.33	122.67	73.67
[illegible]	[illegible]	[illegible]
193.50	124.09	69.41
[illegible]	[illegible]	[illegible]
191.79	128.68	63.11

Table 3 -- Mean Resident and Non-Resident Specific Minutes for Nursing and Therapy Disciplines by RUG-III+ Group (cont.)

Total Nursing Minutes/Day	Total Nursing Resident Specific Minutes/Day	Total Nursing Resident Non-Specific Minutes/Day***	PT Resident Specific Minutes/Day	PT Asst Resident Specific Minutes/Day
446.22	279.67	166.56	11.78	19.78
323.55	198.50	124.05	27.80	18.85
281.00	195.00	86.00	35.00	9.00
316.29	189.00	127.29	20.57	3.57
326.29	190.18	136.12	14.59	13.94
355.71	224.71	131.00	12.14	10.29
334.50	202.04	132.46	13.77	5.85
313.44	190.25	123.19	7.69	10.91
340.09	291.50	158.57	8.15	4.22
376.32	220.77	155.55	15.71	6.32
348.60	192.80	155.80	5.80	1.00
237.00	153.00	84.00	2.00	0.00
321.64	194.53	127.11	19.81	19.33
251.00	145.00	106.00	0.00	0.00
202.35	113.25	89.10	22.80	16.85
207.20	118.20	89.00	0.00	0.00
266.87	157.95	108.92	18.78	10.82
245.06	138.53	106.54	0.00	0.00
306.33	184.54	121.80	14.52	8.72
259.12	152.41	106.71	2.00	2.43
219.83	117.34	102.49	16.17	13.44
209.31	104.17	105.14	0.00	0.00
266.95	149.08	117.87	13.45	9.36
248.00	138.00	110.00	0.00	0.00
312.14	184.52	127.62	5.38	3.81
276.00	158.00	118.00	0.00	0.00
438.29	285.63	152.66	2.19	0.43
361.00	230.00	131.00	0.00	0.00
329.95	210.26	119.68	0.00	0.00

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In the Regulatory Impact Analysis, we showed the distributional impact of these case mix refinements using the UWIM model proposed in this rule. Table 6 shows the distributional shifts of beneficiaries between the existing RUG-III model and the WIM2 Option. In addition, Tables 6.1 and 6.2 show the projected rates using the WIM2 model. (See Table 12 in the Proposed rule for the UWIM model.)

5. Unweighted Index Model (UWIM): This model is the unweighted counterpart to WIM2. While this model performed better than the current RUG-III and proposed RUG-III (version 2001) models, it was slightly outperformed by WIM2. However, we regard the unweighted model as preferable to WIM2, for two reasons. First, it is relatively simple, and employs a more familiar methodology similar to that used in classifying beneficiaries into the Extensive Services groups. Second, in developing the weighted models, the researchers had to rely more heavily on imputed data to develop the number of index levels, and the cut-off points. Therefore, even though the WIM models appear to have slightly more predictive power, they are based upon more subjective criteria. However, the WIM models are subject to additional testing using the full PPS data base, and, based on the results, this model may be reconsidered.

UWIM accounted for 11 percent of the variance in ancillary charges and 17 percent of the variance in total costs. The sensitivity and specificity of the model were slightly less than for WIM2. Using UWIM, beneficiaries are split into four groups based on the number of index model variables present.

Number of qualifiers	Ancillary level
0	2
1–2	3
3–5	4
6 or more	5

Table 5 shows the distribution of Medicare beneficiaries in the 4 non-therapy ancillary index levels by RUG–III (proposed, version 2001) category.

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Table 4: Ancillary Costs for the WIM-2 model

UWIM category	Index value	N	Mean	Std Dev
Extensive Services and Ultra-high rehabilitation	A	44	$373.17	$219.12
	B	144	$251.90	$222.56
	C	100	$145.76	$178.48
	D	203	$98.96	$156.52
Extensive Services and Very-high rehabilitation	A	21	$264.43	$285.28
	B	139	$193.93	$215.39
	C	82	$100.09	$110.60
	D	197	$71.04	$132.08
Extensive Services and High rehabilitation	A	22	$255.12	$275.27
	B	111	$176.47	$201.53
	C	69	$85.08	$115.60
	D	170	$70.77	$140.72
	E	2	$77.96	$82.84
Extensive Services and Medium-high rehabilitation	A	105	$244.00	$230.21
	B	364	$158.97	$191.61
	C	329	$90.82	$132.19
	D	715	$56.82	$96.35
	E	3	$26.54	$4.88
	F	2	$15.52	$21.95
Extensive Services and Low rehabilitation	A	1	$165.37	.
	B	15	$199.05	$246.09
	C	22	$68.78	$110.57
	D	37	$71.75	$139.60
Ultra-high rehabilitation	A	3	$228.29	$43.38
	B	7	$331.89	$330.38
	C	65	$143.43	$135.78
	D	409	$103.47	$104.59
	E	1586	$46.32	$77.92
	F	2704	$30.75	$57.84
Very high rehabilitation	A	1	$487.34	.
	B	9	$269.17	$205.85
	C	75	$134.76	$113.28
	D	446	$102.17	$123.40
	E	1552	$40.51	$70.95
	F	2526	$27.95	$54.91
High rehabilitation	B	10	$235.35	$230.47
	C	68	$82.56	$114.13
	D	404	$88.93	$125.13
	E	1281	$33.03	$58.37
	F	2366	$22.45	$40.82
Medium rehabilitation	A	3	$345.68	$405.23
	B	27	$138.10	$206.93
	C	194	$122.65	$127.15
	D	1221	$71.74	$92.00
	E	3867	$33.99	$57.70
	F	6572	$23.17	$42.59
Low rehabilitation	A	1	$119.11	.
	B	2	$120.58	$144.20
	C	18	$67.05	$68.12
	D	126	$47.61	$78.52
	E	320	$23.60	$31.37
	F	585	$18.72	$26.58
Extensive Services	A	392	$234.65	$238.69
	B	1486	$124.09	$172.45
	C	1342	$79.62	$128.69
	D	1932	$65.16	$112.79
	E	79	$40.40	$55.35
	F	44	$40.67	$86.90
Special Care	A	12	$118.75	$165.68
	B	143	$122.50	$175.16
	C	491	$71.86	$104.30
	D	2158	$63.88	$95.86
	E	6129	$32.71	$56.66
	F	4045	$26.23	$48.66
Clinically complex	C	134	$94.91	$125.47
	D	1461	$69.99	$101.97
	E	1904	$38.72	$70.08
	F	4332	$25.68	$48.81
Impaired cognition	N/A	1016	$22.14	$44.91
Behavior problems	N/A	126	$27.86	$60.17

Table 5.: Ancillary Costs for the UWIM model

UWIM category	Index value	N	Mean	Std Dev
Extensive Services and Ultra-high rehabilitation	5	23	$440.86	$221.53
	4	179	$250.41	$221.34
	3	294	$109.75	$160.61
Extensive Services and Very-high rehabilitation	5	7	$434.36	$260.65
	4	172	$164.67	$194.10
	3	267	$89.76	$148.70
Extensive Services and High rehabilitation	5	13	$215.16.	$274.93
	4	128	$174.02	$192.56
	3	238	$78.42	$146.35
Extensive Services and Medium-high rehabilitation	5	46	$254.30	$232.45
	4	518	$154.70	$186.87
	3	964	$65.44	$111.17
	2	2	$15.52	$21.95
Extensive Services and Low rehabilitation	4	16	$129.90	$193.26
	3	59	$88.83	$156.84
Ultra-high rehabilitation	5	2	$78.99	$2.28
	4	200	$97.85	$113.29
	3	1895	$57.80	$90.04
	2	2728	$30.69	$57.68
Very high rehabilitation	5	1	$80.60 .	
	4	178	$111.98	$123.99
	3	1931	$54.19	$90.76
	2	2565	$28.24	$55.85
High rehabilitation	4	136	$86.92	$129.49
	3	1648	$45.41	$82.24
	2	2385	$22.68	$41.35
Medium rehabilitation	4	434	$95.32	$121.86
	3	4925	$42.37	$69.89
	2	6634	$23.25	$42.80
Low rehabilitation	4	37	$59.55	$76.75
	3	432	$29.99	$48.14
	2	568	$18.64	$26.52
Extensive Services	5	171	$213.62	$219.82
	4	2012	$125.24	$172.80
	3	3283	$71.86	$126.72
	2	58	$45.61	$89.51
Special Care	5	2	$48.76	$13.44
	4	1202	$68.90	$103.25
	3	8093	$40.98	$73.66
	2	4211	$26.48	$48.98
Clinically complex	4	189	$97.38	$125.70
	3	3398	$51.88	$86.31
	2	4499	$26.19	$50.48
Impaired cognition	1	1016	$22.14	$44.91
Behavior problems	1	126	$27.86	$60.17
Reduced physical functioning	1	3986	$28.11	$57.93

N= 61,871 (58 records could not be used to calculate the U|WIM Ancillary Index level

Data sources: Medicare MDS and SNF Claims Data 1995-1997

Table 6
Distributional Shifts of Beneficiaries
Between Existing RUG-III Model and the WIM2 Option

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RUC+SE		A	26
RUC+SE		B	68
RUC+SE		C	47
RUC+SE		D	42
RUC+SE		E	
RUC+SE		F	
RUB+SE		A	18
RUB+SE		B	70
RUB+SE		C	48
RUB+SE		D	145
RUB+SE		E	
RUB+SE		F	
RUA+SE		A	
RUA+SE		B	6
RUA+SE		C	5
RUA+SE		D	16
RUA+SE		E	
RUA+SE		F	
RVC+SE		A	10
RVC+SE		B	66
RVC+SE		C	32

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RVC+SE		D	52
RVC+SE		E	
RVC+SE		F	
RVB+SE		A	11
RVB+SE		B	64
RVB+SE		C	47
RVB+SE		D	126
RVB+SE		E	
RVB+SE		F	
RVA+SE		A	
RVA+SE		B	9
RVA+SE		C	3
RVA+SE		D	19
RVA+SE		E	
RVA+SE		F	
RHC+SE		A	17
RHC+SE		B	81
RHC+SE		C	49
RHC+SE		D	96
RHC+SE		E	1
RHC+SE		F	
RHB+SE		A	5
RHB+SE		B	30

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RHB+SE		C	20
RHB+SE		D	73
RHB+SE		E	1
RHB+SE		F	
RHA+SE		A	
RHA+SE		B	
RHA+SE		C	
RHA+SE		D	1
RHA+SE		E	
RHA+SE		F	
RMC+SE		A	84
RMC+SE		B	242
RMC+SE		C	180
RMC+SE		D	243
RMC+SE		E	
RMC+SE		F	
RMB+SE		A	21
RMB+SE		B	120
RMB+SE		C	149
RMB+SE		D	458
RMB+SE		E	3
RMB+SE		F	2
RMA+SE		A	

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RMA+SE		B	2
RMA+SE		C	
RMA+SE		D	14
RMA+SE		E	
RMA+SE		F	
RLB+SE		A	
RLB+SE		B	14
RLB+SE		C	11
RLB+SE		D	15
RLB+SE		E	
RLB+SE		F	
RLA+SE		A	1
RLA+SE		B	1
RLA+SE		C	11
RLA+SE		D	22
RLA+SE		E	
RLA+SE		F	
RUC	971	A	
RUC		B	1
RUC		C	13
RUC		D	85
RUC		E	388
RUC		F	301

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RUB	3072	A	
RUB		B	
RUB		C	32
RUB		D	206
RUB		E	966
RUB		F	1587
RUA	1222	A	3
RUA		B	6
RUA		C	20
RUA		D	118
RUA		E	232
RUA		F	816
RVC	853	A	
RVC		B	2
RVC		C	10
RVC		D	70
RVC		E	320
RVC		F	291
RVB	2812	A	
RVB		B	2
RVB		C	37
RVB		D	212
RVB		E	919
RVB		F	1394

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RVA	1383	A	1
RVA		B	5
RVA		C	28
RVA		D	164
RVA		E	313
RVA		F	841
RHC	1808	A	
RHC		B	
RHC		C	23
RHC		D	119
RHC		E	651
RHC		F	771
RHB	1795	A	
RHB		B	
RHB		C	25
RHB		D	155
RHB		E	459
RHB		F	1027
RHA	900	A	
RHA		B	10
RHA		C	20
RHA		D	130
RHA		E	171

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RHA		F	568
RMC	3834	A	
RMC		B	3
RMC		C	57
RMC		D	325
RMC		E	1418
RMC		F	1282
RMB	7142	A	
RMB		B	1
RMB		C	84
RMB		D	564
RMB		E	1993
RMB		F	3747
RMA	2426	A	3
RMA		B	23
RMA		C	53
RMA		D	332
RMA		E	456
RMA		F	1543
RLB	404	A	
RLB		B	1
RLB		C	5
RLB		D	38

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RLB		E	155
RLB		F	165
RLA	703	A	1
RLA		B	1
RLA		C	13
RLA		D	88
RLA		E	165
RLA		F	400
SE3	2059	A	239
SE3		B	785
SE3		C	555
SE3		D	480
SE3		E	
SE3		F	
SE2	2944	A	146
SE2		B	683
SE2		C	714
SE2		D	1297
SE2		E	72
SE2		F	32
SE1	272	A	7
SE1		B	18
SE1		C	73

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
SE1		D	155
SE1		E	7
SE1		F	12
SSC	3129	A	
SSC		B	11
SSC		C	92
SSC		D	458
SSC		E	1738
SSC		F	830
SSB	3598	A	
SSB		B	5
SSB		C	93
SSB		D	509
SSB		E	1923
SSB		F	1068
SSA	6251	A	12
SSA		B	127
SSA		C	306
SSA		D	1191
SSA		E	2468
SSA		F	2147
CC2	58	A	
CC2		B	

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
CC2		C	
CC2		D	14
CC2		E	15
CC2		F	29
CC1	309	A	
CC1		B	
CC1		C	6
CC1		D	61
CC1		E	121
CC1		F	121
CB2	262	A	
CB2		B	
CB2		C	7
CB2		D	49
CB2		E	56
CB2		F	150
CB1	1423	A	
CB1		B	
CB1		C	20
CB1		D	258
CB1		E	374
CB1		F	771
CA2	802	A	

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
CA2		B	
CA2		C	18
CA2		D	182
CA2		E	137
CA2		F	465
CA1	4977	A	
CA1		B	
CA1		C	83
CA1		D	897
CA1		E	1201
CA1		F	2796
IB2	60		60
IB1	565		565
IA2	12		12
IA1	379		379
BB2	1		1
BB1	52		52
BA2	2		2

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
BA1	71		71
PE2	41		41
PE1	401		401
PD2	119		119
PD1	1184		1184
PC2	33		33
PC1	342		342
PB2	39		39
PB1	602		602
PA2	40		40
PA1	1185		1185

Table 6.1
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES - WIM 2 URBAN

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
JAA	1.71	6.33	2.25	$110.28	$313.02	$193.03		$58.25	**$674.58**
JAB	1.71	4.25	2.25	$110.28	$210.16	$193.03		$58.25	**$571.72**
JAC	1.71	2.28	2.25	$110.28	$112.75	$193.03		$58.25	**$474.31**
JAD	1.71	1.54	2.25	$110.28	$76.15	$193.03		$58.25	**$437.71**
JAE	1.71	1.08	2.25	$110.28	$53.41	$193.03		$58.25	**$414.97**
JAF	1.71	0.36	2.25	$110.28	$17.80	$193.03		$58.25	**$379.36**
JBA	1.39	6.33	2.25	$89.64	$313.02	$193.03		$58.25	**$653.94**
JBB	1.39	4.25	2.25	$89.64	$210.16	$193.03		$58.25	**$551.08**
JBC	1.39	2.28	2.25	$89.64	$112.75	$193.03		$58.25	**$453.67**
JBD	1.39	1.54	2.25	$89.64	$76.15	$193.03		$58.25	**$417.07**
JBE	1.39	1.08	2.25	$89.64	$53.41	$193.03		$58.25	**$394.33**
JBF	1.39	0.36	2.25	$89.64	$17.80	$193.03		$58.25	**$358.72**
JCA	1.22	6.33	2.25	$78.68	$313.02	$193.03		$58.25	**$642.98**
JCB	1.22	4.25	2.25	$78.68	$210.16	$193.03		$58.25	**$540.12**
JCC	1.22	2.28	2.25	$78.68	$112.75	$193.03		$58.25	**$442.71**
JCD	1.22	1.54	2.25	$78.68	$76.15	$193.03		$58.25	**$406.11**
JCE	1.22	1.08	2.25	$78.68	$53.41	$193.03		$58.25	**$383.37**
JCF	1.22	0.36	2.25	$78.68	$17.80	$193.03		$58.25	**$347.76**
KAA	1.57	6.33	1.41	$101.25	$313.02	$120.96		$58.25	**$593.48**
KAB	1 57	4.25	1.41	$101.25	$210.16	$120.96		$58.25	**$490.62**
KAC	1.57	2.28	1.41	$101.25	$112.75	$120.96		$58.25	**$393.21**
KAD	1.57	1.54	1.41	$101.25	$76.15	$120.96		$58.25	**$356.61**
KAE	1.57	1.08	1.41	$101.25	$53.41	$120.96		$58.25	**$333.87**
KAF	1.57	0.36	1.41	$101.25	$17.80	$120.96		$58.25	**$298.26**

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
KBA	1.44	6.33	1.41	$92.87	$313.02	$120.96		$58.25	**$585.10**
KBB	1.44	4.25	1.41	$92.87	$210.16	$120.96		$58.25	**$482.24**
KBC	1.44	2.28	1.41	$92.87	$112.75	$120.96		$58.25	**$384.83**
KBD	1.44	1.54	1.41	$92.87	$76.15	$120.96		$58.25	**$348.23**
KBE	1.44	1.08	1.41	$92.87	$53.41	$120.96		$58.25	**$325.49**
KBF	1.44	0.36	1.41	$92.87	$17.80	$120.96		$58.25	**$289.88**
KCA	1.20	6.33	1.41	$77.39	$313.02	$120.96		$58.25	**$569.62**
KCB	1.20	4.25	1.41	$77.39	$210.16	$120.96		$58.25	**$466.76**
KCC	1.20	2.28	1.41	$77.39	$112.75	$120.96		$58.25	**$369.35**
KCD	1.20	1.54	1.41	$77.39	$76.15	$120.96		$58.25	**$332.75**
KCE	1.20	1.08	1.41	$77.39	$53.41	$120.96		$58.25	**$310.01**
KCF	1.20	0.36	1.41	$77.39	$17.80	$120.96		$58.25	**$274.40**
LAA	1.53	6.33	0.94	$98.67	$313.02	$80.64		$58.25	**$550.58**
LAB	1.53	4.25	0.94	$98.67	$210.16	$80.64		$58.25	**$447.72**
LAC	1.53	2.28	0.94	$98.67	$112.75	$80.64		$58.25	**$350.31**
LAD	1.53	1.54	0.94	$98.67	$76.15	$80.64		$58.25	**$313.71**
LAE	1.53	1.08	0.94	$98.67	$53.41	$80.64		$58.25	**$290.97**
LAF	1.53	0.36	0.94	$98.67	$17.80	$80.64		$58.25	**$255.36**
LBA	1.45	6.33	0.94	$93.51	$313.02	$80.64		$58.25	**$545.42**
LBB	1.45	4.25	0.94	$93.51	$210.16	$80.64		$58.25	**$442.56**
LBC	1.45	2.28	0.94	$93.51	$112.75	$80.64		$58.25	**$345.15**
LBD	1.45	1.54	0.94	$93.51	$76.15	$80.64		$58.25	**$308.55**
LBE	1.45	1.08	0.94	$93.51	$53.41	$80.64		$58.25	**$285.81**
LBF	1.45	0.36	0.94	$93.51	$17.80	$80.64		$58.25	**$250.20**
LCA	1.23	6.33	0.94	$79.32	$313.02	$80.64		$58.25	**$531.23**
LCB	1.23	4.25	0.94	$79.32	$210.16	$80.64		$58.25	**$428.37**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
LCC	1.23	2.28	0.94	$79.32	$112.75	$80.64		$58.25	**$330.96**
LCD	1.23	1.54	0.94	$79.32	$76.15	$80.64		$58.25	**$294.36**
LCE	1.23	1.08	0.94	$79.32	$53.41	$80.64		$58.25	**$271.62**
LCF	1.23	0.36	0.94	$79.32	$17.80	$80.64		$58.25	**$236.01**
MAA	1.66	6.33	0.77	$107.05	$313.02	$66.06		$58.25	**$544.38**
MAB	1.66	4.25	0.77	$107.05	$210.16	$66.06		$58.25	**$441.52**
MAC	1.66	2.28	0.77	$107.05	$112.75	$66.06		$58.25	**$344.11**
MAD	1.66	1.54	0.77	$107.05	$76.15	$66.06		$58.25	**$307.51**
MAE	1.66	1.08	0.77	$107.05	$53.41	$66.06		$58.25	**$284.77**
MAF	1.66	0.36	0.77	$107.05	$17.80	$66.06		$58.25	**$249.16**
MBA	1.47	6.33	0.77	$94.80	$313.02	$66.06		$58.25	**$532.13**
MBB	1.47	4.25	0.77	$94.80	$210.16	$66.06		$58.25	**$429.27**
MBC	1.47	2.28	0.77	$94.80	$112.75	$66.06		$58.25	**$331.86**
MBD	1.47	1.54	0.77	$94.80	$76.15	$66.06		$58.25	**$295.26**
MBE	1.47	1.08	0.77	$94.80	$53.41	$66.06		$58.25	**$272.52**
MBF	1.47	0.36	0.77	$94.80	$17.80	$66.06		$58.25	**$236.91**
MCA	1.43	6.33	0.77	$92.22	$313.02	$66.06		$58.25	**$529.55**
MCB	1.43	4.25	0.77	$92.22	$210.16	$66.06		$58.25	**$426.69**
MCC	1.43	2.28	0.77	$92.22	$112.75	$66.06		$58.25	**$329.28**
MCD	1.43	1.54	0.77	$92.22	$76.15	$66.06		$58.25	**$292.68**
MCE	1.43	1.08	0.77	$92.22	$53.41	$66.06		$58.25	**$269.94**
MCF	1.43	0.36	0.77	$92.22	$17.80	$66.06		$58.25	**$234.33**
NAA	1.52	6.33	0.43	$98.02	$313.02	$36.89		$58.25	**$506.18**
NAB	1.52	4.25	0.43	$98.02	$210.16	$36.89		$58.25	**$403.32**
NAC	1.52	2.28	0.43	$98.02	$112.75	$36.89		$58.25	**$305.91**
NAD	1.52	1.54	0.43	$98.02	$76.15	$36.89		$58.25	**$269.31**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rat
NAE	1.52	1.08	0.43	$98.02	$53.41	$36.89		$58.25	$246.57
NAF	1.52	0.36	0.43	$98.02	$17.80	$36.89		$58.25	$210.96
NBA	1.26	6.33	0.43	$81.26	$313.02	$36.89		$58.25	$489.42
NBB	1.26	4.25	0.43	$81.26	$210.16	$36.89		$58.25	$386.56
NBC	1.26	2.28	0.43	$81.26	$112.75	$36.89		$58.25	$289.15
NBD	1.26	1.54	0.43	$81.26	$76.15	$36.89		$58.25	$252.55
NBE	1.26	1.08	0.43	$81.26	$53.41	$36.89		$58.25	$229.81
NBF	1.26	0.36	0.43	$81.26	$17.80	$36.89		$58.25	$194.20
UAA	1.21	6.65	2.25	$78.03	$328.84	$193.03		$58.25	$658.15
UAB	1.21	4.61	2.25	$78.03	$227.96	$193.03		$58.25	$557.27
UAC	1.21	2.73	2.25	$78.03	$135.00	$193.03		$58.25	$464.31
UAD	1.21	1.9	2.25	$78.03	$93.96	$193.03		$58.25	$423.27
UAE	1.21	0.84	2.25	$78.03	$41.54	$193.03		$58.25	$370.85
UAF	1.21	0.57	2.25	$78.03	$28.19	$193.03		$58.25	$357.50
UBA	0.94	6.65	2.25	$60.62	$328.84	$193.03		$58.25	$640.74
UBB	0.94	4.61	2.25	$60.62	$227.96	$193.03		$58.25	$539.86
UBC	0.94	2.73	2.25	$60.62	$135.00	$193.03		$58.25	$446.90
UBD	0.94	1.9	2.25	$60.62	$93.96	$193.03		$58.25	$405.86
UBE	0.94	0.84	2.25	$60.62	$41.54	$193.03		$58.25	$353.44
UBF	0.94	0.57	2.25	$60.62	$28.19	$193.03		$58.25	$340.09
UCA	0.79	6.65	2.25	$50.95	$328.84	$193.03		$58.25	$631.07
UCB	0.79	4.61	2.25	$50.95	$227.96	$193.03		$58.25	$530.19
UCC	0.79	2.73	2.25	$50.95	$135.00	$193.03		$58.25	$437.23
UCD	0.79	1.9	2.25	$50.95	$93.96	$193.03		$58.25	$396.19
UCE	0.79	0.84	2.25	$50.95	$41.54	$193.03		$58.25	$343.77
UCF	0.79	0.57	2.25	$50.95	$28.19	$193.03		$58.25	$330.42

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
VAA	1.16	6.65	1.41	$74.81	$328.84	$120.96		$58.25	**$582.86**
VAB	1.16	4.61	1.41	$74.81	$227.96	$120.96		$58.25	**$481.98**
VAC	1.16	2.73	1.41	$74.81	$135.00	$120.96		$58.25	**$389.02**
VAD	1.16	1.9	1.41	$74.81	$93.96	$120.96		$58.25	**$347.98**
VAE	1.16	0.84	1.41	$74.81	$41.54	$120.96		$58.25	**$295.56**
VAF	1.16	0.57	1.41	$74.81	$28.19	$120.96		$58.25	**$282.21**
VBA	1.02	6.65	1.41	$65.78	$328.84	$120.96		$58.25	**$573.83**
VBB	1.02	4.61	1.41	$65.78	$227.96	$120.96		$58.25	**$472.95**
VBC	1.02	2.73	1.41	$65.78	$135.00	$120.96		$58.25	**$379.99**
VBD	1.02	1.9	1.41	$65.78	$93.96	$120.96		$58.25	**$338.95**
VBE	1.02	0.84	1.41	$65.78	$41.54	$120.96		$58.25	**$286.53**
VBF	1.02	0.57	1.41	$65.78	$28.19	$120.96		$58.25	**$273.18**
VCA	0.78	6.65	1.41	$50.30	$328.84	$120.96		$58.25	**$558.35**
VCB	0.78	4.61	1.41	$50.30	$227.96	$120.96		$58.25	**$457.47**
VCC	0.78	2.73	1.41	$50.30	$135.00	$120.96		$58.25	**$364.51**
VCD	0.78	1.9	1.41	$50.30	$93.96	$120.96		$58.25	**$323.47**
VCE	0.78	0.84	1.41	$50.30	$41.54	$120.96		$58.25	**$271.05**
VCF	0.78	0.57	1.41	$50.30	$28.19	$120.96		$58.25	**$257.70**
WAA	1.15	6.65	0.94	$74.16	$328.84	$80.64		$58.25	**$541.89**
WAB	1.15	4.61	0.94	$74.16	$227.96	$80.64		$58.25	**$441.01**
WAC	1.15	2.73	0.94	$74.16	$135.00	$80.64		$58.25	**$348.05**
WAD	1.15	1.9	0.94	$74.16	$93.96	$80.64		$58.25	**$307.01**
WAE	1.15	0.84	0.94	$74.16	$41.54	$80.64		$58.25	**$254.59**
WAF	1.15	0.57	0.94	$74.16	$28.19	$80.64		$58.25	**$241.24**
WBA	1.05	6.65	0.94	$67.71	$328.84	$80.64		$58.25	**$535.44**

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
WBB	1.05	4.61	0.94	$67.71	$227.96	$80.64		$58.25	$434.56
WBC	1.05	2.73	0.94	$67.71	$135.00	$80.64		$58.25	$341.60
WBD	1.05	1.9	0.94	$67.71	$93.96	$80.64		$58.25	$300.56
WBE	1.05	0.84	0.94	$67.71	$41.54	$80.64		$58.25	$248.14
WBF	1.05	0.57	0.94	$67.71	$28.19	$80.64		$58.25	$234.79
WCA	0.89	6.65	0.94	$57.40	$328.84	$80.64		$58.25	$525.13
WCB	0.89	4.61	0.94	$57.40	$227.96	$80.64		$58.25	$424.25
WCC	0.89	2.73	0.94	$57.40	$135.00	$80.64		$58.25	$331.29
WCD	0.89	1.9	0.94	$57.40	$93.96	$80.64		$58.25	$290.25
WCE	0.89	0.84	0.94	$57.40	$41.54	$80.64		$58.25	$237.83
WCF	0.89	0.57	0.94	$57.40	$28.19	$80.64		$58.25	$224.48
XAA	1.09	6.65	0.77	$70.29	$328.84	$66.06		$58.25	$523.44
XAB	1.09	4.61	0.77	$70.29	$227.96	$66.06		$58.25	$422.56
XAC	1.09	2.73	0.77	$70.29	$135.00	$66.06		$58.25	$329.60
XAD	1.09	1.9	0.77	$70.29	$93.96	$66.06		$58.25	$288.56
XAE	1.09	0.84	0.77	$70.29	$41.54	$66.06		$58.25	$236.14
XAF	1.09	0.57	0.77	$70.29	$28.19	$66.06		$58.25	$222.79
XBA	1.02	6.65	0.77	$65.78	$328.84	$66.06		$58.25	$518.93
XBB	1.02	4.61	0.77	$65.78	$227.96	$66.06		$58.25	$418.05
XBC	1.02	2.73	0.77	$65.78	$135.00	$66.06		$58.25	$325.09
XBD	1.02	1.9	0.77	$65.78	$93.96	$66.06		$58.25	$284.05
XBE	1.02	0.84	0.77	$65.78	$41.54	$66.06		$58.25	$231.63
XBF	1.02	0.57	0.77	$65.78	$28.19	$66.06		$58.25	$218.28
XCA	0.98	6.65	0.77	$63.20	$328.84	$66.06		$58.25	$516.35
XCB	0.98	4.61	0.77	$63.20	$227.96	$66.06		$58.25	$415.47
XCC	0.98	2.73	0.77	$63.20	$135.00	$66.06		$58.25	$322.51

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
XCD	0.98	1.9	0.77	$63.20	$93.96	$66.06		$58.25	$281.47
XCE	0.98	0.84	0.77	$63.20	$41.54	$66.06		$58.25	$229.05
XCF	0.98	0.57	0.77	$63.20	$28.19	$66.06		$58.25	$215.70
YAA	1.08	6.65	0.43	$69.65	$328.84	$36.89		$58.25	$493.63
YAB	1.08	4.61	0.43	$69.65	$227.96	$36.89		$58.25	$392.75
YAC	1.08	2.73	0.43	$69.65	$135.00	$36.89		$58.25	$299.79
YAD	1.08	1.9	0.43	$69.65	$93.96	$36.89		$58.25	$258.75
YAE	1.08	0.84	0.43	$69.65	$41.54	$36.89		$58.25	$206.33
YAF	1.08	0.57	0.43	$69.65	$28.19	$36.89		$58.25	$192.98
YBA	0.8	6.65	0.43	$51.59	$328.84	$36.89		$58.25	$475.57
YBB	0.8	4.61	0.43	$51.59	$227.96	$36.89		$58.25	$374.69
YBC	0.8	2.73	0.43	$51.59	$135.00	$36.89		$58.25	$281.73
YBD	0.8	1.9	0.43	$51.59	$93.96	$36.89		$58.25	$240.69
YBE	0.8	0.84	0.43	$51.59	$41.54	$36.89		$58.25	$188.27
YBF	0.8	0.57	0.43	$51.59	$28.19	$36.89		$58.25	$174.92
EAA	1.75	5.37		$112.86	$265.55		$11.32	$58.25	$447.98
EAB	1.75	2.84		$112.86	$140.44		$11.32	$58.25	$322.87
EAC	1.75	1.82		$112.86	$90.00		$11.32	$58.25	$272.43
EAD	1.75	1.49		$112.86	$73.68		$11.32	$58.25	$256.11
EAE	1.75	0.92		$112.86	$45.49		$11.32	$58.25	$227.92
EAF	1.75	0.93		$112.86	$45.99		$11.32	$58.25	$228.42
EBA	1.41	5.37		$90.93	$265.55		$11.32	$58.25	$426.05
EBB	1.41	2.84		$90.93	$140.44		$11.32	$58.25	$300.94
EBC	1.41	1.82		$90.93	$90.00		$11.32	$58.25	$250.50
EBD	1.41	1.49		$90.93	$73.68		$11.32	$58.25	$234.18
EBE	1.41	0.92		$90.93	$45.49		$11.32	$58.25	$205.99

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
EBF	1.41	0.93		$90.93	$45.99		$11.32	$58.25	**$206.49**
ECA	1.19	5.37		$76.74	$265.55		$11.32	$58.25	**$411.86**
ECB	1.19	2.84		$76.74	$140.44		$11.32	$58.25	**$286.75**
ECC	1.19	1.82		$76.74	$90.00		$11.32	$58.25	**$236.31**
ECD	1.19	1.49		$76.74	$73.68		$11.32	$58.25	**$219.99**
ECE	1.19	0.92		$76.74	$45.49		$11.32	$58.25	**$191.80**
ECF	1.19	0.93		$76.74	$45.99		$11.32	$58.25	**$192.30**
SAA	1.13	2.72		$72.87	$134.50		$11.32	$58.25	**$276.94**
SAB	1.13	2.8		$72.87	$138.46		$11.32	$58.25	**$280.90**
SAC	1.13	1.64		$72.87	$81.10		$11.32	$58.25	**$223.54**
SAD	1.13	1.46		$72.87	$72.20		$11.32	$58.25	**$214.64**
SAE	1.13	0.75		$72.87	$37.09		$11.32	$58.25	**$179.53**
SAF	1.13	0.6		$72.87	$29.67		$11.32	$58.25	**$172.11**
SBA	1.05	2.72		$67.71	$134.50		$11.32	$58.25	**$271.78**
SBB	1.05	2.8		$67.71	$138.46		$11.32	$58.25	**$275.74**
SBC	1.05	1.64		$67.71	$81.10		$11.32	$58.25	**$218.38**
SBD	1.05	1.46		$67.71	$72.20		$11.32	$58.25	**$209.48**
SBE	1.05	0.75		$67.71	$37.09		$11.32	$58.25	**$174.37**
SBF	1.05	0.6		$67.71	$29.67		$11.32	$58.25	**$166.95**
SCA	1.01	2.72		$65.13	$134.50		$11.32	$58.25	**$269.20**
SCB	1.01	2.8		$65.13	$138.46		$11.32	$58.25	**$273.16**
SCC	1.01	1.64		$65.13	$81.10		$11.32	$58.25	**$215.80**
SCD	1.01	1.46		$65.13	$72.20		$11.32	$58.25	**$206.90**
SCE	1.01	0.75		$65.13	$37.09		$11.32	$58.25	**$171.79**
SCF	1.01	0.6		$65.13	$29.67		$11.32	$58.25	**$164.37**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
CAA	1.12	2.17		$72.23	$107.31		$11.32	$58.25	**$249.11**
CAB	1.12	2.17		$72.23	$107.31		$11.32	$58.25	**$249.11**
CAC	1.12	2.17		$72.23	$107.31		$11.32	$58.25	**$249.11**
CAD	1.12	1.6		$72.23	$79.12		$11.32	$58.25	**$220.92**
CAE	1.12	0.89		$72.23	$44.01		$11.32	$58.25	**$185.81**
CAF	1.12	0.59		$72.23	$29.18		$11.32	$58.25	**$170.98**
CBA	0.99	2.17		$63.85	$107.31		$11.32	$58.25	**$240.73**
CBB	0.99	2.17		$63.85	$107.31		$11.32	$58.25	**$240.73**
CBC	0.99	2.17		$63.85	$107.31		$11.32	$58.25	**$240.73**
CBD	0.99	1.6		$63.85	$79.12		$11.32	$58.25	**$212.54**
CBE	0.99	0.89		$63.85	$44.01		$11.32	$58.25	**$177.43**
CBF	0.99	0.59		$63.85	$29.18		$11.32	$58.25	**$162.60**
CCA	0.91	2.17		$58.69	$107.31		$11.32	$58.25	**$235.57**
CCB	0.91	2.17		$58.69	$107.31		$11.32	$58.25	**$235.57**
CCC	0.91	2.17		$58.69	$107.31		$11.32	$58.25	**$235.57**
CCD	0.91	1.6		$58.69	$79.12		$11.32	$58.25	**$207.38**
CCE	0.91	0.89		$58.69	$44.01		$11.32	$58.25	**$172.27**
CCF	0.91	0.59		$58.69	$29.18		$11.32	$58.25	**$157.44**
CDA	0.84	2.17		$54.17	$107.31		$11.32	$58.25	**$231.05**
CDB	0.84	2.17		$54.17	$107.31		$11.32	$58.25	**$231.05**
CDC	0.84	2.17		$54.17	$107.31		$11.32	$58.25	**$231.05**
CDD	0.84	1.6		$54.17	$79.12		$11.32	$58.25	**$202.86**
CDE	0.84	0.89		$54.17	$44.01		$11.32	$58.25	**$167.75**
CDF	0.84	0.59		$54.17	$29.18		$11.32	$58.25	**$152.92**
CEA	0.83	2.17		$53.53	$107.31		$11.32	$58.25	**$230.41**
CEB	0.83	2.17		$53.53	$107.31		$11.32	$58.25	**$230.41**

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
CEC	0.83	2.17		$53.53	$107.31		$11.32	$58.25	**$230.41**
CED	0.83	1.6		$53.53	$79.12		$11.32	$58.25	**$202.22**
CEE	0.83	0.89		$53.53	$44.01		$11.32	$58.25	**$167.11**
CEF	0.83	0.59		$53.53	$29.18		$11.32	$58.25	**$152.28**
CFA	0.75	2.17		$48.37	$107.31		$11.32	$58.25	**$225.25**
CFB	0.75	2.17		$48.37	$107.31		$11.32	$58.25	**$225.25**
CFC	0.75	2.17		$48.37	$107.31		$11.32	$58.25	**$225.25**
CFD	0.75	1.6		$48.37	$79.12		$11.32	$58.25	**$197.06**
CFE	0.75	0.89		$48.37	$44.01		$11.32	$58.25	**$161.95**
CFF	0.75	0.59		$48.37	$29.18		$11.32	$58.25	**$147.12**
IAR	0.69	0.51		$44.50	$25.22		$11.32	$58.25	**$139.29**
IBR	0.67	0.51		$43.21	$25.22		$11.32	$58.25	**$138.00**
ICR	0.57	0.51		$36.76	$25.22		$11.32	$58.25	**$131.55**
IDR	0.53	0.51		$34.18	$25.22		$11.32	$58.25	**$128.97**
BAR	0.68	0.64		$43.85	$31.65		$11.32	$58.25	**$145.07**
BBR	0.65	0.64		$41.92	$31.65		$11.32	$58.25	**$143.14**
BCR	0.56	0.64		$36.11	$31.65		$11.32	$58.25	**$137.33**
BDR	0.48	0.64		$30.96	$31.65		$11.32	$58.25	**$132.18**
PAR	0.77	0.64		$49.66	$31.65		$11.32	$58.25	**$150.88**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	**Total Rate**
PBR	0.72	0.64		$46.43	$31.65		$11.32	$58.25	**$147.65**
PCR	0.7	0.64		$45.14	$31.65		$11.32	$58.25	**$146.36**
PDR	0.65	0.64		$41.92	$31.65		$11.32	$58.25	**$143.14**
PER	0.64	0.64		$41.27	$31.65		$11.32	$58.25	**$142.49**
PFR	0.51	0.64		$32.89	$31.65		$11.32	$58.25	**$134.11**
PGR	0.5	0.64		$32.25	$31.65		$11.32	$58.25	**$133.47**
PHR	0.49	0.64		$31.60	$31.65		$11.32	$58.25	**$132.82**
PIR	0.46	0.64		$29.67	$31.65		$11.32	$58.25	**$130.89**
PJR	0.46	0.64		$29.67	$31.65		$11.32	$58.25	**$130.89**

Table 6.2
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES - WIM 2 RURAL

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
JAA	1.71	6.33	2.25	$106.88	$294.85	$223.00		$59.32	**$684.05**
JAB	1.71	4.25	2.25	$106.88	$197.97	$223.00		$59.32	**$587.17**
JAC	1.71	2.28	2.25	$106.88	$106.20	$223.00		$59.32	**$495.40**
JAD	1.71	1.54	2.25	$106.88	$71.73	$223.00		$59.32	**$460.93**
JAE	1.71	1.08	2.25	$106.88	$50.31	$223.00		$59.32	**$439.51**
JAF	1.71	0.36	2.25	$106.88	$16.77	$223.00		$59.32	**$405.97**
JBA	1.39	6.33	2.25	$86.88	$294.85	$223.00		$59.32	**$664.05**
JBB	1.39	4.25	2.25	$86.88	$197.97	$223.00		$59.32	**$567.17**
JBC	1.39	2.28	2.25	$86.88	$106.20	$223.00		$59.32	**$475.40**
JBD	1.39	1.54	2.25	$86.88	$71.73	$223.00		$59.32	**$440.93**
JBE	1.39	1.08	2.25	$86.88	$50.31	$223.00		$59.32	**$419.51**
JBF	1.39	0.36	2.25	$86.88	$16.77	$223.00		$59.32	**$385.97**
JCA	1.22	6.33	2.25	$76.25	$294.85	$223.00		$59.32	**$653.42**
JCB	1.22	4.25	2.25	$76.25	$197.97	$223.00		$59.32	**$556.54**
JCC	1.22	2.28	2.25	$76.25	$106.20	$223.00		$59.32	**$464.77**
JCD	1.22	1.54	2.25	$76.25	$71.73	$223.00		$59.32	**$430.30**
JCE	1.22	1.08	2.25	$76.25	$50.31	$223.00		$59.32	**$408.88**
JCF	1.22	0.36	2.25	$76.25	$16.77	$223.00		$59.32	**$375.34**
KAA	1.57	6.33	1.41	$98.13	$294.85	$139.75		$59.32	**$592.05**
KAB	1.57	4.25	1.41	$98.13	$197.97	$139.75		$59.32	**$495.17**
KAC	1.57	2.28	1.41	$98.13	$106.20	$139.75		$59.32	**$403.40**
KAD	1.57	1.54	1.41	$98.13	$71.73	$139.75		$59.32	**$368.93**
KAE	1.57	1.08	1.41	$98.13	$50.31	$139.75		$59.32	**$347.51**
KAF	1.57	0.36	1.41	$98.13	$16.77	$139.75		$59.32	**$313.97**
KBA	1.44	6.33	1.41	$90.00	$294.85	$139.75		$59.32	**$583.92**
KBB	1.44	4.25	1.41	$90.00	$197.97	$139.75		$59.32	**$487.04**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	**Total Rate**
KBC	1.44	2.28	1.41	$90.00	$106.20	$139.75		$59.32	**$395.27**
KBD	1.44	1.54	1.41	$90.00	$71.73	$139.75		$59.32	**$360.80**
KBE	1.44	1.08	1.41	$90.00	$50.31	$139.75		$59.32	**$339.38**
KBF	1.44	0.36	1.41	$90.00	$16.77	$139.75		$59.32	**$305.84**
KCA	1.2	6.33	1.41	$75.00	$294.85	$139.75		$59.32	**$568.92**
KCB	1.2	4.25	1.41	$75.00	$197.97	$139.75		$59.32	**$472.04**
KCC	1.2	2.28	1.41	$75.00	$106.20	$139.75		$59.32	**$380.27**
KCD	1.2	1.54	1.41	$75.00	$71.73	$139.75		$59.32	**$345.80**
KCE	1.2	1.08	1.41	$75.00	$50.31	$139.75		$59.32	**$324.38**
KCF	1.2	0.36	1.41	$75.00	$16.77	$139.75		$59.32	**$290.84**
LAA	1.53	6.33	0.94	$95.63	$294.85	$93.16		$59.32	**$542.96**
LAB	1.53	4.25	0.94	$95.63	$197.97	$93.16		$59.32	**$446.08**
LAC	1.53	2.28	0.94	$95.63	$106.20	$93.16		$59.32	**$354.31**
LAD	1.53	1.54	0.94	$95.63	$71.73	$93.16		$59.32	**$319.84**
LAE	1.53	1.08	0.94	$95.63	$50.31	$93.16		$59.32	**$298.42**
LAF	1.53	0.36	0.94	$95.63	$16.77	$93.16		$59.32	**$264.88**
LBA	1.45	6.33	0.94	$90.63	$294.85	$93.16		$59.32	**$537.96**
LBB	1.45	4.25	0.94	$90.63	$197.97	$93.16		$59.32	**$441.08**
LBC	1.45	2.28	0.94	$90.63	$106.20	$93.16		$59.32	**$349.31**
LBD	1.45	1.54	0.94	$90.63	$71.73	$93.16		$59.32	**$314.84**
LBE	1.45	1.08	0.94	$90.63	$50.31	$93.16		$59.32	**$293.42**
LBF	1.45	0.36	0.94	$90.63	$16.77	$93.16		$59.32	**$259.88**
LCA	1.23	6.33	0.94	$76.88	$294.85	$93.16		$59.32	**$524.21**
LCB	1.23	4.25	0.94	$76.88	$197.97	$93.16		$59.32	**$427.33**
LCC	1.23	2.28	0.94	$76.88	$106.20	$93.16		$59.32	**$335.56**
LCD	1.23	1.54	0.94	$76.88	$71.73	$93.16		$59.32	**$301.09**
LCE	1.23	1.08	0.94	$76.88	$50.31	$93.16		$59.32	**$279.67**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
LCF	1.23	0.36	0.94	$76.88	$16.77	$93.16		$59.32	$246.13
MAA	1.66	6.33	0.77	$103.75	$294.85	$76.31		$59.32	$534.23
MAB	1.66	4.25	0.77	$103.75	$197.97	$76.31		$59.32	$437.35
MAC	1.66	2.28	0.77	$103.75	$106.20	$76.31		$59.32	$345.58
MAD	1.66	1.54	0.77	$103.75	$71.73	$76.31		$59.32	$311.11
MAE	1.66	1.08	0.77	$103.75	$50.31	$76.31		$59.32	$289.69
MAF	1.66	0.36	0.77	$103.75	$16.77	$76.31		$59.32	$256.15
MBA	1.47	6.33	0.77	$91.88	$294.85	$76.31		$59.32	$522.36
MBB	1.47	4.25	0.77	$91.88	$197.97	$76.31		$59.32	$425.48
MBC	1.47	2.28	0.77	$91.88	$106.20	$76.31		$59.32	$333.71
MBD	1.47	1.54	0.77	$91.88	$71.73	$76.31		$59.32	$299.24
MBE	1.47	1.08	0.77	$91.88	$50.31	$76.31		$59.32	$277.82
MBF	1.47	0.36	0.77	$91.88	$16.77	$76.31		$59.32	$244.28
MCA	1.43	6.33	0.77	$89.38	$294.85	$76.31		$59.32	$519.86
MCB	1.43	4.25	0.77	$89.38	$197.97	$76.31		$59.32	$422.98
MCC	1.43	2.28	0.77	$89.38	$106.20	$76.31		$59.32	$331.21
MCD	1.43	1.54	0.77	$89.38	$71.73	$76.31		$59.32	$296.74
MCE	1.43	1.08	0.77	$89.38	$50.31	$76.31		$59.32	$275.32
MCF	1.43	0.36	0.77	$89.38	$16.77	$76.31		$59.32	$241.78
NAA	1.52	6.33	0.43	$95.00	$294.85	$42.62		$59.32	$491.79
NAB	1.52	4.25	0.43	$95.00	$197.97	$42.62		$59.32	$394.91
NAC	1.52	2.28	0.43	$95.00	$106.20	$42.62		$59.32	$303.14
NAD	1.52	1.54	0.43	$95.00	$71.73	$42.62		$59.32	$268.67
NAE	1.52	1.08	0.43	$95.00	$50.31	$42.62		$59.32	$247.25
NAF	1.52	0.36	0.43	$95.00	$16.77	$42.62		$59.32	$213.71
NBA	1.26	6.33	0.43	$78.75	$294.85	$42.62		$59.32	$475.54

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
NBB	1.26	4.25	0.43	$78.75	$197.97	$42.62		$59.32	$378.66
NBC	1.26	2.28	0.43	$78.75	$106.20	$42.62		$59.32	$286.89
NBD	1.26	1.54	0.43	$78.75	$71.73	$42.62		$59.32	$252.42
NBE	1.26	1.08	0.43	$78.75	$50.31	$42.62		$59.32	$231.00
NBF	1.26	0.36	0.43	$78.75	$16.77	$42.62		$59.32	$197.46
UAA	1.21	6.65	2.25	$75.63	$309.76	$223.00		$59.32	$667.71
UAB	1.21	4.61	2.25	$75.63	$214.73	$223.00		$59.32	$572.68
UAC	1.21	2.73	2.25	$75.63	$127.16	$223.00		$59.32	$485.11
UAD	1.21	1.9	2.25	$75.63	$88.50	$223.00		$59.32	$446.45
UAE	1.21	0.84	2.25	$75.63	$39.13	$223.00		$59.32	$397.08
UAF	1.21	0.57	2.25	$75.63	$26.55	$223.00		$59.32	$384.50
UBA	.094	6.65	2.25	$58.75	$309.76	$223.00		$59.32	$650.83
UBB	.094	4.61	2.25	$58.75	$214.73	$223.00		$59.32	$555.80
UBC	.094	2.73	2.25	$58.75	$127.16	$223.00		$59.32	$468.23
UBD	.094	1.9	2.25	$58.75	$88.50	$223.00		$59.32	$429.57
UBE	.094	0.84	2.25	$58.75	$39.13	$223.00		$59.32	$380.20
UBF	.094	0.57	2.25	$58.75	$26.55	$223.00		$59.32	$367.62
UCA	0.79	6.65	2.25	$49.38	$309.76	$223.00		$59.32	$641.46
UCB	0.79	4.61	2.25	$49.38	$214.73	$223.00		$59.32	$546.43
UCC	0.79	2.73	2.25	$49.38	$127.16	$223.00		$59.32	$458.86
UCD	0.79	1.9	2.25	$49.38	$88.50	$223.00		$59.32	$420.20
UCE	0.79	0.84	2.25	$49.38	$39.13	$223.00		$59.32	$370.83
UCF	0.79	0.57	2.25	$49.38	$26.55	$223.00		$59.32	$358.25
VAA	1.16	6.65	1.41	$72.50	$309.76	$139.75		$59.32	$581.33
VAB	1.16	4.61	1.41	$72.50	$214.73	$139.75		$59.32	$486.30
VAC	1.16	2.73	1.41	$72.50	$127.16	$139.75		$59.32	$398.73
VAD	1.16	1.9	1.41	$72.50	$88.50	$139.75		$59.32	$360.07

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
VAE	1.16	0.84	1.41	$72.50	$39.13	$139.75		$59.32	$310.70
VAF	1.16	0.57	1.41	$72.50	$26.55	$139.75		$59.32	$298.12
VBA	1.02	6.65	1.41	$63.75	$309.76	$139.75		$59.32	$572.58
VBB	1.02	4.61	1.41	$63.75	$214.73	$139.75		$59.32	$477.55
VBC	1.02	2.73	1.41	$63 75	$127.16	$139.75		$59.32	$389.98
VBD	1.02	1.9	1.41	$63.75	$88.50	$139.75		$59.32	$351.32
VBE	1.02	0.84	1.41	$63.75	$39.13	$139.75		$59.32	$301.95
VBF	1.02	0.57	1.41	$63.75	$26.55	$139.75		$59.32	$289.37
VCA	0.78	6.65	1.41	$48.75	$309.76	$139.75		$59.32	$557.58
VCB	0.78	4.61	1.41	$48.75	$214.73	$139.75		$59.32	$462.55
VCC	0.78	2.73	1.41	$48.75	$127.16	$139.75		$59.32	$374.98
VCD	0.78	1.9	1.41	$48.75	$88.50	$139.75		$59.32	$336.32
VCE	0.78	0.84	1.41	$48.75	$39.13	$139.75		$59.32	$286.95
VCF	0.78	0.57	1.41	$48.75	$26.55	$139.75		$59.32	$274.37
WAA	1.15	6.65	0.94	$71.88	$309.76	$93.16		$59.32	$534.12
WAB	1.15	4.61	0.94	$71.88	$214.73	$93.16		$59.32	$439.09
WAC	1.15	2.73	0.94	$71.88	$127.16	$93.16		$59.32	$351.52
WAD	1.15	1.9	0.94	$71.88	$88.50	$93.16		$59.32	$312.86
WAE	1.15	0.84	0.94	$71.88	$39.13	$93.16		$59.32	$263.49
WAF	1.15	0.57	0.94	$71.88	$26.55	$93.16		$59.32	$250.91
WBA	1.05	6.65	0.94	$65.63	$309.76	$93.16		$59.32	$527.87
WBB	1.05	4.61	0.94	$65.63	$214.73	$93.16		$59.32	$432.84
WBC	1.05	2.73	0.94	$65.63	$127.16	$93.16		$59.32	$345.27
WBD	1.05	1.9	0.94	$65.63	$88.50	$93.16		$59.32	$306.61
WBE	1.05	0.84	0.94	$65.63	$39.13	$93.16		$59.32	$257.24
WBF	1.05	0.57	0.94	$65.63	$26.55	$93.16		$59.32	$244.66

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	**Total Rate**
WCA	0.89	6.65	0.94	$55.63	$309.76	$93.16		$59.32	**$517.87**
WCB	0.89	4.61	0.94	$55.63	$214.73	$93.16		$59.32	**$422.84**
WCC	0.89	2.73	0.94	$55.63	$127.16	$93.16		$59.32	**$335.27**
WCD	0.89	1.9	0.94	$55.63	$88.50	$93.16		$59.32	**$296.61**
WCE	0.89	0.84	0.94	$55.63	$39.13	$93.16		$59.32	**$247.24**
WCF	0.89	0.57	0.94	$55.63	$26.55	$93.16		$59.32	**$234.66**
XAA	1.09	6.65	0.77	$68.13	$309.76	$76.31		$59.32	**$513.52**
XAB	1.09	4.61	0.77	$68.13	$214.73	$76.31		$59.32	**$418.49**
XAC	1.09	2.73	0.77	$68.13	$127.16	$76.31		$59.32	**$330.92**
XAD	1.09	1.9	0.77	$68.13	$88.50	$76.31		$59.32	**$292.26**
XAE	1.09	0.84	0.77	$68.13	$39.13	$76.31		$59.32	**$242.89**
XAF	1.09	0.57	0.77	$68.13	$26.55	$76.31		$59.32	**$230.31**
XBA	1.02	6.65	0.77	$63.75	$309.76	$76.31		$59.32	**$509.14**
XBB	1.02	4.61	0.77	$63.75	$214.73	$76.31		$59.32	**$414.11**
XBC	1.02	2.73	0.77	$63.75	$127.16	$76.31		$59.32	**$326.54**
XBD	1.02	1.9	0.77	$63.75	$88.50	$76.31		$59.32	**$287.88**
XBE	1.02	0.84	0.77	$63.75	$39.13	$76.31		$59.32	**$238.51**
XBF	1.02	0.57	0.77	$63.75	$26.55	$76.31		$59.32	**$225.93**
XCA	0.98	6.65	0.77	$61.25	$309.76	$76.31		$59.32	**$506.64**
XCB	0.98	4.61	0.77	$61.25	$214.73	$76.31		$59.32	**$411.61**
XCC	0.98	2.73	0.77	$61.25	$127.16	$76.31		$59.32	**$324.04**
XCD	0.98	1.9	0.77	$61.25	$88.50	$76.31		$59.32	**$285.38**
XCE	0.98	0.84	0.77	$61.25	$39.13	$76.31		$59.32	**$236.01**
XCF	0.98	0.57	0.77	$61.25	$26.55	$76.31		$59.32	**$223.43**
YAA	1.08	6.65	0.43	$67.50	$309.76	$42.62		$59.32	**$479.20**
YAB	1.08	4.61	0.43	$67.50	$214.73	$42.62		$59.32	**$384.17**
YAC	1.08	2.73	0.43	$67.50	$127.16	$42.62		$59.32	**$296.60**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
YAD	1.08	1.9	0.43	$67.50	$88.50	$42.62		$59.32	**$257.94**
YAE	1.08	0.84	0.43	$67.50	$39.13	$42.62		$59.32	**$208.57**
YAF	1.08	0.57	0.43	$67.50	$26.55	$42.62		$59.32	**$195.99**
YBA	0.8	6.65	0.43	$50.00	$309.76	$42.62		$59.32	**$461.70**
YBB	0.8	4.61	0.43	$50.00	$214.73	$42.62		$59.32	**$366.67**
YBC	0.8	2.73	0.43	$50.00	$127.16	$42.62		$59.32	**$279.10**
YBD	0.8	1.9	0.43	$50.00	$88.50	$42.62		$59.32	**$240.44**
YBE	0.8	0.84	0.43	$50.00	$39.13	$42.62		$59.32	**$191.07**
YBF	0.8	0.57	0.43	$50.00	$26.55	$42.62		$59.32	**$178.49**
EAA	1.75	5.37		$109.38	$250.13		$12.10	$59.32	**$430.93**
EAB	1.75	2.84		$109.38	$132.29		$12.10	$59.32	**$313.09**
EAC	1.75	1.82		$109.38	$84.78		$12.10	$59.32	**$265.58**
EAD	1.75	1.49		$109.38	$69.40		$12.10	$59.32	**$250.20**
EAE	1.75	0.92		$109.38	$42.85		$12.10	$59.32	**$223.65**
EAF	1.75	0.93		$109.38	$43.32		$12.10	$59.32	**$224.12**
EBA	1.41	5.37		$88.13	$250.13		$12.10	$59.32	**$409.68**
EBB	1.41	2.84		$88.13	$132.29		$12.10	$59.32	**$291.84**
EBC	1.41	1.82		$88.13	$84.78		$12.10	$59.32	**$244.33**
EBD	1.41	1.49		$88.13	$69.40		$12.10	$59.32	**$228.95**
EBE	1.41	0.92		$88.13	$42.85		$12.10	$59.32	**$202.40**
EBF	1.41	0.93		$88.13	$43.32		$12.10	$59.32	**$202.87**
ECA	1.19	5.37		$74.38	$250.13		$12.10	$59.32	**$395.93**
ECB	1.19	2.84		$74.38	$132.29		$12.10	$59.32	**$278.09**
ECC	1.19	1.82		$74.38	$84.78		$12.10	$59.32	**$230.58**
ECD	1.19	1.49		$74.38	$69.40		$12.10	$59.32	**$215.20**
ECE	1.19	0.92		$74.38	$42.85		$12.10	$59.32	**$188.65**
ECF	1.19	0.93		$74.38	$43.32		$12.10	$59.32	**$189.12**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	**Total Rate**
SAA	1.13	2.72		$70.63	$126.70		$12.10	$59.32	**$268.75**
SAB	1.13	2.8		$70.63	$130.42		$12.10	$59.32	**$272.47**
SAC	1.13	1.64		$70.63	$76.39		$12.10	$59.32	**$218.44**
SAD	1.13	1.46		$70.63	$68.01		$12.10	$59.32	**$210.06**
SAE	1.13	0.75		$70.63	$34.94		$12.10	$59.32	**$176.99**
SAF	1.13	0.6		$70.63	$27.95		$12.10	$59.32	**$170.00**
SBA	1.05	2.72		$65.63	$126.70		$12.10	$59.32	**$263.75**
SBB	1.05	2.8		$65.63	$130.42		$12.10	$59.32	**$267.47**
SBC	1.05	1.64		$65.63	$76.39		$12.10	$59.32	**$213.44**
SBD	1.05	1.46		$65.63	$68.01		$12.10	$59.32	**$205.06**
SBE	1.05	0.75		$65.63	$34.94		$12.10	$59.32	**$171.99**
SBF	1.05	0.6		$65.63	$27.95		$12.10	$59.32	**$165.00**
SCA	1.01	2.72		$63.13	$126.70		$12.10	$59.32	**$261.25**
SCB	1.01	2.8		$63.13	$130.42		$12.10	$59.32	**$264.97**
SCC	1.01	1.64		$63.13	$76.39		$12.10	$59.32	**$210.94**
SCD	1.01	1.46		$63.13	$68.01		$12.10	$59.32	**$202.56**
SCE	1.01	0.75		$63.13	$34.94		$12.10	$59.32	**$169.49**
SCF	1.01	0.6		$63.13	$27.95		$12.10	$59.32	**$162.50**
CAA	1.12	2.17		$70.00	$101.08		$12.10	$59.32	**$242.50**
CAB	1.12	2.17		$70.00	$101.08		$12.10	$59.32	**$242.50**
CAC	1.12	2.17		$70.00	$101.08		$12.10	$59.32	**$242.50**
CAD	1.12	1.6		$70.00	$74.53		$12.10	$59.32	**$215.95**
CAE	1.12	0.89		$70.00	$41.46		$12.10	$59.32	**$182.88**
CAF	1.12	0.59		$70.00	$27.48		$12.10	$59.32	**$168.90**
CBA	0.99	2.17		$61.88	$101.08		$12.10	$59.32	**$234.38**
CBB	0.99	2.17		$61.88	$101.08		$12.10	$59.32	**$234.38**

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
CBC	0.99	2.17		$61.88	$101.08		$12.10	$59.32	**$234.38**
CBD	0.99	1.6		$61.88	$74.53		$12.10	$59.32	**$207.83**
CBE	0.99	0.89		$61.88	$41.46		$12.10	$59.32	**$174.76**
CBF	0.99	0.59		$61.88	$27.48		$12.10	$59.32	**$160.78**
CCA	0.91	2.17		$56.88	$101.08		$12.10	$59.32	**$229.38**
CCB	0.91	2.17		$56.88	$101.08		$12.10	$59.32	**$229.38**
CCC	0.91	2.17		$56.88	$101.08		$12.10	$59.32	**$229.38**
CCD	0.91	1.6		$56.88	$74.53		$12.10	$59.32	**$202.83**
CCE	0.91	0.89		$56.88	$41.46		$12.10	$59.32	**$169.76**
CCF	0.91	0.59		$56.88	$27.48		$12.10	$59.32	**$155.78**
CDA	0.84	2.17		$52.50	$101.08		$12.10	$59.32	**$225.00**
CDB	0.84	2.17		$52.50	$101.08		$12.10	$59.32	**$225.00**
CDC	0.84	2.17		$52.50	$101.08		$12.10	$59.32	**$225.00**
CDD	0.84	1.6		$52.50	$74.53		$12.10	$59.32	**$198.45**
CDE	0.84	0.89		$52.50	$41.46		$12.10	$59.32	**$165.38**
CDF	0.84	0.59		$52.50	$27.48		$12.10	$59.32	**$151.40**
CEA	0.83	2.17		$51.88	$101.08		$12.10	$59.32	**$224.38**
CEB	0.83	2.17		$51.88	$101.08		$12.10	$59.32	**$224.38**
CEC	0.83	2.17		$51.88	$101.08		$12.10	$59.32	**$224.38**
CED	0.83	1.6		$51.88	$74.53		$12.10	$59.32	**$197.83**
CEE	0.83	0.89		$51.88	$41.46		$12.10	$59.32	**$164.76**
CEF	0.83	0.59		$51.88	$27.48		$12.10	$59.32	**$150.78**
CFA	0.75	2.17		$46.88	$101.08		$12.10	$59.32	**$219.38**
CFB	0.75	2.17		$46.88	$101.08		$12.10	$59.32	**$219.38**
CFC	0.75	2.17		$46.88	$101.08		$12.10	$59.32	**$219.38**
CFD	0.75	1.6		$46.88	$74.53		$12.10	$59.32	**$192.83**
CFE	0.75	0.89		$46.88	$41.46		$12.10	$59.32	**$159.76**

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
CFF	0.75	0.59		$46.88	$27.48		$12.10	$59.32	**$145.78**
IAR	0.69	0.51		$43.13	$23.76		$12.10	$59.32	**$138.31**
IBR	0.67	0.51		$41.88	$23.76		$12.10	$59.32	**$137.06**
ICR	0.57	0.51		$35.63	$23.76		$12.10	$59.32	**$130.81**
IDR	0.53	0.51		$33.13	$23.76		$12.10	$59.32	**$128.31**
BAR	0.68	0.64		$42.50	$29.81		$12.10	$59.32	**$143.73**
BBR	0.65	0.64		$40.63	$29.81		$12.10	$59.32	**$141.86**
BCR	0.56	0.64		$35.00	$29.81		$12.10	$59.32	**$136.23**
BDR	0.48	0.64		$30.00	$29.81		$12.10	$59.32	**$131.23**
PAR	0.77	0.64		$48.13	$29.81		$12.10	$59.32	**$149.36**
PBR	0.72	0.64		$45.00	$29.81		$12.10	$59.32	**$146.23**
PCR	0.7	0.64		$43.75	$29.81		$12.10	$59.32	**$144.98**
PDR	0.65	0.64		$40.63	$29.81		$12.10	$59.32	**$141.86**
PER	0.64	0.64		$40.00	$29.81		$12.10	$59.32	**$141.23**
PFR	0.51	0.64		$31.88	$29.81		$12.10	$59.32	**$133.11**
PGR	0.5	0.64		$31.25	$29.81		$12.10	$59.32	**$132.48**

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	**Total Rate**
PHR	0.49	0.64		$30.63	$29.81		$12.10	$59.32	**$131.86**
PIR	0.46	0.64		$28.75	$29.81		$12.10	$59.32	**$129.98**
PJR	0.46	0.64		$28.75	$29.81		$12.10	$59.32	**$129.98**

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The models described here focus on those upper RUG–III categories that are reflective of the skilled care needs of Medicare beneficiaries. However, since there are a small number of beneficiaries in the research data base who may be classified into one of the lower RUG–III levels, we also applied the WIM and UWIM models to the Impaired Cognition, Behavior, and Physical Function categories. Almost all the beneficiaries in these three levels of the RUG–III hierarchy

grouped into the two lowest non-therapy ancillary index levels. In fact, in the UWIM model, 90 percent of the Impaired Cognition, 87.8 percent of the Behavior and 85 percent of the Physical Function observations fell into the lowest level of the non-therapy ancillary index. In these analyses, we did find a relationship between costs and the index value for these beneficiaries. However, including these groups in the model resulted in minimal additional improvement in statistical performance (See Table 7).

While these groups have not been included in the refinements proposed in this rule, we will include these RUG–III categories in additional analyses using the full PPS data base. Based on the results, we will review the applicability of the non-therapy ancillary index to the Impaired Cognition, Behavior, and Physical Function categories.

TABLE 7.—STATISTICAL PERFORMANCE OF POTENTIAL RUG–III REFINEMENTS—MODEL DESCRIPTION

Model description	Number of groups	R-squared validation sample (test sample)	
		Ancillary charges (percent)	Total costs (percent)
UWIM—Unweighted index model applied to Extensive Services residents (includes new category "Extensive Services and Rehabilitation") jkand to Rehabilitation, Special Care, and Clinically Complex residents.	58 plus a four-group ancillary add-on system.	10.9 −12.6	17.1 −18.0
UWIM–ALL-Unweighted index model applied to all residents (including new "Extensive Services and Rehabilitation" category).	58 plus a four-group ancillary add-on system.	10.9 −12.7	17.1 −18.2

Data sources: Medicare claims, Minimum Data Set 1995–1997.

G. RUG–III Medications Data

Although the bulk of the development and analysis of potential RUG–III refinements to date have been based on Medicare claims data, the Section U drug cost data holds unique promise as a source of detailed information on the drug use of particular beneficiaries. In the coming months, once the characteristics of these new data are more fully understood, we plan to use Section U drug cost data to analyze the behavior of high-cost individuals as well as the potential effects of case mix refinements.

1. Creation of MDS-Based Drug Cost Measures

The following types of pricing are available in the Medispan Master Drug Data Base: Average wholesale price (AWP), Direct Price, Wholesaler Acquisition Cost, HCFA Federal Financial Participation (FFP) limit price, Average AWP, and the generic equivalent average price. While we translated the medications listed on the MDS with NDC codes to therapeutic classes and sub-classes, we needed to cross-link the two data systems to identify the cost of the medications. We used the average wholesale price (AWP) for medication costs for several reasons. The AWP is a national figure and not subject to regional influence resulting from purchasing contracts and other local market factors. This helps to account for the cost of dispensing. Using AWP is conservative when the price of a medication is relatively low or high, and AWP is not subject to institutional cost-shifting. Additionally, AWP, compared to other pricing options, was found to yield the lowest amount of missing cost data.

In evaluating the drug regimens of beneficiaries in our sample, we realized that because of the way some drugs are packaged, the AWP price may reflect a price for multiple doses. Examples include injectables, inhalants, elixirs, and other drugs that indicated a multi-day supply in the drug description. We generated a printout of all potential problems of this sort. A clinical pharmacist reviewed the potential appropriateness of multiple use and long-acting dosage forms and unique treatment regimens for bundling. The Physician Desk Reference, the Red Book and other sources were used in addition to the documented AWP to determine a likely constant by which to divide the cost for each potential problem. In many instances, not enough information was available to make an appropriate estimate. In these cases, the drug cost remained as indicated by the AWP.

While we were able to successfully map NDC codes to drug names (nested within therapeutic classes and sub-classes), successfully matching to a drug cost required more information. Specifically, assigning an AWP to a drug requires both the strength of the drug administered and complete information regarding the frequency with which the medication was administered. Unfortunately, many of the NDC codes included in the MDS data did not include information regarding strength.[1] For example, we may know that a beneficiary received aspirin, but we do not know if it was 80 mg, 325 mg, or some other strength. As a result, we have substantial missing cost data. Because of the extent of missing data, we opted to impute the drug costs as opposed to excluding cases for which we did not have complete drug cost information. Analyses of the extent of missing data revealed that missing data did not vary by RUG group, State, year, or type of medication.

Nonetheless, by imputing missing drug costs, we have introduced random variations in the data that were not generated by the underlying process that we are attempting to model. Consequently, variables that explain variance in non-missing data will have no explanatory power for imputed data. The coefficients on these variables will, therefore, be biased toward zero. This bias will be small if the proportion of total variance attributable to imputation is small. However, variables explicitly or implicitly used in the imputation process may have explanatory power with regard to the imputed values. For example, if the RUG group is implicitly used as part of the imputation process, it theoretically could explain more of the variance in the dependent variable simply because RUG was used as part of the imputation algorithm. The coefficients of the variables used to impute cost data may be amplified relative to other coefficients in the explanatory models. Depending on the correlation between the RUG groups and other variables, these coefficients will also be biased in unpredictable ways. This problem could be small if the between-group variance is small (overall variance can be broken down into between-group and within-group components). Given the potential for introducing bias in our models, we opted to create two imputation algorithms.

2. RUG-Based Imputation Method

We assigned drug costs based on NDC codes recorded on Section U of the MDS evaluation forms using the following algorithm. First, if the NDC code was listed among the approximately 150,000 codes tracked by Medispan, we used the pricing information collected by Medispan. If the NDC code was not listed, but the exact name of the generic drug was listed, we calculated pricing as follows. In those instances where the RUG code (as calculated for our recording purposes and provided on the "raw" data files) was observed among beneficiaries using the drug, if only one cost was associated with the drug, it was used. If multiple costs were associated, the most likely cost was chosen based on the distribution of observed costs among beneficiaries. If the RUG code was not observed, we applied the process to a pooled distribution over all of the medication codes observed among all of the MDS records for all of the beneficiaries. If we could not match the exact generic name, we sought a match for the leading words in the generic name, and if matched, we applied the same approach (that is, selecting the most likely drug cost based on the RUG distribution). In cases where no reasonable match could be found, no price was assigned to the medication. This algorithm was iterative over the observed distribution among beneficiaries.

[1] The MDS instruction manual references NDC codes which do not contain drug strength information.

3. State and Year-Based Imputation Method

Because of our concerns regarding bias, we implemented a similar, but alternative algorithm to estimate the drug costs based on data contained in Section U of the MDS. We thought that missing data might vary systematically by State owing to differing data collection procedures (and software) among States. Further, we considered that coding of drugs might have improved over time. If both assumptions were true, the pattern of missing data would vary systematically through time and place. It follows that an imputation method based on time and place would be reasonable. If the NDC code was not listed among the 150,000 Medispan codes, but the exact name of the generic drug was listed, we calculated pricing as follows. If only one cost was associated with the drug within a given State and year, it was used. If multiple costs were associated, we chose the most likely cost based on the distribution of observed costs among beneficiaries. If we could not match the exact generic name, we sought a match for the leading words in the generic name, and if matched, we applied the same approach (that is, selecting the most likely drug cost using the State and year). In cases where no reasonable match could be found, no price was assigned to the medication. As with the RUG-based imputation measure, this algorithm was iterative over the observed distribution among beneficiaries.

During the course of initial analyses, we noted discrepancies between costs as measured by MDS Section U and costs as measured by SNF claims. The discrepancies between the Section U-based drug cost measure and the drug cost measure estimated from SNF claims may be due to several factors. The pharmacy cost detail codes used from the SNF claim include treatments that would not necessarily be included on the Section U according to the MDS instructions. For example, radiation treatment supplies and other procedure-related drug supplies are clearly not included on Section U. Furthermore, while applying the cost to charge ratio for pharmacy charges might appear to estimate "costs", this adjustment may only capture the administrative step-down from the facility cost report since, in all but the largest facilities, consultant pharmacy firms supply all drugs to beneficiaries. The charge to the facility includes both its "cost" (from the pharmaceutical firm or supplier) as well as the value-added labor of the facility's consultant pharmacists who perform its drug utilization review, along with any mark-up that the consultant pharmacy contractor applies. These charges for services provided represent "costs" to the facility, and so applying the facility cost to charge ratio only discounts its administrative step-down. Finally, in most States and areas, the typical practice in nursing homes is for a new admission to have a 30-day blister pack ordered for each specified drug the resident was taking upon admission to the nursing home. Since most residents came from the hospital where drugs are dispensed daily, they generally arrive at the nursing home with less than a one-day supply of medications. As a result, the transition and ordering of medications must be very quick. In turn, the "charge" for the drug will, in many instances, include drugs that may have already been changed by the 14th day of the stay, when the MDS Section U would be completed. The net result of this practice of delivering and billing for a full 30-day supply is a higher observed cost than would be produced by estimating per diem drug cost based on an enumeration of the drugs received.

Thus, we believe that Section U-based drug cost measures may eventually provide further insight into drug utilization patterns in the SNF population as these potential sources of data inconsistency yield to further analysis. However, in view of the delay in implementing the collection of medication data on the MDS, and given the current need to address and resolve these issues before proceeding, the analysis of potential RUG-III refinements described in this report was based on SNF claims data.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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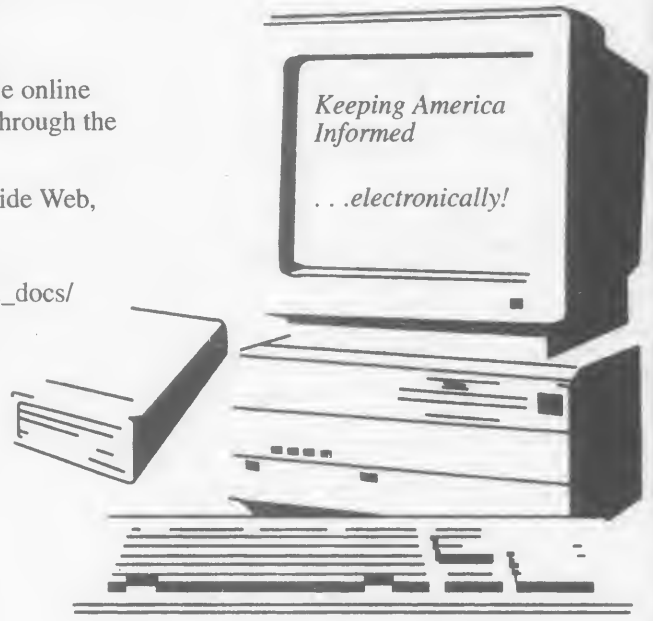

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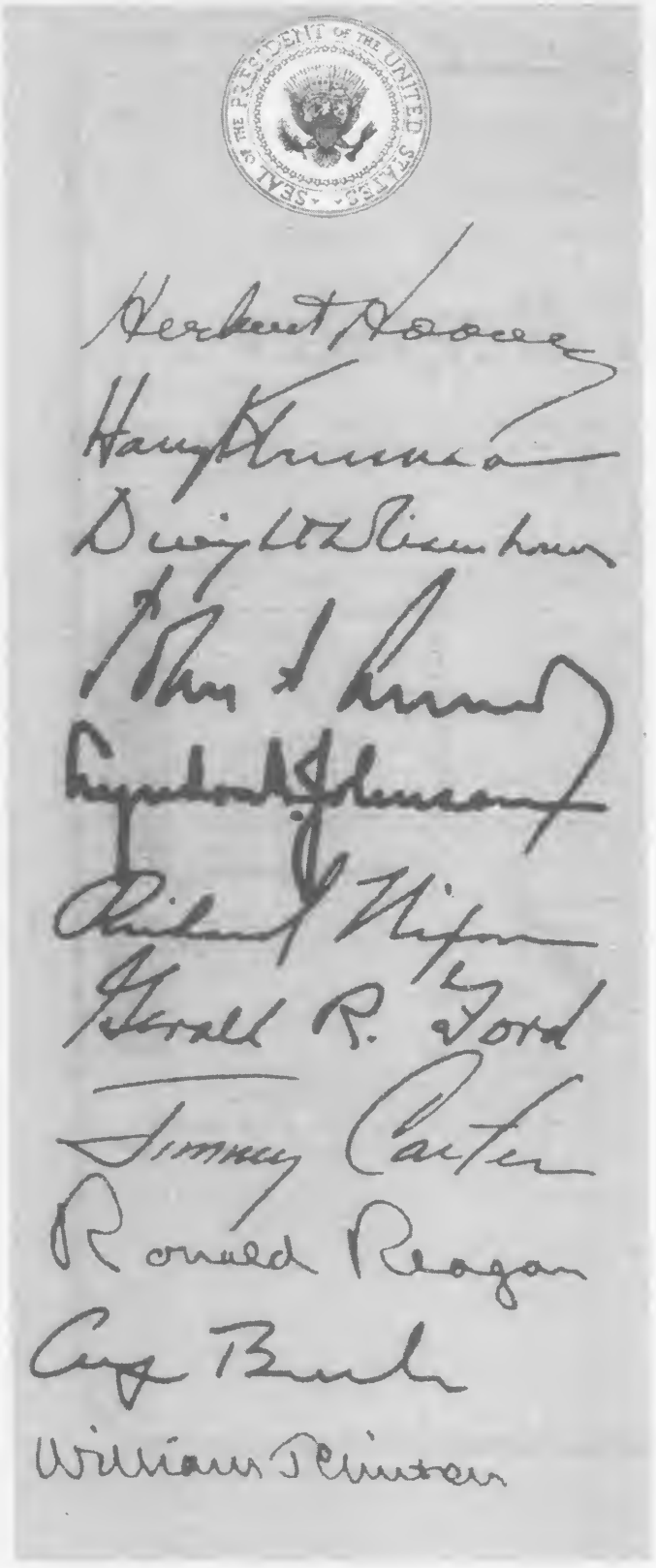

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